

COLORADO TITLE INSURANCE PRACTICE

FIFTH EDITION

VOLUME 1



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FOREWORD

Like so many real estate attorneys, my introduction to the law and practice of title insurance was made through extensive use of Willis Carpenter's manual, *Colorado Title Insurance Practice*. This manual has proven to be the foundation of my career in title insurance in Colorado. After twenty-three years, I still reach for it to provide answers to the many practical and legal issues in my day-to-day practice.

The success of this manual, of course, is due to its author, Willis Carpenter, who first published it in 1987 and updated it annually as the world of title insurance grew in size and scope. The manual matured through the years to meet the challenging demands of sophisticated lenders, sellers, and buyers. I owe an enormous debt of gratitude to Mr. Carpenter for the dedication and knowledge he brought to this manual and his other treatise, *Colorado Real Estate Practice*, both of which maintain status as invaluable and indispensable tools for every real estate attorney.

It is a great honor to be requested to take over editing this manual upon the retirement of Mr. Carpenter in 2015. It is with trepidation that I have approached this task, feeling inadequate to step into his shoes. In doing so, I have been ever mindful of Mr. Carpenter's unique style, providing, in particular, a practical and immensely readable work.

I have continued to follow the scope, content, and layout of Mr. Carpenter's original manual. As stated by Mr. Carpenter in the Foreword to the Fourth Edition:

This manual has been prepared to assist lawyers and paralegals in handling the title insurance aspects of a real estate transaction. It is assumed that, as legal counsel, you are representing one of the parties involved and although any of the parties (broker, lender, seller, buyer, lessor, lessee) could assume responsibility for the title insurance, it is in the best interest of your client that you undertake this task to ensure that your client is properly protected, both as to costs and coverages.

The extent of your responsibility, and the degree of success you experience carrying it out, may well depend upon the availability of basic information, such as that contained herein. *Colorado Title Insurance Practice* is not a research aid or a primer for assertion of claims against the title insurance company. Instead, it is intended as a reference tool for Colorado real estate practitioners who need to know about title insurance commitments, policies, and endorsements in order to work for and with their clients and the various title insurers.

Most likely your transaction is a purchase and sale of real property, involving conveyance of the property by deed and perhaps a simultaneous encumbering by deed of trust or mortgage. However, the transaction may also be the granting of an option or contract to purchase, a leasing of the property, or the securing of a loan without a sale. Whenever the term "sale" is used in this manual, it includes all of these, unless otherwise noted.

Chapter 1 is designed to assist you in selecting an insurer and placing the order for title insurance. Various aspects of title insurance are considered in detail in subsequent chapters. A comprehensive index is included at the end of the manual for ease in locating data on specific subjects. A selected legal bibliography precedes the index to provide assistance with research on title insurance questions.

New for this 2018 edition of the manual is a chapter on Claims, authored by Robert W. Reed, Esq. This is a topic which always attracts intense interest. The proper filing of a claim with the title insurance company is an important first step, as is an understanding of the claims process. Mr. Reed has provided a concise summary of this process, and his contribution is very welcome.

My sincere and grateful thanks to Susan Hoyt, Lisa Travis Fischer, and their colleagues at CLE in Colorado, Inc. for their invaluable assistance in preparing this edition of the manual.

Peter Griffiths, Esq.
January 2018

PUBLISHER'S NOTE

In January 1987, Willis Carpenter's treatise *Colorado Title Insurance Practice* was first published as an accompaniment to his seminal work, *Colorado Real Estate Practice*. Mr. Carpenter prepared *Colorado Title Insurance Practice* in order to provide guidance to lawyers and paralegals in handling the title insurance aspects of real estate transactions.

CLE in Colorado, Inc. has had the privilege of publishing *Colorado Title Insurance Practice* for many years. We have greatly enjoyed working with Mr. Carpenter. He has taught hundreds of Colorado's real estate attorneys the basics of real estate and title insurance practice. Mr. Carpenter's treatises provide straight-forward guidance and insight into Colorado real estate and title insurance law.

In 2015, Mr. Carpenter retired from teaching and writing, and CLE in Colorado was tasked with filling his formidable role. Peter Griffiths was a natural choice for the update author for *Colorado Title Insurance Practice*. Mr. Griffiths has spent many years at title insurance companies and is currently the Vice President and Legal Counsel for Land Title Guarantee Company. His updates to *Colorado Title Insurance Practice* are comprehensive and thoughtful; he paid careful attention to maintaining Mr. Carpenter's unique tone.

We at CLE in Colorado, Inc. constantly strive to produce quality, informative publications. We aspire for our books to be invaluable resources to Colorado attorneys. We welcome all comments and suggestions for *Colorado Title Insurance Practice* and any of our other publications.

Susan Hoyt

*Legal Editor/Social Media Administrator/
Program Planner*
Colorado Bar Association CLE

Lisa C. Travis Fischer, Esq.

Publications Director
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Retired



Mr. Carpenter was admitted to the Colorado bar in 1954, and has been engaged in private practice in Denver ever since, excluding service in the Navy from 1955 to 1958. He attended public schools in Hayden and Denver, Colorado, and graduated from East Denver High School. He received his A.B., cum laude, from Princeton University in 1951, and his LL.B. from Harvard Law School in 1954.

A frequent CLE lecturer and author, he also taught the property portion of the bar refresher course from 1972 to 1981. Mr. Carpenter has authored numerous articles. Additionally, he wrote three chapters of Krendl's Colorado Methods of Practice ("Easements," "Drafting Leases," and "Termination of Leases and Unlawful Detainer"), and published two books with CLE in Colorado: Colorado Title Insurance Practice and Colorado Real Estate Practice.

He chaired the Real Property Section of the Colorado Bar Association in 1976-1977, received that Section's first "Deserving Member Award" in 1986, and was the first recipient of the Section's 50-year Outstanding Lawyer Award in 2004. He served on the Title Standards Committee from 1980 to 2015.

In 1978-1979, he was elected president of the Denver Bar Association. He received the DBA Annual Award of Merit in 1993 and the CBA Annual Award of Merit in 2004.

A director of Continuing Legal Education in Colorado, Inc., from 1967 through 1988, he was CLE's president in 1976-1977. He and Holly Hoxeng were the first recipients of CLE's Richard N. Doyle Award of Excellence in 2002.

Mr. Carpenter was a charter member of the American College of Real Estate Lawyers and is a Fellow in both the American Bar Foundation and the Colorado Bar Foundation.

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Peter J. Griffiths, Esq., is a Vice President and General Counsel of Land Title Guarantee Company. In previous years, he was Vice President of LandAmerica Financial Group Inc. and manager of the LandAmerica Commercial Services office in Denver. Before that, he was Commercial Manager and Office Counsel for Chicago Title of Colorado, Inc. and Rocky Mountain Counsel for Lawyers Title Insurance Corporation in Denver. He has specialized in real estate law and transactions for the past 38 years, 16 of which were as a shareholder in a leading law firm in Cape Town, South Africa, and thereafter in the title insurance industry in Colorado, USA.

Mr. Griffiths is responsible for providing assistance to all levels of the executive staff; identifying and analyzing legal issues, drafting key documents, and ensuring legal compliance; and advising both in-house employees and clients of the company regarding underwriting requirements and legal issues pertaining to the insurability of the various transactions. He has authored a title insurance underwriting guideline for distribution to title officers and escrow personnel, has lectured for private educational institutions on real estate and title insurance law, and has spoken on behalf of Land Title Guarantee Company to realtors and trade groups. He has also lectured widely on behalf of CLE in Colorado, Inc. on title insurance related topics, and is the author of the chapter, “Closing Documents,” in *Colorado Real Estate Forms Deskbook*, (James G. Benjamin, Ed., CLE in Colo., Inc. Supp. 2017). He has edited the Colorado chapter in the “Title Insurance Regulatory Survey,” published annually by the American Land Title Association.

Mr. Griffiths graduated from the University of Cape Town with a Bachelor of Laws degree (1978). He is a member of the Colorado Bar Association, Colorado Bar Foundation, and the American Bar Association (Real Property, Probate and Trust and Business Law sections). From March 2006 until June 2015, he was a member of the Real Estate Section Council of the Colorado Bar Association, and from November 2009 until June 2015, he was the representative of the Council to the Board of Governors of the Colorado Bar Association. In 2009, he was named as one of Colorado’s Super Lawyers. In 2017, *Law Week Colorado* named him as the Barrister’s Choice for Best In-House Counsel Lawyer or Legal Team. He is a member of the American Land Title Association and the Land Title Association of Colorado.

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Chapter 8 — *Title Insurance Claims*

Robert W. “Rob” Reed, Esq. is a solo practitioner in Golden. His practice includes mortgage lending law, judicial and non-judicial foreclosures, real estate transactions, real estate financing, real estate litigation, and probate. Since 1994, Rob has assisted title companies with underwriting and risk identification, claims analysis and resolution, and escrow disputes. Rob represents clients in real estate litigation of matters ranging from boundary line issues, access disputes, encroachments, reformation, easements, ownership issues, partition, mechanics’ liens, treasurer’s deeds, lot line adjustment issues, and lien priority issues.

Rob is Colorado native and a 1990 graduate of the University of Colorado School of Law. He was appointed to the Golden Urban Renewal Authority in 2014, and was elected to Golden City Council in 2017.

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Note on terms used in this Book:

- 1) “*CREP*” refers to *Colorado Real Estate Practice* (Deanne Stodden, ed., CLE in Colo., Inc. Supp. 2018).
- 2) “Title insurance company” means the insurance company authorized under Colorado law to issue policies of title insurance. C.R.S. § 10-11-102(10).
- 3) “Title insurance agent” means an agent of a title insurance company authorized by that title insurance company to solicit insurance, collect premiums, and issue policies on behalf of the title insurance company. C.R.S. § 10-11-102(9).
- 4) “Title entity” means title insurance companies and title insurance agents. *See, e.g.*, § 4.S of Regulation 8-1-1.
- 5) “Regulation” means the title insurance regulations promulgated by the Division of Insurance in the Colorado Department of Regulatory Agencies.

§ 1.1 • WHY TITLE INSURANCE?

Whether the grantee is the buyer, lessee, vendee, optionee, or lender, the grantee will want to be fully advised as to the status of the title of the grantor (the seller, lessor, vendor, optionor, or borrower). A personal search of the real estate records in the office of the clerk and recorder of the county in which the property is situate can accomplish this, but that process is usually too hazardous, too time-consuming, and too expensive, unless you have extensive experience in county searching. An abstract of those records could be purchased, and an attorney may be employed to examine the abstract and provide an opinion as to the title. That method is still sometimes utilized in Colorado, principally in mineral leasing, acquisition of water rights, and in a few rural areas with respect to farms and ranches. However, it affords the grantee recourse only by way of a suit for negligence against the abstractor or attorney if a title failure later occurs and it is determined that the abstract or title opinion was defective. Payment of any claim will depend on the financial wherewithal of the abstractor or attorney and the extent of coverage of any errors and omissions insurance in force.

In most transactions, the grantee will insist upon title insurance because of its economy and because it is *insurance* underwritten by companies with the desired financial strength to cover payment of any claims, with the added protection of extensive state and federal regulation. See the discussion in *CREP*, Chapter 5, “Title Insurance in the Real Estate Practice.”

§ 1.2 • HOW TITLE INSURANCE DIFFERS

Unlike most forms of casualty insurance (*e.g.*, fire, medical, homeowner, automobile) that provide protection against the possible happening of a future event, title insurance provides protection against actions or omissions that occurred long before the time the policy is written.

The title insurance company assumes responsibility for examination of the real estate records in the office of the clerk and recorder of the county in which the property is located. Title examiners employed by the title entity will search the records of the title plant, indexed according to legal descriptions (a “tract index”) rather than indexed according to grantor and grantee, as the county records are indexed. In some rural counties, or where a title plant is not available to the title entity, the title entity will search the county records in person at the office of the clerk and recorder (or via an online connection to that office) and provide a title insurance commitment based upon that “stand-up” search.

Some Colorado counties (*e.g.*, Gunnison, Lincoln, Pitkin) have full or partial tract indices. These are not “official.” The recording statute requires only a grantor-grantee index. C.R.S. § 30-10-408. Thus, a tract index search is not a *legal* search. *Guaranty Bank & Trust Co. v. LaSalle National Bank Ass’n*, 111 P.3d 521 (Colo. App. 2005).

§ 1.3 • SCOPE OF TITLE INSURANCE

The Title Insurance Code of Colorado prohibits the issuance of title insurance other than (a) by a title insurance company which has satisfied the statutory capital requirements; (b) following a reasonable examination of the title; and (c) upon a determination of insurability in accordance with sound underwriting practices. C.R.S. § 10-11-106; § 5.A of Regulation 8-1-2. Colorado is among the minority of states that, by statute, require a search of the records and examination of title before title insurance is written. Other states impose that duty by judicial decision, or leave the question of search and examination to the company’s discretion, permitting the risk to be assumed without either if the company is so inclined.

An important caveat must be made at this early stage regarding the extent of a search made by a title entity. Both statute and regulation provide:

No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies.

C.R.S. § 10-11-106; *see also* § 5.A of Regulation 8-1-2.

The practical effect of these search standards is that a reviewer of the title insurance commitment should not rely on the title insurance commitment as a complete report on the status of title of the property or as disclosing all documents on record. The standards applied are to conduct a reasonable

search and to determine the insurability of title. The standards for the scope of a search set out in the Colorado Real Estate Title Standards also are not followed. *See* Colorado Real Estate Title Standard 1.1.2, “Examinations for Title Opinions,” and 1.1.3, “Scope of Search of Real Property Records” (2017). This may result in a search much more limited than the attorney anticipates. The title entity issuing the title insurance commitment should be requested to conduct a complete search, or if mineral or water rights are a concern, to ensure that the search includes all documents relating to these matters, which are often intentionally overlooked during the search because title insurance is not available for water rights or a severed mineral estate. *See* §§ 2.8.8 and 2.8.9.

Note that the title insurance company is required to make “a determination of insurability of title.” There is a difference between marketable title and insurable title. Section 1(k) of the 2006 Owner’s Policy defines unmarketable title as “Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or 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.” Insurable title is title the title insurance company is willing to insure, based on its assessment of the risk. Insurable title is a broader standard than marketable title. The willingness to insure will not cure a defect causing unmarketable title. For example, the existence of an encroachment affects the marketability of title, and the fact that a title insurance company is willing to insure the risk of the encroachment does not create marketable title or force a buyer to accept the title as marketable.

Each title insurance company sets standards by which its employees and agents determine the reasonable examination of title. While these standards are similar among the title insurance companies, there are also differences. There is no statutory or regulatory definition of what these standards should be, other than the requirements of § 5.A in Regulation 8-1-2:

An examination shall be considered reasonable if it conforms to written standards and practices as determined by the title insurance company that is insuring the transaction. Nothing contained herein shall permit a title insurance company to create written standards and practices that do not comply with sound underwriting principles. Nothing contained herein shall prohibit title insurance companies from developing separate examination standards for different types of transactions or geographical areas.

An example of a commonly applied standard is placing reliance on a prior title policy issued by another title insurance company. A title entity conducting a search may limit the search to a prior insured transaction and not earlier, on the basis that the prior title insurance company cleared or insured over title defects and is liable to its insured for any warranty claims under the continuation of coverage provisions of the owner’s policy. *See* § 4.4.5 for a discussion of continuation of coverage.

The title policy, when issued following the closing, will insure the grantee against all defects not excepted or excluded,¹ regardless of whether those defects arise by reason of recorded or unrecorded interests. It is not necessary to sue the title insurance company for negligence. The title insurance company is liable to the insured on its contract of insurance, *i.e.*, the title policy; and only the existence of the defect need be proved (with proof of loss, if requested).

1. Exclusions, unlike exceptions, appear in the policy, not in the commitment, as explained in § 2.6.1.

As in any insurance policy, “the big print giveth and the little print taketh away.” Complete familiarity with the forms and procedures is a prerequisite to the protection of your client whenever you undertake to rely upon title insurance.

§ 1.4 • SELECTING A TITLE INSURANCE COMPANY AND A TITLE INSURANCE AGENT

§ 1.4.1—Title Insurance Companies and Title Insurance Agents

The title insurance company underwrites the title insurance policy, sets underwriting and search standards, and responds to claims submitted under the policy. In addition to the title insurance companies, there are several hundred title insurance agents in Colorado² who issue title insurance on the policy forms of the qualified title insurance companies.

Some title insurance companies operate only through agents or sub-agents; some issue title insurance directly through title insurance company-owned branch offices; some operate through subsidiary corporations that may be wholly or partly owned; and many operate in a multiplicity of ways in various counties or cities. It may be very difficult to ascertain whether a title entity is in fact the underwriter or an agent. For example, a title insurance company may have had several mergers and acquisitions through the years and may own an agent, in which case the agent is really part of the title insurance company, but the agent is selling insurance under the name of the title insurance company before the acquisition.

It is important to determine the financial stability of the title entity with which you are dealing. A title insurance agent, wholly owned by the title insurance company that is the underwriter of the policy issued, may be regarded as having the same financial stability as the underwriter itself. This is not to say that a title insurance agent may not be financially sound, particularly a large long-established title insurance agent. The due diligence should extend to understanding and selecting the title insurance company based on (1) financial reliability, (2) services offered, and (3) reputation in the community, but not necessarily in that order. Attached as Appendices 1 and 2 are some details about Colorado title insurance companies and title plants that may help with your decision. The Colorado Division of Insurance publishes an annual report on title insurance pursuant to C.R.S. § 10-3-207(1)(f)(IV), which is available on its website, www.dora.colorado.gov/insurance.

§ 1.4.2—Information on Colorado Experience

Appendix 1 indicates the financial experience of the Colorado title insurance companies for the most recent year available. More industry financial data is available on the ALTA website at www.alta.org/industry/financial.cfm. This information provides a guide to the relative size of the title entities, amount of business and claims paid in Colorado, and other pertinent details.

2. According to the Colorado Division of Insurance website, www.dora.colorado.gov/insurance, in 2016 there were 20 title insurance companies and 318 title insurance agents in Colorado.

§ 1.4.3—Information on Title Plants

Appendix 2 provides information, to the extent available, concerning SKLD, a jointly-owned nonprofit title plant in Denver that is utilized by some title entities in the counties indicated. In other counties, different companies own various title plants. *E.g.*, Kimmel Corp. (operates title plants in 57 counties across the western United States, including many counties in Colorado (www.kimmelcorporation.com/about.htm)); DataTrace, Inc. (provides title search and related services nationwide, including in some Colorado counties (www.datatracetitle.com/real-estate-title-plant)).

CAUTION: Errors can be made in maintaining a title plant, just as errors can be made by a title searcher who examines the records in person. Misjudgment in interpreting error-free data can also occur. Therefore, the reliability of a title insurance company as a title searcher and examiner may be indicated by its Colorado track record, shown by the claims paid in Appendix 1. On the other hand, a large or unusual loss in any one year could distort that report. One should be aware that the figures in Appendix 1 may be skewed somewhat by the extent to which the named title insurance companies share income and losses with their agents.

§ 1.4.4—Information on Financial Strength

Large national lenders, based upon a conservative analysis of each title underwriter's financial statements, will set their own guidelines as to the acceptable primary liability limit on a single policy insured by that underwriter. This information is then compared with the insurer's "self-imposed" single risk limit. Because any such determination is necessarily based upon financial information that may change overnight, it is not practical to publish such conclusions here. However, if you wish to do your own analysis, it is suggested that you review the ratings issued by the national rating companies such as A.M. Best Rating Services, Inc., or Demotech, Inc., *available at* <http://ambest.com/ratings> and <http://demotech.com>.

Many of the small title insurance companies will reinsure up to 100 percent of the risk with a larger underwriter having a more favorable balance sheet. Thus, if you are ordering a large policy, you may select a title insurance company capable of assuming the entire risk, or you may go with a smaller company that provides good service and reinsures with one or more large title insurance companies. *See* § 1.9.

§ 1.4.5—Information on Title Insurance Agents

There is no publicly available information on the financial strength of a title insurance agent. Title insurance agents wholly owned by the title insurance company are presumably as financially strong as the parent. This is not as clear for independent title insurance agents. In these cases, reputation in the marketplace is paramount. It is always pertinent to ask the title entity: Are you a title insurance agent, and, if so, which title insurance company underwrites your policies? Who stands 100 percent behind what the title insurance agent does or fails to do? Some title insurance agents may write for more than one title insurance company and can offer a choice. Be aware also that the title insurance company underwriting the policy may refuse responsibility for acts of the title insurance agent in handling the closing, preparing documents, and disbursing proceeds. In this case, the best protection is to obtain an "insured closing letter" or "closing protection letter" in which the title insurance company underwriting the policy will insure against loss resulting from certain of the title insurance agent's activities in a transaction. *See* Appendix 9 for forms of such letters, as authorized by Division of Insurance Bulletin No. B-5.31, issued February 6, 2013, and § 5.C.11 of Regulation 8-1-3 (effective January 1, 2017).

The ALTA website is another useful source of information. ALTA has developed a set of Best Practices “to protect consumers, promote quality service, provide for ongoing employee training, and meet legal and market requirements. These practices are voluntary and designed to help members illustrate to consumers and clients the industry’s professionalism and best practices to help ensure a positive and compliant real estate settlement experience” (*available at* www.alta.org/best-practices). A title entity can be certified by ALTA that it has met the association’s requirements for Best Practices.

§ 1.5 • CONTROLLED BUSINESS — WHO SELECTS THE TITLE ENTITY?

Most often, selection of the title insurance company is dictated by a lender or broker. The practice of conditioning a loan upon the use of a “favored” title entity, such as a title agency in which the lender or broker owns an equity interest, is limited, or proscribed by various laws and regulations.

§ 1.5.1—RESPA

The Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §§ 2601, *et seq.*, prohibits the giving or accepting of kickbacks for the referral of business incident to a real estate settlement involving a federally related mortgage loan. However, if the only value received by the lender or broker is a normal return on the business generated, issuance of title insurance by the “captive” agency is not forbidden, provided (1) the relationship is disclosed, (2) use of that particular title insurance agency is not required, and (3) all charges are estimated in advance. 12 U.S.C. § 2607(c). Specifically permitted is the issuance or arrangement for the issuance of title insurance by an attorney who represents a client in the transaction. *Id.*

§ 1.5.2—Other

Both by statute and regulation, Colorado prohibits the offer of incentives to influence the control of business but does not directly prevent the lender or real estate licensee from designating the issuing title entity. *See* C.R.S. § 10-11-108; Rule E-19 and Commission Position Statement CP-34, Colorado Real Estate Commission; Regulation 8-1-3.

§ 1.6 • ORDERING TITLE INSURANCE

If there is a real estate broker involved in the deal, the broker usually will order the title insurance commitment as soon as the contract is signed or even before. See the discussion in § 2.6.2 regarding identity and amount of the title insurance commitment. It appears everyone has a favorite title entity and the title entities vie with each other to provide helpful services to gain business. Therefore, if you intend to order the title insurance, you must move quickly. Advise the other participants that you will assume that responsibility.

§ 1.6.1—Checklist for Ordering Title Insurance

When ordering title insurance, you should consider the following checklist:

Real Estate Contract

The standard form of contract approved by the Colorado Real Estate Commission, CBS1-6-15, “Contract to Buy and Sell Real Property (Residential)” (Contract), which is mandatory for use by real estate brokers, has several sections expressly dealing with the issuance and form of the title insurance commitment. An understanding of the interplay between the contract and the title insurance components is essential to a review of the title insurance commitment and the policy and the rights and obligations of the seller and buyer.

Section 8 of the Contract covers the selection of the title entity to furnish the owner’s policy, which party will pay for the policy, whether “Owner’s Extended Coverage” will be included, and title objections. This section also covers off-record title matters, which include matters made known to the buyer, and dovetails into the knowledge of the insured that should be made known to the title entity to avoid any prejudice to the buyer/insured under section 3(a) of the owner’s policy. Section 9 covers the choice of whether a survey will be obtained, at whose cost, the type of survey, and objections to survey issues.

Rates

Inquire about rate charges and closing and settlement fees during your initial contact with each title entity. Unfortunately, this may be a frustrating process because all too frequently the person who fields your call knows next to nothing about this most important aspect of the business. If you inform yourself in advance about the various rates normally offered by title insurance companies, you should be able to determine whether you are receiving reliable quotes from the individual with whom you are speaking. The information you need to know in advance is discussed in § 1.8.

Purchase Contract

Furnish the title entity with a copy of the purchase contract or lease as soon as it is available. Be sure it contains an accurate legal description. Occasionally, the only access to the property will be via a private easement. If so, the title to the easement should be insured along with the title to the property. *See* § 2.8.7. In that case, advise the title entity, provide a legal description of the easement and, if applicable, provide the recording information that will identify it.

Unknown Information

If some of the required information is unknown, such as the amount of insurance to be obtained, names of the grantees, etc., the title insurance commitment may still be ordered, with such information “to be determined” and added later (known in the industry as a “TBD” commitment). A word of caution: the title insurance commitment is not binding on the title insurance company until the identity of the proposed insured (purchaser/grantee) and the amounts of the policies to be issued have been inserted in the title insurance commitment. *See* § 2.6.2. A charge may be made for the TBD title insurance commitment. The charge may be credited to the rate charged when the transaction closes and the policy issues. There is no charge if the title insurance commitment is issued pursuant to a sale to a bona fide purchaser which cancels pursuant to the terms of the contract. *See* §§ 5.C.2 and 5.D.2 of Regulation 8-1-3.

Coverages Required

Try to advise the title entity when the order is placed exactly what coverages will be required pursuant to § 8.1 of the Contract, otherwise, there will be some confusion and lost time. Examples: exceptions 1 through 4 deleted (the deletion of exceptions 1 through 4 is described in section 8.1.3 of the contract as “Owner’s Extended Coverage”); form of policy to be used; and endorsements required, such as Colorado Endorsement 130, Colorado Endorsement 100, mineral protection, etc. Unless you are thoroughly familiar with the title entity’s forms of policies and endorsements, ask that samples be sent to you for review prior to the closing.

Survey

Determine whether a survey or improvement location certificate will be required by the title entity to provide the coverages requested. *See* § 9 of the Contract. Establish who is responsible for ordering the survey and obtain an estimate of its cost.

Abstract Surrender

If an abstract is to be surrendered for credit, arrangements must be made at the time the title insurance commitment is ordered. If title has already been examined and then an abstract is tendered, the surrender credit may be denied. Note that § 8.1.6 of the Contract requires any abstract to be delivered prior to the Record Title Deadline. This may be too late to obtain any surrender credit. For additional information, including whether an abstract *should* be surrendered, see § 1.8.6.

Prior Policy

If there is an existing policy of title insurance, owner’s or lender’s, a copy should be obtained and submitted to the title entity at the time the title insurance commitment is ordered. Not only will this assist the title entity in a correct examination and possibly prevent errors, but a lower rate may be available if the existing policy is recent (normally, within one to six years, depending upon the title entity and the type of policy), even though the title entity from whom the title insurance is now being requested did not issue the existing policy.

Off-Record Title Defects

Inform the title entity in writing of any title defects or possible title defects of which you or your client is aware but are not disclosed by the public records. *See* § 8.3 of the Contract. Failure to do so could limit the insurance coverage. *See* § 2.7.2.

Other Services

If possible, state whether the title entity’s closing services are desired, and detail any other services that may be needed. The appointment of the closing company is not dealt with in the Contract, although reference is made to the “Closing Company.” Instead, the closing company is selected in the Closing Instructions. As defined by statute, the “business of title insurance” includes “the performance of closing and settlement services by a title insurance company or title insurance agent in conjunction with the issuance of any contract or policy of title insurance.” C.R.S. §§ 10-11-102(3) and (3.5).

Timing and Distribution

Explain to whom and where the title insurance commitment is to be sent and when it must be received to comply with the purchase contract. *See* § 8.2 of the Contract.

§ 1.6.2—Ownership and Encumbrance Report (O&E)

Prior to ordering a title insurance commitment, when information about ownership or liens is required about a property — for example, to complete a listing agreement — you might consider requesting an O&E. Most title insurance companies and title insurance agents in the Front Range and larger cities and towns across the state offer an O&E or similar product. The O&E will disclose the record owner of a property and any existing liens, such as a deed of trust, and will include copies of the vesting deed and liens. The O&E does not provide much more than this, so use the data supplied in an O&E cautiously, especially if your client is looking at bidding on the property in a judicial or public trustee foreclosure sale or developing the property. The charge is minimal, but so is the information provided. *See* § 4.J of Regulation 8.1.3.

§ 1.7 • OBTAINING A FAVORABLE RATE

In choosing a title entity, exercise care to determine that a favorable rate, if not the *most* favorable rate, will be obtained. The question of rates obviously is an important factor. The rates offered by a title entity, however, must be balanced against the other factors discussed in this chapter, such as services offered, reputation, reliability, and financial stability.

§ 1.7.1—Filing of Rates

The Title Insurance Code of Colorado allows any title entity authorized to do business in Colorado to file a separate and independent schedule of rates without a hearing, review, or approval by the Commissioner. C.R.S. § 10-11-118; Regulation 8-1-1. Since closing and settlement services are part of the business of title insurance, fees for these services must also be filed with the Commissioner of Insurance. *See* “Other Services” in § 1.6.1. The rates and fees will be effective 30 days after the Division of Insurance receives the rate filing. This method of approving rates is sometimes referred to as the file and use procedure. However, see Bulletin No. B-5.33, “Centralized and Streamlined Title Insurance Rates,” Colorado Division of Insurance, March 27, 2013, for an example of regulatory action about the types of rates filed. Although these types of rates were in use, after the statutory filing procedures had been followed, the Colorado Division of Insurance subsequently deemed the rates discriminatory, which necessitated the re-filing of these rates by the title insurance companies.

In Colorado, each title insurance company determines the amount of the rates. The rate for title insurance is the amount charged by a title insurance company, agent for a title insurance company, or either of them to an insured or an applicant for insurance for the assumption by the title insurance company of the risk created by the issuance of the title insurance policy, including the cost of doing business and a reasonable profit, but excluding service charge, if any. C.R.S. § 10-11-102. The Colorado Division of Insurance does not set the rates, unlike in other states such as Florida, New Mexico, and Texas, called “promulgated rate states,” where the state promulgates the title insurance rates.

By statute, a title insurance company must follow certain guidelines in determining its rates. *See* C.R.S. §§ 10-11-118 and 10-4-401. For example:

Rates shall not be excessive, inadequate, or unfairly discriminatory. The following rate standards shall apply:

- (a) Rates are excessive if they are likely to produce a long run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered.
- (b) Concerning inadequacy, rates are not inadequate unless clearly insufficient to sustain projected losses and expenses, or the use of such rates, if continued, will tend to create a monopoly in the market.
- (c) Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory solely if different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.

C.R.S. § 10-4-403.

The filed rates and fees must be on display and available to the public in the office of the title entity. Any increase or decrease applies to policies or services that have been contracted after the effective date. Title entities are not permitted to deviate from the filed rates and fees. *Id.*; § 6 of Regulation 8-1-1; § 5 of Regulation 8-1-3.

§ 1.7.2—Information on Rates

The current filed rates, as well as any proposed changes thereto which take effect in the future, are available from the title entity and the Colorado Division of Insurance. Because new or amended rates are frequently filed, it is not feasible to provide accurate comparisons of company-by-company rate information. Inquiry should be made from various title insurance companies or their agents to determine the rates in force at the time you place your order. In many cases, the rates for the same product offered by a title insurance company will vary by county, so that, for example, the rate for an owner's policy for \$100,000 will be more in the Front Range counties than in the less populated counties. There are many variations and differences between companies, so careful inquiry is required.

Note that the selection of the title insurance company is made in the Contract and the payment of the cost is determined by a choice between the Seller or Buyer. *See* § 8.1.1 of the Contract.

§ 1.7.3—Considerations in Rate Shopping

When you are looking for a favorable rate, be careful to consider all coverages and rate schedules. One title insurance company's basic rate on a small policy may be lower than another's, but the simultaneous issue rate for the lender's policy may be higher. There are differences, too, in subdivision rates, reissue rates, construction loan rates, charges for endorsements, and the costs assessed for handling a closing or an escrow. Some title insurance companies charge extra for a difficult title examination, particularly when two parcels with two chains of title are involved or other circumstances require more than the normal effort. The total package must be defined and the total cost determined on each individual transaction. With all the variations in rate schedules, it is almost impossible to state unequivocally that one company always charges less than the others.

As with rates, fees vary between the various title entities providing closing and settlement services, and many charges are inclusive of services offered. Therefore, when considering the costs to the client in the selection of a title insurance company or title insurance agent, remember to include the costs of the closing and settlement services.

However, keep in mind that if you spend a half-hour sorting out a \$30 reduction in cost, you have not saved the client money unless your hourly rate is less than \$60 (if you utilize the services of the real estate broker, five minutes of direction by you and two hours of hustling by the broker may pay off). Also evaluate the quality of service and reputation of the title entity when considering rates and fees. A good reputation and quality of service will far outweigh the apparent advantages of a lower rate or fee if accompanied by below-average quality of service and poor reputation.

§ 1.8 • RATE SCHEDULES AND RATE INFORMATION

There are numerous types of rates, charges, and credits. They vary from company to company and with time. Any reference to an amount is only an approximation. The principal rates, charges, and credits are discussed below.

§ 1.8.1—Basic Rate

This is the standard rate charged by a title insurance company for an owner's or lender's policy, including policies insuring a contract, option, or leasehold interest, where no special rate, deductions, or credits apply. Charges for endorsements are frequently stated as a percentage of basic rate. Even if a rate other than the basic rate applies to the policy, an endorsement to the policy may still be charged as a percentage of the basic rate.

§ 1.8.2—Reissue and Refinancing Rate (Short-Term Rate)

The title insurance company may allow various credits if a policy on the same property has been issued within a designated period, usually two or three years but sometimes up to six years. The rationale for the credit is based on the reduced risk to the new title insurance company, since the status of title for the property has been recently researched and the same or another title insurance company has assumed the risks on any claim, and in so doing, may have cleared many title defects. The use of a general, or perhaps a special, warranty deed allows the company to subrogate to the insured's claim under the warranties given, thereby further reducing the risks. The credit for the reissue rate applies even if the prior policy was a loan policy and the current policy is an owner's policy, or vice versa. It is not necessary that the previous policy be issued by the same title insurance company issuing the current policy. Any policy from any title insurance company will earn the credit. In the case of title entities using a title plant, such as SKLD, the title plant will indicate which title entity last insured the transaction by a code, known in the industry as a "starter." Also, most title entities will insert their logo, or "bug," on the documents filed for recording by that title entity, providing a useful indicator that the transaction was previously insured. If this information is not available, ensure that a copy of the previous policy is furnished to the title entity at the time the order for title insurance is given (or, at the very least, before the title examination has been commenced). If a new loan policy is being issued upon a refinancing of the property, the credit should be available. This is called a "refinance rate" or "reissue rate."

Traditionally, the amount of the “reissue” credit has been based on a sliding scale from 50 percent of the basic rate applicable to the prior policy, if the title policy is issued within the first year of the prior policy, reducing to 10 percent of the basic rate if the title policy is issued within the fourth or fifth year of the prior policy. If the new policy is for an amount greater than the prior policy, the excess will be charged at the full basic rate. The “reissue” credit generally will not be allowed where other reduced rates apply (e.g., simultaneous rate, subdivision rate, etc.).

§ 1.8.3—Simultaneous or Concurrent Rate

When an owner’s and a lender’s policy are issued for the same transaction, the rate for the loan policy will be charged at a special simultaneous rate, usually between \$100 and \$200, if the liability amount is equal to or less than the liability amount of the owner’s policy. If the loan policy is for a greater amount, the additional liability amount will be charged at the basic rate. For the rationale behind the lower simultaneous rate, see the discussion in “Liability Noncumulative” in § 4.4.5.

The simultaneous issue rate does not, however, apply to two owner’s policies issued concurrently on different properties, as in an exchange or trade. In theory, the rate should not apply to the concurrent issuance of owner’s policies to seller and buyer (as discussed in “Rights of Recovery Upon Payment or Settlement” in § 4.4.5), to lessor and lessee (as discussed in § 4.9), or to fee owner and easement owner (as discussed in § 2.8.8). This is because the title insurance company is releasing its subrogation rights of recoupment in the event of loss, and the risk is cumulative when amounts paid on one policy cannot be subtracted from the other.

§ 1.8.4—Subdivision (Wholesale) Rate

Because subdividers, builders, and developers order quantities of title insurance, a special reduced rate is available to them. Subdivision rates may be even less than the reissue rate. Rates based purely on volume of work referred are prohibited. The reduced subdivision rates are justified by the efficiencies of scale obtained in researching title and producing similar title insurance commitments to insure the sales of the individual lots created through the subdivision and the use of “transaction coordinators” who assist in the closing process. There are considerable variations between title insurance companies in this area, so it is wise to make inquiry and determine if the subdivision rate is applicable to the developer-client’s situation. A loan policy to insure a development or construction loan, obtained to finance the construction of the improvements required by the local authority when approving the plan of development, may be issued at the subdivision rate.

§ 1.8.5—Construction Loan Rate

A policy insuring a construction loan may be eligible for a discounted rate. The rationale for the reduced rate is similar to the rationale for the reissue credit. *See* § 1.8.2. In addition, the construction loan is almost always limited to the duration of the construction process, which results in a reduced risk of claims for the title insurance company.

Conversion from a construction loan policy to a permanent loan policy may bear a reduced or reissue rate. Usually, 10 percent of the rate originally paid for the construction loan policy is charged if the conversion occurs within 24 months, and 30 percent is charged if the conversion occurs within 48 months. Alternatively, 50 percent of the basic rate may be charged when the construction loan policy is issued and an additional 50 percent when the permanent loan policy is issued.

§ 1.8.6—Abstract Surrender Rate

Years ago, when the title insurance companies were competing with the abstracters for title business, the industry came up with the idea of offering a discount on the cost of title insurance if the parties were willing to surrender the abstract traditionally used to evidence title. The credits in Colorado have generally been one-tenth of 1 percent of the insured amount of the policy, with a minimum of \$25 and a maximum of \$100. Today, given the escalation in rate costs for title insurance, the prospect of saving \$100 triggers little response, and abstracts are no longer in meaningful competition with title insurance. However, if you represent a seller who is giving up all interest in the property, is retaining no lien, and will never again have anything to do with the property, an abstract surrender for the \$100 credit may make sense.

The true value of the abstract may be historical. Many purchasers are interested in the history of their titles and the abstract contains that data, though probably not to a current date.

From the economic standpoint, the abstract may contain the record of water rights or mineral interests that would be difficult to research in the public records. A good rule to follow on farm and ranch property is: never surrender the abstract. It is always worth at least \$100 to the owner and may facilitate obtaining title insurance on water rights and mineral interests. *See* §§ 2.8.8 and 2.8.9. The seller of such property who carries back a lien will want to assure the preservation of the abstract, too, and will normally hold the abstract until the lien has been paid in full.

To the extent that the abstract may reflect more recent entries, there is a reason to retain the abstract: to have it available as a check on the title work of the title insurance company, or in the event of a claim against the title insurance policy later.

With some companies, you can have the best of both worlds. Formerly, the practice was to burn or shred surrendered abstracts so they could never again get into circulation and compete with the title insurance industry. But now you may be able to surrender the abstract when the insurance is ordered, obtain the credit, and have the abstract returned to you after it has been used to assist the title examiner. An endorsement may be stamped on it to the effect that it has once been surrendered for credit and cannot again serve that purpose. That way, the buyer preserves the abstract, which could be recertified to date if the need arises, and the seller gets the credit for abstract surrender. Not all companies will agree to this procedure. Call the title insurance company's counsel to make the request. Most lawyers are quite sympathetic to the preservation of the record contained in abstracts, whereas the person with whom you normally deal at the title insurance company may not be sentimentally inclined in that regard.

Since most sales contracts are written so that the seller has the option of providing title insurance or an abstract certified to date (*see* § 8.1.6 of the Contract), it might be well to say a word about that selection at this point. What has been stated above with respect to the pros and cons of abstract surrender applies equally to this question. The seller can save money, usually, by furnishing title insurance and surrendering the abstract. The buyer also saves money with a title insurance commitment because it is not essential³ that an attorney be employed to examine the title as it is with an abstract, and,

3. Not "essential," perhaps, but see § 2.1 for words of caution.

even if counsel is retained, the examination of a title insurance commitment takes only a fraction of the time required for the examination of an abstract and preparation of a legal opinion of title.

§ 1.8.7—Endorsement Charges

Endorsements for special, modified, or extended coverage will be issued for a percentage of the basic rate, a flat dollar amount, or no charge at all. Since every title insurance company files its own rates, it is difficult to generalize. The rate is based on the risk to the title insurance company.

§ 1.8.8—Special Rates and Charges

It is impossible to list all the many different charges and special rates that exist. Some of the special rates and charges are explained below.

Extra Parcel Charge

Charges are made for various services, such as a difficult title examination or one that covers two or more chains of title, as for an easement across other lands. The latter is known as an “extra parcel charge.”

Inspection Charge

A fee may be added for inspection of the premises, when necessary to determine possessory rights; to verify a survey, plat, or stage of construction; or for other reasons.

Conversion to Owner’s Policy

Conversion from a loan policy or a policy insuring an option, contract, or leasehold interest, to an owner’s policy that recognizes the acquisition of fee title may bear a reduced rate. Customarily, this rate is 25 to 50 percent of the previous rate, plus any increased coverage. The reissue rate does not apply. If the conversion involves a loan policy, following issuance of a public trustee’s or sheriff’s deed or a deed in lieu of foreclosure, the lender may be charged 25 percent for an owner’s policy to itself, or 50 percent for an owner’s policy to a stranger. In some instances, the lender may also obtain a special rate for a resale within one or two years.

Consolidation of Ownership

Consolidation of undivided interests separately insured into one insured ownership may qualify for a reduced rate (*e.g.*, one joint tenant conveys to the other, as occurs in a dissolution of marriage settlement).

Hold-Open Charge

A sale with a title insurance commitment “held open” to insure a later resale may save costs if the first purchaser is willing to forego protection afforded by an owner’s policy. An owner’s policy will not be issued to the first purchaser when the first transaction closes. Instead, a “Hold-Open” commitment is issued to insure the resale of the property. The owner’s policy will be issued to the ultimate purchaser when the second transaction closes. This form of commitment is very popular with investors and developers who specialize in purchasing properties in need of repair and then reselling them after the remodel is complete, and lenders who have acquired the secured property through the foreclosure process or a deed-in-lieu transaction and sell the property to third parties. This is discussed in § 5.15.3.

The rate is usually 110 to 125 percent of the basic rate, adjusted by any credits available, payable in full upon issuance of the first title insurance commitment. If the resale occurs within the stipulated period, there will be no additional charge for the owner's policy issued to the second purchaser, except for a charge for the increased rate as a result of any increase in the purchase price. If the property is not resold within the stipulated period, the title insurance company will issue its owner's policy to the first purchaser.

The disadvantage of the Hold-Open procedure is that the first purchaser forgoes the benefit of an owner's policy. If the first purchaser gives any warranties of title in the deed to the second purchaser, the first purchaser will not be protected by the continuation of insurance coverage in the owner's policy. The first purchaser also foregoes the benefit of the Hold-Open rate if the first purchaser submits a claim under the owner's policy. *See* § 4.4.5.

Conservation Easements

Some companies have filed special rates for owner's policies insuring title to conservation easements or other real property interests granted to qualified I.R.C. § 501(c)(3) organizations or governmental entities.

Time Shares

Rates discounted 50 percent or more may be available for owner's policies insuring time share or fractional interest estates.

Short Form or Junior Mortgage Loan

A short form loan policy may be charged on a rate schedule separate from other loan policies. *See* § 5.5. Similarly, a junior mortgage lien certificate may be issued to a lender who does not require full lender's coverage on a loan secured by a junior lien.

Multiple Policies

Multiple loan policies issued in conjunction with one transaction may receive special rates. The simultaneous rate may apply to policies insuring first, second, or other liens if the total amount of the loan policies does not exceed the amount of the owner's policy. If multiple non-contiguous parcels, requiring separate title examination, secure a single loan, the simultaneous rate may apply, together with the extra parcel charge referred to in "Extra Parcel Charge," above.

Bundled Rates

On mortgage refinance transactions, the title insurance company may offer a "bundled rate" that includes the title rate, certificate of taxes due, and various endorsements and other products.

Ownership and Encumbrance Reports (O&E's)

The title insurance company must make a reasonable charge for an O&E. *See* § 1.6.2.

TBD Commitments

The title insurance company will assess a reasonable charge to recover the cost to produce a title insurance commitment where the name of the proposed insured or the amount of coverage is still "to be determined." *See* § 5.C.2 of Regulation 8-1-3.

Expenses

The title insurance company's out-of-pocket expenses and disbursements for photocopies, certificates of taxes due, surveys, express delivery, wire transfers, and like items, will be billed at cost or slight markup for time and trouble expended by the title insurance company in connection therewith. A fee must be filed for these services.

Title Insurance Commitment — Cancellation

If a cancellation fee is assessed and paid, the title insurance company will probably credit some percentage thereof, usually 50 to 100 percent, toward a reorder for title insurance on the same property within a reasonable period, generally 12 to 36 months. If you know in advance that a policy will not be ordered, the expense of a TBD commitment likely will be less than a title insurance commitment cancellation charge. See the discussion of TBD commitments in § 2.6.2.

Duplicate Policy Charge

Lost policies may be replaced for an administrative fee of \$50 to \$100. The new policy will bear this endorsement: "This policy is issued in lieu of lost policy No. _____ which is hereby cancelled."

§ 1.9 • LARGE POLICIES

Is there any difference in practice when a large, rather than a small or moderate-sized, policy is required? As a response to that question, consider some general background as to how title insurance companies deal with large policies.

§ 1.9.1—Reinsurance

In Colorado, C.R.S. § 10-11-112 limits the amount of retained liability on any one policy issued by a title insurance company. If the policy amount exceeds the formula amount, the excess must be ceded to a reinsurer.

Nevertheless, title insurance companies will accept whatever policy is ordered, regardless of its size. Each insurer has its own self-imposed limits of primary retention on a single policy. The title insurance company may have an automatic reinsurance treaty with one or more other companies to take portions of the risk above the acceptable self-imposed or statutory limits, or the title insurance company may reinsure on a case-by-case (facultative) basis.

The officers or directors of each title insurance company decide what its self-imposed primary retention level will be. This varies from year to year and from policy to policy, based on the circumstances or fortunes of the title insurance company. It is important for the attorney for the insured to inquire into, and approve, this limit. It is also important to ascertain that the reinsurance is "in place," either by treaty or a signed and delivered facultative reinsurance agreement.

As an example, suppose you are requesting a \$20 million owner's policy. Your balance sheet analysis indicates \$6 million is a safe retention level, the title insurance company has a self-imposed limit of \$7 million, and the statutory limit is \$8 million. Your review is probably not sufficiently pre-

cise to say whether a difference of \$1 million is or is not appropriate; however, if you insist, the title insurance company will retain primary liability for only \$6 million and will reinsure the balance. Perhaps you will compromise at \$6.5 million. When you and the title insurance company agree on the primary liability, then you either confirm and approve the title insurance company's reinsurance treaty or the title insurance company begins looking for facultative reinsurers. To make it easy, and cut down on the paperwork, for the reinsurance you may prefer to designate a title insurance company that can accept all of the remaining \$13.5 million. It is more efficient to deal with one reinsurer than to line up three or four of them at \$3 to 4 million each. However, the point is, if you insist, you can dictate where the reinsurance goes. If you say nothing, the entire reinsurance process will occur "in house" and you will not be advised. An ALTA facultative reinsurance agreement is attached as Appendix 4.

The companies would much prefer to control their own reinsurance arrangements, because they can purchase reinsurance more cheaply from certain other title insurance companies. Often, two or three companies will have a working relationship where each will lower its reinsurance rates on a reciprocal basis to the other. These rates make no difference to you, the consumer, because you pay only one rate and the issuing title insurance company is responsible for the costs of reinsurance. As a practical matter, however, with a policy of \$20 million or more, you may be able to obtain an even lower rate than is shown in the current rate schedules. If time allows, request bids from several companies.

Remember, too, that what appears to be a \$20 million policy may be much more in terms of total dollars. The typical large project commences with a construction loan policy, perhaps \$19 million. Mechanics' lien protection, if demanded, will add thousands of dollars to the insurance premium. At closing after construction is completed, there may then be a \$20 million owner's policy, a permanent loan policy for \$19 million, and several special endorsements at varying prices. So, we are talking big bucks in terms of title insurance premiums.

But there is still more to consider about reinsurance and how it works. Suppose a missed \$100,000 judgment crops up after closing and must be satisfied by the insurer. The reinsurer can laugh it off. It does not have to pay. The title insurance company with primary liability of \$6.5 million must pay it all. There is no pro rata assumption of primary liability. That is why reinsurance can be obtained at rates considerably lower than rates for primary liability title insurance.

Now, stretch your imagination, and try to conceive of a total title failure — for example, there was a forged deed in the chain of title and the property belongs to a previously destitute family of 12. One person's good news is someone else's bad. The primary title insurance company is liable for \$6.5 million, in accordance with the reinsurance agreement or treaty, and the reinsurer is stuck with the remainder.

But now we look at our policy and find that we do not have any agreement with the reinsurer, just a policy from the primary insurer who is teetering on the brink of bankruptcy. The primary title insurance company will not pay, so we sue. The title insurance company ought to join the reinsurer as a third-party defendant, but refuses to do so. We are now in a procedural morass trying to figure out how to construct a claim for relief against the reinsurer.

There is a way around this dilemma if planning is made. At the time the policy goes together, the insured may demand a “direct access agreement” with the reinsurer. This may be resisted by the primary title insurance company and the reinsurer, or extra reinsurance rates charged for direct access may be passed on to your client. But, for a large policy, you can get it if you hang tough. Though we have never had occasion to litigate the matter, a direct access agreement purports to allow you to sue directly against the reinsurer if a title loss occurs. Thus, in your lawsuit, you would now join both the primary title insurance company and the reinsurer and let the tears fall as they may. A sample of a direct access agreement is attached as Appendix 5. The ALTA form of facultative (*i.e.*, one-time) reinsurance agreement in Appendix 4 also provides for direct access. But the primary title insurance company’s general reinsurance treaty with the reinsurer, under which the reinsurance may be obtained, probably does not. For further discussion on this topic, see James L. Gosdin, *Fundamentals of Title Insurance*, 60 (American Bar Association 2014).

§ 1.9.2—Coinsurance

In the large policy transaction, some lenders will require co-insurance, perhaps with reinsurance tacked on. Seldom seen except with huge policies, coinsurance is just what its name implies: two or more companies sharing the risks pro rata. Instead of reinsurance where one title insurance company may assume primary liability for \$6.5 million and the reinsurer accepts secondary liability for the remaining \$13.5 million, when a \$20 million policy has coinsurance, two separate policies are written by two or more companies, each of which assumes some portion of the primary risk. These could be two \$10 million policies. If a \$1 million loss occurs, each title insurance company will pay \$500,000. Or there could be one \$1 million coinsurance policy, one \$3 million coinsurance policy, with reinsurance for \$16 million. Now if a \$1 million loss occurs, one coinsurance title insurance company pays \$250,000 and the other pays \$750,000.

The benefit of coinsurance is the dual examination of title that takes place by each of the companies independently. The insurers may be asked to sign an affidavit that they have not consulted with each other in such examination prior to the issuance of the title insurance commitment. Some lenders favor coinsurance on large policies or in those situations where title problems appear to exist. It frequently happens, however, that the two separate title examiners are working from the same computer printouts from a jointly-operated title plant like SKLD. *See* § 1.5.2. Thus, if you are considering coinsurance, it would make sense to order from two companies utilizing separate title plants or, perhaps, from one title insurance company using a title plant and the other title insurance company searching the records in person.

Chapter 2

THE TITLE INSURANCE COMMITMENT

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§ 2.19 TITLE INSURANCE COMMITMENT EXCEPTIONS — NON-STANDARD**§ 2.20 TITLE INSURANCE COMMITMENT EXCEPTIONS — DELETION OF —
INSURING OVER****FORMS**

Form 2A—ALTA Commitment Form (Adopted 6-17-06)

Form 2B—ALTA Commitment Form (Adopted 6-17-06, Revised 08-01-2016)

Form 2C—ALTA Plain Language Commitment Form (Adopted 6-17-06)

Form 2D—ALTA Short Form Commitment (Revised 10-16-08)

§ 2.1 • EXAMINING THE TITLE INSURANCE COMMITMENT

In the typical real estate transaction, the proper examination of the title that the client will receive is one of the most important duties of buyer's counsel. Since title insurance today is the preferred method of determining marketability of title (also described as merchantability of title), a thorough examination of the title insurance commitment is required.

The words "marketable" and "merchantable," when used in relation to real estate title, have the same meaning and are interchangeable. However, the word used by Colorado courts, and in Colorado statutes, is "marketable." 2 Krendl, *Colorado Practice Series*, at § 62.25 (Thomson/West, 5th Ed. 2007).

As stated in Chapter 1, the title insurance commitment is the road map that guides the parties to the successful conclusion of the transaction. It is essential that the parties familiarize themselves with the title insurance commitment, as this is the tool that must be used to prepare the closing documents and the final policy.

Because of the advent of title insurance, the decline in the examination of abstracts, and the predominant role today of real estate brokers in handling real estate transactions, the lawyer's role is greatly diminished, particularly in residential transactions. It is not always understood that the title insurance commitment must be analyzed and interpreted as carefully as an abstract of title. Because of the ease of examination, a cursory review becomes the accepted practice.

Very often, the title insurance company will except from its coverage every flaw discovered in the title. Thus, the title insurance commitment becomes a rather strange document. To the uninitiated, it always looks "just fine." There is nothing in capital letters that says: "LOOK OUT FOR THIS ONE!"

§ 2.2 • THE TITLE INSURANCE COMMITMENT AS EVIDENCE OF TITLE

The typical real estate purchase contract in Colorado (Colorado Real Estate Commission form CBS1-6-15, "Contract to Buy and Sell Real Estate (Residential)" (Contract)) calls for the seller to convey title to the purchaser, free and clear of all liens and encumbrances except as specifically noted, as

evidenced by a title insurance commitment. Section 13 of the Contract. See the discussion in Chapter 2, *Colorado Real Estate Forms Deskbook*, 2d Ed. (James G. Benjamin, ed. CLE in Colo., Inc. Supp 2017). With this language, the title insurance commitment becomes more than just a “binder” obligating the title insurance company to insure the title.

The Contract does not refer to marketable title in Section 13. The buyer can object to any unsatisfactory title condition. If the buyer accepts title as presented to the buyer, then one could argue that the buyer has accepted marketable title.

Since the title insurance company is normally aware of the standard contract provision, it is arguable that the title insurance commitment serves two functions in a Colorado real property transaction: (1) it is a binder for insurance evidencing “insurable” title for the purchaser or lender, and (2) it is also the primary evidence of marketable title, or sometimes “satisfactory title.”

The argument that the title insurance commitment is evidence of title is strengthened by the statutory requirement that no “policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title.” C.R.S. § 10-11-106. *See also* § 1.3, “Scope of Title Insurance.”

§ 2.3 • RELIANCE UPON THE TITLE INSURANCE COMMITMENT

From the typical contract provision calling for a title insurance commitment as evidence of marketable or satisfactory title, it follows that both purchaser and seller rely upon the title insurance commitment. The purchaser examines the title insurance commitment for two functions: to determine if the title meets the contract requirements, however phrased, and to be sure that the title is “insurable.” The seller examines the title insurance commitment as proof of the status of title in case any questions are raised on that score by the purchaser, and for guidance in preparing the conveyance, normally a general or special warranty deed, which the seller, as grantor, will sign and deliver to the purchaser/grantee.

§ 2.4 • NEGLIGENCE IN PREPARATION OF THE TITLE INSURANCE COMMITMENT — SELLER’S REMEDY

Although the insurer’s contract of insurance runs only to the grantee, if the title insurance company is negligent in the preparation of the title insurance commitment, knowing that the grantor will rely upon the title insurance commitment to prepare the conveyance, it has been held in several jurisdictions that the title insurance company that errs in the title insurance commitment has breached its duty to the seller and is liable in damages to the seller on a negligence theory. *Ruiz v. Garcia*, 850 P.2d 972 (N.M. 1993) (title company liable in tort to both vendor and vendee under statute similar to C.R.S. § 10-11-106); *Rosenberg v. Missouri Title Guaranty Co.*, 764 S.W.2d 684 (Mo. App. 1988); *Malinak v. Safeco Title Ins. Co.*, 661 P.2d 12 (Mont. 1983); *Transamerica Title Ins. Co. v. Ramsey*, 507 P.2d 492 (Alaska 1973); *Chun v. Park*, 51 Hawaii 462 (Hawaii 1969). *Contra: Kenny v. Safeco Title Ins. Co.*, 159 Cal. Rptr. 808 (Cal. App. 1980); *Gaines v. American Title Ins. Co.*, 220 S.E.2d 469 (Ga. App. 1975). *See Palomar, Title Insurance Law*, §§ 12.5 and 12.6 (Thomson Reuters/West, 2017/2018 ed.).

However, the Colorado Court of Appeals has held that reliance on the title insurance commitment was not shown where the seller became obligated under the sales contract, before the title insurance commitment was issued, to convey title by general warranty deed. Therefore, the title insurance company was not liable for negligent misrepresentation. Further, the title insurance company was not liable for negligence on a third-party beneficiary theory since the title insurance company's only obligation was to issue a policy to the buyer for the sole benefit of the buyer. *Jimerson v. First American Title Ins. Co.*, 989 P.2d 258 (Colo. App. 1999); *Campbell v. Summit Plaza Associates*, 192 P.3d 465 (Colo. App. 2008). See also the discussion in § 5.1.3 of *CREP*.

To limit such tort claims and confine liability to the terms and provisions of the contract of insurance, the Conditions and Stipulations in the 2006 Commitment form (Form 2A to this chapter) limit liability to the proposed insured and such parties included under the definition of Insured in the form of policy committed for. The 2016 Commitment further emphasizes the limitation of this liability to the proposed insured only, and any claim must be based in contract and restricted to the terms and provisions of the title insurance commitment. See, for example, the prominent "Notice" on the first page of the 2016 Commitment.

Colorado courts will enforce the policy as written: "In determining whether there is an ambiguity in a policy provision, we must evaluate the policy as a whole and construe the language in harmony with the plain and generally accepted meaning of the words employed, unless the intent of the parties, as expressed in the contract, indicates that an alternative interpretation is intended." *State Farm Mut. Auto. Ins. Co. v. Stein*, 940 P.2d 384 (Colo. 1997). See also *American Family Mutual Insurance Company v. Hansen*, 375 P.3d 115 (Colo. 2016); *U.S. Bank, N.A. v. Stewart Title Guar. Co.*, 2014 U.S. Dist. LEXIS 36876 (D. Colo. Mar. 20, 2014). The doctrine of the "reasonable expectation of the parties" plays an important role in the interpretation of an insurance policy. *Stein*, 940 P.2d 384; *Hansen*, 375 P.3d 115; *U.S. Bank, N.A. v. Stewart Title Guaranty Co.*, 13-cv-00117-PAB-KLM (D. Colo. Mar. 20, 2014). This doctrine was clarified in *Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039 (Colo. 2011):

Given insurance policies' unique nature, which includes significant potential for insurers to take advantage of or mislead insureds, such policies are subject to heightened scrutiny, including the doctrine of reasonable expectations, which obligates insurers to clearly and adequately convey coverage-limiting provisions to insureds. In Colorado, the reasonable expectations of insureds have succeeded over exclusionary policy language in two main situations: (1) where an ordinary, objectively reasonable person would, based on the language of the policy, fail to understand that he or she is not entitled to the coverage at issue; and (2) where, because of circumstances attributable to an insurer, an ordinary, objectively reasonable person would be deceived into believing that he or she is entitled to coverage, while the insurer would maintain otherwise.

Id. at 1048-49.

The *Bailey* court went on to hold that "[i]n Colorado, the doctrine of reasonable expectations is one of the principles of fairness to which insurance policies are subject, as it is designed to protect insureds from the dangers inherent in standardized insurance policies," *id.* at 1049; and "[w]hen honoring the insured's expectations through this manifestation of the doctrine of reasonable expectations, insureds do not actually have to have read their policies; the test to be applied is what the ordinary reader and purchaser would have understood insurance provisions to mean had they been read." *Id.* at 1051.

§ 2.5 • FORMAT OF THE TITLE INSURANCE COMMITMENT (ALTA FORMS)

In order to examine a title insurance commitment, you must become familiar with the format. The American Land Title Association (ALTA) has adopted the following forms of the title insurance commitment:

Type

Form 2A—ALTA Commitment Form (Adopted 6-17-06)

Form 2B—ALTA Commitment Form (Adopted 6-17-06, Revised 08-01-2016)

Form 2C—ALTA Plain Language Commitment Form (Adopted 6-17-06)

Form 2D—ALTA Short Form Commitment (Revised 10-16-08, Technical Correction 08-01-15)

The ALTA Commitment Form (6-17-06) (2006 Commitment) is the most frequently used version, promoting uniformity among the title insurance companies. ALTA has promulgated a revised version of the 2006 Commitment, effective 08-01-2016 (2016 Commitment). Our analysis here will be confined primarily to the 2006 Commitment, as revised by the 2016 Commitment. According to the synopsis provided by ALTA for the revised title insurance commitment, “this product updates and consolidates the two 2006 versions of the ALTA commitment forms: the ALTA Commitment Form (Adopted 6-17-06) and the ALTA Plain Language Commitment Form (Adopted 6-17-06). While these two forms are similar in substance, there are variations between them.” (See the ALTA website, www.alta.org.) Both the 2006 Commitment and the Plain Language Form will be decertified on December 31, 2017.

§ 2.6 • WHAT IS COMMITTED?

The introductory paragraphs to the 2006 Commitment (as interpreted in conjunction with the Conditions; see § 2.7) determine the extent of the insurer’s commitment to the proposed insured. The 2006 Commitment is issued subject to the provisions of Schedules A and B and the Conditions of the Commitment. The 2016 Commitment follows a similar format by stating that the commitment is subject to the Notice; Schedule B, Part-1 — Requirements, Schedule B, Part II — Exceptions; and the Conditions.

Forms 2A and 2B of this chapter have been prepared to provide examples of a completed title insurance commitment. The discussion below is based on the layout and content of these two forms.

§ 2.6.1—The Offer of Insurance

2006 Commitment

The title insurance company “commits” to issue the policies of title insurance described in Schedule A. The same title insurance commitment form is used for owner’s, lender’s, or any other types of policies issued by the title insurance company. To determine the policy type offered, one must examine Schedule A. Of all the limitations set out in the title insurance commitment, perhaps the most

subtle is the incorporation by reference in Schedule A of the policy boilerplate, particularly the Exclusions. These Exclusions limit the liability of the title insurance company. For example, there are exclusions to eliminate insurance against zoning and other governmental laws and regulations, condemnation, defects known to the insured, defects attaching subsequent to the Date of Policy, loss that would not have been sustained if the insured had paid value (*i.e.*, no coverage for gifts, property purchased at tax sale, etc.), and certain creditors’ rights. The Exclusions from Coverage are discussed separately in detail as to each of the various policy forms in Chapters 4 and 5.

2016 Commitment

Although the 2016 Commitment is more precise as to the type of policy offered, it still incorporates by reference the policy boilerplate. The 2016 Commitment has a “Notice” in the preamble to emphasize that the title insurance commitment is not an abstract of title, report on the condition of title, legal opinion, opinion of title, or other representation of the status of title, and specifically precludes third-party liability. Similar wording is included in paragraph 4 of the Conditions.

2006 Commitment — Page One First paragraph — Offer to Insure	2016 Commitment — Page One Commitment to Issue Policy
<p>Blank Title company, a _____ corporation (“Company”), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.</p>	<p style="text-align: center;">NOTICE</p> <p>IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.</p> <p>THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.</p> <p>THE COMPANY’S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN</p>

	<p>SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.</p> <p>Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Blank Title company, a _____ (the “Company”), commits to issue the Policy according to the terms and provisions of this Commitment</p>
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§ 2.6.2—Identity and Amount

2006 Commitment and 2016 Commitment

Liability under the title insurance commitment is effective only when the identity of the proposed insured and the amount of the policy or policies committed for have been inserted in Schedule A by the title insurance company.

Until the information becomes available, the title insurance company will issue a “to be determined” (TBD) commitment, with the name of the proposed insured or the amount of the policy to be inserted later, usually by issuance of a new title insurance commitment. See the discussion of TBD commitments in § 1.6.1. In such cases, the title insurance commitment is merely a preliminary report, for information only. Accordingly, you must be careful to have a new or updated title insurance commitment issued when all the information has been supplied.

The title insurance company declines to be bound until the proposed insured has been disclosed to allow a search of that name through the various judgment and tax lien indices and to determine whether any lien will attach to the property at the instant of conveyance. Even though the title insurance company may have a defense to a claim based upon such a lien because the proposed insured had actual knowledge thereof, or the lien is deemed subordinate to a new purchase-money lien, the insurer does not intend to accept the risks inherent in having to make such an argument. *See* § 2.7.2; *ALH Holding Company v. Bank of Telluride*, 18 P.3d 742 (Colo. 2000); *Emery v. Ward*, 68 Colo. 373, 191 P. 99 (1920).

The amount of the policy is obviously necessary for the title insurance company to calculate the rate and to determine how much, if any, of the risk it will accept and how much it will reinsure. *See* § 1.9.1.

<p>2006 Commitment — Page One Second Paragraph — Identity of the Insured and Liability Amount</p>	<p>2016 Commitment — Page One Commitment To Issue Policy — Identity of the Insured and Liability Amount</p>
<p>This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.</p>	<p>This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.</p>

§ 2.6.3—Time Limitation and Limitations on Validity of the Title Insurance Commitment

2006 Commitment

The title insurance commitment acts as a binder for as long as stated in the third paragraph. In Colorado, this period is normally six months from the effective date, or until the policies are issued, whichever occurs first (unless the title insurance company is at fault for failure to issue the policies).

The time limit should be kept in mind. If a delay in the closing occurs, the attorney must be alert to extend the title insurance commitment (and the purchase contract) before its expiration. A new title insurance commitment may not be as favorable as the old title insurance commitment, and coverages offered in the old title insurance commitment may not be offered in the new commitment.

Accordingly, before its expiration, the title insurance commitment can be extended for an additional period. Title companies may issue a title insurance commitment initially for 12 months, or even longer, provided special arrangements are made. Some insurers have an arbitrary limit of two or three six-month extensions.

A validating officer or authorized signatory must execute the title insurance commitment.

2016 Commitment

The 2016 Commitment is similar to the 2006 Commitment. However, the time limit is based on the failure to satisfy the requirements in Schedule B, Part I, within the stipulated time frame. In practice, there should be no difference between the two forms.

The 2016 Commitment sets out more precise requirements to validate the title insurance commitment.

2006 Commitment — Page One Third Paragraph — Time Limitation	2016 Commitment — Page Two Commitment Condition 2 — Time Limitation
<p>All liability and obligation under this Commitment shall cease and terminate _____ (here state the time period) after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.</p> <p>**If the Commitment is to be executed by a validating officer, then prior to the “In Witness Whereof” there should be inserted: “This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.” The manner of execution will conform to the company’s practice and will of necessity require some modification in the language identifying the manner of execution. This is deemed a matter of format.</p>	<p>If all of the Schedule B, Part I—Requirements have not been met within [the time period specified in the Commitment to Issue Policy], this Commitment terminates and the Company’s liability and obligation end.</p> <p>The Company’s liability and obligation is limited by and this Commitment is not valid without:</p> <ul style="list-style-type: none"> (a) the Notice; (b) the Commitment to Issue Policy; (c) the Commitment Conditions; (d) Schedule A; (e) Schedule B, Part I—Requirements; [and] (f) Schedule B, Part II—Exceptions[; and (g) a counter-signature by the Company or its issuing agent that may be in electronic form].

§ 2.6.4—Sample Policy Form/Pro Forma Policy

2006 Commitment

Unless you are thoroughly familiar with title insurance forms, you would be well advised to request a sample copy of the proposed policy form from the title insurance company. The 2006 Commitment states that a sample policy will be made available on request. This can be done at the time the title insurance commitment is ordered, or when the title insurance commitment has been issued. Either way, this will give you time to compare the form against the ALTA samples shown in Chapters 4 and 5, and to review the form of policy with the endorsements. You may discover some minor variations, even though the policy purports to be on the ALTA form. Such variations, often occurring in Schedule A, may not be important. But the variations may be important, such as exceptions in Schedule B that are not the standard four exceptions — for example, water rights, unpatented mining claims and patent reservations (*see* § 2.16), or variations in the language excepting taxes and assessments (*see* § 2.18). Watch out for blanket exceptions of water and sewer charges for special districts (*see* § 2.17). These may be appropriate exceptions in some policies, but not across the board.

2016 Commitment

The 2016 Commitment is more precise by referring to a “pro-forma” policy. This should be more than a copy of a blank policy form. It should reflect the policy to be issued with both Schedule A and Schedule B completed and all endorsements attached. Note the limiting language.

<p>2006 Commitment — Page One Fourth Paragraph</p>	<p>2016 Commitment — Commitment Condition 8</p>
<p>The Company will provide a sample of the policy form upon request.</p>	<p>The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.</p>

§ 2.7 • CONDITIONS OF THE TITLE INSURANCE COMMITMENT

§ 2.7.1—Definition

2006 Commitment

There is only one defined term, “mortgage.”

2016 Commitment

There is a more extensive list of definitions, some of which are repeated in the definitions in the 2006 ALTA Owner’s and Loan Policies, such as “knowledge,” “land,” “mortgage,” and “title.”

<p>2006 Commitment — Condition 1</p>	<p>2016 Commitment — Commitment Condition 1</p>
<p>The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.</p>	<p>(a) “Knowledge” or “Known”: Actual or imputed knowledge, but not constructive notice imparted by the Public Records. (b) “Land”: The land described in Schedule A and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy. (c) “Mortgage”: A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.</p>

	<p>(d) “Policy”: Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.</p> <p>(e) “Proposed Insured”: Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.</p> <p>(f) “Proposed Policy Amount”: Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.</p> <p>(g) “Public Records”: Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.</p> <p>(h) “Title”: The estate or interest described in Schedule A.</p>
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§ 2.7.2—Knowledge of the Insured

2006 Commitment and 2016 Commitment

Both the 2006 Commitment and the 2016 Commitment exclude liability for matters of which the insured has or acquires actual knowledge unless and until the matters are disclosed in writing to the title insurance company. This language should be compared with Policy Exclusion 3, considered in § 4.4.2. A sample form of letter for use in disclosing such matters to the title insurance company is included at Appendix 6. The letter attempts to place liability on the title insurance company for the expenses incurred. This may not be justified in view of the limitations on liability in Condition 3 of the 2006 Commitment, and Commitment Condition 5(g) of the 2016 Commitment, both of which incorporate the terms of the policy, including the Exclusions. When such defect has been disclosed, the title insurance company retains the right to add it to Schedule B as an exception to the coverage given.

The actual knowledge of the proposed insured is different from the constructive knowledge or notice imparted by the public records. In Section 1(f) of the 2006 Owner’s Policy Conditions, discussed in § 4.4.5, “knowledge” is defined as actual knowledge. The insurer can defend under this “actual knowledge” clause only to the extent the title insurance company is prejudiced by failure to so disclose such knowledge. Thus, if the proposed insured knows of a recorded lien the title insurance commitment fails to disclose, it has been argued that the insurer was not prejudiced since a search of the public records should have disclosed the lien. The statutory duty in Colorado to conduct a “reasonable examination of the title” militates against the insurer’s argument of prejudice. C.R.S. § 10-11-106; *see also* § 1.3. This has been the ruling of the courts in other states. *Dinges v. Lawyers Title Ins. Corp.*, 435 N.E.2d 944 (Ill. App. 1982); *Cameron v. Benson*, 643 P.2d 1360 (Or. App. 1982), *rev’d on other grounds*, 664 P.2d 412 (Or. 1983) (interpreting ALTA policy provisions); *Smirlock Realty Corp. v. Title Guarantee Co.*, 418 N.E.2d 650 (N.Y. 1981) (interpreting N.Y. policy clause); *McLaughlin v.*

Attorneys' Title Guaranty Fund, Inc., 378 N.E.2d 355 (Ill. App. 1978); *see also* Palomar, *Title Insurance Law*, § 6:17 (Thomson Reuters/West, 2017/2018 ed.).

In order to help protect your clients from the possibility of a future coverage dispute with the title company, the best practice is to disclose to the title company any liens or title defects the purchaser knows about but that do not appear on the title commitment, even if those liens or defects are recorded.

The actual knowledge of the proposed insured can act to the prejudice of the title insurance company, as shown by two common examples:

- 1) **Lack of Authority.** The public records will not show if the deed is signed by a person who purports to be a general partner of the partnership-seller but who in fact is not such a partner. The buyer/insured will be protected by the owner's policy from claims of the partnership to the property unless the lack of authority was known to the buyer-insured and not disclosed to the title insurance company.
- 2) **Imputed Knowledge.** When two or more persons take title to real property, either as co-tenants, partners, joint venturers, or trustees, one of those persons may have knowledge of an unrecorded defect in the title. Under principles of general law, such knowledge would likely be imputed to all the other owners, though in fact the others had no actual knowledge. This imputed knowledge might be sufficient to void the insurance coverage.

With regard to imputed knowledge, protection by endorsement is available to the co-tenants, partners, venturers, or trustees against such imputation of knowledge, as discussed in § 6.27. Affidavits from the parties will be required. Most lenders typically require this extra coverage when they join with their borrowers in an equity participation, such as a joint venture.

2006 Commitment — Condition 2	2016 Commitment — Commitment Condition 5(b)
<p>If the Proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the Proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.</p>	<p>5(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.</p>

§ 2.7.3—Right to Amend

2006 Commitment and 2016 Commitment

Both the 2006 Commitment and the 2016 Commitment discuss the liability of the title insurance company if Schedule B of the title insurance commitment is amended.

2006 Commitment — Condition 2	2016 Commitment — Commitment Condition 4
<p>2) If the Proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the Proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.</p>	<p>4) COMPANY’S RIGHT TO AMEND The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.</p>

§ 2.7.4—Limitation of Liability

2006 Commitment and 2016 Commitment

Both the 2006 Commitment and the 2016 Commitment limit the liability of the title insurance company. Only the proposed insured, as defined in the policy, is covered. See the definition of “Insured” in §§ 4.4.5 (owner’s policy) and 5.2.5 (loan policy). Ostensibly, although the seller may pay the rate, the seller is excluded from any coverage afforded by the title insurance commitment (and by case law, as mentioned in § 2.4). In the 2016 Commitment, the prominently placed preamble to the title insurance commitment, “NOTICE,” emphasizes the limitations on liability.

Regardless of the amount stated in Schedule A of the title insurance commitment, only the actual loss of the proposed insured will be paid. This is standard insurance theory supported by contract. See “Options to Pay or Otherwise Settle Claims; Termination of Liability” in § 4.4.5. The 2016 Commitment limits this to the actual expense, which may be intended to be a narrower definition than “loss.” In addition, the period for which the title insurance company is liable is limited to the interval between the delivery of a title insurance commitment and an amended title insurance commitment. The

2016 Commitment limits the expense if the proposed insured requested the amendment to the title insurance commitment or had knowledge of the matter and did not notify the title insurance company about it in writing.

The proposed insured must have relied upon the title insurance commitment (assuming no policy has been issued), and the reliance upon the title insurance commitment must have been in good faith.

The loss (prior to issuance of a policy) must have been incurred while the proposed insured was attempting to (1) comply with the requirements shown in Schedule B — Section 1; (2) eliminate exceptions shown in Schedule B — Section 2; or (3) acquire or create the estate or interest (or a mortgage thereon) covered by the title insurance commitment. In the 2016 Commitment, liability will only arise under (2) above, if the company gave its written consent to eliminate any Schedule B, Part II — Exceptions.

All limitations set out in the proposed policy apply, including the Exceptions, Exclusions, and Conditions.

2006 Commitment — Conditions 3 and 4	2016 Commitment — Commitment Conditions 5 and 6
<p>3) Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.</p> <p>4) This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may</p>	<p>5. LIMITATIONS OF LIABILITY</p> <p>(a) The Company’s liability under Commitment Condition 4 is limited to the Proposed Insured’s actual expense incurred in the interval between the Company’s delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured’s good faith reliance to:</p> <ul style="list-style-type: none"> (i) comply with the Schedule B, Part I— Requirements; (ii) eliminate, with the Company’s written consent, any Schedule B, Part II— Exceptions; or (iii) acquire the Title or create the Mortgage covered by this Commitment. <p>(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.</p> <p>(c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.</p>

bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing [and authenticated by a person authorized by the Company].
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

§ 2.7.5—Arbitration

2006 Commitment and 2016 Commitment

In both title insurance commitments, notice is given that the proposed policy will contain an arbitration clause.

2006 Commitment — Condition 5	2016 Commitment — Commitment Condition 9
<p>5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.</p>	<p>9. The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration/>.</p>

§ 2.8 • SCHEDULE A

Schedule A, containing five numbered sections, is the point of commencement for the examination of the title insurance commitment by the real estate attorney.

§ 2.8.1—Effective Date

2006 Commitment and 2016 Commitment

The “Effective Date” (2006 Commitment) or “Commitment Date” (2016 Commitment) discloses how recently the records in the office of the county clerk and recorder were searched by the title entity. In metropolitan areas, that date should be within a week. In more remote areas of the state, two weeks may be acceptable. Today, many of the counties in the state provide efficient and useful online access to the real property records, and in some of the larger counties, the records are “verified” to a date within one or two days of the search date. For example, the website of the Denver County Clerk and Recorder allows verification through its records site, <https://countyfusion3.propertyinfo.com/countyweb/login.do?countyname=Denver>.

The effective date is not the date on which the search occurred, but the date to which the records in the clerk and recorder’s office or in the title insurance company’s title plant, depending upon what was searched, were posted when the search was made. Because of an unavoidable time lag in posting, there will always be a “gap” between the effective date and the date of closing. For information about protection from the “gap,” see §§ 2.15 and 6.24.

Standard exception No. 5 on Schedule B — Section 2 (Schedule B, Part II), discussed in § 2.15, refers to the “effective date” and excludes from coverage all matters recorded after the effective date.

The effective date always includes the hour and the minute as well as the day and year.

§ 2.8.2—Policies to be Issued

2006 Commitment

You should carefully review Paragraph 2 where the names of the proposed insured parties (owner and lender) and the amounts of insurance to be issued to each will be typed in. “TBD” means that some of the information is unknown and is “to be determined.” As mentioned in § 2.6.2, the title insurance commitment is not binding upon the title insurance company until this information has been inserted by the issuance of a new or updated title insurance commitment. In the 2006 Commitment, the policy to be issued is typically described only as an ALTA form. You should request more definition here, such as “Owner’s 2006,” “Residential,” “Plain Language,” etc. This is important because, as noted in § 2.6.1, the terms and provisions of the policy forms have been incorporated by reference into the title insurance commitment and the title insurance commitment is subject thereto. There are several types of owner’s and lender’s policies (*see* Chapters 4 and 5), and in the larger or unusual transactions, it is wise to have the exact form of policy specified on Schedule A.

2016 Commitment

The 2016 Commitment is more precise and clearly sets out the choice of the type of policy. However, this form may not be followed exactly by many title entities and so the comments in the discussion on the 2006 Commitment are equally applicable.

2006 Commitment — Schedule A	2016 Commitment — Schedule A
<p>Policy or Policies to be issued: Amount</p> <p>a. _____ Owner’s Policy (Identify form used): \$ _____ Proposed Insured:</p> <p>b. _____ Loan Policy (Identify form used): \$ _____ Proposed Insured:</p>	<p>Policy to be issued:</p> <p>(a) [2006 ALTA® Owner’s Policy][2006 ALTA® Loan Policy][_____ ALTA® _____ Policy] Proposed Insured: _____ Proposed Policy Amount: \$ _____</p> <p>[(b) [2006 ALTA® Owner’s Policy][2006 ALTA® Loan Policy][_____ ALTA® _____ Policy] Proposed Insured: _____ Proposed Policy Amount: \$ _____]</p> <p>[(c) [2006 ALTA® Owner’s Policy][2006 ALTA® Loan Policy][_____ ALTA® _____ Policy] Proposed Insured: _____ Proposed Policy Amount: \$ _____]</p>

§ 2.8.3—Rate and Other Charges

2006 Commitment and 2016 Commitment

The rate to be charged is not part of the ALTA commitment, but most companies will disclose the rates, additional charges, and out-of-pocket disbursements on Schedule A. The title insurance company does not show you how it arrives at the amount. Seller’s counsel will also be examining the title insurance commitment and this will be a main area of concern if the seller has contracted to pay the rate. Be certain that all discounts (reissue rate, abstract surrender, etc.) have been credited. *See* § 1.8.

§ 2.8.4—Estate Covered and Title Holder

2006 Commitment and 2016 Commitment

In Paragraph 3, the type of estate that will be insured is shown, such as fee simple, easement, leasehold, etc. Paragraph 3 should disclose the prospective landlord, vendor, or optionor if the proposed policy insures an interest under a lease, contract, or option.

2006 Commitment Schedule A — Section 3	2016 Commitment Section A — Section 3
The estate or interest in the land described or referred to in this Commitment is _____ (Identify estate covered, i.e. Fee, Leasehold, etc.)	The estate or interest in the Land described or referred to in this Commitment is _____ (Identify estate covered, i.e., fee, leasehold, etc.)

Paragraph 4 should show the name of the record title holder — that is, the proposed grantor. If not the grantor, then a deed to the grantor will be required in Schedule B — Section 1. Paragraphs 3 and 4 are often combined into one paragraph. Section 5(C) of Regulation 8-1-2 requires the title entity to “fully disclose the record vested owner as shown by the applicable county real estate records as of the effective date, shown on the commitment, or, if a circumstance exists which requires a person other than the vested owner to be shown, the title entity shall disclose, in a clear and conspicuous manner, the reason(s) for the deviation from the available county real estate records.”

2006 Commitment Schedule A — Section 4	2016 Commitment Section A — Section 4
Title to the [_____] estate or interest in the Land is at the Effective Date vested in:	Title to the [_____] estate or interest in the Land is at the Commitment Date vested in:

§ 2.8.5—Legal Description — Compared with Contract and Survey

2006 Commitment and 2016 Commitment

The legal description is set forth in Paragraph 5. Most customers rely on the title insurance company’s legal description as presumably accurate and do not think of questioning it. Title insurance companies are no more immune from error than lawyers. The legal description in the title insurance commitment must be carefully reviewed and justified by a recent survey or other comparable evidence. Seller and buyer are equally interested in this portion of the title insurance commitment. The descrip-

tion on the title insurance commitment should be the same as on the contract and the survey, if a survey is available. It is also a good idea to compare the legal description to the county assessor's records. If there is a difference, be sure you understand why, and take all appropriate corrective action to resolve any discrepancies. The title insurer, surveyor, grantor, grantee, and lender must all agree on the exact form of legal description, whether by government survey, metes and bounds, or subdivision plat.

The title insurance company should be particularly interested in obtaining a correct legal description. In *Hedgecock v. Stewart Title Guaranty Co.*, 676 P.2d 1208 (Colo. App. 1983) (abrogated on other grounds as stated in *First Citizens Bank & Trust v. Stewart Title Guar. Co.*, 2014 COA 1), the company was held liable, despite the inclusion in the policy of exception No. 3 (*see* § 2.13), when it insured a defective legal description that had been used to convey the property since 1904.

Descriptions of common interest communities, condominiums, and time share estates are particularly cumbersome and often butchered in translation from the document that creates them — the condominium or time share declaration. Take the time to review the declaration and to compare the directions given therein for describing units in a conveyance of title with the description used in the title insurance commitment. Insist that the declaration be followed to the letter. Watch for missing or inconsistent references to parking and storage spaces.

§ 2.8.6—Legal Description — Used in Preparing Conveyance

2006 Commitment and 2016 Commitment

When the deed or other conveyance (lease, installment land contract, option, mortgage, deed of trust, assignment of rents, etc.) is prepared, strict adherence to the legal description shown on the title insurance commitment is essential because that is the only description the title insurance company has committed to insure. The title insurance commitment or policy will not include the area in acres or square feet, though these are often part of the surveyor's description. The title insurance policy does not insure the amount of land being conveyed. Standard exception No. 3 on Schedule B — Section II (Schedule B, Part II) makes that clear. *See* § 2.13. Buyer's counsel will prefer to include the acreage or square feet in the conveyance, thereby raising the argument, at least, that the seller has warranted the size of the tract. For the same reason, seller's counsel will resist such inclusion.

§ 2.8.7—Legal Description — Insuring Easements

Any easement providing legal access to the property should be legally described in the title insurance commitment as part of the title to be insured. Rarely will the title insurance company offer to insure an access easement unless specifically requested to do so, even when the easement is necessary to eliminate a "lack of access" exception to title. *See* § 6.5. An additional charge may be made for insuring the easement if the examination of a separate chain of title becomes necessary. *See* "Extra Parcel Charge" in § 1.8.8.

"Easement" is a defined legal term; "right of way" is a layman's term. An "easement" is a real property interest, an incorporeal estate with certain legal characteristics. A "right of way" refers to a right of passage that might be a strip of land owned in fee simple, an easement, a license, a permit, or even a covenant. Because it is an interest in land, an "easement" is properly insurable, although often coverage is reluctantly offered. *See* § 5.4, "Access — The Recurring Problem," in *CREP*. The owner's and loan policies both provide affirmative insurance that there is a right of access. However, if the title

insurance company questions access, the title insurance commitment, and policy, will contain an exception for “lack of a right of access to and from the land.”

If that exception appears in the title insurance commitment, you must deal with it. But even if the title insurance commitment does not contain the lack of access exception, you will want to satisfy yourself that there is legal access. The title insurance company’s examiner may not realize that there is no access, whereas routine inquiry by you could disclose that fact. This is not to say that it would be negligent on your part if you relied upon the title insurance commitment for proof of access, but only that you will better serve your client if you make your own independent analysis. This is especially true whenever the property is essentially rural and is not within a municipality, even if it is surrounded by other houses or lots with “acreage.” Examination of a survey is one way to ensure access. Another way is to visit the property and make inquiry of the seller, the seller’s attorney, and your client.

Many online mapping programs are available and can provide a simple way to check access to the property. Some counties provide GIS mapping programs on the assessor’s website that superimpose their parcel maps onto the satellite image and will show the roads and road names. However, these programs are no substitute for an accurate survey. An examination of the subdivision plat, if there is one, and the road records that may be filed with the city clerk or in the office of the county commissioners may be appropriate. Finally, check with the county town planning and building departments. Often, these departments will refuse approval of building plans if there is a lack of access.

If access to an open public road depends upon the right to use a recorded private easement appurtenant to the subject property, crossing the lands of others, do not rely entirely upon the ALTA owner’s policies, all of which state affirmatively that the title insurance company insures a right of access to the property. Require the title insurance company to include a legal description of the easement along with the legal description of the insured property in Schedule A.

The description used in the title insurance commitment and the policy will be the same as shown in the recorded grant of easement, provided that description is definite. If the description is in general terms only, such as “over and across the existing road,” the title insurance company will probably require a survey. If, however, the easement has not been granted by a recorded instrument or is based upon prescriptive use, the title insurance company will require a written easement agreement executed by the owners of the servient tenement or, in lieu thereof, a court decree quieting title to the easement in the owner of the dominant tenement.

If access to an open public road depends upon a revocable “permit” or a “license” from a governmental or quasi-governmental unit (Bureau of Land Management,¹ Forest Service, etc.), or even from a public utility, railroad company, or private party, you may be fortunate to obtain an owner’s policy without a “lack of access” title exception. Do not approve any purchase of land by a client without access unless you receive affirmative assurance, preferably in writing, that your client understands that the right of access may be terminated at some later date. Of course, if the client owns adjoining property through which access to a public road is assured, the “lack of access” exception in the policy may not be critical. In that case, however, consider obtaining endorsement Colorado Endorsement 116.4 to insure contiguity of the two tracts (*see* § 6.43).

1. See *Fidelity National Title Insurance Co. v. Woody Creek Ventures, LLC*, 830 F.3d 1209 (10th Cir. 2016), for an interesting case on the effect of access derived from a Bureau of Land Management permit.

It is also possible to issue an owner's policy that insures only an easement. This occurs frequently with the increasing popularity of conservation easements. The grantee of the conservation easement may insist upon title insurance as a condition of acceptance of the grant. In such event, the title insurance company may be persuaded to offer a reduced rate if an owner's policy on the fee title is being issued simultaneously (see the discussion of TBD Commitments in § 1.6.1). However, for the reasons stated in § 4.9 with respect to the simultaneous issuance of policies to both lessor and lessee, the simultaneous rate described in § 1.8.3 is unlikely to be available.

§ 2.8.8—Legal Description — Water Rights

Although water rights are conveyed and encumbered like real property in Colorado under C.R.S. § 38-30-102, title insurance companies are generally unwilling to insure title to water rights. This reluctance has two sources: inadequate public records and the nature of the right. Water rights are often thrown into a deed as an after-thought or included in a phrase like "any and all water rights appurtenant to the lands described above." Since the earliest days, few abstracters have been willing to certify an abstract as to water rights; the title plants are not indexed for water rights, so the title insurance companies do not feel they have a good handle on the title to water rights. Compounding the problem, water rights are subject to loss and abandonment by non-use.

Many title companies add a specific exclusion or exception for water rights so that no coverage is afforded, even if a description of the water rights is inadvertently carried over to Schedule A of the policy with the legal description of the lands. One example is printed exception No. 6, discussed in § 2.16.

Buyer's and lender's counsel should be especially cautious when considering title to rural lands (particularly along the Front Range) to establish that the present or a past owner has not conveyed, reserved, or mortgaged the deep or nontributary water. Even though the title insurance company's examiner is aware of the deed that severed the deep water, it may be ignored, with the excuse that water rights are not insured. If the situation warrants, *e.g.*, if your client is relying upon the value of the deep water to make the deal, it is wise to consider (1) conducting or recommending a stand-up, grantor-grantee search of the county records; (2) requesting a special search by the title insurance company of the records in its title plant; (3) searching for a decree in the records of the Water Court and the State Engineer; (4) obtaining an affidavit from the seller or borrower that the deep water has not been conveyed or encumbered; or (5) all of the above.

If, as frequently happens, the amount of title insurance is based upon the total purchase price of the insured property, and a significant portion of that price is attributed to the value of water rights conveyed with the land, consider that the buyer is over-insured, since the water rights are not insured. The amount of title insurance should be reduced to the value of the land, without including the value of the water rights. If this is not done, in the event of a claim, the title insurance company will exclude the value of the water rights in the determination of the extent of liability. *See* section 8 of the 2006 ALTA Owner's Policy.

§ 2.8.9—Legal Description — Minerals

A conveyance of the land carries with it all the minerals beneath the surface owned by the grantor unless specifically excepted from the conveyance. When the mineral estate has not been severed from the surface, an owner's policy containing no specific exceptions will insure title to both the

minerals and the surface. However, some companies in certain counties refuse to offer any coverage of minerals whatsoever, severed or not. If a typed exception in Schedule B — Section 2 (Schedule B, Part II) evidences this denial of coverage, you will likely see it and react accordingly. But if this denial is printed in the title insurance commitment as part of Schedule A, it can easily go unnoticed. One underwriter in Colorado has sometimes required its agents in various localities to use a printed Schedule A, Paragraph 3, which reads as follows (emphasis added):

3. The estate or interest in the land described or referred to in this title insurance commitment and covered herein is fee simple, *excepting from such estate or interest, any right, title or interest in and to any oil, gas, minerals and mineral rights, together with any rights associated therewith for which no search and examination has been made of the public records, and title thereto is at the effective date hereof vested in:*

Be aware of this practice of inserting the italicized language and refuse to accept it.

If any of the mineral estate has been severed from the surface, the severed mineral estate will be excepted from coverage under the policy in a properly prepared title insurance commitment. The exception for outstanding severed mineral interests in fee simple or for mineral leasehold estates previously granted may appear in either of two places. It could be part of the legal description in Paragraph 4 or 5 of Schedule A, perhaps spelled out in detail, but also possibly noted only by reference to book and page numbers in the recorder's office. Alternatively, and most likely, it will be an exception to title set out on Schedule B — Section 2 (Schedule B, Part II). Either way, buyer's attorney should examine the title insurance commitment carefully to advise the client whether the seller owns, and will convey, the full mineral interest, a partial mineral interest, no mineral interest, or an interest subject to a mineral lease.

The severance of minerals might affect one or more minerals, a fractional interest of one or more minerals, rights to minerals for a term of years, or even those minerals within a certain zone below the surface. Whatever the severance, if anything less than all the minerals is owned by the surface owner, the severance should be noted in the title insurance documents and the source of the severance shown (such as a United States Patent, Colorado Patent, or a prior deed reserving or conveying the minerals).

When a mineral severance occurs, some title insurance questions are raised. Is the severed mineral estate insurable? There is no logical reason why it should not be insurable, at least for the initial mineral estate. A severed mineral estate is a fee simple interest (or possibly a life estate or term of years, the same as any other estate. But you may have trouble in obtaining title insurance on such a severed mineral estate. Some companies are reluctant to offer such coverage. If, however, it is not a severed interest that you want to insure, but rather an oil and gas or mineral leasehold, title insurance may not be obtainable anywhere. Title insurers consider a developed or to-be-developed leasehold mineral estate too great a risk for the rate that could be charged. For a discussion of title insurance on severed mineral interests, see Jordan, "Title Insurance for the Mineral Estate," *Title News* (Apr. 1984).

Can the owner or lender obtain title insurance protection against the possibility of damage to the surface caused by the mining of a severed mineral interest? Quite frequently, the answer is yes. As discussed in § 6.33, whether the title insurance company will be willing to insure depends upon several different factors. If available, the endorsement will furnish the insurance protection.

§ 2.9 • SCHEDULE B

In the 2006 Commitment, the format of Schedule B is optional with the title insurance company. Therefore, it is still customary in Colorado for the title insurance company to continue to use the format of Schedule B developed for the 1966 Commitment. In contrast, the 2016 Commitment sets out the basic format followed by the optional items, which will be determined by the documents of record and the requirements of the title insurance company to insure the transaction.

Section 1 or Part I is of special interest and importance. If and only if the requirements of Section 1 or Part I are fulfilled, title insurance as described in the title insurance commitment will be issued. We must remember, frustrating as it may be, that the title insurance company is not obligated to insure any particular title. It will be allowed to pick and choose the risks it will accept or reject.

Please refer to the form of the 2006 Commitment, attached to this chapter as Form 2A, for a sample title insurance commitment showing both parts of Schedule B completed with sample requirements and exceptions. Schedule B of the 2016 Commitment will be similar when completed.

2006 Commitment Schedule B — Section 1	2016 Commitment Schedule B — Part I
<p style="text-align: center;">Requirements</p> <p>[NOTE: Appropriate language should be inserted to set forth the requirements of the Company. In many areas, a subcaption may be used such as: “Instruments in insurable form which must be executed, delivered, and duly filed for record:”]</p> <p>Please refer to Form 2A for an example of a completed Schedule B — Section 1 with various types of requirements.</p>	<p style="text-align: center;">Requirements</p> <p>All of the following Requirements must be met:</p> <ol style="list-style-type: none"> 1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions. 2. Pay the agreed amount for the estate or interest to be insured. 3. Pay the premiums, fees, and charges for the Policy to the Company. 4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records. <p style="text-align: center;">(Documents to be listed here)</p> <p>Please refer to Form 2B for an example of a completed Schedule B — Part I with various types of requirements.</p>

§ 2.9.1—Payment Required

Both forms of the title insurance commitment require payment of the full consideration. Payment should include transfer of the purchase price for an owner's policy or the disbursement of loan proceeds for a lender's policy. However, payment does not necessarily mean cash. A promissory note for the balance of the purchase price will suffice. On policies insuring a leasehold, contract, or option, the title insurance company normally will insert a title exception in Schedule B — Section 2 (Schedule B, Part II), excepting from coverage any results that flow from the failure of the insured to comply with the payment terms of the described lease or contract/option. *See* §§ 4.7 (contracts), 4.8 (options), and 4.9 (leasehold).

This requirement is present because in most states the recording act protects only bona fide purchasers for value. *See Sims v. Sperry*, 835 P.2d 565 (Colo. App. 1992). The Colorado Recording Act, however, protects “any person with any kind of rights.” C.R.S. § 38-35-109(1). Strictly speaking, the requirement is unnecessary in Colorado. That does not mean the title insurance company will delete it; but it does mean that you, upon request to the title insurance company disclosing all the facts, should be able to obtain title insurance on a gift transaction in Colorado, whereas in other states you might not. In the policy issued to insure a gift deed you would request deletion of exclusion 3(e), as discussed in “No Value Paid” in § 4.4.2.

If an option to buy is being insured, then “payment” is more than just a Recording Act problem. *See* § 4.8.

§ 2.9.2—Recording Required

The documents that must be recorded before the policy can be issued are listed. We cannot here explain what all various document requirements may be. But, briefly, they will always include a conveyance (deed, lease, contract, option, etc.) from the party in title to the proposed insured (if an owner's policy is to be issued) and a deed of trust or mortgage from the borrower to the lender (if a loan policy is to be issued). A release will be required for any existing deeds of trust or other liens that are not to remain on the property. If title curative documents are required, such as a decree in a quiet title action, quitclaim deed, or probate proceeding, they will be listed under Item (b). Evidence will be required that the grantee is an entity authorized by law to hold title to real property, for example a corporation, partnership, joint venture, trust, limited liability company, or other type of entity created by statute. Also required will be the prerequisites to deletion of the standard printed exceptions to title and the issuance of Colorado Endorsement 100 and other endorsements. *See* §§ 2.10 through 2.18.

§ 2.9.3—Payment of Taxes Required

Item (c) requires, as a condition of issuance of the policy, payment of all taxes, charges, and assessments levied against the subject property that are due. In addition, one or more exceptions for taxes and assessments will appear in Schedule B — Section 2 (Schedule B, Part II), as described in § 2.18.

§ 2.10 • TITLE INSURANCE COMMITMENT EXCEPTIONS: SCHEDULE B

Since a good portion of this manual is concerned with “exceptions,” suffice it to say that the term refers to title exceptions. These are matters that may (in the case of the standard printed exceptions), or that actually do (in the case of non-standard typed exceptions), constitute a cloud upon, a de-

fect in, or an encumbrance against the title. The title insurance company will disclose the exceptions to title in Schedule B — Section 2 (Schedule B, Part II) of the title insurance commitment; and unless those exceptions are disposed of in some manner, they will also appear on Schedule B of the owner’s policy and Schedule B — Part I, of the loan policy. When exceptions to title are indicated on Schedule B — Section 2 (Schedule B, Part II) of the title insurance commitment, that means there will be no insurance against those items, unless they are subsequently deleted or an affirmative endorsement is obtained that specifically refers to the excepted item and states the extent to which the title insurance company will protect against its appearance or attempted enforcement. *See* § 2.20.

Of course, the title insurance company could insure over an exception by omitting or failing to show it. Current insurance regulations require disclosure of all “impairments of record” and specifically prohibit insuring over “any recorded lien, recorded encumbrance or other recorded interest” unless funds are on hand adequate to discharge such interest or an “appropriate” indemnity is obtained from the responsible party. *See* § 5.I of Regulation 8-1-2. So, when the title insurance company refuses to delete an exception but offers an endorsement to insure over it, do not accuse the title officer of incorrectly charging for an endorsement fee. That is the proper way to do it if the defect exists.

Buyer’s and lender’s counsel will scrutinize Schedule B — Section 2 (Schedule B, Part II) of the title insurance commitment to make sure that all the listed exceptions are acceptable and to insist on deletion of all unnecessary exceptions.

2006 Commitment Schedule B — Section 2	2016 Commitment Schedule B, Part II
<p style="text-align: center;">SCHEDULE B*</p> <p>Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:</p> <p>5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.</p> <p>Author’s Note: All matters that would be shown in Schedule B of an Owner’s Policy issued on the effective date of the Commitment, including those general exceptions such as rights of parties in possession, survey matters, etc., should be set forth in paragraph 5 of Schedule B. In many instances these matters are printed as part of</p>	<p style="text-align: center;">SCHEDULE B, PART II Exceptions</p> <p>THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.</p> <p>The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:</p>

<p>Schedule B of the Policy. It is proper to note that an exception shown may be omitted from the Policy as outside of the coverage of the Policy to be issued, or for some other reason.</p> <p><i>(Please refer to Form 2A for an example of a completed Schedule B — Section 2 with various types of exceptions.)</i></p>	<p>[1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.]</p> <p><i>(Please refer to Form 2B for an example of a completed Schedule B, Part II with various types of exceptions.)</i></p>
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Typically, this part of Schedule B — Section 2 (Schedule B, Part II) begins with the standard or preprinted exceptions, as listed below. Regulation 8-1-2 allows these standard exceptions in §§ 4.P and 5.D. At least three additional exceptions are frequently encountered in the printed portions of the title insurance commitment and the policies subsequently issued. Understand, however, that these standard exceptions are there to protect the title insurance company against presently unknown title defects that could arise or be discovered later. When the standard exceptions are deleted, the policy is sometimes referred to as affording “extended coverage.” See Section 8.1.1 of the Contract to Buy and Sell Real Property (Residential) (CBS1-16-15), which has a brief explanation of “extended coverage” to assist the seller and buyer in choosing whether the commitment will provide such coverage. An extra rate, usually less than \$150, will be charged by the title insurance company for “extended coverage.”

Before considering the standard printed exceptions in detail, it is important to know that (1) the 2006 Commitment and the 2016 Commitment do not dictate the wording, order of appearance, or number of these “standard” exceptions; (2) within Colorado, variations occur among the forms of different companies; (3) a definition of “standard” is necessary, at least for purposes of this manual; and (4) most lenders will require “extended coverage.” The exceptions considered “standard” in Colorado, which are often printed in the same numerical order in the title insurance commitment, are:

- 1) Rights of parties in possession (§ 2.11);
- 2) Easements (§ 2.12);
- 3) Surveys (§ 2.13);
- 4) Mechanics’ liens (§ 2.14); and
- 5) Subsequently attaching defects (§ 2.15).

Other *less* “standard” but still frequently encountered printed exceptions are:

- 6) Mining claims, patents, and water rights (§ 2.16);
- 7) Special district liens (§ 2.17); and
- 8) Taxes (§ 2.18).

The complete text of each of these printed exceptions is set forth in §§ 2.11 through 2.18. For information on the deletion of exceptions, see § 2.20.

The insurance regulations prohibit the use of “generic exceptions,” defined as “broad exceptions on a title insurance commitment or policy of title insurance that do not refer to specific documents,” for an owner’s policy. See §§ 4.J and 5.P in Regulation 8-1-2.

§ 2.11 • TITLE INSURANCE COMMITMENT EXCEPTION NO. 1 — RIGHTS OF PARTIES IN POSSESSION

Standard exception No. 1 (and No. 2, to some extent) protects the title insurance company against the claims of a party in possession, such as a contract purchaser under an unrecorded contract, an adverse possessor, the proprietor of an unpatented lode mining claim,² or a tenant with no recorded lease. It should be observed that this is one important area wherein the warranties of the general warranty deed may exceed the insurance afforded by the policy. The general warranty deed includes the grantor's warranty that there are no outstanding possessory claims that are paramount to the title conveyed to the grantee. Exception No. 1, however, says that the title insurance company does not insure against such claims. It follows that the grantee will want exception No. 1 deleted from the policy. That exception typically reads as follows:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

If an approved survey and an affidavit as to possession are tendered to the title insurance company, standard exception No. 1 will be deleted upon request for a minimum charge. Some companies, to preserve rights of subrogation, may decline to delete exception No. 1 unless a general warranty deed will be utilized to convey title to the property. *See* Section 13 of the Conditions in the ALTA Owner's Policy (6-17-06). In addition, on rental properties, the title insurance company may require tenant estoppel certificates before deleting No. 1. If tenants are in possession and No. 1 is deleted, a new exception will be added to except "Rights of tenants as tenants."

If the survey discloses encroachments by buildings, fences, or other improvements, or in any other manner shows a possible possessory claim, such as a road, path, ditch, occupied building, mining claim, driveway, fence, pipeline, etc., the title insurance company will make a specific exception for the facts disclosed by the survey if it deletes standard exception No. 1. Thus, the purchaser would obtain coverage against any other possessory claims not shown by the survey, but would not be protected from known defects as revealed by the survey.

§ 2.12 • TITLE INSURANCE COMMITMENT EXCEPTION NO. 2 — EASEMENTS

Standard printed exception Nos. 1 and 2 have some elements in common. Please read § 2.11 in connection with this section.

Exception No. 2, which some companies combine with No. 1 to make only one exception, relates to possessory and non-possessory rights, but is limited to easements by its wording:

² C.R.S. § 34-43-103(1) requires the recording of a location certificate within three months after the date of discovery of the lode. *See* § 2.16.

2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

As with exception No. 1, buyer's counsel should be aware of the advantages of deletion of exception No. 2; whereas seller's counsel must consider the extent to which the warranties in the conveyance will exceed the insurance tendered in the title insurance commitment if exception No. 2 is not deleted.

The requirements for deletion of exception No. 2 are the same as for No. 1: a survey acceptable to the title insurance company that does not reveal any trails, tracks, roads, paths, utility lines (under or above ground), or other vestiges of prescriptive use; perhaps a personal inspection of the property, though usually the title insurance company will rely upon the surveyor; perhaps an affidavit from the seller; and a nominal charge or fee.

But what about the easement that appears by recorded documents rather than by usage on the ground? It will be shown as a non-standard typed exception to title in Schedule B — Section 2 of the title insurance commitment issued on the servient tenement. Initially, do not accept the title insurance company's word that the easement encumbers your property. Obtain a copy of the recorded document and plot it out. It may lie off the property — perhaps close, but definitely off the property. In that case, an endorsement to the title insurance commitment is in order, deleting the item. *See* § 2.20.

If the easement crossed the property at one time, it may have since been abandoned. A ditch or road that no longer exists or is barely visible and obviously long forgotten can also be deleted as an exception to title if the title insurance company agrees. The title officer may want to visit the property and see for himself or herself. See the discussion of online mapping tools in § 2.8.7. An inspection fee may be charged. If convinced, the title insurance company will insure over the easement by endorsement to the policy.

Exception No. 2 includes not only easements created by prescriptive use but also easements that arise by implication from necessity or from prior existing use. *See* 2 Krendl, *Colorado Methods of Practice*, § 65:5(4) (6th Ed. 2012). Such an implied easement may in fact be provable, though dormant, just waiting to be claimed, with no visible evidence of its existence on the ground. If No. 2 is deleted, the title insurance company has agreed to indemnify the insured should such a claim arise.

§ 2.13 • TITLE INSURANCE COMMITMENT EXCEPTION NO. 3 — SURVEYS

A title insurance policy insures marketability. A shortage of area, encroachment by someone else's building onto the subject property, or by an improvement on the subject property onto adjoining property, a disputed boundary, or another similar defect may make the property unmarketable.

To protect itself (not the insured) from the likelihood of "survey irregularities," the title insurance company inserts standard printed exception No. 3 into all policies, unless special arrangements are made. This exception usually reads as follows:

3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

With that exception, the title insurance company anticipates that it is not liable for survey irregularities affecting marketability. (The exception may not protect the company; *see Hedgecock v. Stewart Title Guaranty Co.*, 676 P.2d 1208 (Colo. App. 1983).) If the exception is removed, the title insurance company is insuring at Covered Risk 4 in both the owner's and lender's policies that there are no survey irregularities that affect the insured property. Therefore, the title insurance company will not delete standard exception No. 3 unless an acceptable survey is delivered to the title insurance company, and any irregularities disclosed by the survey, such as an encroachment or boundary overlap, are noted as non-standard typed exceptions on the policy.

To be acceptable to the title insurance company, the survey must (1) be prepared by a Colorado professional land surveyor approved by the title insurance company; and (2) be certified by the surveyor to the title insurance company on a form of certificate approved by the title insurance company. Several suggested forms of certificates generally found to be acceptable are included in Appendix 7, together with a brief explanation of the types of surveys authorized by statute in Colorado. C.R.S. §§ 38-51-101, *et seq.* For a general discussion on the types of surveys available, see Richard Krohn, "A Brief Survey of Surveys," 34th Annual Real Estate Symposium (CLE in Colo., Inc. 2016).

When should you obtain survey coverage by the deletion of No. 3? The safe answer is "always" if you represent the buyer. Your client is as likely to suffer from a survey irregularity as any other type of title defect. Given the propensity of neighbors to expand their turf by constructing walls, hedges, and so on, city lots are nearly as susceptible to survey irregularities as farms and ranches. The latter always have survey problems. Fences are never on line and original government surveys are invariably subject to minor, and sometimes major, error.

The practice of title companies, over the past 15 or more years, has been to provide survey coverage through the deletion of standard exceptions Nos. 1 through 3 without requiring a survey, if the property is a residential lot in a platted subdivision. If the property is described by a metes and bounds legal description, or is situated in an area with known survey and access problems, then a survey (usually an improvement location certificate) will be required. Because of this practice, real estate brokers will almost always advise their clients to forego the cost of the survey, often amending the contract to state that a survey will be obtained only if the title insurance company requires it. The consequence is that the demand for surveys in residential real estate transactions has fallen away in permitted areas. From the point of view of the real estate attorney, this is most unfortunate. Whether the survey is an improvement location certificate (which is not technically a survey, but is used most often when a survey is obtained in residential transactions due to its low cost) or a survey plat, it probably will disclose, at a minimum, encroachments of improvements onto the adjoining property, encroachments of improvements from the adjoining property onto the property of your client, the presence of utilities if shown on the surface (overhead power lines, for example), and whether the property abuts a public road. If the survey is obtained, the title insurance company can be requested to provide additional affirmative coverage over these matters by way of an endorsement. An obvious advantage is that you will be alerted to these issues and take them into consideration when submitting survey objections to the seller, and able to purchase affirmative coverage over these adverse matters.

The ideal is not the practical. To get title protection you must obtain a recently certified survey. Surveys can be expensive. Nevertheless, whenever your buyer-client can afford the survey, urge that it be obtained. Do not rely upon the fact that the property lies in a platted subdivision. The plat may be defective and, if so, the buyer has little recourse against anyone. Secondly, encroachments and other problems may have occurred after the plat was prepared and filed.

For commercial developments, particularly the larger transactions, surveys are routine. On farm and ranch properties, the cost of a survey may be prohibitive, and even the lender will agree to take its chances. In lieu of a survey, the buyer will attempt to obtain warranties from the seller as to the amount of acreage conveyed and the absence of survey irregularities. The seller's attorney, on the other hand, must be on guard in these rural transactions not to allow the client to give such assurances since there is no way to protect the seller. Thus, the fun begins when knowledgeable counsel with opposing objectives negotiate.

§ 2.14 • TITLE INSURANCE COMMITMENT EXCEPTION NO. 4 — MECHANICS' LIENS

§ 2.14.1—Mechanics' Liens — The Secret Lien

Probably no title insurance subject is more confusing, less understood, or leads to more lawsuits for insurers than mechanics' liens. In Colorado, a person entitled to a mechanics' lien, with certain exceptions, has a four-month period after completing work on the property within which to file a lien of record. C.R.S. § 38-22-109(5). In the interim, such person has an unfiled, secret lien whose priority dates from the commencement of the work on the project (not the commencement of the mechanic's work — the commencement of any work). C.R.S. § 38-22-106(1). *Bankers Trust Co. v. El Paso Pre-Cast Co.*, 560 P.2d 457 (Colo. 1977).

The effect of this Colorado law is to place mechanics' lien claims in priority ahead of almost any mortgage or deed of trust securing a construction loan or a permanent loan. For a state by state list of the priority of a mechanics' lien over a mortgage, see James L. Gosdin, *Fundamentals of Title Insurance*, 107-09 (American Bar Association, 2014). Therefore, let us consider how the title insurance companies step in to protect owners and lenders against mechanics' liens.

§ 2.14.2—Title Insurance Company Protected

Printed exception No. 4 protects the title insurance company against mechanics' liens. It appears in the title insurance commitment, as follows:

4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

The same exception will appear in all policies issued pursuant to the title insurance commitment. In the Residential Title Insurance Policy, mechanics' lien protection is expressly covered unless the insured hired the work (and absent this exception in Schedule B). See § 4.5, "Residential Title Insurance Policy."

Section 5.M of Regulation 8-1-2 requires the title insurance company to notify in writing every prospective insured who purchases an owner's policy for a single-family residence, including a condominium or townhouse, of the requirements for obtaining mechanics' lien coverage. This disclosure will normally be made in the title insurance commitment. See Form 2A for an illustration of the disclosure.

From the underwriters' perspective, assuming the public records do not disclose a filed mechanics' lien, there are three different stages at which mechanics' lien protection can be issued in Colorado. The first stage is when no work has been done on the property within four months prior to the date of policy. The second stage is when the work has been completed within four months. The third stage is when work is presently underway.

§ 2.14.3—Protecting the Insured — First Stage: No Work Within Four Months

The problem for the insurer is to be certain that no work has occurred during the four months preceding the date of the policy. A notice extending the time to file a lien beyond four months may be recorded. C.R.S. § 38-22-109(6). See 1C Krendl, *Colorado Methods of Practice* § 48:12 (6th Ed. 2012). Mechanics' liens are not possible if it can be established that no work has occurred during the four months preceding the date of the policy and a notice to extend the time to file has not been recorded. To establish this, an affidavit and indemnity from the seller that no work has occurred within four months will be required. The usual form of the affidavit and indemnity refers to 120 days. The seller will agree to indemnify the title insurance company if the seller swears falsely. But what if the seller is mistaken? Theoretically, an independent investigation could be conducted. But, in practice, the affidavit of the seller is accepted. An affidavit from the buyer will also be obtained, since it is not unusual that the buyer might have had access to the property for soil tests, environmental inspections, surveys, renovations, or fix-up prior to the closing. Once the affidavits are obtained, standard exception No. 4 will be deleted on all policies for a nominal fee or no charge, provided that the public records disclose no recorded mechanics' liens and the title insurance company has no reason to suspect that any basis exists for filing such a lien.

Colorado Endorsement 130 granting affirmative coverage against mechanics' liens can be added to residential policies. See § 6.31 for a discussion of mechanics' lien protection by endorsement. Examples of affidavit and indemnity forms required by Colorado insurers are illustrated in Appendix 8.

§ 2.14.4—Protecting the Insured — Second Stage: Construction Completed Within Four Months

The second stage is more problematic. Although the title insurance company has been informed that construction is complete, it is aware that there has been work on the property within four months. The contractors who performed the work or supplied materials and/or labor have liens on the property and, if unpaid, the contractors could file a statement of lien within the four-month timeframe. How does the title insurance company determine that construction is complete in order to calculate the four-month time period? More affidavits are required, this time from the general contractor, as well as the buyer and seller. In its affidavit, the general contractor will be asked to name all the subcontractors and show the status of their bills. Title insurance company personnel may substantiate the affidavit by calling various mechanics and suppliers whose names appear on the contractor's affidavit. If the affidavit checks out, and it appears that the contractor and all subcontractors have been paid, then mechanics' lien protection will be provided by the deletion of exception No. 4. The charges will vary, but you might pay as much as \$2.50 per \$1,000 on the owner's policy for a commercial project.

A homebuilder who is selling houses routinely during stage two most likely will give the title insurance company a blanket indemnity agreement, backed up by its reputation and sound financial statements. In that event, there will likely be no charge or only a minimal charge for lien protection, including deletion of exception No. 4 and issuance of Colorado Endorsement 130.

The title insurance company may also choose to rely on the statutory defenses against the filing of a mechanics' lien in its assessment of the risk of providing mechanics' lien coverage during this post-construction phase. There are two defenses available, should a contractor file a mechanics' lien. First, there is:

an affirmative defense that the owner or some person acting on the owner's behalf has paid an amount sufficient to satisfy the contractual and legal obligations of the owner, including the initial purchase price or contract amount plus any additions or change orders, to the principal contractor or any subcontractor for the purpose of payment to the subcontractors or suppliers of laborers or materials or services to the job, when:

- (a) The property is an existing single-family dwelling unit;
- (b) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as his primary residence; or
- (c) The property is a single-family, owner-occupied dwelling unit, including a residence constructed and sold for occupancy as a primary residence. This paragraph (c) shall not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

C.R.S. § 38-22-113(4). The second defense is that:

No lien, excepting those claimed by laborers or mechanics as defined in section 38-22-108(1)(a), filed for record more than two months after completion of the building, improvement, or structure shall encumber the interest of any bona fide purchaser for value of real property, the principal improvement upon which is a single- or double-family dwelling, unless said purchaser at the time of conveyance has actual knowledge that the amounts due and secured by such lien have not been paid, or unless such lien statement has been recorded prior to conveyance, or unless a notice as provided in section 38-22-109(10) has been filed within one month subsequent to completion or prior to conveyance, whichever is later; except that nothing in this section shall extend the time for recording lien statements as provided in section 38-22-109(4), (5), and (10). For the purposes of this section, the dwelling shall be deemed complete upon conveyance and occupancy if not completed before. The lien for items of labor, work, or material which shall thereafter be furnished shall be effective and may be claimed within the time thereafter as provided in section 38-22-109(4), (5), and (10), and their priority shall not be affected by this section.

C.R.S. § 38-22-125.

§ 2.14.5—Protecting the Insured Owner — Third Stage: Construction Underway

The third stage, ongoing construction, gives the title insurance company the most concern due to many large claims it has likely incurred over the years, particularly during the recent recession. In

this stage, owner's protection is not available. Under Exclusion 3(a) of the owner's policy, the title insurance company cannot insure the owner against liens "created, suffered, assumed, or agreed to by the Insured Claimant."

§ 2.14.6—Protecting the Insured Lender — Third Stage: Construction Underway

In contrast to the lack of coverage for an owner's policy, a loan policy may provide coverage during the construction period. In a construction loan, some lenders will forego mechanics' lien coverage because of the track record and the financial strength of the general contractor or the owner, or because a bond is posted or other collateral is furnished to secure the lender's position. But many lenders insist upon title insurance protection against mechanics' liens, and two types are written.

"Full coverage" is a guarantee that no mechanics' lien will "prime" the construction loan. For this protection, the title insurance company deletes exception No. 4 on the Loan Policy or issues Colorado Endorsement 101.3, which modifies Section 3(d) and deletes Sections 6 and 7 of the Exclusions from Coverage on the Construction Loan Policy, and the title insurance company adds affirmative coverage with a new Section 8. The charge for "full coverage" on loan policies may be \$3 or more per \$1,000.

"Modified coverage" is extended on the Loan Policy by the issuance of Colorado Endorsement 101.2. The language on this endorsement is somewhat different from the modified Endorsement 101. Endorsement 101.2 insures against loss or damage from liens for labor or materials that the insured has disbursed funds to pay. It is issued periodically during the course of construction with stated cut-off dates. The title insurance company normally checks the progress of disbursements carefully. It is a day-by-day process. If no problems appear, another Endorsement 101.2 with a new cut-off date will be issued. The charge is usually about \$1.50 per \$1,000.

What does "full coverage" insure that "modified coverage" does not? Here is an example. A construction loan is made to cover the cost of erecting a building. The loan, pursuant to the loan agreement, is not expected to fund the landscaping or tenant improvements. The owner is expected to advance his or her own funds for those items. If a mechanics' lien arises out of construction of the building (*e.g.*, the foundation subcontractor is not paid) the loan policy will insure that the lien will be paid if "modified coverage" is in force. If the landscape gardener or the merchant who supplies built-in cabinets for tenant space files a lien, "modified coverage" will not help. However, under "full coverage" the insurer is liable for all liens. For additional information on mechanics' lien endorsements, see § 6.31.

§ 2.14.7—Protecting the Insured — Recorded Mechanics' Lien

If the title insurance commitment discloses in Schedule B — Section 2 (Schedule B, Part II) that a mechanics' lien has been recorded against the property, the title insurance company, upon compliance with § 5.M of Regulation 8-1-2, can disclose the lien on Schedule B of the policy and then issue endorsement Colorado Endorsement 101.1 to either or both of the owner's and lender's policies, insuring against "enforcement or attempted enforcement" of the lien. The regulation requires funds on hand, securities, bonded obligation, or a letter of credit adequate to discharge the lien. Because of possible interest charges and attorney fees that may be expended defending against "attempted enforcement," the title insurance company frequently requires at least 150 percent of the amount of the lien.

Consequently, it might be more satisfactory to substitute a bond for the lien in accord with the statutory proceeding. The statutory bond amount is one and one-half times the amount of the lien. C.R.S. §§ 38-22-131 to -133. Forms for a mechanics' lien bond-around proceeding can be found in *CREP*, Chapter 11, Forms 11-15, 11-16, and 11-17.

§ 2.15 • TITLE INSURANCE COMMITMENT EXCEPTION NO. 5 — SUBSEQUENTLY ATTACHING DEFECTS — THE “GAP”

§ 2.15.1—Title Insurance Company Protected — The Insurance Contract

Exception No. 5 reads as follows:

5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Title insurance commitment.

This language creates the “gap,” which escrow closings are designed to avoid (but not without expense to the consumer) and which the Division of Insurance has attempted to regulate. *See* §§ 5.F, 5.G, and 5.H of Regulation 8-1-2 (10-1-2015). Regulation 8-1-2 requires disclosure by the company of the circumstances in which “gap” coverage is available to the insured. *See* § 2.15.2.

Unlike the other exceptions disclosed in the title insurance commitment, exception No. 5 will be deleted if the title insurance company provides the closing and settlement services. *See* § 2.15.2. If not, then the exception will remain in the policy.

The title insurance company, not surprisingly, has designed exception No. 5 for its own protection. It will not insure against any defects created or recorded after the effective date of the title insurance commitment (*i.e.*, the day and minute through which the title insurance company has searched the public records). No title insurance commitment is issued initially without this “gap” protection for the title insurance company.

It is always prudent to order an update just prior to closing. Under Regulation 8-1-2, the title insurance company is required to update the commitment from the date of issuance to as reasonably close to the time of closing as possible or as close thereto as permitted by the real estate records (*see* § 2.15.2). But no matter how many updates you obtain, there will always be a “gap” — a period in which a document could (and from time to time will) win the “race” to the courthouse and defeat or encumber the title to be insured. C.R.S. § 38-35-109(1) (Colorado’s “race-notice” recording statute). Only if you closed at the courthouse, examining each instrument previously recorded, could you have a title insurance update that was current. Even the most sophisticated computer and title plant is always hours, if not days, behind. Hence, we have exception No. 5. The title insurance company has declined to take the risk of insuring the “gap.” Then the question becomes, who is liable if a judgment, tax lien, contract, or other document affecting the seller’s title is recorded during the “gap”?

§ 2.15.2—Protecting the Insured — Insurance Regulations

The Colorado Commissioner of Insurance has definite ideas about the “gap.” In § 5.F, 5.G, and 5.H of the Regulation, the risk of the “gap” is thrust into the lap of the title insurance company whenever it conducts the closing:

F. Whenever a title entity provides the closing and settlement service that is in conjunction with the issuance of an owner’s policy of title insurance, it shall update the title commitment from the date of issuance to be as reasonably close to the time of closing as permitted by the real estate records. Such update shall include all impairments of record at the time of closing or as close thereto as permitted by the real estate records. The title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title commitment, other than the effective date of the title commitment, for all undisclosed matters that appear of record prior to the time of closing.

G. As soon as reasonably practical prior to closing, every title entity shall notify in writing every prospective insured under an owner’s title commitment the circumstances under which the title insurance company is responsible for all matters which appear of record prior to the time of recording (commonly referred to as “Gap Coverage”). This notice shall be clear and conspicuous, reasonably understandable, and designed to call attention to its nature and significance.

H. Every title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title commitment, other than the effective date of the title commitment, for all matters which appear of record prior to the time of recording whenever the title company, or its agent, conducts the closing and settlement service that is in conjunction with its issuance of an owner’s policy of title insurance and is responsible for the recording and filing of legal documents resulting from the transaction which was closed.

Although there appears to be a contradiction between exception No. 5 and the regulation, title insurance companies, in practice, have accepted this regulation as controlling and will not deny a claim based on an adverse matter recorded during the “gap.”

§ 2.15.3—Protecting the Insured — Insuring the “Gap”

If the title insurance company is not providing closing and settlement services, you can still obtain protection against the “gap” by requesting an endorsement to the title insurance commitment deleting exception No. 5. Some companies have a “gap” endorsement, as discussed in § 6.24.

§ 2.15.4—Protecting the Insured— Closing Protection Letter

Whenever funds are held in escrow as earnest money or for disbursement at closing, the possibility of theft is present. If the escrow holder is a title insurance agent and not the issuing title insurance company (*see* § 1.4), the agreement probably stipulates that the agent does not, and will not, perform closing and settlement services as agent for the underwriter, despite the belief of the depositor and owner of the funds that the title insurance company issuing the policy is liable for the safety of the deposit. To fulfill the customer’s understanding, the underwriter, on request, can issue to the depositor a closing protection letter, sometimes called an “insured closing letter,” if the depositor is the party to

whom the title insurance will be issued. The protection afforded, as described in the letter, includes loss due to (1) failure of the agent to follow the depositor's written instructions; and (2) fraud, dishonesty, or negligence of the agent. The forms of the closing protection letter promulgated by ALTA are illustrated in Appendix 9. At present, only the lender and the owner/borrower are protected. The seller's interest in the earnest money is not covered, unless the letter is modified at your request. (Modification of the ALTA form of closing protection letter to protect the seller is permitted in Colorado. *See* Division of Insurance Bulletin B-5.31, issued February 6, 2013, and Regulation 8-1-3.) The industry is moving quickly toward providing a closing protection letter to sellers because of regulatory and consumer pressures. In Colorado, Regulation 8-1-3 authorizes title insurance companies to issue a closing protection letter to a seller.

§ 2.15.5—Protecting the Insured — The Policy

As noted previously, Exception No. 5 will not appear in the policy if the title insurance company provides the closing and settlement services. Therefore, if the usual practice prevails, and the Date of Policy is a date and time following the recording of the conveyance or mortgage, the “gap” disappears and the title insurance company has insured the title against all matters appearing of record before the Date of Policy.

§ 2.16 • TITLE INSURANCE COMMITMENT EXCEPTION NO. 6 — MINING CLAIMS, PATENTS, AND WATER RIGHTS

Exception No. 6 is not generally recognized as one of the standard exceptions. The term “standard exception” traditionally has referred to the exceptions 1 through 4. This form of the term is used, for example, in Section 8.1.3 of the Contract, where it refers to the deletion of the standard exceptions as part of the form of the proposed title insurance commitment. However, in recent years, the definition of a standard exception has expanded to include Exception No. 6, described below. Regulation 8-1-2 contains a definition of standard exceptions: “Standard or preprinted exceptions’ means, for the purposes of this regulation, those exceptions on title commitments and policies dealing with parties in possession, survey matters, mechanics’ liens, unpatented mining claims, patented or unpatented mineral reservations, water rights, mineral rights, mineral leases, mineral grants, taxes, and rights or encumbrances.” Section 4.P of Regulation 8-1-2.

Exception No. 6 is typically written as follows:

6. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

Unpatented lode mining claims confer possessory rights only. They may or may not be disclosed by an inspection of the property. However, they would be shown in the public records within three months after discovery of the lode by virtue of the recorded location certificate. C.R.S. § 34-43-103(1). *See* § 2.11. Because they are recorded, they are not excepted from coverage by Exception No. 1, which speaks only to claims of parties in possession not shown by the public records (except during the three-month statutory grace period). The title insurance company may not be able to locate the mining claim accurately because of an indefinite legal description, so it protects itself with Exception No. 6.

The patent exception seems to be overkill. The patent must be recorded before title can be insured. And the recorded patent will disclose the mineral reservation, which in turn can be added onto the title insurance commitment as a non-standard title exception. It would be a rare case, but conceivably the copy of the patent as transcribed by the county clerk and recorder into the public records in the early days could fail to reveal a mineral reservation (or some other reservation, such as a right-of-way) that was set out on the face of the original patent. In such event, the reservation would still be valid. Or, the patent could have been erroneously issued without the reservation being stated on the face thereof, in violation of the Act of Congress or the Colorado General Assembly authorizing the issuance thereof. Again, the reservation would be valid. *Jackman v. Atchison T. & S. F. R. Co.*, 24 N.M. 278, 170 P. 1036 (1918) (railroad right-of-way); *Swendig v. Washington Water Power Co.*, 265 U.S. 322 (1924); *Proctor v. Painter*, 15 F.2d 974 (9th Cir. 1926). Arguably, the title insurance company ought to accept the risk in either situation.

The exception for water rights should probably be included in every title insurance commitment and policy, as discussed in § 2.8.8. Frequently, a description of the water rights is carried over with the description of the land and typed into the title insurance commitment and policy by mistake. The title insurance company does not examine title to water rights, and the forms in use should make it clear that such title is not and will not be insured.

In most areas of Colorado, where the land is settled and mining is not likely, the title insurance company will delete Exception No. 6 upon request, perhaps typing in a water rights exception on Schedule B.

Without a doubt, the mining claim and patent reservation parts of Exception No. 6 are “generic exceptions” that ought to be, but are not, included within the prohibition of the Regulation.

§ 2.17 • TITLE INSURANCE COMMITMENT EXCEPTION NO. 7 — SPECIAL DISTRICT LIENS

Among the surprises for real estate lawyers in the Colorado statutes are the liens granted to cities and special districts to secure charges for water and sewer services and facilities and other improvements. There are many such statutes; the following citations are representative: C.R.S. §§ 31-15-302(1)(e); 31-25-522 and -615; 31-35-407(a), -617, and -708; and 32-1-1001(1)(j) and -1006(1)(a). Aside from the lien for real property taxes, these special liens are senior to all other liens, though nothing may be recorded to evidence their existence, much less their priority. It has been held that such a lien for sewer tap fees furnished after the recording of a mortgage lien is, nevertheless, superior to such mortgage lien. *Wasson v. Hogenson*, 583 P.2d 914 (Colo. 1978). In that case, the supreme court held that the organization of the district in 1961 placed all subsequent lienors upon notice of the district’s lien priority. The court did not mention *Edwards v. St. Paul Title Ins. Co.*, 563 P.2d 979 (Colo. App. 1977), which absolved the title insurance company from liability under its policy for 1969 and 1970 assessments, despite the policy’s failure to disclose in Schedule B the existence of a water and sanitation district formed in 1965. See also *N. Wash. Water & Sanitation Dist. v. Majestic Savings & Loan Assn.*, 594 P.2d 599 (Colo. App. 1979) (following *Wasson*); and *Town of Ordway v. Kaiser*, 9 P.2d 287 (Colo. 1932) (priority of lien dates from enactment of town ordinance).

Because of the priority of such district and municipal liens, some title insurance companies add an exception for district or municipal liens whenever asked to insure property in a special district or a municipality that could claim such a lien. The exception may be stated as simply as “any and all liens for water and sewer charges and services,” or it may take a more elaborate form, such as:

7. Statutory liens for any existing or future assessments, taxes, fees, or charges on account of the inclusion of the subject property in one or more special districts or municipalities, including but not limited to [names of districts, city or town].

Although found in other states, no specific endorsement form is routinely available in Colorado to provide affirmative insurance against district and municipal liens, even for lenders. Reliance upon the absence of a specific exception as assurance of coverage against these special liens is hazardous at best. In addition to policy defenses such as knowledge and other exclusions, Colorado case law is not favorable.

However, a Colorado statute requires disclosure by the title insurance company at the time the title insurance commitment is issued that the property may be located in a special taxing district (without specifying whether it is) and directing the consumer to the county for further information. C.R.S. § 10-11-122. A form of disclosure is illustrated in Form 2A.

§ 2.18 • TITLE INSURANCE COMMITMENT EXCEPTION NO. 8 — REAL ESTATE TAXES

When the title insurance commitment is received, pay particular attention to the exception or exceptions regarding general property taxes and special assessment liens. The language may be included in Schedule B — Section 2 (Schedule B, Part II) of the title insurance commitment as Exception No. 6, 7, or 8. The exception has not been standardized. There are many variations; consider carefully how the tax and assessment exceptions are worded and what is required to protect the client. Sometimes two or more exceptions in the title insurance commitment cover taxes or assessments.

Typically, the exception will read:

8. Any and all unpaid taxes, assessments, and unredeemed tax sales.

The above language, though appropriate for the title insurance commitment, is unacceptable for the policy. It says that the title insurance company will not insure the property against any kind of tax or assessment lien whatsoever. You can do better than that.

§ 2.18.1—Protecting the Insured — Policy Language

At any time of the year, there is always a lien against Colorado real property for current property taxes and for special district or improvement assessments, if any. Such current taxes and assessments will not be paid until the following year, so Buyer will acquire the property subject thereto. But Buyer must be insured against a lien for any prior years' taxes or assessments. Therefore, the exception in the policy should be changed to read:

8. Taxes and assessments for the year 20XX, a lien not yet due and payable.

The title insurance company should be willing to rely upon the certificate of taxes due (which, pursuant to C.R.S. § 10-11-122(3) and Regulation 3-5-3, it must obtain from the county treasurer before a policy is issued on the sale of residential real property, unless waived in writing) for assurance that there are no other unpaid taxes or assessments and no unredeemed tax sales. In other words, make the title insurance company insure the accuracy of the certificate of taxes due. If there are unpaid taxes and assessments disclosed by the certificate, the title insurance company will protect itself by adding a requirement for the payment of the taxes and assessments before closing. Section 16 of the Contract requires the property taxes to be apportioned between the Seller and Buyer.

§ 2.18.2—Protecting the Insured — Certificate of Taxes Due

Two Colorado statutes authorize and direct the county treasurer (C.R.S. § 39-10-115) or the treasurer of any other public entity (C.R.S. § 38-25.5-102) to issue a certificate showing the amount of property taxes, and any assessments collected with the property taxes, then due and payable as a lien on any property and the redemption amount for outstanding sales for unpaid taxes, if any. Only the county treasurer or an authorized agent of the treasurer may issue such certificates. C.R.S. § 39-10-115(4). In every real estate transaction, such a certificate will be ordered. The buyer will pay the cost unless otherwise provided in the contract under the theory that it is the buyer who needs to know the status of the taxes and therefore should pay for the certificate. The charge will be shown on the title insurance commitment and collected at the closing. Most companies impose a service charge for obtaining this certificate in addition to the county treasurer's fee.

By statute, the title insurance company must order a certificate of taxes due from the county treasurer before its policy is issued on residential real property, unless otherwise instructed in writing. C.R.S. § 10-11-122(3).

Usually, the certificate will also show any outstanding unpaid special district assessments that are collected with the taxes but accounted for separately. In certain cases, special district assessments are a component of the property taxes and not a separate assessment. However, in some cases, charges or assessments (especially city assessments) may not be shown because the county treasurer is not responsible for collecting them. Each special district identified in the title insurance commitment or disclosed in the certificate of taxes due can be contacted and requested to issue its own certificate of taxes due. If the districts are not disclosed on the title insurance commitment or the sales contract, the county treasurer or assessor will probably be able to give you a list of them. For property in a municipality, the city clerk should be able to advise whether the city is collecting any assessments, rather than the county treasurer. The Special Districts Association of Colorado maintains a website that includes a list of special districts. See www.sdaco.org/transparency/search.php.

The certificate of taxes due should also show whether any of the unpaid taxes or assessments are delinquent. If the previous year's taxes and assessments have been paid, the certificate should indicate the amounts thereof.

What if the county treasurer makes a mistake upon the certificate? May the person who suffers the loss collect damages from the treasurer? The statute provides as follows: "Any loss resulting to any

person from an error in a tax certificate issued by the treasurer shall be paid by the county . . . issuing such certificate.” C.R.S. § 39-10-115(3). The answer to the same question is less than clear for special districts and other public entities. C.R.S. § 38-25.5-102.

In theory, you can collect from the county or other public entity for a mistake. In practice, any such charge must be approved and paid by the county commissioners or other public authority. It might cost more in time and effort to collect than it is worth.

§ 2.18.3—Protecting the Insured — Other Taxes

Be aware that there are other taxes to be collected at the closing that will not be shown on the certificate of taxes due. These include the state documentary fee, C.R.S. §§ 39-13-101, *et seq.*; municipal transfer taxes (*see* Whittier, “The Real Estate Transfer Tax: A New Source of Community Income,” 10 *Colo. Law.* 3093 (Dec. 1981)); sales and use taxes; and *ad valorem* taxes on personal property transferred with the real estate.

The municipal transfer taxes, adopted by some home rule cities and towns in Colorado, are especially burdensome. Some title companies have adopted a policy of showing the tax as an exception to title on Schedule B — Section 2 (Schedule B, Part II) of the title insurance commitment, as well as a requirement for payment thereof under Schedule B — Section 1 (Schedule B, Part I). While this is commendable disclosure, you may want to obtain assurance that the exception will not be carried over to Schedule B of the owner’s policy once the tax on this particular transfer has been paid.

In addition, some covenant communities collect a fee upon transfer of property within the community. C.R.S. § 38-33.3-207(4)(a). Such fees should be disclosed in the applicable declaration of covenants. *See* Section 15.5 of the Contract.

The title insurance commitment may also contain an exception for a private transfer fee covenant, and possibly a requirement for payment of the fee required under the transfer fee covenant. Private transfer fee covenants on residential real property recorded on or after May 23, 2011, are restricted or prohibited by C.R.S. § 38-35-127. Unless the requirements of C.R.S. § 38-35-127 were followed, either that the private transfer fee covenant falls within the exceptions listed or the “Notice of Transfer Fee” was recorded for any private transfer fee covenant of record prior to May 23, 2011, then the private transfer fee covenant is void.

§ 2.19 • TITLE INSURANCE COMMITMENT EXCEPTIONS — NON-STANDARD

The number of possible non-standard title exceptions is endless. But a good laundry list can be put together from the variety of endorsement forms available in Colorado (*see* Chapter 6). Endorsements are used to provide affirmative insurance to owners or lenders, and sometimes both, against loss or damage occasioned by the exercise of rights pursuant to existing, non-standard title exceptions, as opposed to deletion thereof, which is the usual practice with respect to the standard printed exceptions.

Incomplete as it may be, for reference purposes a list of possible Schedule B non-standard title exceptions is provided here, although discussion thereof is deferred to Chapter 6 of this manual wherein the forms of endorsement are analyzed:

- Access;
- Accretion and reliction;
- Bankruptcy;
- Common Interest Community declarations;
- Covenants;
- Easements and rights of way;
- Encroachments;
- Judgments;
- Leases;
- Licenses;
- Liens;
- Lis pendens;
- Minerals;
- Party wall agreements;
- Reservations;
- Restrictions;
- Reverters;
- Survey problems;
- Time share agreements; and
- Watercourses/ditches.

Please refer to the 2006 Commitment at Form 2A for a sample of a title insurance commitment showing both parts of the Schedule B completed with sample requirements and exceptions. Schedule B of the 2016 Commitment will be similar when completed.

§ 2.20 • TITLE INSURANCE COMMITMENT EXCEPTIONS — DELETION OF — INSURING OVER

Exception Nos. 1 through 4 (and Nos. 5 through 8, as described in §§ 2.15 through 2.18) are frequently deleted by the title insurance company based on whether the satisfaction of the requirements for their deletion, including survey and affidavits, are satisfied. Lenders almost always obtain deletion of these exceptions, unless the loan is a construction loan. As counsel for the purchaser, ensure that the purchase and sale contract includes the deletion of the standard exceptions, and that this is carried over to the title insurance commitment. *See* Section 8.1.3 of the Contract. The charge for deletion of the standard exceptions is often worth the modest additional cost, whether the property is residential or commercial. Alternatively, in a residential transaction, you may opt for the plain language policy. Some protection by endorsement may also be available. But be aware that Colorado Endorsements 100 and 130 are not a complete substitute for deletion of the standard exceptions.

Several methods of deleting the printed exceptions from the title insurance commitment are utilized: (1) the exception language may be crossed out on the printed title insurance commitment; (2) the title insurance company may use a blank title insurance commitment of Schedule B — Section 2 (Schedule B, Part II) with nothing printed, and then type in the exceptions that are not deleted; (3) many title insurance commitments have a blank on Schedule B — Section 2 (Schedule B, Part II) stating “exceptions numbered _____ will be deleted [on the owner’s and loan policies] upon satisfaction of all Requirements set out in Schedule B — Section 1”; or (4) Colorado Endorsement 110.1 may be added to delete exceptions from the title insurance commitment (*see* § 6.38.4).

The title insurance company’s requirements for deleting one or more of the standard printed exceptions usually will be set out in Schedule B — Section 1 (Schedule B, Part I). These requirements are considered separately in §§ 2.11 through 2.18 with respect to each of the exceptions.

Because §§ 4.J and 5.D of Regulation 8-1-2 prohibit “generic exceptions” except in special cases, you should never be asked to accept “all recorded easements, rights of way, reservations, restrictions, covenants,” or similar garbage, although the six standard exceptions described in §§ 2.11 through 2.16 will still be permitted.

Often, specific exceptions can be deleted if counsel can furnish the title insurance company with the documentation necessary to justify their removal. For instance, an exception may be made for a specific recorded document, such as an easement, a restriction, or a reservation. But evidence may be available to convince the title insurance company that the easement has been abandoned, the restriction is unenforceable, or the reservation has been terminated. The point to remember is that each exception must be considered carefully and all reasonable and necessary steps taken to remove it, if possible. Some of the exceptions you might expect to find are shown on the completed sample title insurance commitments set out in Forms 2A and 2B.

Do not confuse “deletion” of an exception with “insuring over” an exception. For instance, a deed of trust exception on Schedule B — Section 2 (Schedule B, Part II) can be “deleted” when it is released, or when the statute of limitations on its enforcement has run. C.R.S. § 38-39-201 provides for a 15-year statute of limitation; insurance regulations also allow deletion of a lien when funds or other assurances sufficient to discharge the lien are held by the company. Regardless of whether the exception is released or the statute of limitations on its enforcement has run, the lien is no longer a title defect. However, a mineral reservation in a United States Patent will continue forever. The exception to title for that reservation in Schedule B must always remain. But the title insurance company may be willing to insure over the exception and assume certain defined losses suffered by the insured if mining pursuant to the reservation disturbs the surface of the land. *See* § 6.33.

The purchase and sale contract forms approved by the Colorado Real Estate Commission have focused attention on the standard exceptions by the inclusion of an election whether or not to require the title insurance commitment to commit to “delete or insure over” the standard exceptions. This creates a problem. Which will it be — deletion or insuring over? Arguably, insuring over the standard exceptions is not feasible. A host of endorsements would be required, and still the result would not be the equivalent to “deletion.” As stated in § 2.20, Colorado Endorsement 130 does not do the job entirely

and should not be accepted in lieu of deletion. The best tactic for buyer's counsel would be to strike the words "or insure over," whereas seller's counsel will elect "not" to delete or insure over unless the buyer will pay the increased cost.

The difference between deleting an exception to title that is disclosed by Schedule B — Section 2 of the title insurance commitment and insuring over that same exception is further explained in § 6.38.4.

The process of insuring over an exception is accomplished by convincing the title insurer to assume the risk represented by the exception. If the title insurance company agrees, it will show the exception in the title insurance commitment, and then add a note or comment to the effect that it can and will provide coverage by issuing a designated endorsement form. The extra charge for the endorsement will normally be stated on the title insurance commitment as well.

Counsel must then examine the endorsement form to determine if the proffered protection is acceptable. The cost of obtaining the endorsement must be disclosed to the client and a decision made. If the title insurance company refuses the risk, counsel should gather the facts and renegotiate if he or she believes the request for coverage is reasonable. If that fails, inquire of competing companies if they will insure over the exception. Many times, persistence and knowledge about titles and title insurance coverages will get the job done.

FORM 2A • ALTA COMMITMENT FORM (ADOPTED 6-17-06)

American Land Title Association

ALTA Commitment Form
Adopted 6-17-06

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

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

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

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

BLANK TITLE INSURANCE COMPANY

BY: _____

PRESIDENT

Attest: _____

SECRETARY

Note:

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

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Adopted 6-17-06**

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



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SCHEDULE A

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

Proposed Insured:

- b. _____ Loan Policy (Identify form used): \$ _____

Proposed Insured:

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

- 3. The estate or interest in the land described or referred to in this Commitment is _____

(Identify estate covered, i.e. Fee, Leasehold, etc.)

- 4. Title to the _____ estate or interest in the land is at the Effective Date vested in:

- 5. The land referred to in this Commitment is described as follows:

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



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SCHEDULE B – Section 1

Requirements

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

1. Deed of Conveyance. Warranty Deed from Blue Waters, Inc., a Colorado corporation, to the proposed insured owners listed in Schedule A hereof.
2. New Deed of Trust. Deed of Trust from Donald M. Smith and Darlene N. Smith to the Public Trustee of Adams County, Colorado, for the use of Second National Bank, N.A., to secure \$525,000.00.
3. New Deed of Trust. Deed of Trust from Donald M. Smith and Darlene N. Smith to the Public Trustee of Adams County, Colorado, for the use of Blue Waters, Inc., a Colorado corporation, to secure \$75,000.00.
4. (Partial) Release of Deed of Trust. Release of the subject property from the lien of the Deed of Trust from Blue Waters, Inc., a Colorado corporation, to the Public Trustee of Adams County, Colorado, for the use of First National Bank, dated July 1, 20XX, and recorded July 3, 20XX, in Book 479 at Page 340, to secure \$1,500,000.00.
5. Removal of Lis Pendens. Certificate of Dismissal or other documentary evidence approved by the Company sufficient to eliminate Notice of Lis Pendens in the case entitled Mechanic's, Inc., v. Blue Waters, Inc., et al., in the District Court in and for the County of Adams and State of Colorado, Case No. XX CV 12, dated June 4, 20XX, and recorded June 10, 20XX, in Book 717 at Page 111.
6. Removal of Transcript of Judgment. Certificate of Satisfaction of Judgment from the County Court in and for the City and County of Denver, State of Colorado, in the case entitled Creditors Anonymous, Inc., v. Blue Waters Partners, as evidenced by Transcript of Judgment Docket showing Creditors Anonymous, Inc., as Judgment Creditor, and Blue Waters Partners as Judgment Debtor, in the judgment amount of \$120.75, entered January 4, 20XX, and recorded January 18, 20XX, in Book 995 at Page 640.
7. Quiet Title. Deeds or evidence of proper legal proceedings, approved by the Company, disposing of the interests of the following-named persons: (a) The Longbranch Trust; (b) Abraham Longbranch; and (c) All unknown persons who claim any



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interest in the subject matter of this action. NOTE: This requirement is necessary by reason of the fact that Abraham Longbranch, a predecessor in title, died intestate on February 2, 19XX. A deed purportedly executed by the decedent, conveying the property to The Longbranch Trust, was recorded May 12, 19XX. The policy when issued will not insure marketability of title until the quiet title decree, if any, has remained of record for six months, during which time no appeal has been taken and no action has been initiated to set aside or otherwise impair such decree. ¹[See exception No. 26 of Schedule B– Section 2.]

8. Proof of Partnership Existence. Recording in Adams County, Colorado, of a Trade Name Affidavit for Blue Waters Partners, a partnership, to evidence the existence of a partnership as defined in the Colorado Uniform Partnership Law. (NOTE: Blue Waters Partners was the predecessor in title to Blue Waters, Inc.).
9. Evidence of Entity Existence and Authority. Recording in Adams County, Colorado, of a Statement of Authority as described in C.R.S. § 38-30-172, to evidence the existence of Blue Waters, Inc., and the authority of the person who will be signing the conveyance deed to act on behalf of Blue Waters, Inc.
10. Lender's Consent. Consent of lender, set forth in writing, to the assumption of the obligations of the grantor of Deed of Trust from George Williams to the Public Trustee of Adams County, Colorado, for the use and benefit of Roy Green, to secure \$9,450.00, dated August 12, 20XX, and recorded August 14, 20XX, in Book 459 at Page 211, which consent is required by the provisions of Paragraph 24 thereof.
11. Torrens Withdrawal. Recording in Adams County, Colorado, of the owner's duplicate certificate of ownership, duly endorsed by [owner(s) of the property] and certified by the registrar, pursuant to C.R.S. § 38-36-136, that the property has been withdrawn from the Colorado Torrens Title Registration Act, C.R.S. §§ 38-36-101, et seq. [NOTE: This requirement may be used when property is to be withdrawn from the Torrens system and title insurance is to be issued. It is also possible to obtain a title insurance policy without withdrawing the title from Torrens.]

Item (c) Payment of all taxes, charges or assessments levied and assessed against the subject premises which are due and payable.

Upon receipt of proof of payment of all prior years' taxes and assessments, Exception No. 6 of the standard exceptions will be amended to read:

"General real property taxes and assessments for 2016 and subsequent years

Item (d) Additional requirements:

¹ C.R.C.P. 60(b); *Morley v. Gieseke*, 351 P.2d 392 (Colo. 1960).

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All parties will be required to sign a final affidavit and agreement at closing.

Requirements to provide owner's extended coverage in the owner's policy to be issued

A. Upon receipt by the company of a satisfactory final affidavit and agreement from the seller and proposed insured, Exceptions 1 through 4 of the standard exceptions will be deleted. Any adverse matters disclosed by the final affidavit and agreement will be added as exceptions.

B. If the title company conducts the closing of the contemplated Transactions and records the documents in connection therewith, exception no. 5 of the standard exceptions will be deleted

Note: the commitment does not reflect the status of title to water rights



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SCHEDULE B* – Section 2

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

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water. The Owner's Extended Coverage Policy will automatically increase coverage by 10 percent on each of the first five anniversaries of the policy date, at no additional charge.

NOTE: Upon compliance with underwriting requirements, exceptions numbered _____ will be omitted from the Owner's and Loan Policies to be issued hereunder.

- a. Access. Any loss or damage by reason of lack of access to and from the subject property by a public road.
- b. Access (Limited). Right to deny or restrict each and every right of access to and from the subject land directly onto abutting highway designated as Interstate Highway 70, by reason of relinquishment of



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said access rights by deed to The Department of Highways, State of Colorado, recorded November 14, 1966, in Book 125 at Page 590.

- c. Accretion and Reliction. Any increase or decrease in the area of the land and any adverse claim to any portion of the land which has been created or caused by accretion or reliction, whether natural or artificial, and the effect of the gain or loss of area by accretion or reliction upon the marketability of the title to the land.
- d. Aircraft Overflight. Burdens, obligations, conditions and restrictions imposed upon the owners or occupants of subject property, as evidenced by aircraft overflight covenant as contained in Agreement recorded May 21, 1974, in Book 274 at Page 461.
- e. Assessments. Lien of any existing or future assessments, taxes, fees or charges on account of the inclusion of the subject property in one or more improvement districts, including but not limited to the Adams Water Conservation District, the Adams Soil Conservation District, and the Blue Waters Fire Protection District.
- f. Association. Declaration of Covenants, Conditions, Restrictions and Lien for Blue Waters Recreation Association, recorded June 7, 1982, in Book 640 at Page 109.
- g. Bankruptcy. Right of a trustee or receiver in the event of bankruptcy, receivership or insolvency of the seller to repudiate the purchase contract.
- h. Beneficiary Deed. Because the deed vesting title in the insured is a beneficiary deed, as described in C.R.S. §15-15-401, et seq., the policy when issued will not insure marketable title in the insured until the earlier of three years after the death of the grantor of such deed or one year after the time of recording the proof of death of such grantor in the office of the clerk and recorder of the county in which the property described in said deed is located.
- i. Ditches or Canals. Rights of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patents.
- j. Easement. Easement and right of way for the right, privilege and authority to construct, operate and maintain its lines together with the necessary equipment, as granted to The Mountain States Telephone and Telegraph Co. by Flora F. McNaught in instrument recorded April 18, 1969, in Book 150 at Page 399.
- k. Encroachments. Encroachments, if any, shown on the survey required to be furnished to the Company.



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- i. Lien (Assumed or Taken Subject to). Deed of Trust from George Williams to the Public Trustee of Adams County, Colorado, for the use of Roy Green, dated August 12, 19XX, and recorded August 14, 19XX, in Book 459 at Page 211, securing the sum of \$9,450.00. Assignment of Rents in connection with said Deed of Trust, recorded August 14, 19XX, in Book 459 at Page 237.
- m. Minerals (Colorado). All rights to any and all minerals, ores and metals of any kind and character, and all coal, asphaltum, oil, gas or other like substance in or under the subject property, the right of ingress and egress for the purpose of mining, together with enough of the surface of the subject property as may be necessary for the proper and convenient working of such minerals and substances, as reserved in Patent issued by the State of Colorado.
- n. Minerals (Federal). All the coal and other minerals, together with the right to prospect for, mine and remove the same, as reserved in United States Patents.
- o. Minerals (Union Pacific). All coal that may be underneath the surface of the land, also such right of way and other grounds as may be necessary for the proper working of any coal mines that may be developed upon said premises, and for the transportation of the coal from the same, as reserved by the Union Pacific Railway Company in Deed dated April 27, 1887, and recorded June 14, 1887, in Book 3 at Page 525. By instrument recorded December 31, 1964, in Book 93 at Page 166, the Union Pacific Railroad Company, successor to the Union Pacific Railway Company, relinquished the rights reserved to enter upon the surface of said land.
- p. Mineral Lease. Oil and gas lease between Blue Waters Partners, lessor, and Amo Petroleum Company, lessee, recorded July 26, 19XX, in Book 1050 at Page 805, providing for a primary term of 10 years, commencing February 21, 19XX.
- q. Mining Right. Right of a proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises, as excepted in United States Patents.
- r. Minor Holding Title. The lack of legal capacity of any minor person insured hereunder to convey or transfer the property described in Schedule A.
- s. Party Wall. Agreement relating to the north wall of the building located on said property, recorded April 11, 19XX, in Book 890 at Page 713.
- t. Plat Exceptions. Ten-foot utility easements reserved along all side and rear lot lines, twenty-foot utility easements reserved along all boundary lines, easements for firewall, dam, cistern and pond and ingress and egress thereto, building restrictions (repeated in Paragraph C of the Protective Covenants) and notes, as set forth and shown on the recorded plat of Blue Waters Subdivision – Unit 1

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- u. Quiet Title. Assuming Requirement No. 7 above is satisfied, the policies when issued will contain the following notation:

Notwithstanding six months have not elapsed from the date of quiet title decree of record, this policy guarantees fee ownership and possession in accordance with its provisions, but does not guarantee marketability. Marketability will be guaranteed beginning _____, 20____, provided that no steps have at that time been initiated to set aside or otherwise impair the effect or validity of the Decree recorded _____, 20 ____, in Book _____ at Page _____.

- v. Restrictions. Protective covenants for Blue Waters Subdivision – Unit 1, recorded June 7, 1982, in Book 640 at Page 105.
- w. Reverter. Restrictions, which contain a forfeiture or reverter clause, but omitting restrictions, if any, based on race, color, religion, or national origin, as contained in Deed from Improvement, Co., Ltd., to A. Gilman, recorded October 7, 1892, in Book 8 at Page 80, providing substantially as follows: Intoxicating liquors may never be kept for sale, manufactured or sold in any place of public resort in or upon the premises.
- x. Rights of Way. Rights of way and easements for all existing roads, highways, ditches, reservoirs, canals, and telephone, power and pipe lines. [See n. 41 in Chapter 2.]
- y. Tenancies. Rights of tenants as tenants.
- z. UCC Statements. Financing Statement encumbering fixtures recorded in Adams County, Colorado, on August 14, 19XX, Reception No. 19XX126347, continued by instrument recorded January 4, 20XX, at Reception No. 20XX000343, wherein George Williams is the Debtor and Roy Green is the Secured Party.
- aa. Watercourse. Any loss of or adverse claim to that portion of the land described in Schedule A hereof adjoining Box Elder Creek based on an assertion that the channel and banks thereof have been changed or altered other than by natural causes and in imperceptible degrees.

The Owner's policy to be issued hereunder will contain, in addition to the items set forth in Schedule B – Section 2, the following items: (1) The mortgage, if any, required under Schedule B – Section 1, Item (b); (2) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water; and (3) Any and all unpaid taxes, assessments and unredeemed tax sales.

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DISCLOSURE STATEMENT

NOTE: Pursuant to C.R.S. 30-10-406(3)(a) all documents received for recording or filing in the Clerk and Recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one-half of an inch. The Clerk and Recorder will refuse to record or file any document that does not conform to the requirements of this section.

NOTE: If this transaction includes a sale of the property and the price exceeds \$100,000.00, the seller must comply with the disclosure/withholding provisions of C.R.S. 39-22-604.5 (Nonresident withholding).

NOTE: Colorado Division of Insurance Regulations 8-1-2 requires that "Every title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title commitment, other than the effective date of the title commitment, for all matters which appear of record prior to the time of recording whenever the title insurance company, or its agent, conducts the closing and settlement service that is in conjunction with its issuance of an owner's policy of title insurance and is responsible for the recording and filing of legal documents resulting from the transaction which was closed.

Pursuant to C.R.S. 10-11-122, the company will not issue its owner's policy or owner's policies of title insurance contemplated by this commitment until it has been provided a Certificate of Taxes due or other equivalent documentation from the County Treasurer or the County Treasurer's authorized agent; or until the Proposed Insured has notified or instructed the company in writing to the contrary.

The subject property may be located in a special taxing district. A Certificate of Taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent. Information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

NOTE: Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments containing a mineral severance instrument exception, or exceptions, in Schedule B, Section 2.

A. That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and

B. That such mineral estate may include the right to enter and use the property without the surface owner's permission.

NOTE: Pursuant to Colorado Division of Insurance Regulations 8-1-1, Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

A. The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.

B. No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.

C. The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.

D. The Company must receive payment of the appropriate premium.



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E. If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of the Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium, fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

NOTE: Pursuant to C.R.S. 38-35-125(2) no person or entity that provides closing and settlement services for a real estate transaction shall disburse funds as a part of such services until those funds have been received and are available for immediate withdrawal as a matter of right.

NOTE: C.R.S. 39-14-102 requires that a real property transfer declaration accompany any conveyance document presented for recordation in the State of Colorado. Said declaration shall be completed and signed by either the grantor or grantee.

NOTE: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

Nothing herein contained will be deemed to obligate the company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.



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CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*

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**FORM 2B • ALTA COMMITMENT FORM
(ADOPTED 6-17-06, REVISED 08-01-2016)**

American Land Title Association

Commitment for Title Insurance
Adopted 6-17-06 Revised 08-01-2016

**COMMITMENT FOR TITLE INSURANCE
ISSUED BY
BLANK TITLE INSURANCE COMPANY**

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, *Blank Title Insurance Company*, a _____ (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within _____ (*insert the time period*) after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance[issued by _____]. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

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American Land Title Association**Commitment for Title Insurance
Adopted 6-17-06 Revised 08-01-2016**

- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.
2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- the Notice;
 - the Commitment to Issue Policy;
 - the Commitment Conditions;
 - Schedule A;
 - Schedule B, Part I—Requirements; [and]
 - Schedule B, Part II—Exceptions; and
 - a counter-signature by the Company or its issuing agent that may be in electronic form].
4. **COMPANY'S RIGHT TO AMEND**
The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.
5. **LIMITATIONS OF LIABILITY**
- The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - comply with the Schedule B, Part I—Requirements;
 - eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - acquire the Title or create the Mortgage covered by this Commitment.
 - The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
 - The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
 - The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.

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- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing [and authenticated by a person authorized by the Company].
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

[9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.]

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[Transaction Identification Data for reference only:

Issuing Agent:
Issuing Office:
ALTA® Universal ID:
Loan ID Number:
Commitment Number:
Issuing Office File Number:
Property Address:]
[Revision Number:]

SCHEDULE A

1. Commitment Date:
2. Policy to be issued:
 - (a) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][_____ ALTA® _____ Policy]
Proposed Insured: _____
Proposed Policy Amount: \$ _____
 - [(b) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][_____ ALTA® _____ Policy]
Proposed Insured: _____
Proposed Policy Amount: \$ _____]
 - [(c) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][_____ ALTA® _____ Policy]
Proposed Insured: _____
Proposed Policy Amount: \$ _____]
3. The estate or interest in the Land described or referred to in this Commitment is _____ (*Identify estate covered, i.e., fee, leasehold, etc.*)
4. Title to the [_____] estate or interest in the Land is at the Commitment Date vested in:
5. The Land is described as follows:

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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American Land Title Association

Commitment for Title Insurance
Adopted 6-17-06 Revised 08-01-2016**SCHEDULE B, PART I
Requirements**

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - a. Deed of Conveyance. Warranty Deed from Blue Waters, Inc., a Colorado corporation, to the proposed insured owners listed in Schedule A hereof.
 - b. New Deed of Trust. Deed of Trust from Donald M. Smith and Darlene N. Smith to the Public Trustee of Adams County, Colorado, for the use of Second National Bank, N.A., to secure \$525,000.00.
 - c. New Deed of Trust. Deed of Trust from Donald M. Smith and Darlene N. Smith to the Public Trustee of Adams County, Colorado, for the use of Blue Waters, Inc., a Colorado corporation, to secure \$75,000.00.
 - d. (Partial) Release of Deed of Trust. Release of the subject property from the lien of the Deed of Trust from Blue Waters, Inc., a Colorado corporation, to the Public Trustee of Adams County, Colorado, for the use of First National Bank, dated July 1, 20XX, and recorded July 3, 20XX, in Book 479 at Page 340, to secure \$1,500,000.00.
 - e. Removal of Lis Pendens. Certificate of Dismissal or other documentary evidence approved by the Company sufficient to eliminate Notice of Lis Pendens in the case entitled Mechanic's, Inc., v. Blue Waters, Inc., et al., in the District Court in and for the County of Adams and State of Colorado, Case No. XX CV 12, dated June 4, 20XX, and recorded June 10, 20XX, in Book 717 at Page 111.
 - f. Removal of Transcript of Judgment. Certificate of Satisfaction of Judgment from the County Court in and for the City and County of Denver, State of Colorado, in the case entitled Creditors Anonymous, Inc., v. Blue Waters Partners, as evidenced by Transcript of Judgment Docket showing Creditors Anonymous, Inc., as Judgment Creditor, and Blue Waters Partners as

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Judgment Debtor, in the judgment amount of \$120.75, entered January 4, 20XX, and recorded January 18, 20XX, in Book 995 at Page 640.

- g. Quiet Title. Deeds or evidence of proper legal proceedings, approved by the Company, disposing of the interests of the following-named persons: (a) The Longbranch Trust; (b) Abraham Longbranch; and (c) All unknown persons who claim any interest in the subject matter of this action. NOTE: This requirement is necessary by reason of the fact that Abraham Longbranch, a predecessor in title, died intestate on February 2, 19XX. A deed purportedly executed by the decedent, conveying the property to The Longbranch Trust, was recorded May 12, 19XX. The policy when issued will not insure marketability of title until the quiet title decree, if any, has remained of record for six months, during which time no appeal has been taken and no action has been initiated to set aside or otherwise impair such decree. ¹[See exception No. 26 of Schedule B— Section 2.]
- h. Proof of Partnership Existence. Recording in Adams County, Colorado, of a Trade Name Affidavit for Blue Waters Partners, a partnership, to evidence the existence of a partnership as defined in the Colorado Uniform Partnership Law. (NOTE: Blue Waters Partners was the predecessor in title to Blue Waters, Inc.).
- i. Evidence of Entity Existence and Authority. Recording in Adams County, Colorado, of a Statement of Authority as described in C.R.S. § 38-30-172, to evidence the existence of Blue Waters, Inc., and the authority of the person who will be signing the conveyance deed to act on behalf of Blue Waters, Inc.
- j. Lender's Consent. Consent of lender, set forth in writing, to the assumption of the obligations of the grantor of Deed of Trust from George Williams to the Public Trustee of Adams County, Colorado, for the use and benefit of Roy Green, to secure \$9,450.00, dated August 12, 20XX, and recorded August 14, 20XX, in Book 459 at Page 211, which consent is required by the provisions of Paragraph 24 thereof.
- k. Torrens Withdrawal. Recording in Adams County, Colorado, of the owner's duplicate certificate of ownership, duly endorsed by [owner(s) of the property] and certified by the registrar, pursuant to C.R.S. § 38-36-136, that the property has been withdrawn from the Colorado Torrens Title Registration Act, C.R.S. §§ 38-36-101, et seq. [NOTE: This requirement may be used when property is to be withdrawn from the Torrens system and title insurance is to be issued. It is also possible to obtain a title insurance policy without withdrawing the title from Torrens.

¹ C.R.C.P. 60(b); *Morley v. Giesecker*, 351 P.2d 392 (Colo. 1960).

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5. Payment of all taxes, charges or assessments levied and assessed against the subject premises which are due and payable.

a. Upon receipt of proof of payment of all prior years' taxes and assessments, Exception No. 6 of the standard exceptions will be amended to read:

b. "General real property taxes and assessments for 2016 and subsequent years

6. Additional requirements:

All parties will be required to sign a final affidavit and agreement at closing.

Requirements to provide owner's extended coverage in the owner's policy to be issued

A. Upon receipt by the company of a satisfactory final affidavit and agreement from the seller and proposed insured, Exceptions 1 through 4 of the standard exceptions will be deleted. Any adverse matters disclosed by the final affidavit and agreement will be added as exceptions.

B. If the title company conducts the closing of the contemplated Transactions and records the documents in connection therewith, exception no. 5 of the standard exceptions will be deleted

Note: the commitment does not reflect the status of title to water rights

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Commitment for Title Insurance
Adopted 6-17-06 Revised 08-01-2016**SCHEDULE B, PART II**
Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water. The Owner's Extended Coverage Policy will automatically increase coverage by 10 percent on each of the first five anniversaries of the policy date, at no additional charge.

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NOTE: Upon compliance with underwriting requirements, exceptions numbered _____ will be omitted from the Owner's and Loan Policies to be issued hereunder.

- a. Access. Any loss or damage by reason of lack of access to and from the subject property by a public road.
- b. Access (Limited). Right to deny or restrict each and every right of access to and from the subject land directly onto abutting highway designated as Interstate Highway 70, by reason of relinquishment of said access rights by deed to The Department of Highways, State of Colorado, recorded November 14, 1966, in Book 125 at Page 590.
- c. Accretion and Reliction. Any increase or decrease in the area of the land and any adverse claim to any portion of the land which has been created or caused by accretion or reliction, whether natural or artificial, and the effect of the gain or loss of area by accretion or reliction upon the marketability of the title to the land.
- d. Aircraft Overflight. Burdens, obligations, conditions and restrictions imposed upon the owners or occupants of subject property, as evidenced by aircraft overflight covenant as contained in Agreement recorded May 21, 1974, in Book 274 at Page 461.
- e. Assessments. Lien of any existing or future assessments, taxes, fees or charges on account of the inclusion of the subject property in one or more improvement districts, including but not limited to the Adams Water Conservation District, the Adams Soil Conservation District, and the Blue Waters Fire Protection District.
- f. Association. Declaration of Covenants, Conditions, Restrictions and Lien for Blue Waters Recreation Association, recorded June 7, 1982, in Book 640 at Page 109.
- g. Bankruptcy. Right of a trustee or receiver in the event of bankruptcy, receivership or insolvency of the seller to repudiate the purchase contract.
- h. Beneficiary Deed. Because the deed vesting title in the insured is a beneficiary deed, as described in C.R.S. §§ 15-15-401, *et seq.*, the policy when issued will not insure marketable title in the insured until the earlier of three years after the death of the grantor of such deed or one year after the time of recording the proof of death of such grantor in the office of the clerk and recorder of the county in which the property described in said deed is located.
- i. Ditches or Canals. Rights of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patents.

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- j. Easement. Easement and right of way for the right, privilege and authority to construct, operate and maintain its lines together with the necessary equipment, as granted to The Mountain States Telephone and Telegraph Co. by Flora F. McNaught in instrument recorded April 18, 1969, in Book 150 at Page 399.
- k. Encroachments. Encroachments, if any, shown on the survey required to be furnished to the Company.
- l. Lien (Assumed or Taken Subject to). Deed of Trust from George Williams to the Public Trustee of Adams County, Colorado, for the use of Roy Green, dated August 12, 19XX, and recorded August 14, 19XX, in Book 459 at Page 211, securing the sum of \$9,450.00. Assignment of Rents in connection with said Deed of Trust, recorded August 14, 19XX, in Book 459 at Page 237.
- m. Minerals (Colorado). All rights to any and all minerals, ores and metals of any kind and character, and all coal, asphaltum, oil, gas or other like substance in or under the subject property, the right of ingress and egress for the purpose of mining, together with enough of the surface of the subject property as may be necessary for the proper and convenient working of such minerals and substances, as reserved in Patent issued by the State of Colorado.
- n. Minerals (Federal). All the coal and other minerals, together with the right to prospect for, mine and remove the same, as reserved in United States Patents.
- o. Minerals (Union Pacific). All coal that may be underneath the surface of the land, also such right of way and other grounds as may be necessary for the proper working of any coal mines that may be developed upon said premises, and for the transportation of the coal from the same, as reserved by the Union Pacific Railway Company in Deed dated April 27, 1887, and recorded June 14, 1887, in Book 3 at Page 525. By instrument recorded December 31, 1964, in Book 93 at Page 166, the Union Pacific Railroad Company, successor to the Union Pacific Railway Company, relinquished the rights reserved to enter upon the surface of said land.
- p. Mineral Lease. Oil and gas lease between Blue Waters Partners, lessor, and Amo Petroleum Company, lessee, recorded July 26, 19XX, in Book 1050 at Page 805, providing for a primary term of 10 years, commencing February 21, 19XX.
- q. Mining Right. Right of a proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises, as excepted in United States Patents.

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- r. Minor Holding Title. The lack of legal capacity of any minor person insured hereunder to convey or transfer the property described in Schedule A.
- s. Party Wall. Agreement relating to the north wall of the building located on said property, recorded April 11, 19XX, in Book 890 at Page 713.
- t. Plat Exceptions. Ten-foot utility easements reserved along all side and rear lot lines, twenty-foot utility easements reserved along all boundary lines, easements for firewell, dam, cistern and pond and ingress and egress thereto, building restrictions (repeated in Paragraph C of the Protective Covenants) and notes, as set forth and shown on the recorded plat of Blue Waters Subdivision – Unit 1.
- u. Quiet Title. Assuming Requirement No. 7 above is satisfied, the policies when issued will contain the following notation:
- Notwithstanding six months have not elapsed from the date of quiet title decree of record, this policy guarantees fee ownership and possession in accordance with its provisions, but does not guarantee marketability. Marketability will be guaranteed beginning _____, 20____, provided that no steps have at that time been initiated to set aside or otherwise impair the effect or validity of the Decree recorded _____, 20____, in Book _____ at Page _____.
- v. Restrictions. Protective covenants for Blue Waters Subdivision – Unit 1, recorded June 7, 1982, in Book 640 at Page 105.
- w. Reverter. Restrictions, which contain a forfeiture or reverter clause, but omitting restrictions, if any, based on race, color, religion, or national origin, as contained in Deed from Improvement, Co., Ltd., to A. Gilman, recorded October 7, 1892, in Book 8 at Page 80, providing substantially as follows: Intoxicating liquors may never be kept for sale, manufactured or sold in any place of public resort in or upon the premises.
- x. Rights of Way. Rights of way and easements for all existing roads, highways, ditches, reservoirs, canals, and telephone, power and pipe lines. [See n. 41 in Chapter 2.]
- y. Tenancies. Rights of tenants as tenants.
- z. UCC Statements. Financing Statement encumbering fixtures recorded in Adams County,

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Colorado, on August 14, 19XX, Reception No. 19XX126347, continued by instrument recorded January 4, 20XX, at Reception No. 20XX000343, wherein George Williams is the Debtor and Roy Green is the Secured Party.

- aa. Watercourse. Any loss of or adverse claim to that portion of the land described in Schedule A hereof adjoining Box Elder Creek based on an assertion that the channel and banks thereof have been changed or altered other than by natural causes and in imperceptible degrees.

The Owner's policy to be issued hereunder will contain, in addition to the items set forth in Schedule B – Section 2, the following items: (1) The mortgage, if any, required under Schedule B – Section 1, Item (b); (2) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water; and (3) Any and all unpaid taxes, assessments and unredeemed tax sales.

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REQUIRED DISCLOSURES:

NOTE: Colorado Division of Insurance Regulation 3-5-1, Repealed and Repromulgated effective 5/1/10, Paragraph G of Section 7, requires that "Whenever a title entity provides the closing and settlement service that is in conjunction with the issuance of an owners policy of title insurance, it shall update the title insurance commitment from the date of issuance to as reasonably close to the time of closing as permitted by the applicable county real estate records. Such update shall include all impairments of record at the time of closing or as close thereto as permitted by the applicable county real estate records. The title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title insurance commitment, other than the effective date of the title insurance commitment, for all undisclosed matters that appear of record prior to the time of closing."

NOTE: Exception 2.d of Schedule B of this Commitment may be deleted from the Owner's Policy to be issued hereunder upon compliance with the following conditions:

- A. The land described in Schedule A of this Commitment must be a single family residence, which includes a condominium or townhouse unit.
- B. No labor or materials may have been furnished by mechanics or materialmen for purposes of construction on the land described in Schedule A of this Commitment within the past 13 months.
- C. The Company must receive appropriate affidavits indemnifying the Company against all unfiled mechanic's and materialmen's liens.
- D. Any deviation from conditions A through C above is subject to such additional requirements or information as the Company may deem necessary, or, at its option, the Company may refuse to delete the exception.

NOTE: Pursuant to C.R.S. § 10-11-122, notice is hereby given that:

- A) The subject real property may be located in a special taxing district.
- B) A Certificate of Taxes Due listing each taxing jurisdiction may be obtained from the County Treasurer's authorized agent.
- C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

NOTE: C.R.S. § 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

NOTE: Pursuant to C.R.S. § 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments containing a mineral severance instrument exception, or exceptions, in Schedule B.

- A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and

This page is only a part of a 2016 ALTA® Commitment for Title Insurance[issued by _____]. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

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American Land Title Association**Commitment for Title Insurance
Adopted 6-17-06 Revised 08-01-2016**

- B) That such mineral estate may include the right to enter and use the property without the surface owner's permission. Nothing herein contained will be deemed to obligate the company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.

NOTICE OF PRIVACY POLICY

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with an unaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Blank Title Insurance Company.

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you such as on applications or other forms.
- Information about your transactions we secure from our files, or from our affiliates or others.
- Information we receive from a consumer reporting agency.
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

- * Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.
- * Non-financial companies such as envelope stuffers and other fulfillment service providers.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance[issued by _____]. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

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**FORM 2C • ALTA PLAIN LANGUAGE COMMITMENT FORM
(ADOPTED 6-17-06)**

American Land Title Association

ALTA Plain Language Commitment Form
Adopted 6-17-06

ALTA PLAIN LANGUAGE COMMITMENT FORM

Issued By

BLANK TITLE INSURANCE COMPANY

INFORMATION

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Policy contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org>>.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact _____
_____.



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American Land Title Association

**ALTA Plain Language Commitment Form
Adopted 6-17-06**

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CONDITIONS

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ALTA Plain Language Commitment Form
Adopted 6-17-06

ALTA PLAIN LANGUAGE COMMITMENT FORM

Issued By

BLANK TITLE INSURANCE COMPANY

AGREEMENT TO ISSUE POLICY

We agree to issue policy to you according to the terms of the Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within _____ insert time period _____ after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-I.

The Exceptions in Schedule B-II.

The Conditions on Page _____.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

(The countersignature clause is optional.)

SCHEDULE A

- 1. Commitment Date:
- 2. Policy (or Policies) to be issued:
 - a. Owner's Policy Policy Amount \$ _____

Proposed Insured:

- b. Loan Policy Policy Amount \$ _____



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Adopted 6-17-06**

Proposed Insured:

- c. Proposed Insured: Policy Amount \$_____
- 3. _____ interest in the land described in this Commitment is owned, at the Commitment Date, by _____.
- 4. The land referred to in the Commitment is described as follows:



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Adopted 6-17-06**

SCHEDULE B - SECTION I

REQUIREMENTS

The following requirements must be met:

- a. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- b. Pay us the premiums, fees and charges for the policy.
- c. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.

(A period may be added to the above or a colon may be added and specific documents typed in.)

- d. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

(Additional requirements may be listed here.)

SCHEDULE B - SECTION II

EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

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Adopted 6-17-06

CONDITIONS

1. DEFINITIONS

"Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting your title according to the state statutes where your land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

Comply with the Requirements shown in Schedule B - Section I

or

Eliminate with our written consent any Exceptions shown in Schedule B - Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.



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American Land Title Association

ALTA Short Form Commitment
Revised 10-16-08

[SCHEDULE B – SECTION II

The policy or policies to be issued will include exceptions to the following unless they are disposed of to the satisfaction of the Company:]

BLANK TITLE INSURANCE COMPANY

BY: _____ **PRESIDENT**

BY: _____ **SECRETARY**



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Chapter 3

THE CLOSING

SYNOPSIS

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§ 3.2 PREPARATIONS FOR CLOSING

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§ 3.3 POST-CLOSING RESPONSIBILITIES

§ 3.1 • WHO DRAFTS THE DOCUMENTS?

An attorney at law, of course, may draft any legal documents required in a transaction involving real property. But, suppose that the attorney, instead of representing buyer or seller, is in-house counsel for the title insurance company, the escrow company, the real estate broker, or the lender? What if the attorney is outside counsel, rather than in-house counsel, for any of those parties?

What documents are we talking about? The Colorado Supreme Court has held that preparation of a sales contract, deed, deed of trust, mortgage, or promissory note by other than the immediate parties to the document constitutes the practice of law. *Conway-Bogue Realty Investment Co. v. Denver Bar Association*, 312 P.2d 998 (Colo. 1957). But the court declined to enjoin licensed real estate agents who were earning a commission on the deal from filling in the blanks on “standard forms.” The Colorado Real Estate Commission followed this lead with the promulgation of Rule F, “Use of Forms,” expressly permitting this practice by its licensees. Rule F, Real Estate Manual, Colorado Real Estate Commission.

SB 17-215, signed into law by the governor on June 1, 2017, added a new subsection (b) to C.R.S. § 12-61-803, which defines, for the first time, “standard form.” This has been followed by the promulgation of a revised Rule F, which provides the regulatory framework for use of standard forms. Standard forms now include Colorado Real Estate Commission-approved forms (Commission-ap-

proved forms), attorney forms, client forms, government and lender forms, Colorado Bar Association forms, disclosure forms, title company forms, and letters of intent.

Obviously, if a real estate broker may fill in the forms and engage in the practice of law, then a lawyer for the broker may also act in a similar manner. But may a non-lawyer agent for the broker, such as an employee of a title insurance company, fill in the forms? The answer appears to be yes, so long as that employee is acting as agent for the broker, despite the fact that the supreme court, in a companion case to the broker litigation case, enjoined title insurance companies from engaging in the practice of law. *Title Guaranty Co. v. Denver Bar Association*, 312 P.2d 1011 (Colo. 1957). In the closing instructions (see § 3.2.6), the broker will authorize the title entity to act as broker's "scrivener" in preparing legal forms, including the deed, bill of sale, promissory note, and deed of trust. But where no licensed real estate agent has requested it, title entity personnel are prohibited from engaging in the practice of law by preparing standard conveyancing forms. *Id.* However, the Colorado Supreme Court has declined to enjoin this practice of law by title insurance companies. *People of the State of Colorado v. Transamerica Title Insurance Co.*, 91 SA 123, April 11, 1991 (not published). The Colorado Real Estate Commission approved form of Closing Instructions specifically states that the "Closing Company agrees to prepare (*excluding legal documents*), deliver and record all documents required or customarily recorded" (emphasis added). See Appendix 12, Form CL8-9-12, Closing Instructions. See also *Colorado Real Estate Forms Deskbook*, Form 9B, 2nd Ed. (James G. Benjamin ed., CLE in Colo. Inc. 2016). In cases where neither the buyer nor seller is represented by a broker or attorney, the title entity will request approval of the form of conveyance on behalf of one of the parties.

A real estate broker or any agent for the broker, including an agent who is a lawyer, is prohibited from preparing conveyancing forms for a third party, even if that party is a customer of the broker, provided that more than simply filling in the blanks of approved standard forms is involved. Rule F, Colorado Real Estate Commission. If the broker's lawyer takes on that task, as frequently happens, the lawyer and customer then have a lawyer-client relationship, though neither may be aware of it. Construction contracts, contracts for the sale of newly constructed houses, and wrap-around mortgages, to mention a few, are not standard forms approved by the Real Estate Commission. *Id.*

§ 3.2 • PREPARATIONS FOR CLOSING

§ 3.2.1—Examine the Commitment

The title insurance commitment is the road map that guides the parties to the successful conclusion of the transaction. It is essential that the parties to the transaction familiarize themselves with the commitment, as this is the tool that must be used to prepare the closing documents and the final policy. Whether you represent buyer, seller, or lender, but particularly where you represent the buyer, you should closely examine the title insurance commitment and consider what forms of extended coverage by endorsement may be appropriate or required by what you see therein. See Chapters 2 and 6. Do not assume the accuracy of anything. Check the names of the proposed insureds. Verify the legal description. Carefully review each of the requirements. Demand proof of the applicability of the exceptions. Yes, we are stating the obvious. Still, many real estate lawyers tend to accept the title insurance company's commitment without question. But the commitment should always be examined, questioned, and tested against known facts.

§ 3.2.2—Examine Original Instruments

Do not fail to require the title entity to furnish a legible copy of every instrument referred to in the commitment, especially exceptions to title. Seldom will all documents be produced without asking, even though the Commission-approved form of sales contract requires that copies be furnished. You cannot properly represent the buyer without a review, either cursory or detailed as the situation requires, of every instrument.

Many title insurance commitments that are delivered electronically come with links to copies of all recorded documents identified therein. With this feature, you can review the documents online, or print copies for your file or for the client. The insurance regulations authorize the companies to provide this service without charge, and, also, to furnish a copy of the vesting deed and any other recorded documents pertinent to the commitment. *See* § 6.J of Regulation 8-1-1.

§ 3.2.3—Determine Title Status Before Drafting Contract

Consider the laundry list of endorsements available. Lists of the most frequently utilized endorsements by subject are available in Chapter 6. Pay attention also to the cost thereof. Twenty percent or even ten percent of basic rate can be a lot of money. *See* § 1.9, “Rate Schedules and Premium Information.” If the seller is contractually obligated to provide “such endorsements and special forms of title insurance as the buyer and the buyer’s lender may reasonably require,” the seller may be in for a shock upon review of the settlement sheet at the closing. Innovative buyer’s and lender’s counsel, conversant with title insurance, could reasonably require numerous endorsements in nearly every sale. On the other hand, if the seller’s lawyer in the contract limits or eliminates the seller’s obligation to pay for endorsements, the buyer will bear the cost of any special coverages.

Thus, an experienced attorney for the buyer will attempt to obtain a copy of the seller’s old title policy while the contract is being drafted. The object is to obligate the seller to provide all title insurance coverages that the buyer will reasonably need as disclosed by the prior policy, and possibly an updated search obtained from the insurer or performed by the buyer’s lawyer or paralegal.

Seller’s counsel, too, should review the old title policy prior to approval of the purchase contract to make certain that appropriate references are contained in the contract to all title exceptions shown on the old policy, plus those title exceptions, if any, that have been created by the seller during the period of seller’s ownership and since the old policy was issued. The standard contract forms currently in use permit the buyer to back out of the deal if anything disclosed on Schedule B — Section 2 (Schedule B, Part II) of the commitment is “unsatisfactory.” Section 8.2 of the Contract provides, “Buyer’s objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer’s sole subjective discretion.” To counter this provision, Seller’s counsel can list certain title exceptions in the contract, to be approved by Buyer in advance.

§ 3.2.4—Suggested Contract Clauses for Title Insurance

Below are several sample title insurance clauses that may be appropriate in the contract, depending on which side you represent. Similar clauses can be found in Section 8 of the Contract. These are merely suggestions. You may want to modify them.

Buyer's Clause: A current commitment for title insurance policy in an amount equal to the purchase price, at Seller's expense, shall be furnished to Buyer on or before _____, 20 __. Seller will deliver the title insurance policy with endorsements to Buyer after closing and pay the premium thereon. The policy will be issued on the ALTA Owner's Form 6-17-06 by a title entity selected by Buyer. Endorsement forms _____ will be included; all standard printed exceptions will be deleted; and an endorsement with "gap" coverage will be issued by the title insurer to the Buyer. The only exception for taxes and assessments will be for the general taxes for 20 __, payable January 1, 20__.

Seller's Clause No. 1: A current commitment for an owner's title insurance policy in an amount equal to the purchase price, at Seller's expense, shall be furnished to Buyer on or before _____, 20 __. Seller will deliver the title insurance policy to Buyer after closing and pay the premium thereon, including the cost of extended coverage. Buyer will pay for all endorsements and for any lender's policies (including a lender's policy on Seller's carryback loan, if any). The policies will be issued by a title insurance company selected by Seller.

Although the seller's owner's policy will insure seller's lien interest if seller carries back a loan on the property (*see* "Continuation of Insurance After Conveyance of Title" in § 4.4.5), the face amount thereof may be woefully inadequate. For only the cost of the simultaneous rate offered by all title insurers, the seller should require that the buyer purchase a lender's policy to insure lien priority on seller's carry-back loan and to have it available in case seller later decides to sell or assign the loan.

Seller's Clause No. 2: If title is not merchantable and written notice of defects is given to Seller within the time herein provided for delivery of deed and such title shall not be rendered merchantable within 30 days after such written notice, then this contract, at Buyer's option, shall be void and of no effect; provided, however, that in lieu of correcting such defects, Seller may, within said 30 days, obtain a commitment for an owner's title insurance policy, in the amount of the purchase price, insuring over or deleting such defects; and Seller shall pay the premium for such title insurance policy.

Seller's clause No. 2, unlike seller's clause No. 1, forces the buyer to accept not marketable title, but insurable title. Insurable title is whatever title seller can induce a title insurance company to insure, regardless of whether it is marketable. Therefore, buyer's counsel will strongly resist the imposition of seller's clause No. 2 on buyer.

Lender's Clause: The Borrower at its expense shall furnish to the Lender the standard form of ALTA Loan Policy 6-17-06 of title insurance, the form and substance of which shall be subject to the approval of Lender's law department, in the full amount of the loan, insuring that Lender has a first lien on the Property, free and clear of encumbrances or exceptions to title other than those which are approved and accepted in writing by the Lender. The issuing title insurance company or companies shall, if required by Lender, issue said policy or policies on a coinsurance and/or reinsurance basis and the title in-

insurance companies and the amount of title insurance issued by any title insurance company shall be subject to approval by Lender. Said policy or policies shall contain such endorsements as Lender may reasonably require.

The sentence regarding coinsurance and reinsurance is appropriate only on large loans. *See* § 1.10. Borrower's counsel will attempt to negotiate the lender's clause to state specifically the coverages borrower must furnish.

§ 3.2.5—Get It in Writing

From the time the initial title insurance commitment is received to the date of closing, buyer's attorney will insist that everything the title entity has agreed to do be evidenced by written endorsement to the commitment or by the issuance of a revised commitment. Such written confirmation should be obtained each time the title entity promises to provide a special endorsement, delete a requirement or exception, increase or decrease the amount of insurance, revise or adjust the premium, or any other time the title entity fulfills a special request. When you get to the closing, you will be able to document the entire title insurance package precisely, without any further discussion or argument. However, do not accept any agreements outside of the policy and endorsements. All forms of title insurance policy have an integration clause that the policy and endorsements constitute the entire contract between the insurer and the insured, and any agreements outside of the policy are excluded from the contract. *See, e.g.*, section 15 of the ALTA 2006 Owner's Policy and section 14 of the ALTA 2006 Loan Policy.

If you have any questions concerning the title insurance forms that will be used, request that the title entity furnish a complete pro forma policy. *See* § 2.6.4. The title entity will complete the pro forma policy with all the information filled in, all exceptions listed, with only the signature of the authorized title officer required to make it valid. Usually, the pro forma policy is not necessary in a typical residential transaction but it may be advisable if there are concerns about access, insurance of easement parcels, or affirmative coverage over some of the exceptions. A pro forma policy is common in commercial transactions.

§ 3.2.6—Closing Instructions

Title entities are required by regulation to obtain written closing instructions from all parties. *See* § 5.K of Regulation 8-1-2. Most of the title entities have adopted a form of closing instructions and earnest money receipt based on the forms approved by the Colorado Real Estate Commission. The approved forms are illustrated in Appendix 11. Though treated as "boilerplate" at the closing, the instructions could be important in various situations, such as disputes over the broker's commission, the earnest money, or the form of payment to the seller. *See Colorado Real Estate Forms Deskbook*, Form 9B, 2nd Ed. (James G. Benjamin, ed., CLE in Colo., Inc. 2016).

§ 3.2.7—If the Deal Collapses — Cancellation of the Commitment

Seller's counsel should also be aware that the cancellation of a title insurance commitment without reliance thereon will incur a cancellation fee that is not less than the minimum rate for the type of policy ordered. Under circumstances of mistake, such as when commitments are ordered inadvertently from two companies, the cancellation fee may be waived upon request. Understand that you cannot avoid payment of the premium by ordering the commitment and not informing the title entity of the

closing or not requesting a policy. If the closing occurs, and the title entity learns of that fact (which it will when the conveyance goes of record), your client will be billed for the full premium, even though you request cancellation.

§ 3.2.8—The “Gap”

The problem of the “gap,” which confronts buyer’s counsel at all closings, is discussed in § 2.15.

§ 3.3 • POST-CLOSING RESPONSIBILITIES

Section 5.N of Regulation 8-1-2 requires that the policy be issued within 90 days of the effective date of the policy if the title entity provides the closing and settlement services. As Buyer’s counsel, you should arrange with the title entity to send the policy to you when issued. This gives you a chance to examine it for accuracy, obtain any necessary corrections or additions (which are frequently required), make a copy for your file, and send a copy to your client.

You must establish a reminder to check that the title policy is issued. From time to time the policy will not be issued, and you will have to contact the title entity repeatedly until you receive the policy. Reasons for neglect in issuing policies vary. Sometimes it is simply inefficiency. Other times the title entity runs into difficulty obtaining a release of lien or other requirement noted on Schedule B — Section 1 of the commitment. Rather than tell buyer’s attorney about it, the title entity may sit on the policy and not issue it. On occasion, there is an underwriting problem that the title entity does not know how to handle. Sometimes there is a miscommunication — the title entity may believe that it is to wait and not issue the policy until a survey is completed or certain documents or releases are recorded. If issuance of the policy would only serve to substantiate the title entity’s liability for a known defect (*e.g.*, a lien is recorded in the “gap” and the title insurance company has insured the “gap”), the title insurance company may refuse to issue the policy.

When the policy arrives, it must be examined carefully and compared with the title insurance commitment and all endorsements thereto. It is not uncommon for your specific instructions to the title officer or closer regarding certain coverages or wording of exceptions to be overlooked or misinterpreted. You may experience problems that will require you to return the policy for correction several times. Do not accept the policy until it is correct. Then forward it to your client with a letter for proof of delivery, keeping a photocopy of the policy in your file.

You need to be able to prove where the original policy was sent. Unlike a deed, which is recorded and thus preserved, a title insurance policy is a valuable document that should never be disposed of, even after the insured property has been resold and conveyed away. You never know when a claim on the warranty deed may work its way through the chain of title and present itself at your client’s door. That is when the title insurance policy needs to be produced and the claim turned over to the title insurance company for defense. The provision in Paragraph 12 of the 1992 Owner’s Policy that required the policy to be produced before a loss would be paid has been deleted from the 2006

Owner's Policy. Nevertheless, without the policy in hand, proof of insurance may depend upon the title entity's record-keeping abilities. Tell your client to put the policy in the safe deposit box with a note that it is to be retained forever. That ought to be long enough.

Additionally, be aware that an owner's policy of title insurance continues to protect the insured when the property has been sold and the insured carries back a mortgage or deed of trust to secure a portion of the purchase price. So long as the insured retains an interest in the property (including a purchase money lien interest), or a contingent liability (such as the warranties in a deed), title insurance remains in force.

A lender's policy may ripen into an owner's policy. If default on the loan occurs and the lender forecloses and obtains a sheriff's or public trustee's deed to the property, or a deed in lieu of foreclosure, the lender's policy will continue to insure the foreclosing lender's interest as owner. *See* "Continuation of Insurance" in § 5.2.5. If the amount of insurance is deemed inadequate, Endorsement Form 107.2 will increase the coverage. Further, unlike owner's policies, lender's policies are assignable and follow the evidence of debt, even without express assignment of the policy itself. If the loan is sold, the lender's policy goes with it.

Chapter 4

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§ 4.9 ALTA LEASEHOLD OWNER'S POLICY (10-17-92)

§ 4.10 ALTA UNITED STATES OWNER'S POLICY (12-03-12)

§ 4.11 LITIGATION GUARANTEE**§ 4.12 SUBDIVISION GUARANTEE****§ 4.13 ALTA RECORDED DOCUMENT CERTIFICATE AND RECORDED DOCUMENT GUARANTEE****§ 4.14 CHAIN OF TITLE GUARANTEE****FORMS**

Form 4A—ALTA Owner’s Policy (6-17-06)

Form 4B—ALTA Residential Title Insurance Policy (6-1-87)

Form 4C—ALTA Homeowner’s Policy (Revised 12-03-13)

Form 4D—ALTA Owner’s Policy (10-17-92)

Form 4E—ALTA Owner’s Policy Form B 1970 (Revised 10-17-70 and 10-17-84)

Form 4F—ALTA Leasehold Owner’s Policy (10-17-92)

Form 4G—ALTA United States Policy Form 9-28-91 (Revised 12-03-12)

Form 4H—Litigation Guarantee

Form 4I—Subdivision Guarantee

Form 4J—ALTA Recorded Document Certificate (10-3-90)

Form 4K—ALTA Recorded Document Guarantee (10-3-90)

Form 4L—Chain of Title Guarantee

§ 4.1 • TYPES OF OWNER’S POLICIES AND GUARANTEES

In Colorado, the owner’s policy forms promulgated by the American Land Title Association (ALTA) are used exclusively by all title insurance companies. The following policy and guarantee forms are currently in use. Forms that have been withdrawn are indicated with an asterisk. In many cases, these forms are included as attachments to this chapter for reference purposes.

<u>Type</u>	<u>Discussed</u>	<u>Illustrated</u>
Owner’s Policy (6-17-06)	§ 4.4	Form 4A
Owner’s Policy (10-17-92)*		Form 4D
Owner’s Policy Form B 1970*		Form 4E
Owner’s Residential Title Insurance Policy (6-1-87)	§ 4.5	Form 4B
Homeowner’s Policy (12-02-13)		Form 4C
Owner’s Policy insuring a Contract	§ 4.7	_____
Owner’s Policy insuring an Option	§ 4.8	_____
Leasehold Owner’s Policy (10-17-92)*	§ 4.9	Form 4F
United States Policy (12-03-12)	§ 4.10	Form 4G
Litigation Guarantee	§ 4.11	Form 4H
Subdivision Guarantee	§ 4.12	Form 4I

Recorded Document Certificate (10-03-90) and		
Recorded Document Guarantee (10-03-90)	§ 4.13	Form 4J – 4K
Chain of Title Guarantee	§ 4.14	Form 4L

§ 4.2 • ALTA OWNER'S POLICY

ALTA adopted the current form of owner's policy in June 2006. This policy replaced the previous owner's policy, adopted in October 1992, which itself was a revision of previous owner's policies in 1990, 1987, and 1970. The content of the owner's policy, in its basic terms, has remained relatively unchanged since 1970.

ALTA is presently considering revisions to the 2006 ALTA Owner's and Loan Policies. The project is expected to take several years and will include obtaining comments and suggestions from industry groups. This process will be followed by ALTA's customary formal approval process with an extended public comment period before final publication. If adopted, it will take several years for the new forms to be fully implemented in the marketplace.

§ 4.3 • COMPARISON OF THE ALTA FORMS WITH OTHER FORMS

The ALTA policy forms, including the 2006 Owner's Policy, the Residential Title Insurance Policy (commonly described as the "Plain Language" policy), and the U.S. Policy, are the owner's forms that are customarily encountered in Colorado. However, from time to time some other form may be used. For example, in California, the California Land Title Association has recommended its own form of owner's policy (the "CLTA Owner's Policy"), which may be used as an option to the ALTA version of the owner's policy. In states such as Florida, New York, and Texas, state regulation requires the use of state-promulgated forms. See Exhibit 2 in James L. Gosdin, *Title Insurance: A Comprehensive Overview*, (American Bar Association, 2007), for a detailed table listing the rate and form filing requirements of each state.

As compared to the ALTA forms used in Colorado, the coverage afforded by other forms may differ in only one regard, but that difference may be so vital that buyer's counsel should draft the purchase contract to require use of a specific ALTA form.

The 2006 and 1992 ALTA owner's forms affirmatively insure against unmarketability of title. The other forms may not. That is one of the primary differences. The other forms sometimes contain this exclusion from coverage:

The refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A.

Translation: if your title is good, but not marketable, and you lose a sale or cannot obtain a loan because of that unfortunate fact, do not look to your title insurer for damages. In contrast, the

2006 ALTA form contains an affirmative statement that “the company insures . . . against loss or damage . . . by reason of: . . . unmarketable title,” a phrase defined in Section 1(k) of the Conditions. See “Unmarketable Title” in § 4.4.5 for a discussion of marketable title.

How could it happen that your title is good but not marketable? Answer: when you have a title that is good against the world so that no paramount title can dispossess you, but you cannot prove your title on the record and you need to obtain and record a quiet title decree, patent, personal representative’s deed, or other title document to make your good title marketable. A title held by adverse possession is an example of good but unmarketable title. On the other hand, some matters may appear to affect marketable title but in fact do not. For example, lack of access does not affect the marketability of title. *Campbell v. Summit Plaza Assocs.*, 192 P.3d 465 (Colo. App. 2008); *Fidelity National Title Insurance Co. v. Woody Creek Ventures, LLC*, 830 F.3d 1209 (10th Cir. 2016). This latter case illustrates the difference between an “economic lack of marketability, which relates to the physical conditions affecting the use of the property, and title marketability, which relates to defects affecting legally recognized rights and incidents of ownership.” *Fidelity National Title Insurance Co.*, 830 F.3d at 1218, quoting *Riordan v. Lawyer’s Title Ins. Corp.*, 393 F. Supp. 2d 1100, 1104 (D.N.M. 2005).

§ 4.4 • 2006 ALTA OWNER’S POLICY (6-17-06)

§ 4.4.1—What is Insured? — Covered Risks

A feature of the 2006 Owner’s Policy is the list of Covered Risks, which are enumerated in considerable detail compared to the four affirmative coverages in the 1992 Owner’s Policy. Before looking at the Covered Risks, pay attention to the preamble that immediately limits the effect of the affirmative coverages. The coverages are limited “SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS.”

The 2006 Owner’s Policy sets out the Covered Risks as follows:

([T]he “Company”) insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

- (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
- (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
 4. No right of access to and from the Land.
 5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
 6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
 7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
 9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

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 Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

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.

Unusually, Covered Risks 9 and 10 provide affirmative coverage over matters affecting title that occur *after* the Date of Policy.

Covered Risks Nos. 1, 3, and 4 are carried over to the 2006 Owner's Policy from the 1992 Owner's Policy with only minor language changes. However, Affirmative Coverage No. 2 in the 1992 Owner's Policy provides coverage for "Any defect in or lien or encumbrance on the title." Covered Risk No. 2 in the 2006 Owner's Policy expands this by listing seven possible defects that are covered. In fact, far more than seven defects are listed, because many of the seven subsections contain reference to multiple defects. All of the defects listed in the 2006 Owner's Policy arguably were covered in the 1992 Owner's Policy, though not specifically designated. Two of the listed defects concern electronic processing of real estate records, so that the 2006 Owner's Policy specifically covers failure to properly create a document by electronic means or failure to properly record or index in the public records by electronic means.

The only lien listed in the expansion of Covered Risk No. 2 in the 2006 Owner's Policy is the lien of "real estate taxes or assessments imposed on the Title by governmental authority due or payable, but unpaid." Taking the year 2016 as an example, that statement would provide coverage for the lien of the 2015 real estate taxes, if unpaid, because that lien is due and payable January 1, 2016. C.R.S. § 39-10-102(1)(b)(I). The lien for taxes for 2016, however, is neither due nor payable until January 1, 2017, although it does attach to and encumber the property as at January 1, 2016. C.R.S. §§ 39-1-105 and -107. Therefore, the title insurance company will include an exception for taxes for 2016 in Schedule B of the policy.

The last part of Covered Risk No. 2, "encumbrance on the title," is expanded in the 2006 Owner's Policy by subsection (c) to include any "encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey." The policy does not define the term "survey." Many types of surveys are available in Colorado, from the least expensive improvement location certificate to the most expensive ALTA/NSPS surveys. C.R.S. §§ 38-51-101, *et seq.* For a general discussion of the types of surveys available, see Richard Krohn, "A Brief Survey of Surveys," 34th Annual Real Estate Symposium (CLE in Colo., Inc. 2016).

An improvement location certificate is not a survey; rather, it is a depiction of the property based on the surveyor's knowledge of the property and the area. Due to the widespread acceptance of improvement location certificates by the industry, it is doubtful that a title insurance company would deny a claim based on the argument that an improvement location certificate is not an "accurate and complete survey."

The term “encroachment” is defined to include both encroachments of existing improvements onto adjoining land and the reverse, where improvements on adjoining land encroach on the insured property.

The next paragraphs of the Covered Risks, Nos. 5 through 8, are included in the affirmative insurance provisions because of a basic change in drafting technique. In the 1992 Owner's Policy, various affirmative insurance provisions were set out as exceptions to the Exclusions from Coverage, and were required to be construed as providing affirmative insurance. Thus, governmental regulations such as building and zoning laws; the occupancy, use, or enjoyment of the land; the character, dimensions, or location of improvements; a separation in ownership or change in the dimensions; and environmental protection were all excluded from coverage, “except to the extent that a notice of the enforcement thereof” was recorded. The exercise of police powers and rights of eminent domain or taking, including regulatory taking and inverse condemnation, were similarly excluded unless or to the extent that a notice of the exercise of such power was recorded.

The affirmative statements of coverage in the 2006 Owner's Policy have resolved this uncertainty of interpretation. *See* James L. Gosdin, *Title Insurance: A Comprehensive Overview*, Chapter 1B, 3rd. Ed. (American Bar Association 2007). All such previous exceptions to the Exclusions from Coverage are now listed as Covered Risks Nos. 5, 6, 7, and 8, providing the affirmative coverage if a notice of violation or enforcement has been recorded. Of course, if such a notice is recorded and found by the title insurance company, it will become an exception in Schedule B of the policy. On the other hand, should the title insurance company fail to find and disclose the notice, affirmative insurance is provided.

Covered Risk No. 9 in the 2006 Owner's Policy offers protection against a prior transfer that (1) constituted a fraudulent conveyance or a preferential transfer under bankruptcy, state insolvency, or similar creditors' rights laws, or (2) constituted a preferential transfer under bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure to record in timely fashion or failure of the notice to be effective against a purchaser for value or a judgment or lien creditor. This affirmative coverage should be contrasted with the provisions of Exclusion No. 4. Covered Risk No. 9 excludes coverage if the transaction insured under the policy is set aside as a preferential transfer or a fraudulent conveyance. Exclusion No. 4 and Covered Risk No. 9 come into play, for example, when a lender acquires the insured property by way of a deed-in-lieu of foreclosure and an owner's policy is issued to the lender. The lender is not insured under the Exclusion No. 4 if the deed-in-lieu is set aside under the circumstances outlined in the Exclusion. However, when the lender sells and conveys the property to a third party, the deed-in-lieu becomes a prior transaction covered by the policy under Covered Risk No. 9(a).

Covered Risk No. 10 in the 2006 Owner's Policy goes beyond any similar coverage in the 1992 Owner's Policy by providing “gap” insurance for defects, liens, or encumbrances recorded after the date of the policy and prior to recording of the transfer deed. This Covered Risk should not apply in Colorado, where the practice is to cut off the policy at the date and time of recording, with the result that any such recorded matters will be considered as “post-policy,” except, possibly, mechanics' liens. *See* § 2.14.

§ 4.4.2—What is Not Insured? — Exclusions from Coverage

Exclusions are not as well understood as exceptions to title. The latter appear in Schedule B of both the commitment and the policy. Real estate lawyers deal with title exceptions every day. Exclusions, however, are part of the seldom-considered boilerplate form of the policy. They do not even appear on the commitment at all, but are incorporated by reference.

The importance of the Exclusions is made clear, as stated earlier, by the prominent statement in the preamble that the Covered Risks are subject to the Exclusions. The introduction to the Exclusions section reads as follows:

EXCLUSIONS FROM COVERAGE

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

Following that introduction are five exclusionary sections that we will consider separately.

Exclusion 1. Laws, Ordinances, and Regulations

Building and Zoning Laws; Environmental Protection Laws

Environmental laws were not specifically mentioned in the pre-1984 forms. It was argued that they were included in the phrase “any law . . . restricting or regulating . . . use or enjoyment of the land.” However, the concern with which the title industry viewed the growing list of environmental protection laws, and their possible effects upon insured titles, was evidenced by the fact that they were emphasized in a separate subsection in 1984, only to be included with building and zoning laws in 1987. This combined subsection (a) in the 2006 Owner’s Policy now states:

Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
- (iii) the subdivision of land; or
- (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

This exclusion purports to put beyond the coverage of the policy all manner of government regulation, such as zoning ordinances, building codes, subdivision regulations, laws prohibiting lot splits and curb cuts, limited access ordinances, hazard warnings, and environmental protection laws. One such governmental regulation regarding lot splits is SB 72-035, codified at C.R.S. § 30-28-101(10). There are numerous county and municipal subdivision regulations patterned thereafter. Some affirmative protection against violations of this sort may be available by endorsement. *See* § 6.46, “Zoning.”

Under the pre-1984 exclusion, even though the governmental entity recorded a notice of code violation, the title insurer was not liable for loss or damage suffered by a subsequent insured. *Arapahoe*

Land Title, Inc. v. Contract Financing, Ltd., 472 P.2d 754 (Colo. App. 1970) (recorded notice of Denver's housing code). Under the present Exclusion 1(a), the title insurance company admits liability for notices recorded in the public records. However, the definition in Section 1(i) of the Conditions limits the meaning of "public records." See the discussion on the definition of "Public Records" in § 4.4.5.

Police Power

The policy is intended to exclude those inherent rights of government grouped under the heading of police power. This exclusion reads:

Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

No definition of "police power" is provided. Seizure and forfeiture of property for certain types of criminal behavior may be one example. The term "public records" is defined in Section 1(i) of the Conditions. Protection against forfeiture is not available by endorsement, absent special arrangements. Many title insurance companies will not insure a transaction involving a marijuana facility, notwithstanding the argument that this Exclusion excludes any seizure of the facility by the federal government under the federal drug laws.

Exclusion 2. Eminent Domain

The policy protects the title insurance company against the effects of condemnation of the property unless the title search fails to locate or report a recorded notice evidencing a pending or completed eminent domain proceeding. Exclusion 2 states:

Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

In Colorado, a notice of condemnation normally would be in the form of a "Rule and Order" or similar document from the court exercising jurisdiction over the condemnation proceedings. The mere existence of a special district having statutory powers of eminent domain is not sufficient notice to the title insurance company to create liability. See *Edwards v. St. Paul Title Ins. Co.*, 563 P.2d 979 (Colo. App. 1977), which held that the existence of a water and sanitation district with taxing and assessment powers did not render title to the property unmarketable.

Exclusion 3. Acts of the Insured, Etc.

Exclusion 3 contains five sections, some of which are carryovers from the title insurance commitment and others of which are only incorporated by reference into the title insurance commitment. We will consider the five sections separately.

Acts of the Insured

The exclusion for acts of the insured excludes coverage for:

Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed, or agreed to by the Insured Claimant;

In this exclusion, the title insurance company protects itself, by way of example, from judgments and tax liens against the insured or pre-transfer mortgages or conveyances by the insured with after-acquired property clauses, even though recorded in the public records. As used in the policy, “created” does not include a defect not deliberately caused by the insured. *First Citizens Bank v. Stewart Title Guaranty Co.*, 320 P.3d 406 (Colo. App. 2014); *Sims v. Sperry*, 835 P.2d 565 (Colo. App. 1992).

Known to the Insured

This exclusion refers to known defects:

Defects, liens, encumbrances, adverse claims, or other matters (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

Defects known to the insured and not shown by the public records are, as discussed in § 2.7.2, excluded in Paragraph 2 of the Conditions in the 2006 Commitment. If the insured knows of a defect but it is shown by the public records, then the defect is not excluded under this clause. Since the commitment refers to actual knowledge, the same definition undoubtedly applies here, though it is not stated.

No Loss to the Insured

The text of this exclusion is as follows:

Defects, liens, encumbrances, adverse claims, or other matters (c) resulting in no loss or damage to the Insured Claimant;

The presence of a harmless defect will not cause liability. Also, the title insurance company may be able to remove a defect before the insured suffers damage. Under Section 9 of the Conditions, the title insurance company has a right to “establish the Title, or remove the alleged defect, lien, or encumbrance, or cure the lack of a right of access to or from the Land, or cure the claim of Unmarketable Title.” The title insurance company does not guarantee a perfect title. Rather, it insures against loss or damages resulting from an unmarketable title.

Post-Policy Defects

This exclusion refers to defects discovered after the policy date:

Defects, liens, encumbrances, adverse claims, or other matters (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

This exclusion is a continuation of the idea expressed in standard exception No. 5 of the commitment. *See* § 2.15. The policy insures title as at a date certain. It is not a casualty policy, insuring the policy holder against future events. *See* § 1.2. As straightforward as this exclusion appears to be, it has still required judicial interpretation in Colorado with respect to a special district with assessment powers and a statutory lien where the assessment was not actually levied until after the date of the policy. *Edwards*, 563 P.2d 979.

No Value Paid

The text of this exclusion is as follows:

Defects, liens, encumbrances, adverse claims, or other matters (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

If the loss occurs because the insured did not pay value for the property, coverage is excluded under the policy. This same exclusion was discussed in regard to the commitment at § 2.9.1. If the policy is to insure a transfer where value has not been paid (*e.g.*, a gift, purchase at tax or foreclosure sale, etc.) deletion of Exclusion 3(e) is recommended, even though it could be argued that, under the Colorado Recording Act, value is not a prerequisite to protection. No specific endorsement form is available to accomplish such a deletion. The title insurance company will probably use the generic endorsement Colorado Endorsement 110.3.

Exclusion 4. Creditors' Rights

Exclusion 4 was first added to the Owner's Policy in 1990, revised in 1992, and revised again in 2006. It reads as follows:

Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

- (a) a fraudulent conveyance or fraudulent transfer; or
- (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

The purpose of Exclusion 4 is to protect the title insurance company from liability to its insureds for creditors' claims to ownership of, or a lien upon, the property whenever those claims arise under federal bankruptcy or state fraudulent transfer or insolvency laws. Thus, if an insured conveyance is challenged or set aside because it violates the Colorado Uniform Fraudulent Transfer Act, C.R.S. §§ 38-8-101, *et seq.*, or constitutes a voidable preference in bankruptcy, the insured may not look to the title insurance company for indemnity from the loss or for a defense against the claim. Note that this Exclusion 4 refers to the transaction which creates the title. In contrast, Covered Risk 9 refers to a transfer occurring prior to the transaction vesting title.

Comparable language appears as Covered Risk No.13 and Exclusion No. 6 in the 2006 Loan Policy. These are considered in § 5.2.2.

You may be able to obtain the deletion of Exclusion 4 by endorsement, although today most title insurers will not agree to this, having incurred substantial losses because of claims based on this coverage during the Great Recession from 2007 to 2010. *See* § 6.15.

Exclusion 5. Taxes and Assessments

This exclusion from coverage in the 2006 Owner's Policy protects the title insurance company from claims for any lien for real estate taxes and assessments created or attaching between Date of Policy and the date of the recording of the vesting deed. It reads as follows:

Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

Since the Date of Policy and the date of recording of the vesting deed are normally the same in Colorado, this Exclusion usually will not apply.

§ 4.4.3—Schedule A

The items listed in Schedule A of the title insurance commitment will be carried over to Schedule A of the policy, hence the need for accuracy in the preparation of the title insurance commitment. Refer to the discussion on these items in § 2.8.

Amount of Insurance

The amount of insurance in force is stated in dollars on Schedule A of the policy. In no event will the title insurance company pay an insured claimant more than the amount set out in Schedule A, subject to any costs, attorney fees, and expenses for which the title insurance company may be obligated. This limitation is clearly expressed in Section 7(a) of the Conditions.

Date of Policy

The Date of Policy is the date and time on which the documents creating the estate to be insured are recorded. In accordance with the Covered Risks, coverage begins on the Date of Policy. Title defects attaching or created after the Date of Policy are excluded from coverage. See Paragraph 3(d) of the Exclusions from Coverage.

Name of Insured

The insured may be the fee simple owner of the subject property, the holder of an easement interest, a tenant under a policy insuring a leasehold interest, a life tenant, a contract purchaser, or an optionee. The definition of “Insured” in Section 1(d) of the Conditions expands who is insured under the policy. See the discussion on the definition of “Insured” in § 4.4.5.

Description of Insured Estate

Paragraph 2 on Schedule A calls for a description of the estate or interest to be insured. Typical examples are fee simple or fee simple absolute, leasehold, easement, easement appurtenant (usually with a fee simple estate), life estate, vendee’s interest under a purchase contract, or optionee’s interest under an option contract. Sometimes in this paragraph the title insurance company will exclude the mineral estate while insuring the surface estate subject to the rights of the holder of the mineral estate. Thus, in the usual case, this should not be acceptable to the insured.

Name of Vested Owner

Paragraph 3 on Schedule A will show the owner or owners of the estate or interest covered by the policy. This will always be the same as the named insureds unless an additional insured has been added.

Legal Description

The legal description of the property in the commitment was discussed in §§ 2.8.5 through 2.8.9. The comments made there are also applicable to Paragraph 3 of Schedule A of the 2006 Owner's Policy.

Section 1(g) of the Conditions defines "land" (which is the property described in Schedule A):

"Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

By implication, "Land" does not include any property beyond the described boundary lines, and specifically excludes any interest in abutting streets, roads, avenues, alleys, lanes, ways, or waterways. It follows, therefore, that to insure an appurtenant easement or an adjoining vacated street or alley, it must be described specifically in Schedule A. Pursuant to C.R.S. § 38-30-113(1)(d), effective April 27, 2005, a deed that follows the form in this statute conveys the grantor's interest in adjoining vacated streets, alleys, and rights of way without additional description unless specifically excepted. Notwithstanding the terms of this statute, any such interest should be included as an additional parcel to be insured.

Condominiums may be the subject of title insurance. The condominium declaration will normally appear on Schedule B of the policy as an exception to title. This is because the real property interest is subject to all covenants, conditions, restrictions, easements, and liens set out in the declaration. By issuing the owner's policy, it seems apparent that the title company has insured that the condominium complies with the applicable Colorado statutes and does represent an interest in real property. *See* C.R.S. §§ 38-33-101, *et seq.*; 38-33.3-101, *et seq.*; and 12-61-401(3). For the nervous lender, endorsements are available expressly stating that the mortgage secures an interest in real property. *See* § 6.14.

If a time share estate constitutes an interest in land and not merely a license, title insurance can be obtained. C.R.S. §§ 38-33-110 and -111; 12-61-401(3) and (4); Colorado Real Estate Commission Rules S-23 and S-24. *See also* C.R.S. § 6-1-703. The policy, when issued, looks much like a policy insuring title to a condominium. The time-sharing agreement will appear as an exception in Schedule B. We are not aware of any endorsement forms expressly prepared for time share units, but such may exist.

If reservations, restrictions, or easements encumber or affect the title, they should be listed as exceptions in Schedule B and not included with the legal description on Schedule A. Exceptions for tracts of land previously conveyed and now intended to be excluded from the legal description are, however, proper additions to paragraph 3 of Schedule A.

Counsel for the insured is urged to pay close attention to the legal description in Schedule A and to insist upon 100 percent accuracy.

§ 4.4.4—Schedule B

Schedule B contains the exceptions to title. These were considered in detail in §§ 2.10 through 2.20, and those comments need not be repeated here, though they are applicable to the policy as well as to the title insurance commitment.

All of the standard printed exceptions will be carried over from Schedule B — Section 2 (Schedule B, Part II) of the commitment to Schedule B of the policy unless arrangements for their deletion are made with the title insurance company prior to the closing and issuance of the policy. See § 2.20 for details. As stated in § 2.15, standard printed exception No. 5 on the title insurance commitment may be deleted when the policy is issued, either if the title company provides the closing and settlement services, or if a “gap” endorsement is purchased.

Endorsements may be issued to insure over certain Schedule B exceptions that cannot be deleted. The exceptions will be shown in Schedule B without reference to the fact that an endorsement has insured over them. See § 2.20 and Chapter 6 for more information.

Counsel for the insured is well advised to review Schedule B, as well as the entire policy and its endorsements, with care when the policy is received from the insurer, as explained in § 3.3 on post-closing responsibilities.

§ 4.4.5—Conditions

The 2006 Owner’s Policy contains several pages of Conditions in 18 sections that are seldom reviewed until a loss has occurred and a claim is being prepared against the title insurance company. Some of the Conditions govern the scope and extent of the insurance provided and should be understood by any real estate professional.

The full text of the Conditions is contained in the 2006 Owner’s Policy, attached as Form 4A, and is not repeated here. It is suggested that the provisions of the Residential Title Insurance Policy, illustrated in Form 4B, might well be utilized by a court to resolve any ambiguous or unclear portions of the 2006 Owner’s Policy’s technically worded sections.

For convenience, we will discuss the Conditions under the same paragraph designations contained in the policy.

1. Definition of Terms**Amount of Insurance**

“Amount of Insurance”: The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.

Date of Policy

The date designated as “Date of Policy” in Schedule A.

Entity

A corporation, partnership, trust, limited liability company, or other similar legal entity.

Insured

“Insured”: The Insured named in Schedule A.

- (i) the term “Insured” also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

This definition covers not only the Insured named in Schedule A, but also the Insured’s successors by operation of law (heirs, devisees, survivors) but not by purchase. A policy issued to a joint venturer will not protect the joint venture to which the property is later conveyed. *Van Winkle v. Transamerica Title Ins. Co.*, 697 P.2d 784 (Colo. App. 1984). Where, however, the company issued its policy in the name of a partnership’s agent, the partnership may sue on the contract of insurance made for its benefit. *Happy Canyon Investment Co. v. Title Ins. Co. of Minnesota*, 560 P.2d 839 (Colo. App. 1976).

Also included in the definition of Insured are successors by dissolution, merger, consolidation, distribution, or reorganization of any type of entity — not just corporations and fiduciaries as in the 1992 Owner’s Policy. Successors resulting from conversion to another kind of entity are also included. Additionally, the “insured” includes the grantees under a deed delivered without payment of actual valuable consideration if (1) the shares, memberships, or other equity interests are wholly owned by the named Insured; (2) the grantee wholly owns the named Insured; (3) the grantee is wholly owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly owned by the same person or Entity; or (4) the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes. For a donee not otherwise described, request coverage by endorsement Colorado Endorsements 107.9 or 107.10.

The question arises whether the definition includes a trust as grantee as opposed to a deed where the grantee is a trustee or beneficiary of a trust. Under C.R.S. § 38-30-108.5 (which is probably unique to Colorado), a trust may acquire title to, or an interest in, real property. Although this definition excludes a trust as an insured, it is doubtful that a title insurance company will deny liability for a claim on the basis that a trust is not an insured under the policy. A cautious real estate attorney may consider obtaining confirmation, by way of an endorsement, from the title insurance company that it will recognize a trust as an insured. Colorado Endorsement 110.3 can be used for this purpose. *See* § 6.13.

With this definition of Insured, the *Fairway* Endorsement will no longer be necessary.

Insured Claimant

An insured claimant is any insured that makes a claim under the policy.

“Knowledge” or “Known”

The term includes only “actual knowledge,” and specifically eliminates constructive knowledge or notice that may be imputed.

Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

Land

The land described in Schedule A, and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

If an interest is to be insured, it must be described in Schedule A. Consider adding to Schedule A any easement necessary for access, as described in § 2.8.8. Also, consider the effect of C.R.S. § 38-30-113(1)(d), where an interest in a vacated street or alley is included in the conveyance of the property. This interest is not covered by the definition and any interest in a vacated street or alley should be separately described.

Mortgage

Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

Public Records

Public records are those that impart constructive notice.

The definition of “Public Records” in the 2006 Owner’s Policy reads as follows:

Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), “Public Records” shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

The intention is to limit “public records” to the land records in the county clerk and recorder’s office, plus environmental liens that may be filed in the office of the clerk of the federal district court. However, the drafters of the 1987 change were probably not aware of the fact that the Colorado Recording Act does not confine its protection to purchasers for value. Instead, our unique statute, C.R.S. § 38-35-109(1), protects “any person with any kind of rights,” including donees and those who have not paid value. *Eastwood v. Shedd*, 442 P.2d 423 (Colo. 1968); see § 2.9.1. Thus, the revised definition is imprecise where Colorado property is concerned. You may assume, however, that this definition of public records will be interpreted to include those documents recorded under the auspices of the Colorado Recording Act because that is the only interpretation that would make any sense in Colorado. Be aware also that the 1988 adoption in Colorado of the Uniform Federal Lien Registration Act C.R.S. §§ 38-25-101, *et seq.*, terminates the practice of filing environmental protection liens with the clerk of the federal district court. Instead, the liens are recorded in the county clerk and recorder’s office.

In Colorado, this may be broader than the real estate records in the office of the county clerk and recorder. *Page v. Fees-Krey, Inc.*, 617 P.2d 1188 (Colo. 1980) (records at Bureau of Land Management provide constructive notice); *Grynberg v. City of Northglenn*, 703 P.2d 601 (Colo. App. 1985), *rev’d on other grounds*, 739 P.2d 230 (Colo. 1987) (records of State Land Board do not provide constructive notice); *City of Lakewood v. Mavromatis*, 817 P.2d 90 (Colo. 1991) (county road books do not provide constructive notice); *South Creek Assocs. v. Bixby & Assocs., Inc.*, 781 P.2d 1027 (Colo. 1989) (PUD “plan” filed in the office of the City of Boulder’s planning department constitutes constructive notice); C.R.S. § 38-50-101(5)(b) (plat deposited in accordance with that statute does not constitute notice). The definition of “public records” was changed in 1987 to avoid the results of the *Hahn* case, in which the Federal Register was held to be part of the “public records.” *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976).

Title

Title is defined as “the estate or interest described in Schedule A.”

Unmarketable Title

Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

In Colorado, the definition is found in case law:

The term “marketable title,” when applied to real estate, means a title free from reasonable doubt. . . . It means a title that is reasonably free from such doubts as will affect the

market value of the estate; one which a reasonably prudent person with knowledge of all the facts and their legal bearing would be willing to accept.

Federal Farm Mortgage Corp. v. Schmidt, 126 P.2d 1036 (Colo. 1942). This case law definition would logically be influential in determining a marketable title question in Colorado raised pursuant to a claim on the title insurance policy.

2. Continuation of Insurance after Conveyance of Title

An owner's policy, unlike a lender's policy, is not transferable to "purchasers." If the seller-insured conveys with warranty of title, the policy continues to protect against loss or damage, including legal costs, if suit is ever brought on the title warranties. Note that Colorado's unique statute, C.R.S. § 38-30-121, permits a remote grantor to be liable on title warranties, and thus protected by a policy of title insurance, despite intervening conveyances without warranties (*i.e.*, quitclaim or bargain and sale deeds). If the seller-insured carries back a purchase money mortgage or reserves a life estate, easement, minerals, or any other interest, the insurance provided by the policy continues in force as to such lien or other interest. A purchaser from the insured, however, will receive no protection under the seller's policy. The continuation of insurance is one of the most important reasons to obtain title insurance due to the protection the insured receives for future claims based on a breach of the warranties of title given in any general warranty deed.

3. Notice of Claim to be Given by Insured Claimant

If the insured fails to notify the title insurance company "promptly" in writing of (1) any litigation against the property, (2) any other "Knowledge" of an adverse claim against the title, or (3) rejection of the title as unmarketable, then liability of the title insurance company will be reduced to the extent of the title insurance company's prejudice from such failure. This notice provision, from counsel's point of view, may be the most important part of the Conditions.

4. Proof of Loss

Formerly a condition to coverage, a "proof of loss" is only required to be submitted by the Insured if and when required by the title insurance company. The proof of loss is described as a statement signed by Insured Claimant describing the defect, lien, encumbrance, or other covered matter constituting the basis for the claim of loss or damage and the amount thereof, to the extent possible.

5. Defense and Prosecution of Actions

Upon written request of the Insured, and subject to the title insurance company's other options contained in Section 7 of the Conditions, the title insurance company, at its expense, and without "unreasonable delay," will provide a legal defense to an attack on the title of an insured property. In *Hedgecock v. Stewart Title Guaranty Co.*, 676 P.2d 1208 (Colo. App. 1983), the company was required to pay the claimant's attorney fees incurred in suing the company to enforce the policy when the company wrongfully denied coverage. *See also U.S. Bank, N.A. v. Stewart Title Guar. Co.*, 2014 U.S. Dist. LEXIS 36876 (D. Colo. March 20, 2014). The title insurance company will select counsel to represent the Insured, but the Insured may object to this selection for reasonable cause. The title insurance company will not pay the Insured claimant's legal fees incurred by counsel not approved by the title insurance company.

The title insurance company may take any legal action or do any other act necessary, in its opinion, to defend the insured title or reduce the loss or damage. The title insurance company must proceed diligently whenever it acts under this section.

According to *Hecla Mining Co. v. New Hampshire Insurance Co.*, 811 P.2d 1083 (Colo. 1991), interpreting a comprehensive general liability policy and not a title insurance policy, the company's duty to defend "arises when the underlying complaint against the insured alleges any facts that might fall within the coverage of the policy." *Id.* at 1089. Hence, it is said that the duty to defend is broader than the duty to indemnify. *Accord Sims v. Sperry*, 835 P.2d 565 (Colo. App. 1992) (title insurance policies); *Wheeler v. Reese*, 835 P.2d 572 (Colo. App. 1992) (duty to defend arises when insured alleges any facts potentially or arguably within the policy coverage).

Having brought an action, the title insurance company has the right to appeal an adverse decision. By the terms of Section 6 of the Conditions, the title insurance company does not have to pay the loss until all appeals are exhausted.

6. Duty of Insured Claimant to Cooperate

At the title insurance company's expense, the insured shall aid the title insurance company and allow it to prosecute or defend all actions or proceedings in the name of the insured; otherwise, the title insurance company's obligation of indemnity under the policy will terminate if the Insured's lack of cooperation prejudices the title insurance company.

If requested to do so, the Insured must submit to examination under oath, must produce the insured's books and records for inspection, and must permit the inspection of books and records in the custody of any third party. Failure to comply with these provisions, it is stated, could result in a release of the title insurance company from liability under the policy.

7. Options to Pay or Otherwise Settle Claims; Termination of Liability

If the title insurance company tenders the full amount of the policy, together with costs, attorney fees, and expenses incurred to date, its liability is thereupon terminated. By this tender, the title insurance company can avoid the expense of litigating what it perceives to be a hopeless cause. The insured may disagree, but it cannot force the title insurance company to litigate, provided that the full amount of the insurance ("Policy Limit") is paid.

The title insurance company may pay or settle claims, at its option; or the title insurance company may pay and settle with the Insured Claimant.

One of the most important aspects of title insurance is the title insurance company's obligation to pay the costs of defense in connection with a claim against the title of the insured, regardless of whether the claim is successful. As all lawyers are aware, the cost of defending the title, even if the title appears unassailable, can cause a dent in the client's net worth.

If the title insurance company believes but cannot be certain that the claim may not be covered by the policy, a defense may still be tendered by the insurer with a reservation of rights by the title insurance company not to pay any judgment rendered against the insured or any claim under the policy and to seek reimbursement from the insured for the costs of litigation if it is ultimately determined that

the policy did not cover the claim. The Colorado Supreme Court has adopted a stern view of a title insurance company's duty to defend. See cases cited in "5. Defense and Prosecution of Actions," above.

8. Determination and Extent of Liability

The extent of the title insurance company's liability for loss or damage under the policy "shall not exceed the lesser of (i) the Amount of Insurance; or (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy."

The insured often does not understand that, as with other types of insurance, a title loss is not measured by the amount of insurance in force. Example: assume a \$100,000 policy and a property market value of \$90,000 at the date of total title failure. The insured will receive only \$90,000, not \$100,000. Of course, the insured will also be reimbursed for any costs, attorney fees, and expenses that are authorized in writing, which could total more than the \$10,000 policy balance and, if so, would be paid without regard to the \$100,000 limit.

In addition to carrying forward the extent of liability provisions of the 1992 Owner's Policy, Section 8 of the Conditions in the 2006 Owner's Policy makes two important changes: (1) the coinsurance provision in Section 7 of the Conditions and Stipulations in the 1992 Owner's Policy has been eliminated; and (2) if the title insurance company chooses to litigate under Section 5 of the Conditions, and is unsuccessful in establishing the title of the insured, the amount of insurance increases by 10 percent and the insured has the right to determine the loss or damage as of the date a claim was made *or* as of the date of settlement. Thus, the owner who is under-insured, whether from inflation in the value of the insured property or by the addition of improvements, will get a boost in the amount of insurance set out in Schedule A of the policy. Further, the insured owner has the option to select the date on which the value of the insured property was highest. This could be either the date the loss was discovered and the claim was made, or the date on which the unsuccessful litigation terminates and the title insurance company pays the claim.

The 2006 Owner's Policy provides one additional advantage to the owner. Section 8 of the Conditions and Stipulations of the 1992 Owner's Policy mandates an apportionment of the amount of insurance between two or more parcels insured in the same policy. The apportionment provision has been eliminated in the 2006 Owner's Policy.

9. Limitation of Liability

The title insurance company does not have to pay for a loss (1) if the title is perfected as insured in a reasonably diligent manner, including litigation, and appeals therefrom (*First Federal Sav. & Loan Ass'n of Fargo, N.D. v. Transamerica Title Ins. Co.*, 793 F. Supp. 265 (D. Colo. 1992), *aff'd*, 19 F.3d 528 (10th Cir. 1994) (title defect cured within a reasonable time)); (2) until all appeals have been heard (see Section 5(c) of the Conditions); or (3) voluntarily assumed by the insured in settlement without consent of the title insurance company.

10. Reduction of Insurance; Reduction or Termination of Liability

Assume a \$100,000 policy. Suppose the title insurance company pays \$10,000, plus \$1,000 costs and legal fees, to satisfy an encumbrance that was missed in the title search. The remaining insurance in force is \$90,000 (costs and legal fees do not reduce the amount of the insurance). The insured, of course, could buy an additional \$10,000 of insurance, or perhaps more, and return the face amount of the policy to \$100,000 or more.

11. Liability Noncumulative

Assume a \$100,000 owner's policy and a \$90,000 lender's policy, both issued by the same title insurance company. Suppose a complete title failure occurs. The title insurance company pays \$90,000 to the lender and \$10,000 to the owner. The result is the same whether the lender's lien was shown as an exception on Schedule B of the Owner's Policy or was granted later. The point is that the owner does not receive more than his actual loss — that is, the owner's equity in the property.

12. Payment of Loss

The 2006 Owner's Policy does not require that the policy be produced by the insured before the loss is paid. Losses will be paid within 30 days of final determination.

13. Rights of Recovery Upon Payment or Settlement

When the title insurance company pays a loss and settles a claim against its insured, it expects to acquire any rights the insured may have to recover from another, such as the right of action for breach of warranties in the conveyance to the insured. This acquisition of rights is called subrogation. The title insurance company is subrogated to the insured's right of action against any third party. If the title insurance company pays only part of the insured's loss, then the title insurance company will defer its rights of subrogation until the insured has recovered its loss.

What is the practical effect of this right of subrogation? Take an example: suppose W conveys by forged quitclaim deed to X for \$50,000, and X is insured by Co. Then after the property appreciates in value, X conveys by general warranty deed to Y for \$150,000, and Y is insured by Inc. Now X is in the position of an under-insured seller. When the forgery is detected, Y's title will fail, Inc. will settle with Y by paying Y \$150,000 (assuming Y's "actual loss" is that much or more) and Inc. will then be subrogated to Y's rights against X on the warranties in X's general warranty deed. When X notifies Co. of Inc.'s suit (in Y's name), Co. will, at least in theory, step in, and having no defense to a complete failure of title, pay to Inc. on X's behalf the full amount of X's title insurance, namely \$50,000. The additional \$100,000 of Inc.'s claim by subrogation will come out of X's pocket.

X could have been protected against this result by conveying by special warranty deed,¹ bargain and sale deed, quitclaim deed, or any deed without general warranties of title (but not if Y refused to accept less than a general warranty deed), or increasing X's policy with Co. to \$150,000 (*see* § 6.25) or obtaining a new \$150,000 policy. But what if Y sold to Z for \$200,000? The additional coverage would still be insufficient to protect against remote grantees who acquired the property for a higher price.

14. Arbitration

In 1987, a mandatory arbitration clause was added to the Owner's Policy. Included within the scope of arbitration are controversies between the title insurance company and the insured, claims arising out of or relating to the policy, and any service of the title insurance company in connection with its

1. Views on the use of a special warranty deed, rather than a general warranty deed, have changed over time. It now seems most reasonable and appropriate to use a special warranty deed in both residential and commercial transactions.

issuance or breach of the policy provisions. The arbitration clause attempts to include any matter at issue between the title insurance company and the insured. Presumably, claims arising out of the title insurance company's closing and escrow services are within this scope. Claims against the title insurance company by a non-insured, such as a seller with a claim for negligence in the preparation of a title insurance commitment, would not be included. *See* § 2.4.

The mandatory aspect of the arbitration clause applies only when the 1992 Owner's Policy is \$1 million or less or the 2006 Owner's Policy is \$2 million or less. If the policy is in excess of that amount, arbitration may be accepted by the parties but cannot be forced upon them.

The rules of the American Arbitration Association apply to any arbitration under the ALTA policy forms (owner's and lender's) issued through 2004. The 2006 Owner's and Loan policies eliminate administration of the arbitration clause by the AAA, and instead provide for ALTA's Title Insurance Arbitration Rules (TIAR) to be administered by the National Arbitration Federation. The TIAR conform to the requirements and variances of title insurance cases. The TIAR are set out in Appendix 11.

The arbitration award may be entered as a judgment in district court pursuant to C.R.C.P. 109. The arbitrators may not award attorney fees unless the laws of the state permit a court to grant attorney fees to the prevailing party. Presumably, this provision incorporates the Colorado statutes on frivolous, groundless, and vexatious actions, C.R.S. §§ 13-17-101, *et seq.*, and any other statutes or rules that allow the assessment of attorney fees.

15. Liability Limited to this Policy; Policy Entire Contract

This section is standard contract boilerplate. The policy with endorsements is the contract between the title insurance company and the insured. Claims are declared to be limited to the provisions, conditions, and stipulations of the policy, regardless of whether they are based on negligence. No changes may be made to the policy except in writing signed by an authorized officer of the title insurance company.

16. Severability

The invalidity or unenforceability of any policy clause will not affect the remainder of the policy.

17. Choice of Law; Forum

This paragraph benefits all parties by requiring that the laws of the jurisdiction where the land is located apply and that the title insurance company can be sued only in a state or federal court within the United States.

18. Notices, Where Sent

All notices and statements should be sent to the address shown in Section 18 of the policy. The careful lawyer will inquire and send all notices to the stated address, the home office if different from the address stated in Section 18, and the issuing agent. Be sure to obtain written confirmation that the title insurance company received your notice and will be considered. For additional notice requirements, see the discussions of Paragraphs 3 and 5, above.

§ 4.5 • ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

The ALTA Residential Title Insurance Policy, often known as the “Plain Language Policy,” was modified in 1987 to reflect most of the changes incorporated into the owner’s policy at that time. The full text of the Residential Title Insurance Policy is set out in Form 4B. It may be used only with individuals seeking title insurance for single-family residences, defined as a one-to-four family residential lot or condominium unit. ALTA decertified this policy in August 2013. It is discussed here, however, as it has been widely issued in Colorado and many owners are still insured under this form of policy.

Attached to the policy is the “Owner’s Information Sheet,” which is not part of the policy. This sheet explains briefly the scope of the policy and, appropriately, warns the insured to retain the policy even if title to the land is later transferred. The reasons for retention of old title insurance policies are explained in § 3.3, and in “Continuation of Insurance after Conveyance of Title” in § 4.4.5.

If the Residential Title Insurance Policy is still offered or available, recommend it to your clients, perhaps with Colorado Endorsement I (Inflation), discussed in § 6.24.

§ 4.5.1—Residential Title Insurance Policy — What is Insured? Affirmative Coverage

In addition to the coverages afforded by the 2006 Owner’s Policy, the Residential Title Insurance Policy also expressly insures against:

- 1) Rights of parties in possession;
- 2) Present violations of restrictive covenants;
- 3) Mechanics’ liens not created by the insured;
- 4) Prescriptive and implied easements;
- 5) Encroachment of the structures; and
- 6) Present violation of existing zoning law.

Would the 2006 Owner’s Policy with the standard exceptions deleted and Colorado Endorsement 130 attached give broader coverage? As discussed in § 4.5.5, the answer is no, with the possible exception of survey protection against more than just encroachments onto the lands of others. In the author’s opinion, if it is offered, take the Residential Title Insurance Policy. Claims against the title insurance company, should they arise, will be facilitated by the obvious attempt to furnish “plain language” protection to consumers without legal entanglements.

§ 4.5.2—Residential Title Insurance Policy — What is Not Insured? Exclusions

The Exclusions set out in Sections 1 through 4 on the Residential Title Insurance Policy, though expressed in “plain language,” are basically the same as in the 2006 Owner’s Policy discussed in § 4.4, except that the zoning exclusion is modified by the Affirmative Coverages, and, most importantly, the creditors’ rights exclusion is not included (unless the title insurance company adds it to Schedule B). The exclusion in Section 5 of the Residential Title Insurance Policy paraphrases the definition of “land” in Section 1(d) of the 2006 Owner’s Policy Conditions, discussed in § 4.4.

§ 4.5.3—Residential Title Insurance Policy — Conditions

In an apparent attempt to comply with its own “plain language” mandate, the 1987 Residential Title Insurance Policy substitutes “Conditions” for the “Conditions and Stipulations” of the 1992 Owner’s Policy that it preceded. Except for the title, and substantial rephrasing, the nine sections of the “Conditions” of the Residential Title Insurance Policy equate in all respects to the 17 sections of the Conditions and Stipulations of the 1992 Owner’s Policy (with one exception discussed in “Our Liability is Limited to this Policy,” below) as indicated by the following brief analysis. We suggested in § 4.4.5 that the plain language provisions of this policy could be helpful in interpreting the boilerplate of the 2006 Owner’s Policy. But the reverse is also true, and the plain language Conditions must be read in light of traditional meanings attributed to their parallels in the 1992 and 2006 Owner’s policies.

Definitions

The Residential Title Insurance Policy defines “land,” “mortgage,” and “public records” in substantially the same language as the 2006 Owner’s Policy. A condominium unit is expressly included within the meaning of “land.” Added are definitions of “easement,” “the right of someone else to use your land for a special purpose,” and “title,” “the ownership of your interest in the land, as shown in Schedule A.” Deleted are the definitions of “insured,” which is included with Section 2 of the Conditions, “insured claimant,” which term is not used in the Residential Title Insurance Policy, and “knowledge” or “known,” which terms are used in the Exclusions but not defined, thereby indicating that the everyday usage of “actual” knowledge prevails.

Continuation of Coverage

This section of the policy states that it protects the insured as long as the property is owned or is encumbered by a purchase money mortgage carried back by the insured upon sale or if the insured is liable for title warranties. This section also states that the policy covers the insured’s heirs and successors upon the death of the insured. Corporate and other entity successors are not mentioned because the Residential Title Insurance Policy is available only to individuals.

How to Make a Claim

In this section, the Residential Title Insurance Policy covers the notice provisions of Sections 3, 5, and 17 of the Conditions and Stipulations in the 1992 Owner’s Policy. Noticeably present is the 90-day proof of loss requirement of Section 5 of the 1992 Owner’s Policy, deleted in the 2006 Owner’s Policy. Upon learning of a claim, the insured is directed to notify the title insurance company “promptly,” a term that may well be measured by the more precise language of the Owner’s Policy. It is important to note that this section speaks of reduced coverage if failure to notify promptly prejudices the title insurance company.

Our Choices When You Notify Us of a Claim

This section condenses the Conditions of the 2006 Owner’s Policy into six succinctly expressed alternatives. The title insurance company will pay the claim or pay the amount of the policy, plus expenses and attorney fees. If necessary or desirable, the title insurance company may negotiate a settlement, or may prosecute or defend a lawsuit.

Handling a Claim or Court Case

These elements of the Conditions of the 2006 Owner's Policy are combined in this section of the Residential Title Insurance Policy. The title insurance company controls the handling of any claims or litigation related to the policy. Only expenses approved in advance will be reimbursed to the insured.

Limitation of the Company's Liability

This section is a catch-all that covers portions of the Conditions of the 2006 Owner's Policy. The title insurance company will pay only the actual loss, reduced by any loss of rights caused by the insured, the amount paid on loan policies on the same property, and any amounts previously paid on the same policy. One new coverage, however, is extended to the policy holder. If eviction occurs, the title insurance company agrees to reimburse the insured for rent incurred for substitute housing until the property is restored to the insured or the policy claim is settled. This appears to be a substitute for the provision in Section 12 of the Conditions of the 2006 Owner's Policy, which requires the title insurance company to pay all loss or damage within 30 days following the date liability of the title insurance company has been fixed.

Transfer of Your Rights

The Residential Title Insurance Policy does not use the word "subrogation." Those desiring an explanation of Section 13 of the Conditions of the 2006 Owner's Policy, or a definition of the meaning of subrogation, should read this paragraph. Subrogation is considered in more detail in "Rights of Recovery Upon Payment or Settlement" in § 4.4.5.

Arbitration

The arbitration clause added to the plain language policy in 1987 is basically the same as the arbitration clause in Section 14 of the Conditions of the 2006 Owner's Policy, except that the \$2 million policy limit does not apply.

Our Liability is Limited to this Policy

Section 15 of the Conditions of the 2006 Owner's Policy is restated here. Apparently, the drafters of the Residential Title Insurance Policy considered it unnecessary to incorporate the provision that all amendments to the policy must be made in a signed writing. This omission could prove important in persuading a court that assurances of the title company's agent should be considered in interpreting the Residential Title Insurance Policy.

§ 4.5.4—Schedule A

The Residential Title Insurance Policy's Schedule A, in concept if not in language, is nearly identical to its 2006 Owner's Policy counterpart. *See* § 4.4.3.

§ 4.5.5—Schedule B — Exceptions

Although Schedule B of the Residential Title Insurance Policy contains no standard exceptions, Colorado insurers customarily add two exceptions. These two exceptions are stated as follows:

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Taxes or assessments which are not shown as liens by the public records.
2. Any water rights or claims of title to water in or under the land.

Review the discussion of the taxes, assessments, and water rights exceptions in §§ 2.16, 2.17, and 2.18. Note that Exception No. 1, as stated above, is not acceptable in Colorado. It should be deleted and the following exception substituted in its place:

Taxes for 20XX, payable January 1, 20XY, and assessments due January 1, 20XY.

Exception No. 2 is permissible since title to water rights traditionally has not been insurable in Colorado, as considered in § 2.8.9.

Most title companies will add in the standard exceptions found in the 2006 Policy. But what is the effect if the standard printed exceptions are omitted in the Residential Title Insurance Policy?

As stated on the face of the Residential Title Insurance Policy, you, as the policy holder, are insured if (1) someone else owns an interest in your land (*i.e.*, insurance against the rights of parties in possession, standard exception No. 1— *see* § 2.11); (2) someone else has an easement on your land (*i.e.*, insurance against easements not shown by the public records, standard exception No. 2 — *see* § 2.12); (3) you are forced to remove your existing structure other than a boundary wall or fence because it extends onto adjoining land or onto any easement (*i.e.*, insurance against some, but not all, of the matters of survey described in standard exception No. 3 — *see* § 2.13); and (4) there are liens on your title, arising now or later, for labor and material furnished before the Policy Date, unless you agreed to pay for the labor and material (*i.e.*, insurance against mechanics' liens, standard exception No. 4 — *see* § 2.14). Also, the Residential Title Insurance Policy does not exclude, and therefore protects the insured against, unpatented mining claims and reservations or exceptions in patents or in acts authorizing the issuance of patents. These exceptions are sometimes found in standard exception No. 6, discussed in § 2.16.

It follows from the above analysis that the Residential Title Insurance Policy is basically the equivalent of the 2006 Owner's Policy with all standard printed exceptions deleted, except for survey exception No. 3. It remains unclear whether the Residential Title Insurance Policy covers the insured for shortage in area, encroachments of improvements from adjoining property onto the insured property, or the forced removal of boundary walls and fences that encroach onto adjoining properties. Because of the detail devoted to the listing of covered title risks, it could certainly be argued that the failure of the Residential Title Insurance Policy to provide affirmative coverage for these three matters "which a correct survey and inspection of the property would disclose," to quote standard exception No. 3, leads to the conclusion that they are intentionally excluded. However, not being explicitly excluded, it could also be argued that they are implicitly included in the phrase "other defects, liens, or encumbrances," No. 14 under Covered Title Risks on the Residential Title Insurance Policy. If you wish to remove all doubt in this area of coverage, the 2006 Owner's Policy with standard exception No. 3 deleted (plus exception Nos. 1, 2, and 4) is preferable.

Despite this slight omission in survey protection, the Residential Title Insurance Policy offers considerably more coverage than the 2006 Owner's Policy with the standard exceptions deleted, namely, insurance if you are forced to remove your existing structure — other than a boundary wall or fence, but arguably including detached structures, such as a garage or shed — because it violates a covenant or restriction shown on Schedule B or an existing zoning law, or if you cannot use the land for a single-family residence because such use violates a restriction shown on Schedule B or an exist-

ing zoning law. In addition, the ALTA form of the Residential Title Insurance Policy, unless the title insurance company has modified it, does not contain the creditors' rights exclusion. See "Proof of Loss" in § 4.4.5. This is a significant increase in coverage.

The final question is whether the Residential Title Insurance Policy affords title insurance protection in excess of the coverage obtained by adding Colorado Endorsement 130 to the 2006 Owner's Policy with the standard printed exceptions deleted. See Exhibit 6B for a list of references to Colorado Endorsement 130. (No, the title insurance company will not add Colorado Endorsement 130 to a Residential Title Insurance Policy!) The answer is a definite "maybe."

The coverage in the 2006 Owner's Policy plus Colorado Endorsement 130 and deletion of the standard exceptions is broader in that survey coverage is complete, whereas there may be some slight exceptions, as indicated above, in the Residential Title Insurance Policy. The Residential Title Insurance Policy contains more comprehensive zoning protection than Colorado Endorsement 130 by virtue of an enlarged definition of "your structure" versus "principal dwelling" and the protection against loss of residential use of the land versus enforced removal of the dwelling under Colorado Endorsement 130. See the discussion of Colorado Endorsement 130 in § 6.46.

Whatever slight advantage may be perceived in use of the 2006 Owner's Policy should, however, be weighed against the countervailing benefits of the title insurance company's plain language assurances to the presumably unsophisticated single-family insured who purchases the Residential Title Insurance Policy in reliance on the expertise of the title company, not to mention protection against the rights of creditors. This author recommends the Residential Title Insurance Policy whenever it is available.

§ 4.6 • ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)

This plain language policy contains many of the same provisions and advantages of the Residential Title Insurance Policy, discussed at § 4.5. The full text of the Homeowner's Policy is set forth as Form 4C. The enhancement comes not from the plain language format, but from a new approach to title insurance that includes assumption of risk for events occurring after policy issuance, with a maximum liability and a deductible for certain new coverages. This policy has been described as providing the optimum coverage a residential purchaser can secure, and should be recommended by the buyer's attorney, if available. James L. Gosdin, *Fundamentals of Title Insurance*, p. 187 (American Bar Association 2014). To date, no title company in Colorado has issued the Homeowner's Policy.

Like the Residential Title Insurance Policy, it is only available in transactions for a single family improved residence lot with a one-to-four family residence. It will be issued only to insured parties who are individuals (*i.e.*, humans) or the trustee of a trust created for estate planning purposes (regardless of whether the trustee is a human).

§ 4.6.1—Homeowner's Policy — What is Insured? Affirmative Coverages

The affirmative coverages afforded by the Residential Owner's Policy are also contained in the Homeowner's Policy. Covered Title Risks under the Residential Owner's Policy are discussed in

§ 4.5.1. In addition, the list of 14 covered title risks in the Residential Owner’s policy has been expanded to 27 Covered Risks in the Homeowner’s Policy. These Covered Risks are described below.

Risks Occurring After Policy Date

Covered Risks 1 through 6 (defective title, adverse claims, leases, contracts or options, the effects of forgery or impersonation, easements, right to limit the use of the land), Covered Risks 8 through 10 (liens, encumbrances, fraud, duress, incompetency, incapacity) and Covered Risk 29 (marketability) afford similar protection to the Residential Owner’s Policy or the 2006 Owner’s Policy with the standard exceptions deleted. Covered Risk 7 purports to expand Covered Risks 1 through 6 with regard to any such risks occurring after the policy date. Given the shield afforded by the Colorado Recording Act against subsequently recorded interests, the additional coverage offered by Covered Risk 7 appears quite modest, to say the least. Furthermore, as with other owner’s policies, the Exclusions in the Homeowner’s Policy deny protection whenever the risk is “created, allowed, or agreed to” by the insured. *See* § 4.6.2.

Access

Covered Risk 11 provides protection if “You do not have both actual vehicular and pedestrian access to and from the Land, based upon a legal right.”

This is indeed new coverage. Even with the only endorsement form available, “actual” access is not covered in any policy other than owner’s policy. *See* §§ 4.4.1 and 6.9. This language insures not only that the property adjoins or has a deeded access to an open public road, but also that the terrain will permit entry to the land by vehicle. Access only by pedestrian pathway or by water would not be sufficient under Covered Risk 11.

Covenants, Conditions, and Restrictions

Covered Risks 12 and 13 insure against loss in the event the insured is forced to correct or remove an existing violation or if title is lost or taken because of a pre-existing violation of any covenant, condition, or restriction, even if the covenant, condition, or restriction is excepted in Schedule B. Similar coverage is available by endorsement. *See* § 6.40.

Deductibles and Maximums

Covered Risks 16, 18, 19, and 21 are unique in that these coverages are limited to “Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.”

The part of Schedule A referred to, when completed on the policy form, might look like this:

Deductible Amounts and Maximum Dollar Limits of Liability For Covered Risk 16, 18, 19, and 21:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$10,000

Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$5,000

The Covered Risks that are limited with deductibles and maximums are the following:

- *Building Permit Unavailable.* Covered Risk 16 insures against loss if, because of an existing violation of a subdivision law or regulation (such as Senate Bill 35, *see* C.R.S. § 30-28-101(10)), the insured is unable to obtain a building permit, is required to correct or remove the violation, or suffers an inability to sell, lease, or obtain a mortgage on the land because of the violation. The company's liability is limited by the Schedule A deductible and maximum.
- *Building Permit Ignored.* Covered Risk 18 covers a situation wherein the insured is forced to remove or remedy existing structures, or any part of them, other than boundary walls and fences, because any portion was built without obtaining a building permit from the proper government office. The company's liability is limited by the Schedule A deductible and maximum.
- *Zoning Violation.* Covered Risk 19 is the same as Covered Risk 15 except that the forced removal or remedy is occasioned by violation of an existing zoning law or zoning regulation. The deductible and maximum in Schedule A apply only if the insured is required to "remedy" rather than "remove" the existing structure. Boundary walls and fences are not excluded from coverage.
- *Encroachment on Neighbors.* Covered Risk 21 protects the insured if forced to remove an existing structure because of an encroachment onto a neighbor's land. The deductible and maximum in Schedule A apply only if the encroaching structure is a boundary wall or fence.

Single-Family Zoning

Covered Risk 20 insures that the zoning is appropriate for a single-family residence. No deductible or maximum applies.

Encroachments

Encroachments receive attention in Covered Risks 21, 22, 23, and 28. Covered Risk 22 affords marketability protection in the event the insured is unable to sell, lease, or pay the mortgage on property because of a neighbor's encroaching structures. Covered Risk 23 provides protection against the forced removal of existing structures because they encroach onto an easement or over a building setback line. Covered Risk 28 should raise some eyebrows as well as claims. It protects against the following situations:

Your neighbor builds any structures after the Policy Date — other than boundary walls or fences — which encroach onto the Land.

Of course, Covered Risk 28 is limited by the “created, allowed, or agreed to” Exclusion. *See* § 4.6.2.

Easements

Covered Risk 24 covers existing structures that are damaged because of the exercise of easement rights, even if the easement is excepted in Schedule B. Presumably the company will examine a survey or improvement location certificate to establish that no structures have been built over easements as of the policy date.

Minerals

Covered Risk 25 offers mineral coverages not available by endorsement or in other policies. *See* § 6.33. Extraction of water and “any other substance” are new coverages. The company will provide protection if existing improvements (or replacements or modifications of improvements made after the Policy Date), including lawns, shrubbery, or trees, are damaged by the future exercise of a right to use the surface of the land, even if the right is excepted or reserved from the description of the land or excepted in Schedule B.

Discrimination

Covered Risk 27 protects the insured in the unlikely circumstance that someone attempts to enforce a discriminatory covenant against the insured’s title. The types of discrimination listed are race, color, religion, sex, disability, familial status, or national origin, which are also identified in the federal Fair Housing Act and protected by state statute. 42 U.S.C. §§ 3601, *et seq.*; *see also* C.R.S. § 24-34-502. Not much risk is assumed here, but purchasers in any of the listed categories would certainly be given comfort from the stated coverage.

Supplemental Taxes

Covered Risk 27 purports to insure against “taxes not previously assessed against the Land for any period before the Policy Date because of construction or a change of ownership or use that occurred before the Policy Date.” It is unclear whether this would include a mid-year reassessment pursuant to C.R.S. § 39-5-132. If so, surely no insurer in Colorado would knowingly agree to this coverage without funds in escrow to cover the possibility.

Address

Finally, Covered Risk 31 insures that the address of the property, which is now required to be set forth on Schedule A, is the address of the residence located on the land insured by the policy. A mix-up in address and unit numbers is a frequent occurrence. In effect, this provision insures the owner that the house occupied is the house actually purchased and conveyed.

NOTE: Covered Risk 32, insuring a map attached to the policy, is generally not applicable in Colorado.

§ 4.6.2—Homeowner’s Policy — What is Not Insured? Exclusions

The Exclusions, set forth in seven paragraphs in the Homeowner’s Policy, include all of the Exclusions contained in the Residential Owner’s Policy, plus some additions.

Building and zoning ordinances, laws, and regulations have been added to the previous governmental police power Exclusion for ordinances, laws, and regulations pertaining to land use, improvements on the Land, land division, and environmental protection. However, this paragraph also states that nothing shall limit the coverage described in Covered Risk 8.a (unpaid taxes), Covered Risk 14 (violation of governmental regulations), Covered Risk 15 (notice of police power), Covered Risk 16 (violation of subdivision law), Covered Risk 18 (failure to obtain a building permit), Covered Risk 19 (forced removal of structures), Covered Risk 20 (zoning violation), Covered Risk 23 (encroachment on easement), and Covered Risk 27 (supplemental taxes). Thus, this Exclusion does not directly limit the stated Covered Risks. The Exclusion does, however, serve as a warning that the Covered Risks will be narrowly interpreted.

The following Exclusion is new and does not appear in the Residential Owner's Policy:

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.

This Exclusion denies coverage for violations of the building code, not just failure to obtain a building permit.

The Exclusion for condemnation is basically the same as in the Residential Owner's Policy.

The important Exclusion for risks that are "created, allowed, or agreed to" by the insured has been altered by the added phrase "whether or not they are recorded in the Public Records." This does not appear to be a major change in this oft-cited Exclusion.

As in all policies, unrecorded risks known to the insured but not to the company are excluded. Risks that result in no loss are also excluded.

The Exclusion for risks "that first occur after the Policy Date," heretofore standard in all owner's policies, including the Residential Owner's Policy, must now be qualified because Covered Risks 7, 8.e, 25, 26, 27, and 28 provide coverage for events occurring after the Policy Date.

Failure to pay value is excluded. See the discussion of this concept in Colorado at § 2.9.1. Defects to any land, streets, alleys, or waterways not described in Schedule A are also excluded.

Most importantly, the Homeowner's Policy, unlike the Residential Owner's Policy, contains the creditor's right Exclusion, which was added to the Owner's Policy in 1992 in its present form. See "Exclusion 4. Creditors' Rights" in § 4.4.2.

The following exclusions are new and do not appear in the Residential Owner's Policy:

8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence.
9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

§ 4.6.3—Homeowner’s Policy — Conditions

The Homeowner’s Policy incorporates all of the conditions of the 1987 Residential Owner’s Policy, in most cases without any or with only slight rewording. See § 4.5.3 for a discussion of the Conditions in the Residential Owner’s Policy. The newly added conditions in the Homeowner’s Policy appear to benefit the company in some instances, but not invariably. The additions are as follows:

Definitions

“Estate Planning Entity” is any legal entity or a trust established by a Natural Person for estate planning.

We finally have a definition of “known,” which calls for “actual” knowledge. This should prove helpful to the insured and not the company.

“Natural Person” is defined as a human being, not a commercial or legal organization or entity — except that “natural person” does include a trustee of a trust regardless of whether the trustee is a human being.

“Trust” is defined as a living trust established by a human being for estate planning. There is a catch here that is probably unintentional. Title to the property must be in the name of the trustee, and not in the name of the trust, as permitted by C.R.S. § 38-30-108.5.

The term “Policy Date,” used throughout the Homeowner’s Policy, is defined as the later of the date and time shown in Schedule A or the date and time the conveying instrument was recorded. Thus, the policy, when issued, insures the “gap” between the effective date of the commitment and the date of recording. See § 2.15 for a discussion of “gap” coverage.

Continuation of Coverage

While specifically providing that the insured cannot assign the policy to anyone else, continuation of coverage is provided for (1) a spouse who receives title because of dissolution of marriage, (2) the trustee or successor trustee of a trust or an estate planning entity to whom title is transferred after the Policy Date, (3) the beneficiaries of such trust upon the death of the insured, and (4) anyone to whom title is transferred by operation of law upon the death of the insured. Any defenses that the company would have against the original insured may be raised as defenses against any of the parties to whom coverage is continued.

How to Make a Claim

Prompt notice is required but no proof of loss is due from the insured unless the company requests a written statement describing the loss and establishing the basis of the claim. The customary provisions for cooperation, submission of records, statements under oath, etc., are set forth in plain language.

Our Choices When We Learn of a Claim

In plain language, the company now emphasizes that it may end all coverage under the policy for any claim by paying the actual loss incurred by the insured, plus attorney fees and expenses. This includes the deductible and the maximum where applied in Covered Risks 16, 18, 19, and 21. The company reserves the right to cease defending or continuing any legal action or to defend with a reservation of rights.

Handling a Claim or Legal Action

This paragraph first states that the insured must cooperate with the company in handling any claim or legal action, and must provide all relevant information. It then states that the refusal of the insured to cooperate with the company may cause the coverage to be reduced or ended, but only to the extent the failure or refusal affects the company's ability to resolve the claim or defend the insured. This pro rata penalty is a new concept for failure of the insured to cooperate, borrowed from the penalty for failure of the insured to provide timely notice of loss. *See* "Notice of Claim to be Given by Insured Claimant" in § 4.4.5.

Limitation of Our Liability

The deductible is subtracted, and the maximum dollar limit is applied, where applicable. If, after receiving notice, the company removes the cause of the claim with reasonable diligence, all obligations for the claim end, including any obligation for loss suffered while the company was removing the cause of the claim. This additional protection for the company is not found in the 1987 Residential Owner's Policy.

The feature of the Residential Owner's Policy that requires the company to pay rent until the claim is removed or settled if the insured is forced to move from the property is expanded in the Homeowner's Policy. Concurrently, this benefit is more carefully defined with such terms as "reasonably equivalent substitute residence" and "the actual rent you pay." Added to this is the company's obligation to pay reasonable costs to relocate any personal property, including transportation for up to 25 miles from the land and repair of any damage to that personal property because of the relocation. It is difficult to imagine a title insurance company taking on this latter responsibility, but presumably the risk will be reinsured through the mover's insurance if any exists.

Unlike the 1987 Residential Owner's Policy, but following the lead of the 2006 Owner's Policy (*see* "Determination and Extent of Liability" in § 4.4.5), if the company proceeds with litigation attempting unsuccessfully to establish or defend the title of the insured, the amount of insurance is increased by 10 percent, and the insured can elect to have the loss valued as of the date the claim was made or when the claim is paid. This feature will benefit the insured regardless of whether the value of the insured property has increased or decreased.

Transfer of Your Rights to Us

Required transfer of rights to the company includes contracts, such as indemnities, guaranties, bonds, or other policies of insurance, that provide for recovery of the loss of the insured. The company may collect on those contracts. This is subrogation without the legal definition. If the company is successful in pursuing subrogation, it will first recover its costs, then pay to the insured any unrecovered portion of the insured's loss, and then reimburse itself for funds paid to settle the claim.

Entire Contract

This typical boilerplate clause has been expanded but the meaning is the same. The policy and endorsements constitute the entire contract, and any changes must be in writing.

Increased Policy Amount

This is not a feature of the 1987 Residential Owner's Policy, although it can be added by endorsement. *See* § 6.24. The Homeowner's Policy includes the same coverage as provided by the inflation endorsement, namely, an increase of 10 percent of the policy amount per year for the first five years after the policy date, not to exceed 150 percent of the original policy amount.

Severability

Other owner's policies do not contain a severability clause. The Homeowner's Policy does, permitting enforcement of any portions of the policy not held to be legally unenforceable.

Arbitration

This final provision is basically the same as under the 1987 Residential Owner's Policy, though reworded. The Title Insurance Arbitration Rules control. *See* Appendix 11.

Choice of Law

Colorado law applies to policies issued on Colorado lands.

§ 4.6.4—Schedule A

Two changes have been added to Schedule A that are not found in the 1987 Residential Owner's Policy. First, as previously discussed, Schedule A sets forth the deductible amount and maximum dollar limits of liability. *See* "Deductibles and Maximums" in § 4.6.1. In addition, the street address of the land will be stated on Schedule A for purposes of Covered Risk 28. *See* "Address" in § 4.6.1.

§ 4.6.5—Schedule B — Exceptions

Schedule B of the Homeowner's Policy contains no standard exceptions. Refer to the 1987 Residential Owner's Policy for discussion of the advantages of removal of the standard exceptions. *See* § 4.5.5.

§ 4.7 • OWNER'S POLICY INSURING A CONTRACT

When a buyer purchases on an installment land contract, contract for deed, or land contract (the terms are used interchangeably), the 2006 Owner's Policy will be modified to describe the equitable estate acquired. Schedule A will describe the insured's interest as that of a vendee under the contract, with fee title shown in the vendor. Schedule A, Item 3 will describe the estate insured under the policy as:

The equitable interest created by the Installment Land Contract between _____, vendor, and _____, vendee, dated _____, 20__, and recorded _____, 20__, at Reception No. _____ of the records of _____ County, Colorado.

The purchase contract must be recorded and will appear as an exception to title in Schedule B of the policy. Typically, this exception will read:

Terms, conditions and provisions of Installment Land Contract between _____, vendor, and _____, vendee, dated _____, 20__, and recorded _____, 20__, at Reception No. _____ of the records of _____ County, Colorado. This policy does not insure or guarantee performance by the vendor, or the vendor's heirs, successors, and assigns, of the terms and provisions of said Installment Land Contract.

Essentially, the owner's policy insures that the vendee will acquire title as shown, provided that there is compliance with the terms of the contract, the contract is recorded, and a proper deed is signed, acknowledged, and placed in escrow. The policy may also be modified to make an exception for the interposition of the bankruptcy laws, should the vendor file for protection thereunder. In the latter case, the exception will be stated approximately as follows:

Right of a trustee or receiver in the event of bankruptcy, receivership, or insolvency of the vendor to repudiate the Installment Land Contract described in Schedule A.

The bankruptcy trustee's rights are limited. The vendee in possession is protected against the vendor's bankruptcy by 11 U.S.C. § 365(i).

When the contract is paid in full and the deed is released from escrow and recorded, a new Owner's Policy of title insurance may be obtained, showing fee title in the vendee. If an owner's policy insuring a contract was purchased previously, the rate for the new policy will be only a percentage of the basic rate for this conversion, typically 25 percent. *See* "Conversion to Owner's Policy" in § 1.9.9. The reissue (short-term) rate does not apply.

The vendor's counsel should take advantage of the opportunity to obtain an owner's policy at a reduced rate, possibly the simultaneous rate, insuring the vendor's title and vendor's lien, even though the vendor may already have an older, and probably smaller, owner's policy.

§ 4.8 • OWNER'S POLICY INSURING AN OPTION

The 2006 Owner's Policy can be modified to insure the holder of an option to purchase real property. Schedule A will describe the insured's interest as that of an optionee under the option agreement, with fee title shown in the optionor. The option agreement must be recorded and will be shown in Schedule B of the policy as an exception to title in the same manner as in an Owner's Policy insuring a contract, discussed in § 4.7.

The optionee has two alternatives. Suppose the purchase price is \$150,000 and the optionee pays \$15,000 for the option. If the policy issues for \$15,000 of insurance, the rate charged is only for that amount. Later, if the option is exercised and the property conveyed to the optionee, a new policy showing fee title in the optionee will issue for \$150,000 at the full rate, with no credit given for the prior policy.

Alternatively, the policy can issue for the full \$150,000 when the option is granted, and a rate will be paid on that amount. When the option is exercised, a date down endorsement is added to the old policy or a new \$150,000 policy is issued insuring fee title in the optionee. The rate then is only a percentage of the basic rate, typically 25 percent. The re-issue (short term) rate does not apply.

The requirements for insuring an option are the same as for an Owner's Policy insuring a contract: (1) compliance with the option agreement, (2) recordation of the option agreement, and (3) a proper deed signed, acknowledged, and placed in escrow. The policy will contain an exception in Schedule B for the rights of the optionor's trustee in bankruptcy, as described in § 4.7.

If, instead of \$15,000, the consideration for the option was nominal or non-existent, the option may not be enforceable. *See* Dufford, "Options, Orphans of the Law," 50 *Den. Law Journal* 283 (1973). The title insurance company will rely upon Section 3(e) of the Exclusions, which denies coverage for "loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy." *See* "No Value Paid" in § 4.4.2.

§ 4.9 • ALTA LEASEHOLD OWNER'S POLICY (10-17-92)

To insure title to a tenant's leasehold estate, a specialized policy form, the Leasehold Owner's Policy, was used for many years. It was discontinued in 2001, however. Today, the 2006 Owner's Policy is used with ALTA Endorsement Form 13-06 attached. The Leasehold Owner's Policy is illustrated in Form 4F. It is comparable to the 2006 Owner's Policy, except:

- 1) In Schedule A, the estate or interest in the land is described as "the leasehold estate, as leasehold estate is defined in Section 1(h) of the Conditions and Stipulations of this policy, created by the instrument herein referred to as the Lease." A section has been added to Schedule A to describe the insured leasehold. In all other respects, Schedule A of the Leasehold Owner's Policy is the same as Schedule A of the 2006 Owner's Policy. *See* § 4.4.3. Schedule B is also the same. *See* § 4.4.4.
- 2) Leasehold estate is defined in Section 1(h) of the Conditions and Stipulations as "the right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the Lease which limit the right of possession."
- 3) Two additional sections, Nos. 14 and 15, dealing with valuation of the leasehold estate and items of loss in the event of eviction, have been added to the Conditions and Stipulations.

The lease must be recorded and will be shown in Schedule B of the policy as an exception to title.

If the tenant purchases the landlord's reversion during the period of the lease, the policy can be converted and reissued as a policy insuring the fee title using a standard owner's policy form. The cost of this reissue is only a percentage of the basic rate, typically 25 percent. *See* "Conversion to Owner's Policy" in § 1.9.9.

Charges for insuring a leasehold using the owner's policy with ALTA Endorsement Form 13-06 are based upon the full value of the leasehold. This may be disclosed to the title insurance company by appraisal, or the following formula may be utilized to determine value: if the lease term is less than 25 years, the value is the annual rent multiplied by 10; if the lease term is 25 years or more but less than 50 years, the value is the annual rent multiplied by 20; and if the lease term is 50 years or more, the land value controls without regard to the amount of rent.

If a 2006 Owner's Policy on the reversion and an owner's policy with ALTA Endorsement Form 13-06 are issued simultaneously, it would seem that the simultaneous rate would apply. *See* § 1.9.4. However, Section 11 of the Conditions allows reduction of the policy amount only for sums paid by the title insurance company on a loan policy. Therefore, the risk of two owner's policies on the same property is, in theory, cumulative. Accordingly, the simultaneous rate will most likely not be offered by the title insurance company. The larger policy will be issued for 100 percent of the schedule rate and the smaller of the two policies may be issued at a lesser rate, such as 30 percent of the charge on the larger policy. Where, however, the tenant owns the improvements (ownership of land and improvements are separated) and a leasehold interest in the land, the 30 percent rate does not apply and both policies are issued at 100 percent of the schedule rate.

§ 4.10 • ALTA UNITED STATES OWNER'S POLICY (12-03-12)

Negotiations between the ALTA Forms Committee and representatives of the United States resulted in a complete revision of the 1963 United States Policy form in 1991 and again in 2012. The ongoing acquisition of properties by the General Services Administration, Veterans Administration, Department of Justice, Bureau of Land Management, Forest Service, and other government agencies had indicated a need for something better than the prior forms. The 2012 U.S. Owner's Policy, illustrated at Form 4G, parallels the 1992 Owner's Policy (*see* Form 2D).

The affirmative insurance provisions are the same as in the 1992 Owner's Policy, except that an assurance has been added in Section 5 to provide that, where property has been acquired by condemnation, all of the proper parties have been notified. In the Exclusions from Coverage, Section 4, the policy expressly declines to insure against the invalidity or insufficiency of any eminent domain proceeding, except to the extent of notice as set out in Section 5 of the Affirmative Coverages. Section 5 of the Exclusions from Coverage (creditors' rights) has been added in the 2012 Policy.

The Conditions and Stipulations are essentially the same as in the 1992 Owner's Policy (Form 4D), with the following exceptions:

- 1) A new Section 4(e) has been added to grant the United States Attorney General a prior right to defend claims arising under the policy. If that occurs, the title insurance company is off the hook unless it is given an opportunity to suggest defenses and actions, and the Attorney General presents the defenses and takes the actions suggested by the title insurance company. This is a cumbersome procedure at best.

- 2) In Section 6(b), the Attorney General is afforded the right to approve or disapprove claim settlements. If the Attorney General fails to approve a settlement, the United States retains its insurance, except to the extent that the title insurance company has been prejudiced thereby.
- 3) The coinsurance provisions of Section 7(b) have been deleted entirely.
- 4) Section 13(c) has been added, specifically denying the title insurance company any rights of subrogation to the rights of the United States. The title insurance company, however, may agree to reimburse the United States for all costs and attorney fees incurred in connection with subrogation litigation, and if so, recoveries are applied first to reimburse the title insurance company for the amount paid to satisfy the claim, and then to reimburse the loss of the United States.
- 5) Arbitration is by agreement only, not mandatory as in Section 14 of the Owner's Policy. In effect, the arbitration clause has been deleted from this form.

§ 4.11 • LITIGATION GUARANTEE

The Litigation Guarantee (not an ALTA form) is intended to be used for actions under C.R.C.P. 105 (quiet title, judicial foreclosure, or, conceivably, other statutory actions, such as partition, mechanics' lien foreclosure, and unlawful detainer). If the proposed action is a public trustee foreclosure combined with a Rule 120 proceeding, the Litigation Guarantee is replaced by another Guarantee, the Public Trustee's Sale Guarantee, discussed in § 5.13.

The Litigation Guarantee is not a policy of title insurance. It is both an owner's and a lender's form, but it is included here with the owner's policies because it appears to be ordered more often for quiet title actions than foreclosures. The full text of the Litigation Guarantee is set out in Form 4H.

In Part 1 of this form, the title insurance company "guarantees" to the "assured" that it has searched the public records and determined the name of the "vestee" in whom title to the estate or interest is vested, and the names of all parties necessary to be joined as defendants in the subject action. The type of action is specifically described in Part 1. The title insurance company does not "insure" that service of process on those parties will be accomplished correctly or that any other portion of the action will be properly prosecuted. Further, the title insurance company does not "insure" that the title is or will be free from defects unrelated to the litigation described in the Guarantee. For instance, the "assured" would not be protected against a subsequently discovered forgery in the chain of title.

The Litigation Guarantee and the coverage afforded thereby, like the Public Trustee's Sale Guarantee, should be compared to and contrasted with the Foreclosure Certificate/Guarantee (*see* § 5.14), and not with other policies of title insurance. The principal difference between the Litigation Guarantee and the Foreclosure Certificate/Guarantee lies in the process of examination. A properly certified Foreclosure Certificate or Guarantee certifies or guarantees that all instruments of record between two stated dates affecting title to Blackacre have been included. It does not tell you what information should be extracted from those documents as pertinent to the litigation contemplated. The Litigation Guarantee encompasses an examination feature: someone at the title insurance company has examined so much of the chain of title to Blackacre as deemed relevant by the examiner (no dates hav-

ing been specified) and, based upon that examination, the title insurance company now purports to tell the assured the names of the appropriate defendants, as gleaned from such examination.

One caution must be stated: addresses of record may be as vital as names to the successful completion of a Rule 105 action. On its face, the Litigation Guarantee does not “guarantee” that all of the defendants’ addresses affecting the litigation have been set out correctly. Require the issuer to do just that and to say that it has been done. Then, as an added precaution, when the litigation is complete, order a policy of title insurance.

The Litigation Guarantee comes with its own set of Conditions and Stipulations. We mention here only those significant items that are not identical or reasonably equivalent to the corresponding sections of the Conditions in the 2006 Owner’s Policy, as discussed in § 4.4.5.

In Section 2 of the Litigation Guarantee’s Conditions and Stipulations, the Exclusions from Coverage are considerably different than in the Owner’s Policy. The added exclusions are (1) taxes or assessments not shown as liens on the records of any taxing authority or by the public records (*see* § 2.18); (2) unpatented mining claims, patent reservations, and water rights (*see* § 2.16); and (3) title to property beyond the boundaries of the described land. Since the Rule 105 action may be brought to quiet title to or foreclose against mining claims, inchoate tax liens, etc., your attention is invited to these exclusions.

Section 4 contains a departure from the title insurance norm that must be emphasized. The Litigation Guarantee contains a private 25-month limitation of action. A “statement” of loss or damage must be furnished to the title insurance company within 60 days after the loss or damage “shall have been determined,” presumably by the assured. If action thereon against the title insurance company is not commenced within two years plus 30 days after notice, action by the assured is conclusively barred. The usual title policy language, that failure to provide notice will not bar recovery unless “the title insurance company shall be prejudiced by such failure,” has been deleted entirely. *See* “Notice of Claim to be Given by Insured Claimant” in § 4.4.5.

The balance of the Litigation Guarantee’s Conditions and Stipulations is without surprise. However, because of the differences compared to an ALTA policy, you are urged to read the entire Litigation Guarantee, as shown in Form 4H, before placing reliance upon it. The manner in which the title insurance company completes the form is most important. To repeat, compare the Litigation Guarantee and its cost with the Foreclosure Certificate or Foreclosure Guarantee, discussed at § 5.13, and do not hesitate to negotiate with the title insurance company for changes and additions that will enhance the protection afforded.

§ 4.12 • SUBDIVISION GUARANTEE

Many title insurance companies in Colorado offer a Subdivision Guarantee, which is not an ALTA form. This guarantee has been produced in response to the request of counties and cities, pursuant to their subdivision regulations, that the subdivider/developer prove the status of ownership and encumbrance of all lands described on the subdivision plat submitted for approval. Accordingly, the

title insurance company, in the Subdivision Guarantee, lists the names of all owners or other parties having an interest in the property, as shown by the public records. The liability amount is usually limited to \$1,000, but in theory the Subdivision Guarantee could be issued for any guaranteed sum required by the subdivision regulations. This would depend, of course, on whether there is a filed rate to support the higher liability amount.

It appears that the Subdivision Guarantee could be modified for related uses, such as proof of ownership to the Office of Interstate Land Sales Registration (OILSR) in offering unimproved lots. 24 C.F.R. § 1710.209(c)(1).

The Conditions and Stipulations incorporated as part of the Subdivision Guarantee are identical to those of the Litigation Guarantee, discussed in § 4.11. The Subdivision Guarantee is illustrated in Form 4I.

§ 4.13 • ALTA RECORDED DOCUMENT CERTIFICATE AND RECORDED DOCUMENT GUARANTEE

The Recorded Document Certificate and the Recorded Document Guarantee, illustrated in Forms 4J and 4K, may be used by prospective buyers and lenders to carry out the due diligence required to confirm recorded matters relating to environmental issues. This may include, for example, “All appropriate inquiries” required under 40 C.F.R. 312.20(b): “the following components of all appropriate inquiries must be conducted or updated within 180 days of and prior to the date of acquisition of the subject property: (2) Searches for recorded environmental cleanup liens (see § 312.25); (3) Reviews of federal, tribal, state, and local government records (see § 312.26).”

Application is made to the title insurance company on a form included as part of the Certificate or Guarantee that designates the legal description of the subject property, specifies a list of the type of documents desired (deeds, leases and subleases, mortgages/deeds of trust, environmental protection liens, or “all documents”), and the inclusive dates through which the search is desired. Usually, a limited period of time, such as 20 to 50 years, will be requested.

The application offers a choice of grantor-grantee index search, or title plant-tract index search. However, the search alternatives available to the company selected to provide the information will dictate that choice. The search will exclude documents indexed only by name in the title plant, for example, judgments, tax liens, and others containing no legal description.

Of more concern than the omission of “name only” documents is the stated exclusion of “documents pertaining to an estate or interest in minerals, gas and oil, or other hydrocarbon substances.” You should be able to negotiate the deletion of this exclusion, so that mineral leases and particularly affidavits of production pursuant to C.R.S. § 38-42-106 are included. Therein lies a definite source of potential pollution of the land.

When listing the documents to be disclosed by the search, do not overlook the importance of past leases of the property (though now expired or terminated) and filed mechanics’ liens (though ex-

pired or released). Remember, your objective in obtaining the search is to discover the uses to which the property has been subjected, not to establish title or expose title encumbrances or defects. The application contains a monetary limitation of liability to be negotiated with the title insurance company, as well as numerous other exclusions and exceptions that should be carefully considered.

The difference between the certificate and the guarantee is important only if the title insurance company fails to comply with the directions, does not furnish a document called for, and, as a direct result thereof, the applicant does not qualify for the “innocent landowner” defense under CERCLA. In such event, the title insurance company would be liable for its negligence, if any, in an action by the applicant on the certificate, whereas the guarantee is insurance to the extent of the “policy” or contract, consisting of the application and the guarantee. Any agent or abstractor could issue the certificate, but only an insurance company should issue the guarantee.

One would expect that the guarantee costs more. But the product is so limited in use that most companies issue only one or the other, usually the guarantee, and many companies will not furnish either or will do so only in connection with a commitment for title insurance.

A typical rate for the guarantee in the Denver area is \$5 per document supplied plus \$100 for the application and the base rate for the stated liability in the guarantee, and an aggregate minimum charge of \$250. Some companies charge by the hour for the search or a combination thereof (for example, \$500 for the first 40 years searched and \$65-75 per hour above that). Most companies, barring special situations and some hard bargaining, will limit their liability to \$5,000-\$25,000. Not all use the ALTA forms verbatim, but there is a noticeable resemblance in all the forms reviewed.

§ 4.14 • CHAIN OF TITLE GUARANTEE

When a customer requires a search of the records with a report and copy of all instruments recorded between certain dates, which might be from the inception of title in a particular owner to the present time, some title companies will offer a Chain of Title Guarantee (not an ALTA form) that specifically describes the parameters of the search, lists all documents found, attaches copies of the listed documents, and limits the liability of the title insurance company to the amount paid by the customer for the Guarantee.

The usual Guarantee schedule of Exclusions from Coverage and Conditions and Stipulations will be attached and incorporated. *See* Form 4L; see also the discussion of these Conditions and Exclusions in § 4.11.

FORM 4A • ALTA OWNER'S POLICY (6-17-06)

American Land Title Association

Owner's Policy
Adopted 6-17-06**OWNER'S POLICY OF TITLE INSURANCE**

Issued by

BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;



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**Owner's Policy
Adopted 6-17-06**

- (b) the character, dimensions, or location of any improvement erected on the Land;
- (c) the subdivision of land; or
- (d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

- 6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
- 7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
- 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
- 9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
- 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 Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: PRESIDENT

BY: SECRETARY



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Owner's Policy
Adopted 6-17-06**EXCLUSIONS FROM COVERAGE**

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.



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**Owner's Policy
Adopted 6-17-06**

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:
Address Reference:
Amount of Insurance: \$ [Premium: \$]
Date of Policy: [at a.m./p.m.]

1. Name of Insured:
2. The estate or interest in the Land that is insured by this policy is:
3. Title is vested in:
4. The Land referred to in this policy is described as follows:

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**Owner's Policy
Adopted 6-17-06**

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

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

1. [Policy may include regional exceptions if so desired by the issuing Company.]
2. [Variable exceptions such as taxes, easements, CC&R's, etc., shown here]



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Owner's Policy
Adopted 6-17-06

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) the term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) with regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records"



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shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

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

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the



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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 shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

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

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

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

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

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the



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Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
- (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
 - (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

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

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
- (i) the Amount of Insurance; or
 - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
- (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals,



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American Land Title Association

**Owner's Policy
Adopted 6-17-06**

adverse to the Title, as insured.

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

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

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

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 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 have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

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

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

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the

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American Land Title Association**Owner's Policy
Adopted 6-17-06**

option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

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

17. CHOICE OF LAW; FORUM

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

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

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

18. NOTICES, WHERE SENT

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



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**Owner's Policy
Adopted 6-17-06**

NOTE: Bracketed [] material optional



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FORM 4B • ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

American Land Title Association

ALTA Residential Title Insurance Policy
Adopted 6-1-87**RESIDENTIAL TITLE INSURANCE POLICY
ONE-TO-FOUR FAMILY RESIDENCES
Issued By
BLANK TITLE INSURANCE COMPANY**OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between you and Blank Title Insurance Company.

It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page one of the Policy. The Policy is limited by:

- . Exclusions on page
- . Exceptions on Schedule B
- . Conditions on pages

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page___.

You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy--and not this sheet--is the legal document, **YOU SHOULD READ THE POLICY VERY CAREFULLY.**

If you have any questions about your Policy, contact:

BLANK TITLE INSURANCE COMPANY

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ALTA Residential Title Insurance Policy
Adopted 6-1-87

**RESIDENTIAL TITLE INSURANCE POLICY
ONE-TO-FOUR FAMILY RESIDENCES
Issued By
BLANK TITLE INSURANCE COMPANY**

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RESIDENTIAL TITLE INSURANCE POLICY



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ALTA Residential Title Insurance Policy
Adopted 6-1-87

ONE-TO-FOUR FAMILY RESIDENCES

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BLANK TITLE INSURANCE COMPANY

OWNER'S COVERAGE STATEMENT

This policy insures your title to the land described in Schedule A -- if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- . Exclusions on page
- . Exceptions in Schedule B
- . Conditions on pages

We insure you against actual loss resulting from:

- . any title risks covered by this Policy -- up to the Policy Amount
- and
- . any costs, attorneys' fees and expenses we have to pay under this Policy

COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date:

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
 - . a mortgage or deed of trust
 - . a judgment, tax, or special assessment

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**ALTA Residential Title Insurance Policy
Adopted 6-1-87**

- . a charge by a homeowner's or condominium association
- 8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date -- unless you agreed to pay for the labor and material.
- 9. Others have rights arising out of leases, contracts, or options.
- 10. Someone else has an easement on your land.
- 11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
- 12. You are forced to remove your existing structure -- other than a boundary wall or fence -- because:
 - . it extends on to adjoining land or on to any easement
 - . it violates a restriction shown in Schedule B
 - . it violates an existing zoning law
- 13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
- 14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.

We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

This Policy is not complete without Schedules A and B.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____ PRESIDENT

BY: _____ SECRETARY



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ALTA Residential Title Insurance Policy
Adopted 6-1-87

**RESIDENTIAL TITLE INSURANCE POLICY
ONE-TO-FOUR FAMILY RESIDENCES
Issued By
BLANK TITLE INSURANCE COMPANY**

SCHEDULE A

Policy Number:

Policy Date:

Policy Amount:

1. Name of insured:
2. Your interest in the land covered by this Policy is:
3. The land referred to in this Policy is described as follows:

**RESIDENTIAL TITLE INSURANCE POLICY
ONE-TO-FOUR FAMILY RESIDENCES
Issued By
BLANK TITLE INSURANCE COMPANY**

SCHEDULE B

EXCEPTIONS

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

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ALTA Residential Title Insurance Policy
Adopted 6-1-87

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- . land use
- . improvements on the land
- . land division
- . environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

- . a notice of exercising the right appears in the public records on the Policy Date
- . the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking

3. Title Risks:

- . that are created, allowed, or agreed to by you
- . that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
- . that result in no loss to you
- . that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- . to any land outside the area specifically described and referred to in Item 3 of Schedule A
- or
- . in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.



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ALTA Residential Title Insurance Policy
Adopted 6-1-87

**RESIDENTIAL TITLE INSURANCE POLICY
ONE-TO-FOUR FAMILY RESIDENCES
Issued By
BLANK TITLE INSURANCE COMPANY**

CONDITIONS

1. DEFINITIONS

- a. Easement - the right of someone else to use your land for a special purpose.
- b. Land - the land or condominium unit described in Schedule A and any improvements on the land which are real property.
- c. Mortgage - a mortgage, deed of trust, trust deed or other security instrument.
- d. Public Records - title records that give constructive notice of matters affecting your title -- according to the state statutes where your land is located.
- e. Title - the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE

This Policy protects you as long as you:

- . own your title
- or
- . own a mortgage from anyone who buys your land
- or
- . are liable for any title warranties you make

This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM

- a. You Must Give The Company Notice Of Your Claim

If anyone claims a right against your insured title, you must notify us promptly in writing.

Send the notice to _____. Please include the Policy number shown in Schedule A, and the county and state where the land is located.

Our obligation to you could be reduced if:



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ALTA Residential Title Insurance Policy
Adopted 6-1-87

- . you fail to give prompt notice
- and
- . your failure affects our ability to dispose of or to defend you against the claim

b. Proof Of Your Loss Must Be Given To The Company

You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.

The statement must have the following facts:

- . the Covered Title Risks which resulted in your loss
- . the dollar amount of your loss
- . the method you used to compute the amount of your loss

You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.

We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.

We may require you to answer questions under oath.

Our obligation to you could be reduced if you fail or refuse to:

- . provide a statement of loss
- or
- . answer our questions under oath
- or
- . show us the papers we request,
- and
- . your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM

After we receive your claim notice or in any other way learn of a matter for which we are



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**ALTA Residential Title Insurance Policy
Adopted 6-1-87**

liable, we can do one or more of the following:

- a. Pay the claim against your title.
- b. Negotiate a settlement.
- c. Prosecute or defend a court case related to the claim.
- d. Pay you the amount required by this Policy.
- e. Take other action which will protect you.
- f. Cancel this policy by paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE

You must cooperate with us in handling any claim or court case and give us all relevant information.

We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.

When we defend your title, we have a right to choose the attorney. We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF THE COMPANY'S LIABILITY

- a. We will pay up to your actual loss or the Policy Amount in force when the claim is made -- whichever is less.
- b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.

If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:

. the cause of the claim is removed

or

. we settle your claim

- c. The Policy Amount will be reduced by all payments made under this policy --except for costs, attorneys' fees and expenses.
- d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
- e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.



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ALTA Residential Title Insurance Policy
Adopted 6-1-877. TRANSFER OF YOUR RIGHTS

When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.

We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.

With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION

If it is permitted in your state, you or the Company may demand arbitration.

The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.

The arbitration award may:

- . include attorneys' fees if allowed by state law
- . be entered as a judgment in the proper court.

The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.

The law used in the arbitration is the law of the place where the property is located.

You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY

This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

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FORM 4C • ALTA HOMEOWNER'S POLICY (REVISED 12-03-13)

American Land Title Association

Homeowner's Policy
Adopted 10-17-98

Revised 10-22-03 01-01-08 02-03-10 12-02-13

HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between You and Us.

It applies only to a one-to-four family residence and only if each insured named in Schedule A is a Natural Person. If the Land described in Schedule A of the Policy is not an improved residential lot on which there is located a one-to-four family residence, or if each insured named in Schedule A is not a Natural Person, contact Us immediately.

The Policy insures You against actual loss resulting from certain Covered Risks. These Covered Risks are listed beginning on page ____ of the Policy. The Policy is limited by:

- Provisions of Schedule A
- Exceptions in Schedule B
- Our Duty To Defend Against Legal Actions On Page _____
- Exclusions on page ____
- Conditions on pages __ and __.

You should keep the Policy even if You transfer Your Title to the Land. It may protect against claims made against You by someone else after You transfer Your Title.

IF YOU WANT TO MAKE A CLAIM, SEE SECTION 3 UNDER CONDITIONS ON PAGE ____.

The premium for this Policy is paid once. No additional premium is owed for the Policy.

This sheet is not Your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail Your rights and obligations and Our rights and obligations. Since the Policy--and not this sheet--is the legal document,

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If You have any questions about Your Policy, contact:

BLANK TITLE INSURANCE COMPANY



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Homeowner's Policy
Adopted 10-17-98

Revised 10-22-03 01-01-08 02-03-10 12-02-13

HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

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3. Description of the Land	
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**Homeowner's Policy
Adopted 10-17-98**

Revised 10-22-03 01-01-08 02-03-10 12-02-13

HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

As soon as You Know of anything that might be covered by this Policy, You must notify Us promptly in writing at the address shown in Section 3 of the Conditions.

OWNER'S COVERAGE STATEMENT

This Policy insures You against actual loss, including any costs, attorneys' fees and expenses provided under this Policy. The loss must result from one or more of the Covered Risks set forth below. This Policy covers only Land that is an improved residential lot on which there is located a one-to-four family residence and only when each insured named in Schedule A is a Natural Person.

Your insurance is effective on the Policy Date. This Policy covers Your actual loss from any risk described under Covered Risks if the event creating the risk exists on the Policy Date or, to the extent expressly stated in Covered Risks, after the Policy Date.

Your insurance is limited by all of the following:

- The Policy Amount
- For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A
- The Exceptions in Schedule B
- Our Duty To Defend Against Legal Actions
- The Exclusions on page
- The Conditions on pages and .

COVERED RISKS

The Covered Risks are:

1. Someone else owns an interest in Your Title.
2. Someone else has rights affecting Your Title because of leases, contracts, or options.
3. Someone else claims to have rights affecting Your Title because of forgery or impersonation.
4. Someone else has an Easement on the Land.
5. Someone else has a right to limit Your use of the Land.



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American Land Title Association**Homeowner's Policy
Adopted 10-17-98****Revised 10-22-03 01-01-08 02-03-10 12-02-13**

6. Your Title is defective. Some of these defects are:
- Someone else's failure to have authorized a transfer or conveyance of your Title.
 - Someone else's failure to create a valid document by electronic means.
 - A document upon which Your Title is based is invalid because it was not properly signed, sealed, acknowledged, delivered or recorded.
 - A document upon which Your Title is based was signed using a falsified, expired, or otherwise invalid power of attorney.
 - A document upon which Your Title is based was not properly filed, recorded, or indexed in the Public Records.
 - A defective judicial or administrative proceeding.
7. Any of Covered Risks 1 through 6 occurring after the Policy Date.
8. Someone else has a lien on Your Title, including a:
- lien of real estate taxes or assessments imposed on Your Title by a governmental authority that are due or payable, but unpaid;
 - Mortgage;
 - judgment, state or federal tax lien;
 - charge by a homeowner's or condominium association; or
 - lien, occurring before or after the Policy Date, for labor and material furnished before the Policy Date.
9. Someone else has an encumbrance on Your Title.
10. Someone else claims to have rights affecting Your Title because of fraud, duress, incompetency or incapacity.
11. You do not have actual vehicular and pedestrian access to and from the Land, based upon a legal right.
12. You are forced to correct or remove an existing violation of any covenant, condition or restriction affecting the Land, even if the covenant, condition or restriction is excepted in Schedule B. However, You are not covered for any violation that relates to:
- any obligation to perform maintenance or repair on the Land; or
 - environmental protection of any kind, including hazardous or toxic conditions or substances
- unless there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists. Our liability for this Covered Risk is limited to the extent of the violation stated in that notice.
13. Your Title is lost or taken because of a violation of any covenant, condition or restriction, which occurred before You acquired Your Title, even if the covenant, condition or restriction is excepted in Schedule B.



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American Land Title Association**Homeowner's Policy
Adopted 10-17-98****Revised 10-22-03 01-01-08 02-03-10 12-02-13**

14. The violation or enforcement of those portions of any law or government regulation concerning:
- building;
 - zoning;
 - land use;
 - improvements on the Land;
 - land division; or
 - environmental protection,
- if there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists or declaring the intention to enforce the law or regulation. Our liability for this Covered Risk is limited to the extent of the violation or enforcement stated in that notice.
15. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 14 if there is a notice recorded in the Public Records, describing any part of the Land, of the enforcement action or intention to bring an enforcement action. Our liability for this Covered Risk is limited to the extent of the enforcement action stated in that notice.
16. Because of an existing violation of a subdivision law or regulation affecting the Land:
- You are unable to obtain a building permit;
 - You are required to correct or remove the violation; or
 - someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.
- The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
17. You lose Your Title to any part of the Land because of the right to take the Land by condemning it, if:
- there is a notice of the exercise of the right recorded in the Public Records and the notice describes any part of the Land; or
 - the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
18. You are forced to remove or remedy Your existing structures, or any part of them - other than boundary walls or fences - because any portion was built without obtaining a building permit from the proper government office. The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
19. You are forced to remove or remedy Your existing structures, or any part of them, because they violate an existing zoning law or zoning regulation. If You are required to remedy any portion of Your existing structures, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
20. You cannot use the Land because use as a single-family residence violates an existing zoning law or zoning regulation.
21. You are forced to remove Your existing structures because they encroach onto Your neighbor's land. If the encroaching structures are boundary walls or fences, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar



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Limit of Liability shown in Schedule A.

22. Someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it because Your neighbor's existing structures encroach onto the Land.
23. You are forced to remove Your existing structures which encroach onto an Easement or over a building set-back line, even if the Easement or building set-back line is excepted in Schedule B.
24. Your existing structures are damaged because of the exercise of a right to maintain or use any Easement affecting the Land, even if the Easement is excepted in Schedule B.
25. Your existing improvements (or a replacement or modification made to them after the Policy Date), including lawns, shrubbery or trees, are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.
26. Someone else tries to enforce a discriminatory covenant, condition or restriction that they claim affects Your Title which is based upon race, color, religion, sex, handicap, familial status, or national origin.
27. A taxing authority assesses supplemental real estate taxes not previously assessed against the Land for any period before the Policy Date because of construction or a change of ownership or use that occurred before the Policy Date.
28. Your neighbor builds any structures after the Policy Date -- other than boundary walls or fences -- which encroach onto the Land.
29. Your Title is unmarketable, which allows someone else to refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.
30. Someone else owns an interest in Your Title because a court order invalidates a prior transfer of the title under federal bankruptcy, state insolvency, or similar creditors' rights laws.
31. The residence with the address shown in Schedule A is not located on the Land at the Policy Date.
32. The map, if any, attached to this Policy does not show the correct location of the Land according to the Public Records.

OUR DUTY TO DEFEND AGAINST LEGAL ACTIONS

We will defend Your Title in any legal action only as to that part of the action which is based on a Covered Risk and which is not excepted or excluded from coverage in this Policy. We will pay the costs, attorneys' fees, and expenses We incur in that defense.

We will not pay for any part of the legal action which is not based on a Covered Risk or which is excepted or excluded from coverage in this Policy.

We can end Our duty to defend Your Title under Section 4 of the Conditions.

THIS POLICY IS NOT COMPLETE WITHOUT SCHEDULES A AND B.

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**Homeowner's Policy
Adopted 10-17-98**

Revised 10-22-03 01-01-08 02-03-10 12-02-13

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____
PRESIDENT

BY: _____
SECRETARY



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Homeowner's Policy
Adopted 10-17-98

Revised 10-22-03 01-01-08 02-03-10 12-02-13

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division; and
 - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence.



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-
9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.



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HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

CONDITIONS

1. DEFINITIONS

- a. Easement - the right of someone else to use the Land for a special purpose.
- b. Estate Planning Entity - a legal entity or Trust established by a Natural Person for estate planning.
- c. Known - things about which You have actual knowledge. The words "Know" and "Knowing" have the same meaning as Known.
- d. Land - the land or condominium unit described in paragraph 3 of Schedule A and any improvements on the Land which are real property.
- e. Mortgage - a mortgage, deed of trust, trust deed or other security instrument.
- f. Natural Person - a human being, not a commercial or legal organization or entity. Natural Person includes a trustee of a Trust even if the trustee is not a human being.
- g. Policy Date - the date and time shown in Schedule A. If the insured named in Schedule A first acquires the interest shown in Schedule A by an instrument recorded in the Public Records later than the date and time shown in Schedule A, the Policy Date is the date and time the instrument is recorded.
- h. Public Records - records that give constructive notice of matters affecting Your Title, according to the state statutes where the Land is located.
- i. Title - the ownership of Your interest in the Land, as shown in Schedule A.
- j. Trust - a living trust established by a Natural Person for estate planning.
- k. We/Our/Us - Blank Title Insurance Company.
- l. You/Your - the insured named in Schedule A and also those identified in Section 2.b. of these Conditions.

2. CONTINUATION OF COVERAGE

- a. This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else.
- b. This Policy also insures:



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American Land Title Association**Homeowner's Policy
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- (1) anyone who inherits Your Title because of Your death;
 - (2) Your spouse who receives Your Title because of dissolution of Your marriage;
 - (3) the trustee or successor trustee of Your Trust or any Estate Planning Entity created for You to whom or to which You transfer Your Title after the Policy Date;
 - (4) the beneficiaries of Your Trust upon Your death; or
 - (5) anyone who receives Your Title by a transfer effective on Your death as authorized by law.
- c. We may assert against the insureds identified in Section 2.b. any rights and defenses that We have against any previous insured under this Policy.

3. HOW TO MAKE A CLAIM**a. Prompt Notice Of Your Claim**

- (1) As soon as You Know of anything that might be covered by this Policy, You must notify Us promptly in writing.
- (2) Send Your notice to **Blank Title Insurance Company**, , Attention: Claims Department. Please include the Policy number shown in Schedule A , and the county and state where the Land is located. Please enclose a copy of Your policy, if available.
- (3) If You do not give Us prompt notice, Your coverage will be reduced or ended, but only to the extent Your failure affects Our ability to resolve the claim or defend You.

b. Proof Of Your Loss

- (1) We may require You to give Us a written statement signed by You describing Your loss which includes:
 - (a) the basis of Your claim;
 - (b) the Covered Risks which resulted in Your loss;
 - (c) the dollar amount of Your loss; and
 - (d) the method You used to compute the amount of Your loss.
- (2) We may require You to make available to Us records, checks, letters, contracts, insurance policies and other papers which relate to Your claim. We may make copies of these papers.
- (3) We may require You to answer questions about Your claim under oath.
- (4) If you fail or refuse to give Us a statement of loss, answer Our questions under oath, or make available to Us the papers We request, Your coverage will be reduced or ended, but only to the extent Your failure or refusal affects Our ability to resolve the claim or defend You.



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American Land Title Association

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4. OUR CHOICES WHEN WE LEARN OF A CLAIM

- a. After We receive Your notice, or otherwise learn, of a claim that is covered by this Policy, Our choices include one or more of the following:
- (1) Pay the claim;
 - (2) Negotiate a settlement;
 - (3) Bring or defend a legal action related to the claim;
 - (4) Pay You the amount required by this Policy;
 - (5) End the coverage of this Policy for the claim by paying You Your actual loss resulting from the Covered Risk, and those costs, attorneys' fees and expenses incurred up to that time which We are obligated to pay;
 - (6) End the coverage described in Covered Risk 16, 18, 19 or 21 by paying You the amount of Your insurance then in force for the particular Covered Risk, and those costs, attorneys' fees and expenses incurred up to that time which We are obligated to pay;
 - (7) End all coverage of this Policy by paying You the Policy Amount then in force, and those costs, attorneys' fees and expenses incurred up to that time which We are obligated to pay;
 - (8) Take other appropriate action.
- b. When We choose the options in Sections 4.a. (5), (6) or (7), all Our obligations for the claim end, including Our obligation to defend, or continue to defend, any legal action.
- c. Even if We do not think that the Policy covers the claim, We may choose one or more of the options above. By doing so, We do not give up any rights.

5. HANDLING A CLAIM OR LEGAL ACTION

- a. You must cooperate with Us in handling any claim or legal action and give Us all relevant information.
- b. If You fail or refuse to cooperate with Us, Your coverage will be reduced or ended, but only to the extent Your failure or refusal affects Our ability to resolve the claim or defend You.
- c. We are required to repay You only for those settlement costs, attorneys' fees and expenses that We approve in advance.
- d. We have the right to choose the attorney when We bring or defend a legal action on Your behalf. We can appeal any decision to the highest level. We do not have to pay Your claim until the legal action is finally decided.
- e. Whether or not We agree there is coverage, We can bring or defend a legal action, or take other appropriate action under this Policy. By doing so, We do not give up any rights.



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6. LIMITATION OF OUR LIABILITY

- a. After subtracting Your Deductible Amount if it applies, We will pay no more than the least of:
- (1) Your actual loss;
 - (2) Our Maximum Dollar Limit of Liability then in force for the particular Covered Risk, for claims covered only under Covered Risk 16, 18, 19 or 21; or
 - (3) the Policy Amount then in force.
- and any costs, attorneys' fees and expenses that We are obligated to pay under this Policy.
- b. If We pursue Our rights under Sections 4.a.(3) and 5.e. of these Conditions and are unsuccessful in establishing the Title, as insured:
- (1) the Policy Amount then in force will be increased by 10% of the Policy Amount shown in Schedule A, and
 - (2) You shall have the right to have the actual loss determined on either the date the claim was made by You or the date it is settled and paid.
- c. (1) If We remove the cause of the claim with reasonable diligence after receiving notice of it, all Our obligations for the claim end, including any obligation for loss You had while We were removing the cause of the claim.
- (2) Regardless of 6.c.(1) above, if You cannot use the Land because of a claim covered by this Policy:
- (a) You may rent a reasonably equivalent substitute residence and We will repay You for the actual rent You pay, until the earlier of:
 - (i) the cause of the claim is removed; or
 - (ii) We pay You the amount required by this Policy. If Your claim is covered only under Covered Risk 16, 18, 19 or 21, that payment is the amount of Your insurance then in force for the particular Covered Risk.
 - (b) We will pay reasonable costs You pay to relocate any personal property You have the right to remove from the Land, including transportation of that personal property for up to twenty-five (25) miles from the Land, and repair of any damage to that personal property because of the relocation. The amount We will pay You under this paragraph is limited to the value of the personal property before You relocate it.
- d. All payments We make under this Policy reduce the Policy Amount then in force, except for costs, attorneys' fees and expenses. All payments We make for claims which are covered only under Covered Risk 16, 18, 19 or 21 also reduce Our Maximum Dollar Limit of Liability for the particular Covered Risk, except for costs, attorneys' fees and expenses.
- e. If We issue, or have issued, a Policy to the owner of a Mortgage that is on Your Title and We have not given You any coverage against the Mortgage, then:



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American Land Title Association**Homeowner's Policy
Adopted 10-17-98****Revised 10-22-03 01-01-08 02-03-10 12-02-13**

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- (1) We have the right to pay any amount due You under this Policy to the owner of the Mortgage, and any amount paid shall be treated as a payment to You under this Policy, including under Section 4.a. of these Conditions;
- (2) Any amount paid to the owner of the Mortgage shall be subtracted from the Policy Amount then in force ; and
- (3) If Your claim is covered only under Covered Risk 16, 18, 19 or 21, any amount paid to the owner of the Mortgage shall also be subtracted from Our Maximum Dollar Limit of Liability for the particular Covered Risk.
- f. If You do anything to affect any right of recovery You may have against someone else, We can subtract from Our liability the amount by which You reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS TO US

- a. When We settle Your claim, We have all the rights and remedies You have against any person or property related to the claim. You must not do anything to affect these rights and remedies. When We ask, You must execute documents to evidence the transfer to Us of these rights and remedies. You must let Us use Your name in enforcing these rights and remedies.
- b. We will not be liable to You if We do not pursue these rights and remedies or if We do not recover any amount that might be recoverable.
- c. We will pay any money We collect from enforcing these rights and remedies in the following order:
- (1) to Us for the costs, attorneys' fees and expenses We paid to enforce these rights and remedies;
- (2) to You for Your loss that You have not already collected;
- (3) to Us for any money We paid out under this Policy on account of Your claim; and
- (4) to You whatever is left.
- d. If You have rights and remedies under contracts (such as indemnities, guaranties, bonds or other policies of insurance) to recover all or part of Your loss, then We have all of those rights and remedies, even if those contracts provide that those obligated have all of Your rights and remedies under this Policy.

8. THIS POLICY IS THE ENTIRE CONTRACT

This Policy, with any endorsements, is the entire contract between You and Us. To determine the meaning of any part of this Policy, You must read the entire Policy and any endorsements. Any changes to this Policy must be agreed to in writing by Us. Any claim You make against Us must be made under this Policy and is subject to its terms.



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American Land Title Association**Homeowner's Policy
Adopted 10-17-98****Revised 10-22-03 01-01-08 02-03-10 12-02-13****9. INCREASED POLICY AMOUNT**

The Policy Amount then in force will increase by ten percent (10%) of the Policy Amount shown in Schedule A each year for the first five years following the Policy Date shown in Schedule A, up to one hundred fifty percent (150%) of the Policy Amount shown in Schedule A. The increase each year will happen on the anniversary of the Policy Date shown in Schedule A.

10. SEVERABILITY

If any part of this Policy is held to be legally unenforceable, both You and We can still enforce the rest of this Policy.

11. ARBITRATION

- a. If permitted in the state where the Land is located, You or We may demand arbitration.
- b. The law used in the arbitration is the law of the state where the Land is located.
- c. The arbitration shall be under the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). You can get a copy of the Rules from Us.
- d. Except as provided in the Rules, You cannot join or consolidate Your claim or controversy with claims or controversies of other persons.
- e. The arbitration shall be binding on both You and Us. The arbitration shall decide any matter in dispute between You and Us.
- f. The arbitration award may be entered as a judgment in the proper court.

12. CHOICE OF LAW

The law of the state where the Land is located shall apply to this policy.



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American Land Title Association

**Homeowner's Policy
Adopted 10-17-98**

Revised 10-22-03 01-01-08 02-03-10 12-02-13

HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

SCHEDULE A

Name and Address of Title Insurance Company:

Policy No.: [Premium: \$ _____] Policy Amount: \$ Policy Date [and Time]:

Deductible Amounts and Maximum Dollar Limits of Liability
For Covered Risk 16, 18, 19 and 21:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	% of Policy Amount Shown in Schedule A or \$ (whichever is less)	\$
Covered Risk 18:	% of Policy Amount Shown in Schedule A or \$ (whichever is less)	\$
Covered Risk 19:	% of Policy Amount Shown in Schedule A or \$ (whichever is less)	\$
Covered Risk 21:	% of Policy Amount Shown in Schedule A or \$ (whichever is less)	\$

Street Address of the Land:

1. Name of Insured:
2. Your interest in the Land covered by this Policy is:
3. The Land referred to in this Policy is described as:



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HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

SCHEDULE B

EXCEPTIONS

In addition to the Exclusions, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:



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FORM 4D • ALTA OWNER'S POLICY (10-17-92)

NOTE: This form has been replaced by Form 4A, "ALTA Owner's Policy (6-17-06)." It is included in this chapter for reference purposes only.

POLICY OF TITLE INSURANCE

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____
PRESIDENT

BY: _____
SECRETARY

EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**BLANK TITLE INSURANCE COMPANY
OWNER'S POLICY NO. _____
SCHEDULE A**

AMOUNT OF INSURANCE: \$100,000.00 DATE OF POLICY: October 15, 20XX, at 8:42 a.m.

1. Name of Insured:

DONALD M. SMITH and DARLENE N. SMITH

2. The estate or interest in the land which is covered by this policy is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

Donald M. Smith and Darlene N. Smith, as joint tenants

4. The land referred to in this policy is situate in the County of Adams, and State of Colorado and is described as follows:

Lot 207,
Blue Waters Subdivision – Unit 1,
according to the recorded plat thereof.

BLANK TITLE INSURANCE COMPANY
OWNER'S POLICY NO. _____
SCHEDULE B _____

EXCEPTIONS FROM COVERAGE

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

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any and all unpaid taxes, assessments and unredeemed tax sales.
7. Lien of any existing or future assessments, taxes, fees or charges on account of the inclusion of the subject property in one or more improvement districts, including but not limited to the Adams Water Conservation District, the Adams Soil Conservation District, and the Blue Waters Fire Protection District.
8. Declaration of Covenants, Conditions, Restrictions and Lien for Blue Waters Recreation Association, recorded June 7, 1982, in Book 640 at Page 109.
9. Deed of Trust from Donald M. Smith and Darlene N. Smith to the Public Trustee of Adams County, Colorado, for the benefit of Second National Bank, N.A., dated October 10, 19XX, and recorded October 15, 19XX, in Book 1001 at Page 100, securing the sum of \$90,000.00.
10. Deed of Trust from Donald M. Smith and Darlene N. Smith to the Public Trustee of Adams County, Colorado, for the benefit of Blue Waters, Inc., a Colorado corporation, dated October 10, 19XX, and recorded October 15, 19XX, in Book 1001 at Page 105, securing the sum of \$5,000.00.

CONDITIONS AND STIPULATIONS1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

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

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

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

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

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

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

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

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

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

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

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

the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

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

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

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

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

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

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

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of

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

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

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

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

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

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

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

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

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

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

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

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

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

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

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

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

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

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

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

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

8. APPORTIONMENT.

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

9. LIMITATION OF LIABILITY.

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

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

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

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

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

11. LIABILITY NONCUMULATIVE.

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

12. PAYMENT OF LOSS.

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

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

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

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

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

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

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

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

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

14. ARBITRATION

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

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

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

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

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

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

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

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

16. SEVERABILITY.

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

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [] material optional

**FORM 4E • ALTA OWNER'S POLICY FORM B 1970
(REVISED 10-17-70 AND 10-17-84)**

NOTE: This form has been replaced by Form 4A, "ALTA Owner's Policy (6-17-06)." It is included in this chapter for reference purposes only.

POLICY OF TITLE INSURANCE
Issued by
BLANK TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, BLANK TITLE INSURANCE COMPANY, a blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

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

IN WITNESS WHEREOF, Blank Title Insurance Company has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

BLANK TITLE INSURANCE COMPANY
By _____
President

By _____
Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy:

1. (a) Governmental police power.
- (b) Any law, ordinance or governmental regulation relating to environmental protection.
- (c) Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part.
- (d) The effect of any violation of the matters excluded under (a), (b), or (c) above, unless notice of a defect, lien or encumbrance resulting from a violation has been recorded at Date of Policy in those records in which under state statutes deeds, mortgages, lis pendens, liens or other title encumbrances must be recorded in order to impart constructive notice to purchasers of the land for value and without knowledge; provided, however, that without limitation, such records shall not be construed to include records in any of the offices of federal, state or local environmental protection, zoning, building, health or public safety authorities.

2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

SCHEDULE A

Date of Policy:

Amount of Insurance: \$ _____

1. Name of Insured:

2. The estate or interest in the land described in this Schedule and which is covered by this policy is:
(a fee, a leasehold, etc.)

3. The estate or interest referred to herein is at Date of Policy vested in:

4. The land referred to in this policy is described as follows:

SCHEDULE B

This policy does not insure against loss or damage by reason of the following:

[Not part of ALTA form]

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any and all unpaid taxes, assessments and unredeemed tax sales.

CONDITIONS AND STIPULATIONS

1. Definition of Terms

The following terms when used in this policy mean:

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

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

(c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

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

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

(f) "public records": those records which by law impart constructive notice of matters relating to said land.

2. Continuation of Insurance after Conveyance of Title

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

3. Defense and Prosecution of Actions - Notice of Claim to be given by an Insured Claimant

(a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured in an action to enforce a contract for a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

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

(c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provision of this policy.

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

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in

such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expenses so incurred.

4. Notice of Loss - Limitation of Action

In addition to the notices required under paragraph 3(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

5. Options to Pay or Otherwise Settle Claims

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment by the insured claimant and authorized by the Company.

6. Determination and Payment of Loss

(a) The liability of the Company under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such insure with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the

loss or damage shall be payable within 30 days thereafter.

7. Limitation of Liability

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

8. Reduction of Liability

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

9. Liability Noncumulative

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring either (a) a mortgage shown or referred to in Schedule B hereof which is a charge or lien on the estate or interest covered by this policy, or (b) a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. The Company shall have the option to apply to the payment of any such mortgages any amount that otherwise would be payable hereunder to the insured owner of the estate or interest covered by this policy and the amount so paid shall be deemed payment under this policy.

10. Apportionment

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata

basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement herein or by an endorsement attached hereto.

11. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights and remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. If loss should result from

any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

12. Liability Limited to this Policy

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy. No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. Notices, Where Sent

All notices require to be given to the Company and any statement in writing required to be furnished the Company shall be addressed to it at _____.

FORM 4F • ALTA LEASEHOLD OWNER'S POLICY (10-17-92)

NOTE: This form has been replaced by Form 4A, "ALTA Owner's Policy (6-17-06)," with ALTA Endorsement 13-06 attached. It is included in this chapter for reference purposes only.

POLICY OF TITLE INSURANCE

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

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

BLANK TITLE INSURANCE COMPANY

BY: _____
PRESIDENT

BY: _____
SECRETARY

EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE A

[File No.] Policy No.
Amount of Insurance \$
[Premium \$]

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

1. Name of Insured:

2. The estate or interest in the land which is covered by this policy is the leasehold estate, as leasehold estate is defined in Section 1(h) of the Conditions and Stipulations of this policy, created by the instrument herein referred to as the Lease which is identified as follows:

3. The leasehold term insured is:

4. Title to the estate or interest in the land is vested in:

- [5. The land referred to in this policy is described as follows:]

If Paragraph 5 is omitted, a Schedule C, captioned the same as Paragraph 5, must be used.

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

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

- 1.
2. [POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO
DESIRED BY ISSUING COMPANY]
3. [VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Rs, ETC.]
- 4.

CONDITIONS AND STIPULATIONS1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

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

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

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

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

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

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

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

(h) "leasehold estate": the right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the Lease which limit the right of possession.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

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

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

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

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

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

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

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

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or

proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

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

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

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

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

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

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

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

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

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

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

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

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

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

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

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

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

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

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

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

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

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

8. APPORTIONMENT.

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

9. LIMITATION OF LIABILITY.

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

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

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

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

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

11. LIABILITY NONCUMULATIVE.

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

12. PAYMENT OF LOSS.

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

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

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

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

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

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

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

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

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

14. VALUATION OF ESTATE OR INTEREST INSURED.

If, in computing loss or damage incurred by the insured, it becomes necessary to determine the value of the estate or interest insured by this policy, the value shall consist of the then present worth of the excess, if any, of the fair market rental value of the estate or interest, undiminished by any matters for which claim is made, for that part of the term stated in Schedule A then remaining plus any renewal or extended term for which a valid option to renew or extend is contained in the Lease, over the value of the rent and other consideration required to be paid under the Lease for the same period.

15. MISCELLANEOUS ITEMS OF LOSS.

In the event the insured is evicted from possession of all or a part of the land by reason of any matters insured against by this policy, the following, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estate or interest insured by this policy.

(a) The reasonable cost of removing and relocating any personal property which the insured has the right to remove and relocate, situated on the land at the time of eviction, the cost of transportation of that personal property for the initial twenty-five miles incurred in connection with the relocation, and the reasonable cost of repairing the personal property damaged by reason of the removal and relocation. The costs referred to above shall not exceed in the aggregate the value of the personal property prior to its removal and relocation.

"Personal property," above referred to, shall mean chattels and property which because of its character and manner of affixation to the land, can be severed therefrom without causing appreciable damage to the property severed or to the land to which the property is affixed.

(b) Rent or damages for use and occupancy of the land prior to the eviction which the insured as owner of the leasehold estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

(c) The amount of rent which, by the terms of the Lease, the insured must continue to pay to the lessor after eviction for the land, or part thereof, from which the insured has been evicted.

(d) The fair market value, at the time of the eviction, of the estate or interest of the insured in any sublease of all or part of the land existing at the date of the eviction.

(e) Damages which the insured may be obligated to pay to any sublessee on account of the breach of any sublease of all or part of the land caused by the eviction.

16. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

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

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

17. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

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

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

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

18. SEVERABILITY.

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

19. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [] material optional.

FORM 4G • ALTA UNITED STATES POLICY FORM 9-28-91 (REVISED 12-03-12)

American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12

**UNITED STATES OF AMERICA
POLICY OF TITLE INSURANCE
Issued by
BLANK TITLE INSURANCE COMPANY**

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

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. In instances where the insured acquires title to the land by condemnation, failure of the commitment for title insurance, as updated to the date of the filing of the *lis pendens* notice or the Declaration of Taking, to disclose the parties having an interest in the land as disclosed by the public records.
6. Title to the estate or interest described in Schedule A being vested other than as stated therein or being defective:
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the land occurring prior to the transaction vesting title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the public records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12

BY: _____ PRESIDENT

BY: _____ SECRETARY

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12**EXCLUSIONS FROM COVERAGE**

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under the policy;
 - (c) resulting in no loss or damage to the insured claimant; or
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under insuring provision 6).
4. This policy does not insure against the invalidity or insufficiency of any condemnation proceeding instituted by the United States of America, except to the extent set forth in insuring provision 5.

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American Land Title Association

**U.S. Policy Form 9-28-91
Revised 12-03-12**

5. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the title as shown in Schedule A is:
- (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in insuring provision 6.

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.] Policy No.

Amount of Insurance \$

[Premium \$]

a.m.

Date of Policy _____

[at p.m.]

1. Name of Insured:

2. The estate or interest in the land which is covered by this policy is:

3. Title to the estate or interest in the land is vested in:

[4. The land referred to in this policy is described as follows:]

If Paragraph 4 is omitted, a Schedule C, captioned the same as Paragraph 4, must be used.

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

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

- 1. [POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO
- 2. DESIRED BY ISSUING COMPANY]
- [VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Rs, ETC.]
- 3.
- 4.

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12**CONDITIONS AND STIPULATIONS****1. DEFINITION OF TERMS.**

The following terms when used in this policy mean:

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

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

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

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

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

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

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

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

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

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12**3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.**

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

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

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

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

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

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12

(e) Notwithstanding Conditions and Stipulations Section 4(a-d), the Attorney General of the United States shall have the sole right to authorize or to undertake the defense of any matter which would constitute a claim under the policy, and the Company may not represent the insured without authorization. If the Attorney General elects to defend at the Government's expense, the Company shall, upon request, cooperate and render all reasonable assistance in the prosecution or defense of the proceeding and in prosecuting any related appeals. If the Attorney General shall fail to authorize and permit the Company to defend, all liability of the Company with respect to that claim shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest defenses and actions as it shall recommend should be taken, and the Attorney General shall present the defenses and take the actions of which the Company shall advise the Attorney General in writing, the liability of the Company shall continue and, in any event, the Company shall cooperate and render all reasonable assistance in the prosecution or defense of the claim and any related appeals.

5. PROOF OF LOSS OR DAMAGE.

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

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

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

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

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

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

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

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

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

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

Upon the exercise by the Company of either of the options provided for in paragraphs 6(b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation. Failure of the Attorney General to give the approval called for in 6(b)(i) shall not prejudice the rights of the insured unless the Company is prejudiced thereby, and then only to the extent of the prejudice.

7. DETERMINATION AND EXTENT OF LIABILITY.

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

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

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

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

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

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U.S. Policy Form 9-28-91
Revised 12-03-12**8. APPORTIONMENT.**

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

9. LIMITATION OF LIABILITY.

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

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

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

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

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

11. LIABILITY NONCUMULATIVE.

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

12. PAYMENT OF LOSS.

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

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

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12**13. SUBROGATION UPON PAYMENT OR SETTLEMENT.**(a) The Company's Right of Subrogation.

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

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

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

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

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

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

(c) No Subrogation to the Rights of the United States.

Notwithstanding the provisions of Conditions and Stipulations Section 13(a) and (b), whenever the Company shall have settled and paid a claim under this policy, the Company shall not be subrogated to the rights of the United States. The Attorney General may elect to pursue any additional remedies which may exist, and the Company may be consulted. If the Company agrees in writing to reimburse the United States for all costs, attorneys' fees and expenses, to the extent that funds are recovered they shall be applied first to reimbursing the Company for the amount paid to satisfy the claim, and then to the United States.

14. ARBITRATION ONLY BY AGREEMENT.

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters shall be arbitrated only when agreed to by both the Company and the Insured.

The law of the United States, or if there be no applicable federal law, the law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

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

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American Land Title Association

U.S. Policy Form 9-28-91
Revised 12-03-12

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

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

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

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

16. SEVERABILITY.

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

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [] material optional

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FORM 4H • LITIGATION GUARANTEE

NOTE: This is not an ALTA form. See § 4.11 for a discussion of this form and its uses.

LITIGATION GUARANTEE

LIABILITY \$ _____

ORDER NO. _____

FEE \$ _____

REF. NO. _____

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE,

BLANK TITLE INSURANCE COMPANY, a corporation, herein called the Company,

GUARANTEES

herein called the Assured, against loss not exceeding the liability amount stated above which the Assured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, on the date stated below,

1. The title to the herein described estate or interest was vested in the vestee named, subject to the matters shown as Exceptions herein, which Exceptions are not necessarily shown in the order of their priority;
2. The necessary parties defendant in an action to _____ are as herein stated.

Dated:

Title to said estate or interest at the date hereof is vested in:

The estate or interest in the land hereinafter described or referred to covered by this Guarantee is:

EXCEPTIONS:

Said necessary parties (other than those having a claim or interest by reason of matters shown in Exceptions numbered _____) to be made defendants in said action to be brought by _____, as plaintiff, are as follows:

The land referred to in this Guarantee is situated in the State of Colorado, County of _____, and is described as follows:

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms. The following terms when used in this Guarantee mean:

(a) "land": The land described, specifically or by reference, in this Guarantee and improvements affixed thereto which by law constitute real property;

(b) "public records": those records which impart constructive notice of matters relating to said land;

(c) "date": the effective date;

(d) "the Assured": the party or parties named as the Assured in this Guarantee, or in a supplemental writing executed by the Company;

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

2. Exclusions from Coverage of This Guarantee. The Company assumes no liability for loss or damage by reason of the following:

(a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

(b) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

(c) Title to any property beyond the lines of the land expressly described in the description set forth in this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.

(d) Defects, liens, encumbrances, adverse claims against the title as guaranteed or other matters (1) created, suffered, assumed or agreed to by one or more of the Assured; or (2) resulting in no loss to the Assured.

3. Prosecution of Actions.

(a) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or do any other act which in its opinion may be necessary or desirable to establish or confirm the matters herein guaranteed; and the Company may take any appropriate action under the terms of this Guarantee whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision hereof.

(b) In all cases where the Company does so institute and prosecute any action or proceeding, the Assured shall permit the Company to use, at its option, the name of the Assured for such purpose. Whenever requested by the Company, the Assured shall give the Company all reasonable aid in prosecuting such action or proceeding, and the Company shall reimburse the Assured for any expense so incurred.

4. Notice of Loss — Limitation of Action. A statement in writing of any loss or damage for which it is claimed the Company is liable under this Guarantee shall be furnished to the Company within sixty days after such loss or damage shall have been determined, and no right of action shall accrue to the Assured under this Guarantee until thirty days after such statement shall have been furnished, and no recovery shall be had by the Assured under this Guarantee unless action shall be commenced thereon within two years after expiration of said thirty day period. Failure to furnish such statement of loss or damage or to commence such action within the time hereinbefore specified, shall be a conclusive bar against maintenance by the Assured of any action under this Guarantee.

5. Option to Pay, Settle or Compromise Claims. The Company shall have the option to pay or settle or compromise for in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage, the Company shall have the option to purchase the indebtedness secured by said mortgage. Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage securing the same to the Company upon payment of the purchase price.

6. Limitation of Liability — Payment of Loss.

(a) The liability of the Company under this Guarantee shall be limited to the amount of actual loss sustained by the Assured because of

reliance upon the assurances herein set forth, but in no event shall such liability exceed the amount of the liability stated on the face page hereof.

(b) The Company will pay all costs imposed upon the Assured in litigation carried on by the Company for the Assured, and all costs and attorney's fees in litigation carried on by the Assured with the written authorization of the Company.

(c) No claim for damages shall arise or be maintainable under this Guarantee (1) if the Company after having received notice of an alleged defect, lien or encumbrance not shown as an Exception or excluded herein removes such defect, lien or encumbrance within a reasonable time after receipt of such notice, or (2) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.

(d) All payments under this Guarantee, except for attorney's fees as provided for in paragraph 6(b) hereof, shall reduce the amount of the liability hereunder *pro tanto*, and no payment shall be made without producing this Guarantee for indorsement of such payment unless the Guarantee be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

(e) When liability has been definitely fixed in accordance with the conditions of this Guarantee, the loss or damage shall be payable within thirty days thereafter.

7. Subrogation Upon Payment or Settlement. Whenever the Company shall have settled a claim under this Guarantee, all right of

subrogation shall vest in the Company unaffected by any act of the Assured, and it shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to such claim had this Guarantee not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. The Assured if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving such rights or remedies.

8. Guarantee Entire Contract. Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Guarantee. No provision or condition of this Guarantee can be waived or changed except by a writing endorsed or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.

9. Notices, Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at

_____.

10. Fee. The fee specified on the face of this Guarantee is the total fee for title search and examination and for this Guarantee.

FORM 4I • SUBDIVISION GUARANTEE

NOTE: This is not an ALTA form. See § 4.12 for a discussion of this form and its uses.

SUBDIVISION GUARANTEE

SUBDIVISION: _____

ORDER NO. _____

BLANK TITLE INSURANCE COMPANY, a corporation, herein called the Company,

GUARANTEES

The County of _____ and any city within which said subdivision is located in a sum not exceeding \$1,000.00, that, according to those public records which, under the recording laws, impart constructive notice of matters affecting the title to the land included within the exterior boundary shown on the map of the above referenced subdivision, the only parties having any record title interest in said land whose signatures are necessary on the certificates consenting to the recordation of said map and offering for dedication any streets, roads, avenues and other easements offered for dedication by said map are:

The map hereinbefore referred to is a subdivision of: _____

Dated: _____

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms. The following terms when used in this Guarantee mean:

(a) "land": The land described, specifically or by reference, in this Guarantee and improvements affixed thereto which by law constitute real property;

(b) "public records": those records which impart constructive notice of matters relating to said land;

(c) "date": the effective date;

(d) "the Assured": the party or parties named as the Assured in this Guarantee, or in a supplemental writing executed by the Company;

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

2. Exclusions from Coverage of This Guarantee. The Company assumes no liability for loss or damage by reason of the following:

(a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

(b) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

(c) Title to any property beyond the lines of the land expressly described in the description set forth in this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.

(d) Defects, liens, encumbrances, adverse claims against the title as guaranteed or other matters (1) created, suffered, assumed or agreed to by one or more of the Assured; or (2) resulting in no loss to the Assured.

3. Prosecution of Actions.

(a) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or do any other act which in its opinion may be necessary or desirable to establish or confirm the matters herein guaranteed; and the Company may take any appropriate action under the terms of this Guarantee whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision hereof.

(b) In all cases where the Company does so institute and prosecute any action or

proceeding, the Assured shall permit the Company to use, at its option, the name of the Assured for such purpose. Whenever requested by the Company, the Assured shall give the Company all reasonable aid in prosecuting such action or proceeding, and the Company shall reimburse the Assured for any expense so incurred.

4. Notice of Loss — Limitation of Action. A statement in writing of any loss or damage for which it is claimed the Company is liable under this Guarantee shall be furnished to the Company within sixty days after such loss or damage shall have been determined, and no right of action shall accrue to the Assured under this Guarantee until thirty days after such statement shall have been furnished, and no recovery shall be had by the Assured under this Guarantee unless action shall be commenced thereon within two years after expiration of said thirty day period. Failure to furnish such statement of loss or damage or to commence such action within the time hereinbefore specified, shall be a conclusive bar against maintenance by the Assured of any action under this Guarantee.

5. Option to Pay, Settle or Compromise Claims. The Company shall have the option to pay or settle or compromise for in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage, the Company shall have the option to purchase the indebtedness secured by said mortgage. Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage securing the same to the Company upon payment of the purchase price.

6. Limitation of Liability — Payment of Loss.

(a) The liability of the Company under this Guarantee shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurances herein set forth, but in no event shall such liability exceed the

amount of the liability stated on the face page hereof.

(b) The Company will pay all costs imposed upon the Assured in litigation carried on by the Company for the Assured, and all costs and attorney's fees in litigation carried on by the Assured with the written authorization of the Company.

(c) No claim for damages shall arise or be maintainable under this Guarantee (1) if the Company after having received notice of an alleged defect, lien or encumbrance not shown as an Exception or excluded herein removes such defect, lien or encumbrance within a reasonable time after receipt of such notice, or (2) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.

(d) All payments under this Guarantee, except for attorney's fees as provided for in paragraph 6(b) hereof, shall reduce the amount of the liability hereunder *pro tanto*, and no payment shall be made without producing this Guarantee for indorsement of such payment unless the Guarantee be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

(e) When liability has been definitely fixed in accordance with the conditions of this Guarantee, the loss or damage shall be payable within thirty days thereafter.

7. Subrogation Upon Payment or Settlement. Whenever the Company shall have settled a claim under this Guarantee, all right of subrogation shall vest in the Company

unaffected by any act of the Assured, and it shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to such claim had this Guarantee not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. The Assured if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving such rights or remedies.

8. Guarantee Entire Contract. Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Guarantee. No provision or condition of this Guarantee can be waived or changed except by a writing endorsed or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.

9. Notices, Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at

10. Fee. The fee specified on the face of this Guarantee is the total fee for title search and examination and for this Guarantee.

FORM 4J • ALTA RECORDED DOCUMENT CERTIFICATE (10-3-90)

American Land Title Association

ALTA Recorded Document Certificate
Adopted 10-3-90

APPLICATION FOR THE ISSUANCE OF A RECORDED DOCUMENT CERTIFICATE

Applicant, for the purpose of purchase, sale, lease or loan, is in the process of investigating the prior ownerships and uses of the Subject Property. As only a component of that investigation, Applicant hereby requests _____, the Company, to furnish Applicant with a Recorded Document Certificate, which Certificate will set forth and attach copies of the Designated Documents. The Certificate is being provided to Applicant solely for the purpose of facilitating any innocent landowner or purchaser defenses which may be available under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. It is provided for the sole use and benefit of Applicant and may not be used or relied upon by any other party.

1. The following terms when used in the Application and the Recorded Document Certificate shall mean:
 - a. **CERCLA** - Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
 - b. **Certificate** - Recorded Document Certificate
 - c. **Company** - the entity providing and executing the Recorded Document Certificate.
 - d. **Designated Documents** - Those documents specifically designated by Applicant in paragraphs 3a or 3b and in paragraph 4 and which describe the Subject Property or any portion thereof and which are not Excluded Documents.
 - e. **Excluded Documents** - Any of the following:
 - (i) documents indexed in the Company's title plant records by name only,
 - (ii) documents pertaining to an estate or interest in minerals, gas and oil, or other hydrocarbon substances,
 - (iii) documents pertaining to water rights, claims or title to water, or
 - (iv) documents recorded or indexed outside the chain of title, whether or not the documents impart constructive notice to purchasers of the Subject Property for value and without knowledge.
 - f. **Land Records** - Those records in which under state statutes the Designated Documents must be recorded in order to impart constructive notice to purchasers of the Subject Property for value and without knowledge.
 - g. **Subject Property** - The real property described in the Application, but not including any severed mineral estate.
2. The Subject Property is described as follows:
3. Applicant hereby requests the Company to issue the Certificate identifying only the following Designated Documents which are:
 - a. _____ currently posted in the Company's title plant and which were recorded in the Land Records from (Date) through (Date) .
 - b. _____ recorded and indexed in the grantor-grantee indices in the Land

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ALTA Recorded Document Certificate
Adopted 10-3-90

Records of (Name of County) (State) from (Date) through (Date).
 Other:]

4. Designated Documents as defined in paragraph 1(d) above:
- a. Deeds
 - b. Leases and Subleases
 - c. Mortgages/Deeds of Trust
 - d. Environmental Protection Liens recorded pursuant to CERCLA
 - e. All documents
5. Applicant specifically instructs the Company to disclose in the Certificate only the Designated Documents indicated above. Applicant understands that during the course of searching the records covered by the Certificate the Company may find or have knowledge of documents of a type other than the Designated Documents requested by Applicant. Even if the Company knows or would have reason to know Applicant may have an interest in these other documents, Applicant imposes no duty or responsibility on the Company to disclose those documents or their content to Applicant either through the Certificate or otherwise.
6. BY THE EXECUTION AND SUBMISSION OF THIS APPLICATION TO THE COMPANY, APPLICANT ACKNOWLEDGES AND SUBMITS:
- a. That the Company's sole obligation under the Certificate, and this Application, shall be to conduct a search in accordance with the terms and provisions of this Application and to furnish copies of the Designated Documents to Applicant as a part of the Certificate. The Company shall have no obligation to read, examine, or interpret the Designated Documents.
 - b. That the Company shall not be obligated under this Certificate to pay any costs, attorneys' fees, or expenses incurred in any action, proceeding, or other claim brought against Applicant.
 - c. That the Certificate is limited in scope and is not an abstract of title, title opinion, preliminary or title report, or commitment to issue title insurance.
 - d. That the Certificate is not to be relied upon by Applicant or any other person as a representation of the status of title to the Subject Property.
 - e. That Applicant shall have no right of action against the Company, whether or not based on negligence, except under the terms and provisions of, and subject to all limitations of this Application and the Certificate.
 - f. That the Certificate is not valid and the Company shall have no liability thereunder unless this Application, or a copy thereof, is attached thereto.
 - g. That the Certificate does not assure that Applicant will be entitled to any innocent landowner or purchaser defenses which may be available under CERCLA.

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ALTA Recorded Document Certificate
Adopted 10-3-90

LIMITATION OF LIABILITY

APPLICANT RECOGNIZES THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF DAMAGES WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN THE CERTIFICATE. APPLICANT RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITIES PURSUANT TO CERCLA. THEREFORE, APPLICANT UNDERSTANDS THAT THE COMPANY IS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REQUESTED CERTIFICATE UNLESS THE COMPANY'S LIABILITY IS STRICTLY LIMITED. APPLICANT AGREES WITH THE PROPRIETY OF THIS LIMITATION AND AGREES TO BE BOUND BY ITS TERMS.

THIS LIMITATION IS AS FOLLOWS:

APPLICANT AGREES, AS A PART OF THE CONSIDERATION FOR THE ISSUANCE OF THIS CERTIFICATE, THAT THE COMPANY SHALL BE LIABLE TO APPLICANT UNDER THIS CERTIFICATE ONLY IN THE EVENT THAT ENVIRONMENTAL HAZARDOUS WASTE OR TOXIC SUBSTANCE CLEAN-UP COSTS OR PENALTIES ARE ACTUALLY IMPOSED ON APPLICANT, OR AGAINST THE SUBJECT PROPERTY, SOLELY BY REASON OF AN ERROR OR OMISSION BY THE COMPANY IN FAILING TO IDENTIFY AND ATTACH THE DESIGNATED DOCUMENTS TO THE CERTIFICATE, WHICH ERROR OR OMISSION BY THE COMPANY HAS CAUSED APPLICANT TO FAIL TO COMPLY WITH THE REQUIREMENTS FOR DUE DILIGENCE INQUIRY OF PRIOR OWNERSHIPS AND USES IN CONNECTION WITH THE INNOCENT LAND OWNER OR PURCHASER DEFENSES UNDER CERCLA; AND THEN THE LIABILITY SHALL BE A ONE TIME PAYMENT TO APPLICANT OF \$_____.

ACCORDINGLY, APPLICANT REQUESTS THAT THE CERTIFICATE BE ISSUED WITH THIS LIMITATION AS A PART OF THE CONSIDERATION THAT THE APPLICANT GIVES THE COMPANY TO PREPARE AND ISSUE THE CERTIFICATE.

APPLICANT CERTIFIES THAT HE HAS READ AND UNDERSTANDS ALL OF THE TERMS, LIMITATIONS AND CONDITIONS OF THIS APPLICATION.

Executed this _____ day of _____ 20__.

Applicant

[This application must be signed by the Applicant itself or an attorney at law representing the Applicant.]

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ALTA Recorded Document Certificate
Adopted 10-3-90

RECORDED DOCUMENT CERTIFICATE

Based on a search of the records indicated in the Application executed by the Applicant on the ___ day of _____, 20____, which Application, or a copy thereof, is attached hereto and made a part hereof, the undersigned _____, the Company, hereby certifies to (Applicant) that the following identified and attached documents constitute all of the Designated Documents requested in the Application:

Designated Documents:

- 1.
- 2.
- 3.
- 4.

The certification provided by this Certificate is not valid, and the Company shall have no liability hereunder unless there is attached hereto the Application, or a copy thereof, executed the ___ day of _____, 20 ____.

Executed this _____ day of _____, 20 ____.

Blank Title Insurance Company or Agent

By:



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FORM 4K • ALTA RECORDED DOCUMENT GUARANTEE (10-3-90)

American Land Title Association

ALTA Recorded Document Guarantee
Adopted 10-3-90

APPLICATION FOR THE ISSUANCE OF A RECORDED DOCUMENT GUARANTEE

Applicant, for the purpose of purchase, sale, lease or loan, is in the process of investigating the prior ownerships and uses of the Subject Property. As only a component of that investigation, Applicant hereby requests the Company to furnish Applicant with a Recorded Document Guarantee, which Guarantee will set forth and attach copies of the Designated Documents. The Guarantee is being provided to Applicant solely for the purpose of facilitating any innocent landowner or purchaser defenses which may be available under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. It is provided for the sole use and benefit of Applicant and may not be used or relied upon by any other party.

1. The following terms when used in the Application and the Recorded Document Guarantee shall mean:
 - a. **Applicant** - The party or parties which have executed this Application and which are shown as the Assured in the Guarantee.
 - b. **CERCLA** - Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
 - c. **Company** - *Blank Title Insurance Company*
 - d. **Designated Documents** - Those documents specifically designated by Applicant in paragraphs 3a or 3b and in paragraph 4 and which describe the Subject Property or any portion thereof and which are not Excluded Documents.
 - e. **Excluded Documents** - Any of the following:
 - (i) documents indexed in the Company's title plant records by name only;
 - (ii) documents pertaining to an estate or interest in minerals, gas and oil, or other hydrocarbon substances;
 - (iii) documents pertaining to water rights, claims or title to water; or
 - (iv) documents recorded or indexed outside the chain of title, whether or not the documents impart constructive notice to purchasers of the Subject Property for value and without knowledge.
 - f. **Guarantee** - Recorded Document Guarantee.
 - g. **Land Records** - Those records in which under state statutes the Designated Documents must be recorded in order to impart constructive notice to purchasers of the Subject Property for value and without knowledge.
 - h. **Subject Property** - The real property described in the Application, but not including any severed mineral estate.
2. The Subject Property is described as follows:



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ALTA Recorded Document Guarantee
Adopted 10-3-90

3. Applicant hereby requests the Company to issue the Guarantee identifying only the following Designated Documents which are:
- a. _____ currently posted in the Company's title plant and which were recorded in the Land Records from (Date) through (Date) .
 - b. _____ recorded and indexed in the grantor-grantee indices in the Land Records of (Name of County) (State) from (Date) through (Date) .
- [____ Other:]
4. Designated Documents as defined in paragraph 1(d) above:
- a. _____ Deeds
 - b. _____ Leases and Subleases
 - c. _____ Mortgages/Deeds of Trust
 - d. _____ Environmental Protection Liens recorded pursuant to CERCLA
 - e. _____ All documents
5. Applicant specifically instructs the Company to disclose in the Guarantee only the Designated Documents indicated above. Applicant understands that during the course of searching the records covered by the Guarantee the Company may find or have knowledge of documents of a type other than the Designated Documents requested by Applicant. Even if the Company knows or would have reason to know Applicant may have an interest in these other documents, Applicant imposes no duty or responsibility on the Company to disclose those documents or their content to Applicant either through the Guarantee or otherwise.
6. BY THE EXECUTION AND SUBMISSION OF THIS APPLICATION TO THE COMPANY, APPLICANT ACKNOWLEDGES AND SUBMITS:
- a. That the Company's sole obligation under the Guarantee, and this Application, shall be to conduct a search in accordance with the terms and provision of this Application and to furnish copies of the Designated Documents to Applicant as a part of the Guarantee. The Company shall have no obligation to read, examine, or interpret the Designated Documents.
 - b. That the Company shall not be obligated under this Guarantee to pay any costs, attorneys' fees, or expenses incurred in any action, proceeding, or other claim brought against Applicant.
 - c. That the Guarantee is limited in scope and is not an abstract of title, title opinion, preliminary or title report, or commitment to issue title insurance.
 - d. That the Guarantee is not to be relied upon by Applicant or any other person as a representation of the status of title to the Subject Property.
 - e. That Applicant shall have no right of action against the Company, whether or not



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**ALTA Recorded Document Guarantee
Adopted 10-3-90**

based on negligence, except under the terms and provisions of, and subject to all limitations of this Application and the Guarantee.

- f. That the Guarantee is not valid and the Company shall have no liability thereunder unless this Application, or a copy thereof, is attached thereto.
- g. That the Guarantee does not assure that Applicant will be entitled to any innocent landowner or purchaser defenses which may be available under CERCLA.

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ALTA Recorded Document Guarantee
Adopted 10-3-90

LIMITATION OF LIABILITY

APPLICANT RECOGNIZES THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF DAMAGES WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN THE GUARANTEE. APPLICANT RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITIES PURSUANT TO CERCLA. THEREFORE, APPLICANT UNDERSTANDS THAT THE COMPANY IS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REQUESTED GUARANTEE UNLESS THE COMPANY'S LIABILITY IS STRICTLY LIMITED. APPLICANT AGREES WITH THE PROPRIETY OF THIS LIMITATION AND AGREES TO BE BOUND BY ITS TERMS.

THIS LIMITATION IS AS FOLLOWS:

APPLICANT AGREES, AS A PART OF THE CONSIDERATION FOR THE ISSUANCE OF THIS GUARANTEE, THAT THE COMPANY SHALL BE LIABLE TO APPLICANT UNDER THIS GUARANTEE ONLY IN THE EVENT THAT ENVIRONMENTAL HAZARDOUS WASTE OR TOXIC SUBSTANCE CLEAN-UP COSTS OR PENALTIES ARE ACTUALLY IMPOSED ON APPLICANT, OR AGAINST THE SUBJECT PROPERTY, SOLELY BY REASON OF AN ERROR OR OMISSION BY THE COMPANY IN FAILING TO IDENTIFY AND ATTACH THE DESIGNATED DOCUMENTS TO THE GUARANTEE, WHICH ERROR OR OMISSION BY THE COMPANY HAS CAUSED APPLICANT TO FAIL TO COMPLY WITH THE REQUIREMENTS FOR DUE DILIGENCE INQUIRY OF PRIOR OWNERSHIPS AND USES IN CONNECTION WITH THE INNOCENT LAND OWNER OR PURCHASER DEFENSES UNDER CERCLA; AND THEN THE LIABILITY SHALL BE A ONE TIME PAYMENT TO APPLICANT OF \$ _____.

ACCORDINGLY, APPLICANT REQUESTS THAT THE GUARANTEE BE ISSUED WITH THIS LIMITATION AS A PART OF THE CONSIDERATION THAT APPLICANT GIVES THE COMPANY TO PREPARE AND ISSUE THE GUARANTEE.

APPLICANT CERTIFIES THAT HE HAS READ AND UNDERSTANDS ALL OF THE TERMS, LIMITATIONS AND CONDITIONS OF THIS APPLICATION.

Executed this _____ day of _____ 19 ____.

Applicant

[This application must be signed by the Applicant itself or an attorney at law representing the Applicant.]

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ALTA Recorded Document Guarantee
Adopted 10-3-90

RECORDED DOCUMENT GUARANTEE

NO. _____ LIABILITY \$ _____ [FEE _____]

BLANK TITLE INSURANCE COMPANY
a _____, corporation, herein called the Company,
SUBJECT TO THE TERMS, LIMITATIONS AND CONDITIONS OF
THE APPLICATION FOR THIS GUARANTEE
EXECUTED ON THE ___ DAY OF _____, 19___,
WHICH APPLICATION IS ATTACHED HERETO AND MADE A PART HEREOF

GUARANTEES

herein called the Assured, against loss not exceeding the liability amount stated above which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

Any claim or other notice to the Company shall be in writing and shall be addressed to the Company at [fill in].

THIS GUARANTEE IS NOT VALID AND THE COMPANY SHALL HAVE NO LIABILITY HEREUNDER UNLESS THE APPLICATION, OR A COPY THEREOF, REFERRED TO ABOVE AND SCHEDULE A ARE ATTACHED HERETO.

Dated:

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signature

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**ALTA Recorded Document Guarantee
Adopted 10-3-90**

SCHEDULE A

RECORDED DOCUMENT GUARANTEE

NO.

The assurances referred to on the face page are, that, based on a search of the records indicated in the Application referred to on the face page hereof, the following identified and attached documents constitute all of the Designated Documents requested in the Application.

Designated Documents:

- 1.
- 2.
- 3.
- 4.

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FORM 4L • CHAIN OF TITLE GUARANTEE

NOTE: This is not an ALTA form. See § 4.14 for a discussion of this form and its uses.

CHAIN OF TITLE GUARANTEE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND THE CONDITIONS AND STIPULATIONS OF THIS GUARANTEE,

BLANK TITLE INSURANCE COMPANY
a Nebraska corporation,
herein called the Company

GUARANTEES

the Assured named in Schedule A against actual monetary loss or damage not exceeding the liability stated in Schedule A, which the Assured shall sustain by reason of any incorrectness in the assurance set forth in Schedule A.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signature

SCHEDULE A

Chain of Title Guarantee

Order No. _____

Liability: \$ _____

Fee \$: _____

[Guarantee No.]

1. Name of Assured:

2. Date of Guarantee:

The assurance referred to on the face page are:

That, according to those public records which, under the recording law, impart constructive notice of matters relating to the interest, if any, which was (acquired) (reserved) by _____ pursuant to a (identify instrument) in and to the land described as follows:

Only the following matters appear in such records subsequent to _____:

This Guarantee does not cover:

1. Taxes, assessments, and matters related thereto.
2. Instruments, proceedings, or other matters which do not specifically describe said land.

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
 - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) of (2) are shown by the records of the taxing authority or by the public records.
 - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule A of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
 - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
 - (c) The identity of any party shown or referred to in Schedule A.
 - (d) The validity, legal effect or priority if any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS**1. Definition of Terms.**

The following terms when used in this Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company;
- (b) "land": The land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

(e) "date": the effective date shown in Schedule A.

2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

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

(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

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

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Option to Pay or Otherwise Settle Claims: Termination of Liability.

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

- (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under the Guarantee, together with any costs, attorneys' fees and expenses incurred by the

Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. Determination and Extent of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A;
- (b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
- (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

8. Limitation of Liability.

- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
- (c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. Payment of Loss.

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. Subrogation Upon Payment or Settlement.

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

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

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. Arbitration.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$2,000,000.00 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$2,000,000.00 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

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

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

13. Liability Limited to This Guarantee; Guarantee Entire Contract.

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

(b) Any claim or loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

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

14. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at [insert address].

Chapter 5

LENDER'S POLICIES AND GUARANTEES

SYNOPSIS

- § 5.1 **TYPES OF LENDER'S POLICIES AND GUARANTEES**
- § 5.2 **2006 ALTA LOAN POLICY (6-17-06)**
 - § 5.2.1—What is Insured? — Covered Risks
 - § 5.2.2—What is Not Insured? — Exclusions from Coverage
 - § 5.2.3—Schedule A
 - § 5.2.4—Schedule B
 - § 5.2.5—Conditions
- § 5.3 **ALTA CONSTRUCTION LOAN POLICY (10-17-92)**
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- § 5.5 **ALTA SHORT FORM RESIDENTIAL LOAN POLICY (12-03-12)**
- § 5.6 **ALTA SHORT FORM RESIDENTIAL LOAN POLICY — CURRENT VIOLATIONS (04-02-15)**
- § 5.7 **ALTA RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY (8-1-12)**
- § 5.8 **SHORT FORM RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY (04-02-2013)**
- § 5.9 **EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — ASSESSMENTS PRIORITY (04-02-15)**
- § 5.10 **SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — ASSESSMENTS PRIORITY (04-02-15)**
- § 5.11 **EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — CURRENT ASSESSMENTS (04-02-15) AND SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — CURRENT ASSESSMENTS (04-02-15)**
- § 5.12 **RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY (12-01-14)**

§ 5.13 LIMITED PRE-FORECLOSURE POLICY (12-03-12)**§ 5.14 PUBLIC TRUSTEE'S SALE GUARANTEE****§ 5.15 FORECLOSURE CERTIFICATE/GUARANTEE/COMMITMENT**

§ 5.15.1—Foreclosure Certificate

§ 5.15.2—Foreclosure Guarantee

§ 5.15.3—Foreclosure Commitment

FORMS

Form 5A—ALTA Loan Policy (Adopted 6-17-06)

Form 5B—ALTA Loan Policy (10-17-92)

Form 5C—ALTA Loan Policy 1970

Form 5D—ALTA Construction Loan Policy (10-17-92)

Form 5E—ALTA Leasehold Loan Policy (10-17-92)

Form 5F—ALTA Short Form Residential Loan Policy (Revised 12-03-12)

Form 5G—ALTA Short Form Residential Loan Policy — Current Violations (04-02-15)

Form 5H—ALTA Residential Limited Coverage Junior Loan Policy (Revised 8-1-12)

Form 5I—ALTA Short Form Residential Limited Coverage Junior Loan Policy (Revised 04-02-2013)

Form 5J—ALTA Expanded Coverage Residential Loan Policy — Assessments Priority (04-02-15)

Form 5K—ALTA Short Form Expanded Coverage Residential Loan Policy — Assessments Priority (04-02-15)

Form 5L—ALTA Expanded Coverage Residential Loan Policy — Current Assessments (04-02-15)

Form 5M—ALTA Short Form Expanded Coverage Residential Loan Policy — Current Assessments (04-02-15)

Form 5N—Residential Limited Coverage Mortgage Modification Policy (12-01-14)

Form 5O—ALTA Limited Pre-Foreclosure Policy (Adopted 12-03-12)

Form 5P—Public Trustee's Sale Guarantee

Form 5Q—Foreclosure Certificate

Form 5R—Foreclosure Guarantee

§ 5.1 • TYPES OF LENDER'S POLICIES AND GUARANTEES

In Colorado, the lender's policy forms promulgated by the American Land Title Association (ALTA) are used exclusively by the title insurance companies. The following policy and guarantee forms are illustrated in this chapter. Forms that have been withdrawn are indicated with an asterisk.

<u>Type</u>	<u>Discussed</u>	<u>Illustrated</u>
Loan Policy (6-17-06)	§ 5.2	Form 5A
Loan Policy (10-17-92)*		Form 5B
Loan Policy 1970*		Form 5C
Construction Loan Policy (10-17-92)*	§ 5.3	Form 5D
Leasehold Loan Policy (10-17-92)*	§ 5.4	Form 5E
Short Form Residential Loan Policy (12-03-12)	§ 5.5	Form 5F
Short Form Residential Loan Policy — Current Violations (04-02-15)	§ 5.6	Forms 5G
Residential Limited Coverage Junior Loan Policy (Revised 8-1-12)	§ 5.7	Form 5H
Short Form Residential Limited Coverage Junior Loan Policy (Revised 04-02-2013)	§ 5.8	Form 5I
Expanded Coverage Residential Loan Policy — Assessments Priority (04-02-15)	§ 5.9	Form 5J
Short Form Expanded Coverage Residential Loan Policy — Assessments Priority (04-02-15)	§ 5.10	Form 5K
Expanded Coverage Residential Loan Policy – Current Assessments (04-02-15)	§ 5.11	Form 5L
Short Form Expanded Coverage Residential Loan Policy — Current Assessments (04-02-15)	§ 5.11	Form 5M
Residential Limited Coverage Mortgage Modification Policy	§ 5.12	Form 5N
Limited Pre-Foreclosure Policy (12-03-12)	§ 5.13	Form 5O
Public Trustee's Sale Guarantee	§ 5.14	Form 5P
Foreclosure Certificate/Guarantee/Commitment	§ 5.15	Forms 5Q – 5R

Loan policies may be issued any time a loan to a borrower is secured by real property and the lender elects to obtain or cause the borrower to obtain, as a condition of granting the loan, a loan policy insuring the lien of the mortgage or deed of trust. A loan policy is normally issued for the full principal amount of the loan. The definition of “Indebtedness” in Condition 1(d) may appear to cover amounts exceeding the liability amount. In fact, the provisions of Condition 8, “Determination and Extent of Liability,” will limit the liability amount. *See* § 5.2.5. See also the discussion on the Expanded Coverage Residential Loan Policy, where the amount of insurance is 125 percent of the face amount of the policy.

Loan policies are frequently issued simultaneously with owner's policies. When this occurs, the rate for the loan policy is less than the rate for a loan policy insuring a stand-alone mortgage (usually in a refinance of an existing loan). *See* § 1.8.3.

For second mortgage lenders, some companies are marketing a short form loan policy, which is an abbreviated loan policy. This policy is designed to provide minimum protection for small or subordinated loans. The short form loan policy is discussed in § 5.5.

The 2006 Loan Policy is comparable to the 1992 Loan Policy, which followed the 1987 Loan Policy with added creditor's rights language. The 1987 Loan Policy, in turn, was a comprehensive revi-

sion of the 1970 Loan Policy as amended in 1984. From time to time, mention will be made of the 1970 Loan Policy and the 1987 Loan Policy.

ALTA is presently considering revisions to both the 2006 ALTA Owner's and Loan Policies. The project is expected to take several years and will include obtaining comments and suggestions from industry groups. This process will be followed by ALTA's customary formal approval process with an extended public comment period before final publication. If adopted, it will take several years for a new base form to be fully implemented in the marketplace.

Much of the discussion of the 2006 Owner's Policy in Chapter 4 applies to the 2006 Loan Policy. However, there are enough significant differences to warrant a detailed separate analysis.

§ 5.2 • 2006 ALTA LOAN POLICY (6-17-06)

The 1970 loan policy, amended 10-17-70 and 10-17-84, is illustrated in Form 5C. This form has been decertified. Until the advent of the 1987 policy forms, the 1970 loan policy was the basic lender's and lender's form of title insurance in Colorado. Much of the earlier case law involves the interpretation of this policy form, so it is included here primarily for informational purposes.

The 1992 form was also decertified by ALTA, effective June 17, 2007. It is illustrated as Form 5B.

The current 2006 ALTA Loan Policy is illustrated as Form 5A. It is discussed in detail below.

§ 5.2.1—What is Insured? — Covered Risks

The Covered Risks of the 2006 Loan Policy are the equivalent of the Affirmative Coverages in the 1992 Loan Policy, but are enumerated in considerably more detail. Covered Risks 11, 13, and 14 provide expanded coverage in the 2006 Loan Policy, as explained below.

As stated in the discussion on the 2006 Owner's Policy (*see* § 4.4.1), before looking at the Covered Risks, pay careful attention to the preamble, which immediately limits the effect of the affirmative coverages:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, _____.

The 2006 Loan Policy sets out the Covered Risks as follows:

BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term “encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
 - (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
 - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
 - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

- (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

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

Covered Risks Nos. 1, 3, and 4 are carried over to the 2006 Loan Policy with only minor language changes from the 1992 Loan Policy. Affirmative Coverage No. 2 in the 1992 Loan Policy states, "Any defect in or lien or encumbrance on the title . . ." Covered Risk No. 2 in the 2006 Loan Policy expands this by listing seven possible defects that are covered. In fact, far more than seven defects are listed because many of the seven subsections contain references to multiple defects. All of the defects listed in the 2006 Loan Policy were arguably covered in the 1992 Loan Policy, though not specifically designated. Two of the listed defects concern electronic processing of real estate records, so the 2006 Loan Policy specifically covers failure to properly create a document by electronic means or failure to properly record or index in the public records by electronic means.

The only lien listed in the expansion of Covered Risk No. 2 in the 2006 Loan Policy is the lien for "real estate taxes or assessments imposed on the Title by governmental authority due or payable, but unpaid." Taking the year 2016 as an example, that statement would provide coverage for the lien of the 2015 real estate taxes, if unpaid, because that lien is due and payable January 1, 2016. C.R.S. § 39-10-102(1)(b)(I). The lien for 2016 taxes, however, is neither due nor payable until January 1, 2017, although it does attach to and encumber the property as of January 1, 2016. C.R.S. §§ 39-1-105 and -107. The title insurance company, therefore, will recite an exception for 2016 taxes in Schedule B of the policy.

The last part of Covered Risk No. 2, "encumbrance on the title," is expanded in the 2006 Loan Policy by subparagraph (c) to include any "encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey." The policy does not define the term "survey." Many types of surveys are available in Colorado, from the least expensive improvement location certificate to the most expensive ALTA/NSPS survey. C.R.S. §§ 38-51-101, *et seq.* For a general discussion on the types of surveys available, see Richard Krohn, "A Brief Survey of Surveys," 34th Annual Real Estate Symposium (CLE in Colo., Inc. 2016). An improvement location certificate is not a survey, but rather a depiction of the property based on the surveyor's knowledge of the property and the area. Due to the widespread acceptance of such certificates by the industry, it is doubtful that a title insurance company would deny a claim based on the argument that an improvement location certificate is not an "accurate and complete survey."

The term “encroachment” is defined to include both encroachments of existing improvements onto adjoining land and the reverse, where improvements on adjoining land encroach onto the insured property.

The next paragraphs of Covered Risks Nos. 5 through 8 are included in the affirmative insurance provisions because of a basic change in drafting technique. In the 1992 Loan Policy, various affirmative insuring provisions were set out as exceptions to the exclusions from coverage and required that they be construed as providing the affirmative insurance. Thus, governmental regulations such as building and zoning laws; the occupancy, use, or enjoyment of the land; the character, dimensions, or location of improvements; a separation in ownership or change in the dimensions; and environmental protection were all excluded from coverage “except to the extent that a notice of the enforcement thereof . . . has been recorded.” The exercise of police powers and rights of eminent domain or taking, including regulatory taking and inverse condemnation, were similarly excluded unless or to the extent that a notice of the exercise of such power was recorded.

The affirmative statements of coverage in the 2006 Loan Policy have resolved the uncertainty of interpretation. *See* James L. Gosdin, *Title Insurance: A Comprehensive Overview*, Chapter 1B, 3rd Ed. (American Bar Association 2007). All such previous exceptions to the exclusions are now listed as Covered Risks Nos. 5, 6, 7, and 8. They are affirmatively covered if a notice of violation or enforcement has been recorded. Of course, if such a notice is recorded and found by the title insurance company, it will become an exception in Schedule B of the policy. On the other hand, if the title insurance company fails to find and disclose the notice, affirmative insurance is provided.

Covered Risk No. 9 in the 2006 Loan Policy repeats the Affirmative Coverage of No. 5 in the 1992 Loan Policy, as follows: “The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title.” This sentence is then expanded with the same detailed explanation of coverages afforded under the policy for the benefit of the Insured Mortgage as contained in Covered Risk No. 2 with respect to title to the insured property. This expansion is more of an explanation of the existing coverages in the policy than an increase in coverages.

Covered Risk No. 10 in the 2006 Loan Policy insures the priority of the insured mortgage. This is basically the same as Affirmative Coverage No. 6 in the 1992 Loan Policy. If a lien with priority senior to the Insured Mortgage encumbers the property, that senior lien will be shown on Schedule B as an exception to title.

Covered Risk No. 11(a) in the 2006 Loan Policy provides protection against mechanics’ liens when the work is either (1) contracted for or commenced on or before the Date of Policy, or (2) when the work is contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the lender has advanced or is obligated to advance on the Date of Policy. *See* discussion of mechanics’ lien priorities in Krendl, *Colo. Methods of Practice*, § 48.24 (6th Ed. 2013/2014). *See also* Jack Greenwald & Gilbert Egle, *Colorado Liens and Claims Handbook*, § 2.15, 4th Ed. (CLE in Colo., Inc. Supp. 2013).

Under Covered Risk No. 11(b), the Insured Mortgage is protected against the lien of any assessments for street improvements under construction or completed at Date of Policy. This added coverage is limited and will not cover assessments for other types of municipal improvements.

Covered Risk No. 12 of the 2006 Loan Policy relates to an assignment of the Insured Mortgage to a purchaser thereof. The assignment must be simultaneous, or nearly so, in order that it be recorded in time to appear on Schedule A of the policy. When shown on Schedule A, the assignee becomes the insured. The advantage here is that the title insurance company insures under this Covered Risk that the assignment itself, as shown on Schedule A, is valid and enforceable and vests title in the assignee free and clear of all liens. For later assignments of the mortgage that are not shown on Schedule A, the same result can be achieved by using appropriate endorsement forms, discussed in § 6.9.

Covered Risk No. 13 in the 2006 Loan Policy offers protection against a prior transfer that constituted a fraudulent conveyance under federal bankruptcy, state insolvency, or similar creditor's rights laws, or constituted a preferential transfer under federal bankruptcy, state insolvency, or similar creditor's rights laws by reason of failure to record in timely fashion or failure of the insured mortgage to impart notice to a purchaser for value or a judgment or lien creditor. This coverage is the same as that contained in the 2006 Owner's Policy, with changes in language because it affords protection to the Insured Mortgage, rather than the title to the insured property. *See* § 4.4.1.

Covered Risk No. 14 in the 2006 Loan Policy goes beyond any similar coverage in the 1992 Loan Policy by providing "gap" insurance for defects, liens, or encumbrances recorded after the date of the policy and prior to recording of the transfer deed. This Covered Risk should not apply in Colorado, where the practice is to cut off the policy at the date and time of recording, with the result that any such recorded matters will be considered as post-policy, with the possible exception of mechanics' liens. *See* § 2.14.

§ 5.2.2—What is Not Insured? — Exclusions from Coverage

As discussed in § 5.2.1, the exceptions from the exclusions in the 1992 Loan Policy have been restated as Covered Risks in the 2006 Loan Policy.

Except for references to different Covered Risks and use of the term "Mortgage" instead of "Title," Exclusions Nos. 1, 2, and 3 in the 2006 Loan Policy are identical to the same exclusions in the 2006 Owner's Policy, discussed in § 4.4.2.

Exclusion No. 4 reads as follows:

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

This exclusion protects the title insurance company against the unenforceability of the insured mortgage because the insured lender did not qualify to do business (presumably as a foreign corporation, partnership, or other business entity) in the state in which the land is located. In some other states, a foreign lender may be excluded from contracting or enforcing a mortgage by local laws as a penalty for such failure to qualify. C.R.S. §§ 7-90-801(2)(g) and (h) (profit and nonprofit "foreign entity" as defined in C.R.S. § 7-90-102(23)); C.R.S. § 7-71-102(1) (penalty for failure to file or register trade name). *But see* C.R.S. § 11-43-101 (prohibiting foreign (non-federal) savings and loan associations from originating loans in Colorado).

The remedial action, qualification, is strictly within the control of the policy holder. Since the Covered Risks insure the enforceability of the insured mortgage, Exclusion No. 4 assures the title insurance company that it will not have to pay for the neglect or intransigence of the insured in failing to qualify to do business. Affirmative coverage over this Exclusion is available through ALTA Endorsement 24-06. *See* § 6.16.

Use of the term “insured” in Exclusion 4 differs from Exclusion 3, which refers to an “Insured Claimant.” The possible effect of this difference is explained in “Amount of Insurance” and “Date of Policy” in § 5.2.5.

Exclusion No. 5 reads as follows:

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

This exclusion protects the title insurance company in the event of invalidity or unenforceability of the lender’s lien resulting from usury or violation of state or federal laws pertaining to consumer protection or truth in lending. Usury is not a major concern in Colorado, since C.R.S. § 5-12-103(1) imposes a limit on the rate of interest not to exceed 45 percent per annum. Usury protection is available by endorsement. *See* § 6.45. Consumer protection laws, however, are numerous and tricky. They include the Federal Truth in Lending Act (15 U.S.C. §§ 1601, *et seq.*), Colorado Uniform Consumer Credit Code (C.R.S. §§ 5-1-101, *et seq.*), Federal Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601, *et seq.*), laws pertaining to credit, and other subjects. Many of the federal statutes are discussed in Barron, Rosin, and Berenson, *Federal Regulation of Real Estate and Mortgage Lending*, 4th Ed. (1998 with updates through July 2014). The Colorado lender who seeks title insurance against these two exclusions will find only meager help, as explained in §§ 6.40 and 6.45. Some protection is available by endorsement as to truth in lending laws. *See* § 6.40.

Exclusion No. 6, pertaining to certain creditors’ rights, states:

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

Comparable language appears as Exclusion No. 4 in the 2006 Owner’s Policy and is considered in “Exclusion 4. Creditors’ Rights” in § 4.4.2. Note that this Exclusion refers to the transaction that creates the lien of the Insured Mortgage. In contrast, Covered Risk 13 refers to a transfer occurring prior to the transaction creating the lien of the insured mortgage.

Exclusion No. 7 states:

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

Since the Date of Policy and the date of recording of the Insured Mortgage are normally the same, this Exclusion usually will not apply.

§ 5.2.3—Schedule A

The comments concerning Schedule A of the 2006 Owner's Policy, as discussed in § 4.4.3, are pertinent to this discussion of Schedule A of the 2006 Loan Policy.

Amount of Insurance

The amount of insurance in force is stated in dollars in Schedule A. As set out in Sections 7(a)(i) and 8(a)(i) of the Conditions, in no event will the title insurance company pay an insured claimant more than the Schedule A amount plus authorized costs, attorney fees, and expenses. *See* § 5.2.5. Interest on the insured mortgage is covered only to the extent that the Schedule A amount is not exceeded. The amount expressed in Schedule A does not limit the title insurance company's additional obligation for costs, attorney fees, and expenses pursuant to Sections 7(a) and 7(b) of the Conditions. *See* "Description of Mortgage" in § 5.2.3.

The sum of all loan policies issued on a parcel of real property at the same time as the conveyance insured by a new Owner's Policy is usually less than the Schedule A amount of the new Owner's Policy, but that is not always the case. A purchase money mortgage may also include funds intended for construction of improvements on the property in the case of a remodel, or, as in the case of a loan for commercial property, for future tenant improvements. Covered Risk 11 provides for mechanics' lien coverage on any advances made after the effective date of the policy under the circumstances enumerated.

Date of Policy

The Date of Policy is equivalent to, but usually later than, the Effective Date in the title insurance commitment. *See* § 2.8.1. Coverage begins on the Date of Policy according to the affirmative insurance provisions on the face of the policy. *See* § 5.2.1. Title defects attaching or created after the Date of Policy are excluded from coverage, as stated in Section 3(d) of the Exclusions, except as provided in Covered Risks 11, 13, and 14. *See* § 5.2.2. Normally the Date of Policy will be the date the insured mortgage was recorded, or as soon thereafter as the title insurance company's date down search is completed.

Name of Insured

The grantee of the mortgage or beneficiary of a deed of trust (lender) will be named as the insured in Paragraph 1.

In addition to the named insured, others not named in Schedule A may become the insured by acquisition of the indebtedness or by operation of law. These possibilities are based on Section 1(e) of the Conditions of the 2006 Loan Policy, discussed in § 5.2.5.

Estate or Interest

Paragraph 2 calls for a description of the estate or interest encumbered by the insured mortgage. Usually, this will be a fee simple estate. But it could also be a leasehold, easement, life estate, or other interest.

Owner

The name of the owner of the estate or interest described in Paragraph 2 will be inserted in Paragraph 3. Unlike the Owner's Policy, the name of the owner will not be the same as the named insured. The owner will be the grantor of the insured mortgage. It is vital to the lender's protection that the policy correctly identifies such owner-grantor and that the policy insures that the estate or interest is vested in the owner.

Description of Mortgage

Paragraph 4 describes the insured mortgage, together with all assignments thereof, which have been recorded as at the date of issuance of the policy. *See* "Assignment of Rents" in § 5.2.3; *see also* Section 12 of the Covered Risk provisions, discussed in § 5.2.1. In this paragraph, the exact heading or name of the recorded instrument will normally be shown, not just the defined term "mortgage." Thus, if the instrument is referred to as a mortgage, one can anticipate that it truly is a mortgage and not a deed of trust.

Legal Description

Paragraph 5 describes the encumbered real property exactly as set out in the insured mortgage. If easements appurtenant are vital to the value of the property, they, too, should be encumbered by the mortgage and described in Paragraph 5. *See* § 2.8.7.

Endorsements

Paragraph 6, which is optional, contains a check-the-box laundry list of 13 endorsements commonly requested by lenders. Other endorsements can be added and tailored to the specific facts of the transaction. Generally, the forms of the policy used by title insurance companies do not contain this option. The loan policy will be issued with the endorsements attached, but without any reference to the list of endorsements in the policy form. The question of the additional cost to the borrower of the endorsements required by the lender has been discussed in *CREP*. *See CREP*, Chapter 5.

The use of "bundled rates" for a loan policy has the result that the rate for the lender's policy is fixed and includes many, if not all, of the usual endorsements routinely requested by lenders at no additional charge. This rate will appear to be more than the regular charge for a loan policy, but when the cost of the endorsements is factored into the equation, the bundled rate should result in a cost savings to the borrower, with the benefit of certainty for the rate charged. This certainty is particularly important for both borrowers and lenders, since it enables them to comply with the Consumer Financial Protection Bureau's TILA-RESPA Disclosures Integration Rule, Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z), 12 C.F.R. pt. 1024 and 1026.

Assignment of Rents

The 2006 Loan Policy insures the priority of the lien of the deed of trust or mortgage. Frequently, an assignment of rents is given by the borrower to the lender in connection with the deed of trust or mortgage.

The assignment of rents should be shown as a subordinate matter in Schedule B — Part II of the policy. This is consistent with the ALTA Endorsement 37-06, which refers to the assignment of rents in this section of the loan policy. *See* § 6.9.

Some companies will describe the assignment of rents on Schedule A of the policy along with the insured mortgage. This appears to result in title insurance for the lender, and gives the assignment of rents priority over any other document of record except those shown as exceptions in Schedule B, and except the accompanying mortgage or deed of trust. However, this author believes this is incorrect because the assignment of rents does not create a lien on the property. At the same time, the assignment of rents does not create an interest in the title and should not be shown as an exception in Schedule B — Part I of the loan policy.

§ 5.2.4—Schedule B

Schedule B of the 2006 Loan Policy is divided into Part I and Part II. These are considered separately.

Schedule B — Part I of the 2006 Loan Policy

All the exceptions to title that are senior to the lien of the insured mortgage are listed in Schedule B — Part I. Although the ALTA form does not contain printed or standard exceptions, many title insurers in Colorado include the four standard exceptions on Schedule B — Part I. These are the same four referred to in § 2.10 and discussed in detail in §§ 2.11, 2.12, 2.13, and 2.14. Other exceptions, such as those considered in §§ 2.16, 2.17, and 2.18, may be included in the printed form.

Because all knowledgeable lenders insist upon the deletion of the standard exceptions, this process is facilitated either by omitting them from the policy or by adding a statement that may be printed near the end of Schedule B — Part I:

Exceptions numbered _____ are hereby omitted.

Filling in the blank with the appropriate numbers obviates the necessity of obtaining the deletion endorsement considered in § 6.38.4.

Except for deletion of the standard exceptions, Schedule B — Part I of the 2006 Loan Policy should be almost identical to Schedule B of a concurrently issued owner's policy, with two major differences: (1) the lien of the insured mortgage will always be an exception to title shown in Schedule B of the owner's policy and (unless the title insurance company slips up, which it sometimes does) will never be an exception to title in the 2006 Loan Policy insuring the same lien; and (2) the exceptions to title that appear in Schedule B — Part II of the 2006 Loan Policy will be shown as exceptions in Schedule B of the Owner's Policy. Apart from this variation, the discussion of Schedule B of the Owner's Policy in § 4.4.4 is applicable here.

Special mention must be made of “wrap-around” or “all-inclusive” mortgages. A wrap is a junior mortgage that secures:

- 1) The amount advanced by a lender to the purchaser or, more likely, that portion of the purchase price carried back by a seller, to purchase a property; and

- 2) The balance due on one or more senior mortgages, owing by the seller and encumbering the property, which the purchaser does not assume but agrees to take title subject to these senior mortgages.

The theory of the wrap is that the purchaser will make payments to the seller sufficient to permit the seller to make the payments due to the senior mortgages, and will retire the wrap according to its terms. From the title insurance company's perspective, however, when it issues a loan policy insuring the wrap, the title insurance company is at risk only for the lesser amount representing the difference between the amount of the senior mortgages and the amount of the wrap. For instance, if a first mortgage of \$200,000 encumbers the property, a second mortgage of \$100,000, and a third wrap mortgage of \$450,000, the title insurance company will issue its loan policy insuring the wrap for only \$150,000. To reinforce the limitation on coverage, the following may be added to the policy as a note or a Schedule B exception:

Notwithstanding the face amount of the mortgage hereby insured, the liability of the title insurance company under this policy is limited to \$150,000, being the actual principal amount secured by the Insured Mortgage.

A loan policy insuring a wrap mortgage will contain exceptions in Schedule B for the senior mortgages.

Schedule B — Part II of the 2006 Loan Policy

Any exceptions to title that are subordinate or junior to the lien of the insured mortgage are shown in Schedule B — Part II. These are the matters that would be eliminated by a properly conducted foreclosure of the insured mortgage, such as a junior or subordinated mortgage, restrictive covenants, easements, leases, or liens, other than mechanics' liens, which may retain priority under mechanics' lien laws. Although a portion of an assessment lien under CCIOA (C.R.S. § 38-33.3-316(2)(b)) may be junior to the insured mortgage, it is rarely shown in this part of the loan policy, unless subordinated thereto by a specific subordination agreement of record.

It is necessary for the title insurance company to show the items in Schedule B — Part II, even though they are subordinate to the insured mortgage, because the 2006 Loan Policy insures that the title to the land is vested in the named owner subject to the exceptions contained in Schedule B, and the Schedule B — Part II items are exceptions to the owner's title. Also, it gives the lender peace of mind to have assurance that certain liens disclosed in Schedule B of the Owner's Policy are junior to the insured mortgage.

Schedule B of the 2006 Loan Policy — Second Mortgages (Junior Loan Policies)

For volume second mortgage lenders, some companies have designed a streamlined, less expensive loan policy, written on the 2006 Loan Policy form. It is, of course, preceded by a title insurance commitment. On these second mortgage forms, only Schedule B of the policy differs from the regularly issued 2006 Loan Policy. Schedule B will not contain Part I or Part II. The insured second mortgage is subordinate to an existing first mortgage that will be listed in the one-part Schedule B, along with the standard exceptions (which are not deleted) and exceptions for all taxes, assessments, water and sewer charges, and leases, covenants, conditions, restrictions, reservations, minerals, easements, and servitudes, none of which is identified or traced to a recorded instrument but instead is wrapped into two or three all-inclusive general exceptions.

Thus, the lender is assured that its junior mortgage is subject only to the described first mortgage; it does not concern itself with any other encumbrances. Other prior recorded liens, such as judgments liens and tax liens, will of course be disclosed on the commitment, and, ultimately, the policy, together with any *lis pendens* or other lien-threatening matters.

This practice may appear to be contrary to § 5.D of Regulation 8-1-2, which requires that all exceptions in a title insurance commitment refer to the recording information of the documents to be excepted from coverage. *See* Appendix 3. However, this section of the Regulation refers to an owner's policy only, thereby allowing these "generic" exceptions to be used for a loan policy. Section 4.J of Regulation 8-1-2 defines "Generic exceptions" as "broad exceptions on a commitment or policy of title insurance that do not refer to a specific document or recording information and are not standard or preprinted exceptions or a specific exception."

§ 5.2.5—Conditions

The 2006 Loan Policy contains 17 sections of technical language called Conditions. They are similar to the Conditions and Stipulations of the 1992 Loan Policy, but in many cases reworded for clarity or to secure substantive changes in the coverage afforded by the 2006 Loan Policy. The Conditions define, limit, and extend coverage. Some of the provisions are standard boilerplate, common to both the 2006 Loan Policy and the 2006 Owner's Policy. But there are significant differences affecting the protection afforded the insured.

The full text of the Conditions is contained in the 2006 Loan Policy attached as Form 5A.

Definition of Terms

Amount of Insurance

This is a new definition not found in the 1992 Loan Policy:

"Amount of Insurance". The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Section 10 of these Conditions.

Date of Policy

This is a new definition not found in the 1992 Loan Policy:

The date designated as "Date of Policy" in Schedule A.

Entity

This is a new definition not found in the 1992 Loan Policy:

A corporation, partnership, trust, limited liability company, or other similar legal entity.

Indebtedness

The definition of "indebtedness" is:

“Indebtedness”: The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

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

Whereas the 1992 Loan Policy limited the policy holder’s coverage to additional indebtedness advanced to secure foreclosure costs, similar costs to protect the lien, and the priority of the insured mortgage, or pursuant to construction advances the lender was obligated to make at the policy date, the definition of indebtedness in the 2006 Loan Policy is expanded to include the amount of principal disbursed after the policy date. Suppose the original loan and policy amount of \$100,000 is subsequently paid down to \$90,000. Later, the lender disburses \$5,000, so that the loan amount is now \$95,000. With this change, the amount of insurance in force is \$95,000, even though the additional \$5,000 was disbursed after the Date of Policy. This corresponds to the provisions of Condition 8, “Determination and Extent of Liability,” where the indebtedness is one of the factors in determining the amount of the loss.

However, the 2006 Loan Policy does not insure against the invalidity, unenforceability, or lack of priority of the lien of the insured mortgage as security for post-policy disbursements of principal, unless they are construction loan advances. In the example above, the post-policy disbursement of \$5,000 will be subject to any matters affecting the title after the date of the policy. To insure priority for future advances, an endorsement will be required. *See* § 6.6.

In most states, if the future advances are contracted for and are thus “obligatory” to the lender, the initial policy amount may be set at the maximum to be advanced, or the additional advances in excess of the face amount of the policy can be insured by the use of the appropriate endorsement. In Colorado, by statute, both obligatory and optional advances retain priority as of the date the mortgage was recorded, provided the maximum amount to be advanced is set out in the mortgage and the mortgage states that it was made pursuant to a revolving credit arrangement. If this is done, the mortgage will secure future advances so long as the stated maximum amount is not exceeded. Pursuant to C.R.S. § 38-39-106, any future advance retains the priority of the mortgage:

Any mortgage may, by its terms, secure future advances up to a total maximum principal amount expressly set forth in such mortgage. Such mortgage shall be effective to secure payment of all advances, both obligatory and optional, up to the stated maximum principal amount to the same extent and with the same effect and priority as if such total maximum principal amount had been fully disbursed on or before the date such mortgage was recorded.

Any post-policy advances made under a mortgage that do not comply with this statute will be subject to any matters affecting the title post-policy, and an endorsement must be purchased to provide coverage for such advances.

The 2006 Loan Policy does not include the pro tanto reduction clause that was a feature of the 1992 Policy. A payment on the mortgage does not reduce the amount of the insurance. Instead, a payment will reduce the indebtedness. Because of this change, the Last Dollar endorsement is no longer necessary for the 2006 Loan Policy.

Insured

Insured includes not only the insured named in Schedule A, but also each successive owner of the indebtedness by operation of law or by purchase for value and without knowledge of defects. Insured successors also include any governmental agency, whether named or not, insuring or guaranteeing the secured indebtedness, and those parties (transferees upon foreclosure) identified in Section 2. Section 12(c) specifically excludes those acquiring an interest in the indebtedness by indemnity agreements and the like. See *U.S. Bank, N.A. v. Stewart Title Guar. Co.*, 2014 U.S. Dist. LEXIS 36876 (D. Colo. March 20, 2014), where the court held that, “as a matter of law,” a servicer of a loan is not an “Insured” under the terms of the policy.

Compare this coverage to the 2006 Owner's Policy in which only successors by operation of law are included in the definition of “insured” (*see* § 4.4.5). Stated another way, if an owner of land sells the land, the 2006 Owner's Policy is not assignable to the grantee and does not follow the ownership of the land. The purchaser must obtain a new policy. If, however, the owner of the indebtedness sells the indebtedness, the 2006 Loan Policy will follow the ownership of the indebtedness, *i.e.*, the same policy covers the new owner of the Indebtedness. Though unnecessary, the new owner may obtain an endorsement to the policy in which the title insurance company recognizes the transfer (*see* § 6.9).

The definition of successors by operation of law (heirs, distributees, devisees, survivors, personal representatives, and next of kin) has been expanded so that it now includes:

- 1) Successors to the insured who own the indebtedness as a trustee or other fiduciary;
- 2) The person or entity who has control of the transferable record, as defined in applicable electronic transactions law;
- 3) Successors to an insured by dissolution, merger, consolidation, distribution, or reorganization;
- 4) Successors to an insured by conversion to another kind of entity; and
- 5) The grantee of an insured under a deed delivered without payment of actual valuable consideration if

- a) The shares, memberships or other equity interests are wholly owned by the named insured;
- b) The grantee wholly owns the named insured; and
- c) The grantee is wholly owned by an affiliated entity of the named insured, provided the affiliated entity and the named insured are both wholly owned by the same person or entity.

Such successors step into the shoes of the original insured party and take the 2006 Loan Policy subject to all rights and defenses the title insurance company would have had against the original insured. Successors by purchase of the indebtedness, on the other hand, provided they acquire their rights for value and without knowledge of defects, are not subject to defenses that the title insurance company could have raised against the original insured.

The following example illustrates the result of this provision. If the original lender (or owner) created a title defect or had knowledge of a title defect not known to the title insurance company and not shown by the public records, the original lender (or owner), as an insured claimant, would be denied coverage under Sections 3(a) and 3(b) of the Exclusions of the 2006 Loan Policy. These sections deny coverage for defects (a) created by or (b) known to the insured. See the discussion of Exclusion 3. Acts of the Insured in § 4.4.2; *see also* § 5.2.2. Successors by operation of law would similarly be barred. But a successor purchaser/assignee of the indebtedness, as an insured claimant who did not create and had no actual knowledge of the title defect, can recover under the 2006 Loan Policy. *Southern Title Ins. Co. v. Crow*, 278 So.2d 294 (Fla. App. 1973). However, lenders that do not acquire but only participate in a mortgage loan may not be insured. *See Border City Sav. & Loan Assn. v. First American Title Ins. Co.*, 768 F.2d 89 (6th Cir. 1985).

These features of the 2006 Loan Policy help to explain the nationwide popularity of lender's title insurance. As mortgages (or, more likely, bundles of mortgages) are sold, each purchaser, without concern for any defense based upon payment of less than value, is insured, without a direct assignment of the policy, free and clear of defenses that could have been invoked to deny coverage to prior holders of the mortgage based upon the prior holder's acts or knowledge.

The inclusion of governmental agencies and instrumentalities to the definition of "insured" is another assist to the flow of commerce in real property mortgages.

Insured Claimant

An insured claimant is any insured that makes a claim under the policy. Because only the insured claimant and not the original or any predecessor insured is subject to the defenses interposed by Section 3 of the Exclusions, successors by purchase of the mortgage take clear of any acts or knowledge of the original or any predecessor insured. However, defenses under Section 4 of the Exclusions, including failure to comply with "doing business" laws, appear to apply to the original insured at the date the policy was issued and any subsequent insured. *See* § 5.2.2. Affirmative coverage over this Exclusion is available by ALTA Endorsement 24-06; *see* § 6.16. Successors by operation of law take subject to all defenses valid against the original or any predecessor insured.

Insured Mortgage

An insured mortgage is the mortgage described in paragraph 4 of Schedule A. The following definitions are the same in the 2006 Loan Policy and the 2006 Owner's Policy:

- Knowledge;
- Land;
- Mortgage;
- Public Records;
- Title; and
- Unmarketable Title (to either the Land or, in the Loan Policy, the Mortgage).

Continuation of Insurance

The 2006 Loan Policy continues to protect an insured lender who acquires title to the property through foreclosure of the insured mortgage or by deed in lieu of foreclosure. The definition of insured covers transferee entities that are parents or wholly owned subsidiaries of the insured lender. This provision recognizes the prevailing practice adopted by many lenders to convey properties acquired by foreclosure or deed-in-lieu to an affiliate for resale and salvage. Any governmental agency or instrumentality that acquires title to the property as a result of a contract of insurance or guaranty of the insured mortgage is similarly entitled to coverage under the 2006 Loan Policy.

There is a misconception that the loan policy becomes an owner's policy when the lender acquires the insured property. The continuing coverage does not provide coverage equivalent to the owner's policy. The Exclusions and Conditions of the Loan Policy still apply. For example, the determination and extent of liability differs in the Loan Policy from the Owner's Policy by including the indebtedness as one of the factors in calculating a payment under a claim: "this policy shall not exceed the least of (i) the Amount of Insurance, (ii) the Indebtedness, (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy," and the continued coverage is effective only until the Date of Policy. Any defects in the foreclosure process or in the deed-in-lieu transaction will not be covered by the policy. If the lender wants to insure its foreclosure or deed in lieu, it must obtain a "date down" endorsement (*see* § 6.38.3) or, preferably, a new owner's policy.

Consider the likelihood that your lender client will not be aware of the extent or lack of title insurance following a foreclosure or deed-in-lieu conveyance. If you have conducted the foreclosure proceeding, naturally you will be reluctant to advise the client to spend more money to insure what you have been paid to do properly. But the rate for such insurance is minimal, as explained in "Conversion to Owner's Policy" in § 1.8.8. Considering the procedural and legal complexities of modern foreclosure practice in Colorado, whether judicial or administrative, there is no disgrace to you in urging that a new owner's policy be obtained by the lender, in an appropriate amount, with an effective date subsequent to the recording of the sheriff's or public trustee's deed. A "hold open" commitment may be an option to reduce costs. *See* "Hold-open Charge" in § 1.8.8.

When a deed in lieu of foreclosure is accepted by the lender, counsel not only will then recommend but will insist upon a new owner's policy, insuring the lender against all title defects except a later bankruptcy. The title insurance company will require special language in the deed in lieu of foreclosure, such as:

This deed is an absolute conveyance, the grantors having sold the property to the grantee for a fair and adequate consideration, such consideration, in addition to that above recited, being full satisfaction of all obligations secured by the deed of trust from [grantors] to the Public Trustee of _____ County for the use of [grantee], recorded at Reception No. _____ of the records of said county, and the promissory note secured thereby. Grantors declare that this conveyance is freely and fairly made, that there are no agreements, oral or written, contrary to the foregoing assertions, and that it is the intention of the parties that the lien interest of [grantee] under the said deed of trust shall not merge with the title conveyed to [grantee] by this deed.

When the policy is issued, the creditors' rights exclusion will protect the title insurance company (*see* § 5.2.2) and, unless you can persuade the title insurance company otherwise, a Schedule B exception, similar to the following, will be added:

Any defect, lien or encumbrance arising by reason of the fact that the deed from [grantors] to [grantee], recorded _____, 20__, at Reception No. _____, was given in satisfaction of a mortgage.

Notice of Claim to be Given by Insured Claimant

The title insurance company's liability on the policy will be reduced to the extent the title insurance company is prejudiced by the failure of the insured claimant to notify the title insurance company of any threatening litigation, adverse claims against the title, or rejection of the title or mortgage as unmarketable.

Proof of Loss

If, but only if, the title insurance company requests it, the insured claimant must submit proof of its loss and the method used to calculate damages.

Defense and Prosecution of Actions

This section is identical to Section 5 of the Conditions in the 2006 Owner's Policy, discussed at § 4.4.5, except for addition of the phrase "or the lien of the Insured Mortgage" to define what is insured. *U.S. Bank, N.A. v. Stewart Title Guar. Co.*, 2014 U.S. Dist. LEXIS 36876 (D. Colo. March 20, 2014) (discussion of title insurance company's duty to defend).

Duty of Insured Claimant to Cooperate

This section is identical to Section 6 of the Conditions in the 2006 Owner's Policy, discussed at § 4.4.5, except for addition of the phrase "the lien of the Insured Mortgage" to define what is insured.

Options to Pay or Otherwise Settle Claims; Termination of Liability

With one exception, Section 7 is identical in both the 2006 Loan Policy and the 2006 Owner's Policy. The title insurance company has the option of either settling any claims adverse to the interest of the insured or terminating its liability under the policy by paying the full amount thereof, plus costs and attorney fees, to the insured. The importance to the insured of the company's obligation to pay legal costs is stressed in Paragraph 7 of § 4.4.5. In the 2006 Loan Policy, Section 7 provides a third option, whereby the title insurance company may purchase the balance of indebtedness as defined in

Section 1(d) of the Conditions from the insured lender. The purchase price includes costs, expenses, and attorney fees for which the title insurance company is obligated. Upon purchase, the lender is obligated to transfer, assign, and convey the indebtedness and the mortgage together with any collateral security to the title insurance company, which can then attempt to salvage its loss by proceeding against the debtor. The insured will prefer to transfer the collateral without recourse.

Determination and Extent of Liability

This section, which is similar but not identical to the same section in the 2006 Owner's Policy, will determine the amount payable by the title insurance company to the insured in the event of loss. That amount will be the lesser of the following: (1) the amount of insurance stated in Schedule A; (2) the amount of indebtedness as defined in Section 1(d) of the Conditions; (3) the difference between the value of the title, as insured, and the value of the title subject to the defect, lien, or encumbrance (*i.e.*, the risk) insured against by the policy; or (4) the amount paid by a governmental agency on its guaranty. The amount payable remains the same in the event the insured lender becomes the owner in the manner described in Section 2 of the Conditions.

When the smoke clears, the title insurance company, in all cases, has limited its liability to the face amount of the policy or less. Therefore, although interest accrued and unpaid can be counted as part of the lender's actual loss, the lender will be unable to collect interest from the insurer unless the original policy amount included precomputed interest or the principal has been paid down to an extent that is greater than the amount of accrued interest. However, perhaps to counter the complaints of the insured lenders and owners that the title insurance company chooses to litigate primarily for the purpose of delaying payment of the claim, the 2006 Loan Policy contains a "sweetener." If the title insurance company chooses to litigate under Section 5 of the Conditions and is unsuccessful in establishing the title of the insured, the amount of insurance increases by 10 percent, and the insured shall have the right to determine the loss or damage as of the date a claim was made or as of the date of settlement. Further, the insured lender has the option to select the date on which the value of the property was highest — this could be either the date the loss was discovered and the claim was made or the date on which the unsuccessful litigation terminates.

The policy is a contract of indemnity against "actual monetary loss or damage sustained or incurred by the Insured Claimant, who has suffered loss or damage by reason of matters insured against by this policy." *See also* Exclusion from Coverage 3(c), "resulting in no loss or damage to the Insured Claimant." A title insurance company usually will not accept coverage for a claim until the insured has incurred the actual monetary loss. However, in the case of *First Citizens Bank & Trust Co. v. Stewart Title Guaranty Co.*, 320 P.3d 406 (Colo. App. 2014), the Colorado Court of Appeals held that the Plaintiff-Appellee, First Citizens Bank & Trust Co., did not have to suffer a loss for a claim to be triggered under the loan policy. In this case, the deed of trust was invalid at its inception, having been granted by a party not in title. Therefore, as a practical matter, the bank could not foreclose on the property, and suffered a loss compensable under the loan policy. *Id.* at 412.

Limitation of Liability

The three subsections of Section 9, except for reference to "the lien of the insured mortgage," are identical to the same subsections of Section 9 of the Conditions in the 2006 Owner's Policy.

Reduction of Insurance; Reduction or Termination of Liability

This section contains the provision found in Section 10 of the Conditions in the 2006 Owner's Policy, that payments made by the title insurance company on the policy, except costs and attorney fees, reduce the amount of insurance pro tanto.

However, a payment on the mortgage does not reduce the amount of the insurance. Instead, a payment will reduce the indebtedness. See the discussion on the "Last Dollar Endorsement" in § 6.28 — in the 1992 Loan Policy, payments received by the lender on the mortgage reducing the outstanding balance of the indebtedness secured by the insured mortgage did not reduce the amount of insurance until the indebtedness was paid down to the amount of insurance shown in Schedule A. The 2006 Loan Policy does not include this provision.

Provisions in the 1992 Loan Policy reducing the amount of insurance in force whenever a partial release of the mortgage was granted have been deleted in the 2006 Loan Policy.

Any voluntary satisfaction or release of the insured mortgage will terminate the title insurance company's liability under the 2006 Loan Policy, except for a discharge by foreclosure or deed in lieu of foreclosure followed by the insured lender's acquisition of title to the land, as provided in Section 2 of the Conditions, in which case the policy continues in force.

Payment of Loss

The title insurance company will pay the loss within 30 days after full compliance with the Conditions. Presentation of the policy for endorsement of the payment thereon is no longer required.

Right of Recovery Upon Payment or Settlement

This section contains the subrogation provisions set out in Section 13 of the Conditions in the 2006 Owner's Policy, but is modified to allow the insured lender, prior to the time it receives notice of any claim adverse to the title or the priority of the insured mortgage, to take certain actions without fear of violation of this clause. See "Rights of Recovery Upon Payment or Settlement" in § 4.4.5. Pursuant to this exception, the insured lender may (1) release any debtor or guarantor from personal liability; (2) substitute the personal liability of any debtor or guarantor; (3) extend or otherwise modify the terms of payment; (4) release a portion of the land from the mortgage; or (5) release any collateral security for the indebtedness secured by the mortgage. The foregoing is permitted only if such actions do not affect the enforceability or priority of the insured mortgage. If the insured had knowledge of any adverse claim, the policy is not voided, but the title insurance company's liability is reduced by the loss to the title insurance company caused by the impairment of the title insurance company's subrogation rights. If payment under the policy does not cover the entire loss of the insured claimant, the title insurance company's subrogation rights attach after the insured has recovered its loss. *See Hicks v. Londre*, 107 P.3d 1009 (Colo. App. 2004), *aff'd*, 125 P.3d 452 (Colo. 2005).

In Section 12(c) of the 2006 Loan Policy, the title insurance company attempts to expand its rights of subrogation to include rights of the insured against "non-insured obligors." By this provision, the title insurance company would expect to garner the insured's rights to collect on "indemnities, guaranties, other policies of insurance or bonds." Performance bonds, bonds substituted for mechanics' liens, personal guarantees, and hazard insurance proceeds may all be included in this net, provided the title insurance company has first paid the claim.

Arbitration

This section is the same as Section 14 in the Conditions of the 2006 Owner's Policy. The addition of the phrase "any other controversy or claim arising out of the transaction giving rise to this policy" certainly broadens the scope of mandatory arbitration. The ALTA Title Insurance Arbitration Rules have replaced the Rules of the American Arbitration Association. *See* Appendix 11.

Liability Limited to this Policy, Policy Entire Contract

The phrase "whether or not based on negligence" has been eliminated from the standard boilerplate provision in the 2006 Loan Policy.

Severability

This is a standard severability clause. The invalidity or unenforceability of any policy clause will not affect the remainder of the policy.

Choice of Law; Forum

This section first appears in the 2006 Loan Policy. It benefits all parties by requiring that the law of the jurisdiction where the land is located will apply and the title insurance company can be sued only in a state or federal court within the United States.

Notices, Where Sent

A mailing address for notice to the title insurance company should be stated here. The first paragraph of the 2006 Loan Policy provides that notices of claim must be given to the title insurance company at the address shown in Section 17 of the Conditions.

§ 5.3 • ALTA CONSTRUCTION LOAN POLICY (10-17-92)

The ALTA Construction Loan Policy (10-17-92) and Construction Loan Policy Endorsements A, B, C, and D (Revised 6-1-87), which were available to insure construction loans, were decertified by ALTA on February 3, 2011. If title insurance is requested by the construction lender, the ALTA 2006 Loan Policy can be issued with ALTA Endorsements 32-06, 32.1-06, 32.2-06, or 33-06 added, as agreed between the lender and the title insurance company. In addition to the ALTA endorsements, there are also a number of Colorado endorsements similar to the ALTA endorsements that provide varying degrees of mechanics' lien coverage to a lender during the construction process. *See* § 6.31 for a discussion of the endorsements available to insure over mechanics' liens.

The problem confronted by a lender when issuing a construction loan is dealing with the risk of mechanics' liens, and managing that risk, while remaining in a position to disburse funds during the construction process.

In § 2.14, we considered the basic mechanics' lien problems encountered under Colorado statutes. In summary, it is nearly impossible to loan money for construction in this state without subjecting the loan to risk of subsequently filed mechanics' liens. A cautious lender will not approve a construction loan without a survey, plans, and specifications. The surveyor and architect who prepare those loan prerequisites, by definition and by case law, are working on the project. Thus, work has com-

menced, and the mechanics' and materialmen's liens of all who come after will take priority from the date of commencement of work on the project, even though the architect and surveyor have been paid in full and delivered lien waivers. Accordingly, the mechanics' liens of all those who provide labor or materials to the project after the commencement of work will "prime" (*i.e.*, take priority over) the construction lender's lien. The starting point in any discussion to insure over the risk of a mechanics' lien priming the lien of the insured mortgage is quite simple — standard Exception No. 4 of the 2006 Loan Policy will not be deleted. Remember that this exception will negate the affirmative coverage provided in Covered Risk 11(a) over mechanics' liens when the loan funds are used to finance the construction of improvements on the property.

In theory, the construction lender has several options for protection. It can require that the construction contract conform to the statute and be recorded. Then only the general contractor would have a lien against the land, and all subcontractors and suppliers would have rights against the funds as disbursed by the lender. C.R.S. §§ 38-22-101(2) and (3); 38-22-102. A bond can be required to assure payment and release of all liens. C.R.S. § 38-22-129. The owner's or general contractor's indemnity against mechanics' liens can provide some comfort, depending upon the net worth, liquidity, and reputations of the indemnitors. Collateral can be pledged to secure the indemnity. Construction can be halted for 3 months following commencement of the work, which, coupled with payment of the surveyor, architect, and all others previously performing work on the project, would cause the job to be abandoned and a new commencement date to be established when the project is resumed. C.R.S. § 38-22-109(7). Finally, a title insurance policy can be obtained to insure the construction lender against mechanics' liens.

For practical, economic, and legal reasons, title insurance is the preferred method to provide varying degrees of mechanics' lien coverage, notwithstanding the potential for higher costs. See § 2.14.

The full text of the Construction Loan Policy is illustrated as Form 5D for historical purposes only, as it is unlikely that such a policy will still be effective, given the limited term of a construction loan.

§ 5.4 • ALTA LEASEHOLD LOAN POLICY (10-17-92)

ALTA decertified the Leasehold Loan Policy in 2001. In its place, ALTA Endorsement Form 13.1-06 may be attached to the 2006 Loan Policy when mortgaged leasehold interests are being insured. See § 6.29 for a discussion of the advantages of ALTA Endorsement Form 13.1-06 over the Leasehold Loan Policy. The Leasehold Loan Policy is included here because previously issued policies may be encountered. See § 6.29 for a discussion on the leasehold endorsements.

The lease must be recorded and will be shown in Schedule B — Part I of the policy as an exception to title. The insured mortgage must also be recorded but will not be shown as an exception to title in the Loan Policy, although the mortgage will be shown as an exception to title in a simultaneously issued Owner's Policy insuring the leasehold.

The full text of the Leasehold Loan Policy is illustrated as Form 5E.

§ 5.5 • ALTA SHORT FORM RESIDENTIAL LOAN POLICY (12-03-12)

The ALTA Short Form Residential Loan Policy will be issued only for loans secured by one-to-four family residences. This policy consists of three or four pages, which incorporate by reference the terms, exclusions, and conditions of the 2006 Loan Policy and Schedules A and B. The ALTA Short Form Residential Loan Policy form is set out as Form 5F.

Schedule A contains the amount of insurance, identification of the insured mortgage by loan number and date (no recording information), names of the parties (insured lender and the borrower), and the property address. The legal description of the property is not included. Instead, the legal description, as set out in the insured mortgage, is merely referenced. An addendum can be attached, which will be identified in Schedule A. Various ALTA endorsements are also listed on Schedule A, which can be incorporated by reference into the policy by checking the appropriate box in place of attaching the endorsement to the policy when it is issued. This is in line with the “short form” nature of the policy.

Schedule B is novel in that it contains the standard exceptions but with affirmative coverage included within the exception language that insures over the standard exceptions. The resulting coverage is that coverage usually afforded by Colorado Endorsement 100 and more. *See* §§ 6.17, 6.19, and 6.41. Below is a summary of what the lender receives in the policy:

- 1) The lender receives insurance against all taxes and special assessments, except those that become due and payable subsequent to the date of the policy. *See* § 2.18. Thus, the title insurance company will have to be particularly careful in Colorado, where taxes are paid in arrears. If policies are issued in the first four months of the new year, the title insurance company must be certain that taxes and assessments for the previous year have been paid, even though they are not delinquent until the end of April.
- 2) Protective covenants are excepted, but the title insurance company insures that the same have not been violated as of the date of the policy and that no future violation will result in forfeiture or reversion of the title or will extinguish, subordinate, or impair the lien of the insured mortgage. In a variation of this policy adopted 04-02-15, only violations occurring prior to the Date of Policy are covered.
- 3) Easements and servitudes are excepted, but the policy insures that the improvements do not encroach upon them. An improvement location certificate or survey should be required before the policy is issued with this coverage.
- 4) The policy excepts any prior reservation or conveyance of minerals, including leases. Then it proceeds to give protection similar to Colorado Endorsement 100.29, to the effect that exercise of the mineral rights will not interfere with the residential use of the property or cause damage to existing improvements. *See* § 6.32.1. This is better than Colorado Endorsement 100, but not as broad as Colorado Endorsement 100.30. Loss occasioned by subsidence is specifically not covered.
- 5) This Short Form Policy does not contain a survey exception.

Other exceptions to title may be listed on Schedule B.

§ 5.6 • ALTA SHORT FORM RESIDENTIAL LOAN POLICY — CURRENT VIOLATIONS (04-02-15)

This policy provides an alternative to the ALTA Short Form Residential Loan Policy. It includes the optional selection of ALTA Endorsement 9.10-06 in place of ALTA Endorsement 9-06. This endorsement provides affirmative insurance that, at the date of the policy, there is no violation of a covenant as defined in the endorsement that may divest, subordinate, or extinguish the lien of the insured mortgage. The policy also provides affirmative insurance in Schedule B, item 2(c) with respect to “the invalidation, subordination, or other impairment of the lien of the Insured Mortgage because of a violation at Date of Policy of any provisions in those covenants, conditions, or restrictions, including those relating to environmental protection.” This is the reason for the descriptor, “current violations.”

The ALTA Short Form Residential Loan Policy – Current Violations form is set out as Form 5G.

§ 5.7 • ALTA RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY (8-1-12)

This policy is available only for loans on a one-to-four family residence or a condominium unit. The ALTA Endorsement Form JR1, which identifies the insured mortgage and lists any recorded exceptions to title, supplements the policy. If future advances are anticipated, ALTA Endorsement Form JR2 must be attached.

This policy offers these limited affirmative coverages:

- 1) The name of the last grantee of the land (*i.e.*, the borrower) and the legal description of the land;
- 2) No liens encumbering the land except as disclosed; and
- 3) No *ad valorem* tax liens except as disclosed.

The policy affords protection against mechanics’ liens unless specifically excepted.

Exclusions from Coverage include the invalidity, unenforceability, or ineffectiveness of the insured mortgage. This broad language appears to cover the usual exclusions for failure to comply with doing business, usury, consumer protection, and creditors’ rights laws. Defects created or known to the insured, similar in format but not identical to Paragraph 3 of the Exclusions of the 2006 Loan Policy, are also excluded.

The Conditions of this policy are also similar, but not identical, to those of the 2006 Loan Policy. The policy provides no continuation of coverage after acquisition of title, but assignees of the insured lender are covered. Mandatory arbitration applies when the amount of insurance is \$2 million or less.

The policy is illustrated at Form 5H and the two specialized endorsement forms are illustrated in Chapter 7, “Endorsement Forms.”

§ 5.8 • SHORT FORM RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY (04-02-2013)

This short form policy contains only the basic information — amount of insurance, name of insured and borrower, description of the land, and any exceptions to title — and then incorporates by reference the terms, Exceptions, Exclusions from Coverage, and the Conditions of the Residential Limited Coverage Junior Loan Policy (8-1-12). It is illustrated as Form 5I.

§ 5.9 • EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — ASSESSMENTS PRIORITY (04-02-15)

ALTA adopted the Expanded Coverage Residential Loan Policy (12-02-13) and ALTA Short Form Expanded Coverage Residential Loan Policy (04-02-14) in 2013 and 2014. These policies insured the priority of the insured mortgage over condominium and property owners’ assessment liens and did not offer the flexibility to differentiate coverage if state law or covenants established priority of the assessment liens for future assessments in whole or in part. See the discussion on insuring the priority of the lien of a mortgage where a portion of the lien for assessments imposed under CCIOA may have priority over the lien of the mortgage in 6.10. ALTA subsequently approved revised forms in 2015 to replace the 2013 and 2014 policies, which were then decertified by ALTA in August 2016. These forms provide coverage with respect to assessment liens based on the actual provisions of state law and terms of covenants. See the ALTA 2016 Policy Forms Year in Review at www.alta.org

The ALTA Expanded Coverage Residential Loan Policy — Assessments Priority (04-02-15) insures the priority of the Insured Mortgage over assessment liens for future assessments. This policy offers expanded coverage, not to exceed 125 percent of the amount of insurance, for loss or damage incurred by reason of the listed covered risks (but not for mere interest accrual). This policy is available only for loans on one-to-four residential units or condominiums. The itemization of covered risks includes those contained in the 2006 Loan Policy plus the following new coverages:

- Lack of actual pedestrian and vehicular access;
- Lack of priority of future advances over subsequently-recorded encumbrances or environmental liens;
- Incorrect street address, location, or dimensions of the land not improved by lawfully created one-to-four family residences or condominium units;
- Improper zoning;
- Forced removal of improvements because of certain zoning violations;
- Unlawfully subdivided for one-to-four family residences;
- Invalid building permit for existing structures;
- Violation of use restrictions shown in Schedule B;

- Damage to surface improvements resulting from mineral extraction;
- Encroachments on or off the land constructed on or after Date of Policy;
- Forgery after Date of Policy;
- Damages or interference with use resulting from easements shown in Schedule B;
- Violation of usury laws; and
- Supplemental real estate taxes.

The Exclusions from Coverage, while basically the same as in the 2006 Loan Policy, have been modified to prevent conflict with the expanded coverages contained in the policy. Two new exclusions are added for advances made after the insured lender learns that ownership of the land has changed and for failure to comply with applicable building codes.

The Conditions of this policy correspond to the 2006 Loan Policy, with these exceptions:

- 1) Paragraph 1(a) defines “advances”;
- 2) The Amount of Insurance is defined in Paragraph 1(b) as 125 percent of the Policy Amount; and
- 3) Paragraph 8(a)(iii) states that the “value as insured versus the value subject to the defect” rule for calculating damages shall not apply in the event of a total failure of the lien to attach to the insured estate.

The policy incorporates by reference the following ALTA endorsements, unless stated to the contrary in Schedule B:

- ALTA Form 4-06 (Condominium), if a condominium unit is referred to in the description of the Land;
- ALTA Form 5-06 (Planned Unit Development);
- ALTA Form 6-06 (Variable Rate Mortgage);
- ALTA Form 6.2-06 (Variable Rate Mortgage — Negative Amortization);
- ALTA Form 8.1-06 (Environmental Protection Lien) subject to the statutes, if any, shown in Schedule B specifically for this endorsement; and
- ALTA Form 9-06 (Restrictions, Encroachments, Minerals — Loan Policy).

§ 5.10 • SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — ASSESSMENTS PRIORITY (04-02-15)

These forms are illustrated in Forms 5J and 5K. The Short Form Policy incorporates by reference the terms, Exclusions, and Conditions of the Expanded Coverage Residential Loan Policy (04-02-15).

Schedule A sets out the amount of insurance, amount and date of the mortgage (but not the recording information), and the names of the insured lender and the borrower.

The land is described only as being the same as stated in the insured mortgage.

Exceptions set out on Schedule B may be itemized by an addendum. The printed exceptions include taxes and assessments that become due after Date of Policy, recorded covenants, restrictions, easements, servitudes and mineral leases, grants, exceptions, and reservations. Wherever the printed exceptions conflict with the stated covered risks, the exceptions do not limit the stated coverages.

§ 5.11 • EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — CURRENT ASSESSMENTS (04-02-15) AND SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — CURRENT ASSESSMENTS (04-02-15)

Unlike the ALTA Expanded Coverage Residential Loan Policy — Assessments Priority (04-02-15), which insures the priority of the Insured Mortgage over assessment liens for future assessments, the ALTA Expanded Coverage Residential Loan Policy — Current Assessments (04-02-15) provides coverage over current assessments only. The difference between the two policies appears to be achieved by the incorporation of slightly different ALTA endorsements, which include the same distinction between priority over future assessments and current assessments:

- ALTA Form 4.1-06 (Condominium), if a condominium unit is referred to in the description of the Land;
- ALTA Form 5.1-06 (Planned Unit Development);
- ALTA Form 6-06 (Variable Rate Mortgage);
- ALTA Form 6.2-06 (Variable Rate Mortgage — Negative Amortization);
- ALTA Form 8.1-06 (Environmental Protection Lien) subject to the statutes, if any, shown in Schedule B specifically for this endorsement; and
- ALTA Form 9.10-06 (Restrictions, Encroachments, Minerals—Current Violations—Loan Policy).

Other than the change in the endorsements incorporated by reference into the policy, the two policies, including the Short Form versions, are identical. These forms are illustrated in Forms 5L and 5M.

§ 5.12 • RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY (12-01-14)

This policy provides coverage to the lender with regard to a mortgage on a one-to-four family residence or condominium. It is illustrated as Form 5N. It insures against loss or damage arising by reason of (1) the invalidity or unenforceability of the lien of the insured's mortgage upon the title at Date of Policy as a result of a modification of the insured's mortgage; and (2) the lack of priority of the lien of the insured's mortgage, at Date of Policy, over any defects in or liens or encumbrances on the title as a result of the modification.

The following matters are excluded from coverage:

- (a) Any invalidity, unenforceability, or lack of priority of the Insured's Mortgage or the Modification. This Exclusion does not modify or limit the coverage provided under the Covered Risks.
- (b) Defects, liens, encumbrances, adverse claims, or other matters:
 - (i) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (ii) Known to the Insured Claimant whether or not disclosed in the Public Records;
 - (iii) resulting in no loss or damage to the Insured Claimant;
 - (iv) not recorded or filed in the Public Records at Date of Policy; or
 - (v) attaching or created subsequent to Date of Policy.
- (c) Any usury, consumer credit protection, or truth-in-lending law.
- (d) The status or ownership of the Title.
- (e) Any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:
 - (i) the Modification being deemed a fraudulent conveyance or fraudulent transfer;
or
 - (ii) the Modification being deemed a preferential transfer.

See ALTA 2014 Policy Forms Yearbook, available at www.alta.org.

§ 5.13 • LIMITED PRE-FORECLOSURE POLICY (12-03-12)

This unique policy is designed to provide comfort to a foreclosing lender against a change in ownership, title defects, liens, judicial proceedings, bankruptcies, and condemnations affecting title to the collateral but recorded after the lender's mortgage, or a federal tax lien or judgment lien recorded against the mortgagors prior to the recording of the lender's mortgage. Also covered are real estate taxes and assessments due and payable at the Date of Policy.

The Exclusions are basically the same as in the 2006 Loan Policy, with one important difference: matters known to the insured are not covered, even if recorded.

The policy is available only for a one-to-four family residence.

The title insurance company disclaims any duty to defend or prosecute any action or proceeding to which the insured is a party, but may do so at its election.

An unnumbered ALTA Date-Down Endorsement form is available with this policy. The policy is illustrated at Form 50, and the Date-Down Endorsement is illustrated in Chapter 7.

§ 5.14 • PUBLIC TRUSTEE'S SALE GUARANTEE

The Public Trustee's Sale Guarantee (not an ALTA form) is issued in connection with non-judicial foreclosures processed through the county Office of the Public Trustee in the county in which the encumbered land is situated. This Guarantee is not a policy of title insurance. Since it is normally ordered by lenders in connection with foreclosure proceedings, it is described in this chapter on loan policies. The full text of the Guarantee is illustrated as Form 5P.

Comparison of the Public Trustee's Sale Guarantee with the Litigation Guarantee, discussed in § 4.11, shows that the two are nearly identical. In fact, the Conditions and Stipulations appended to the two Guarantees are the same printed form. Therefore, we will not repeat here what has been said about the form in § 4.11. Instead, we will consider only the few minor differences.

The second numbered paragraph in Part 1 of the Public Trustee's Sale Guarantee is different from the Litigation Guarantee. The latter provides a place for the title insurance company to list the names (but not the addresses) of the necessary parties defendant in whatever action the insured intends to commence. The Public Trustee's Sale Guarantee, however, states that the "names and addresses, if determinable, of the persons who appear to have acquired an interest of record affecting the title to the herein described land are as shown herein." Whatever the sentence lacks in style is more than compensated by its honest attempt to paraphrase the statutory requirement for notice. C.R.S. §§ 38-38-100.3(1.5) and (14). Still, it is unclear whether "if determinable" modifies "names and addresses" or only "addresses," and the question of where such names and addresses (or addresses only) were determined is left unanswered. Unlike the Litigation Guarantee, the Public Trustee's Sale Guarantee purports to provide the addresses to which the combined notice and notice of the Rule 120 action must be mailed. *See* C.R.S. §§ 38-38-100.3(1.5) and (14); *see also* C.R.C.P. 120(b).

Part 2 of the Public Trustee's Sale Guarantee is virtually identical to Part 2 of the Litigation Guarantee, containing a space to list the vestee of the estate or interest, describe the estate or interest, state any exceptions, and set out the legal description of the land (in the Litigation Guarantee, the legal description is shown in Part 3).

The majority of the differences between the two Guarantees occurs in Part 3. Under the heading "Information for Insured," the Public Trustee's Sale Guarantee provides the names and addresses of the grantor of the Deed of Trust (the Conditions and Stipulations define "mortgage," not "Deed of Trust," but the intention is the same), and all persons who appear to be "subsequent grantors of record under the Deed of Trust." Presumably, this means any subsequent owner of record subject to or assuming the Deed of Trust. It is unfortunate that the statutory phrases were not used.

Any deficiencies in Paragraph (a) are probably cured by Paragraph (b), which calls for the names and addresses of persons not listed in Paragraph (a) "who appear to have acquired an interest in [*sic*] affecting the title to the herein described property." Again, the statutory language would have been preferable. Only recorded interests will be listed, such as grantees of junior mortgages or deeds of trust, conveyances in fee, easements, and leases.

Attention is called in Paragraphs 3, 4, and 5, respectively, to the possible applicability of the Servicemembers Civil Relief Act of 2003, 50 App. U.S.C.A. §§ 501, *et seq.*, without stating whether it is applicable or how it may affect a public trustee's foreclosure; the Federal Tax Lien Act of 1966, 26 U.S.C. § 7425(d)(1), with its 120-day redemption provision in favor of the United States; and C.R.C.P. 120 and its notice requirements.

The comments in § 4.11 expressing concern as to the limitations of the Litigation Guarantee and the need to compare its function and cost with the Foreclosure Certificate/Guarantee are equally pertinent to the Public Trustee's Sale Guarantee. Keep in mind that the latter Guarantee does not ripen into a policy of title insurance. There is nothing, repeat nothing, in the Guarantee to assure your client that you have validly and unassailably completed a public trustee's foreclosure on the subject property so that the public trustee's deed vests title in the grantee thereof. If your client is that grantee, following foreclosure, consider ordering an owner's policy of title insurance at the reduced rates offered by all companies to the holders of loan policies. See "Conversion to Owner's Policy" in § 1.8.8 for rate information. Only then will your client have insurance that includes and protects against defects in the foreclosure sale and issuance of the public trustee's deed.

§ 5.15 • FORECLOSURE CERTIFICATE/GUARANTEE/COMMITMENT

Some companies issue foreclosure certificates. Some issue foreclosure guarantees. Others issue foreclosure commitments. Foreclosure certificates and foreclosure guarantees are illustrated as Forms 5Q and 5R, respectively. Neither the Foreclosure Certificate nor the Foreclosure Guarantee is an ALTA form.

Foreclosure commitments are issued on the standard ALTA commitment form described in Chapter 2. There are differences between the Foreclosure Guarantee, Foreclosure Certificate, and Foreclosure Commitment, not only in substance, but in cost. Comparison shopping is recommended. An estimate of cost furnished before you place your order may save embarrassment and dollars.

Beware of the language on the certificates, which varies widely among the issuers. Disclaimers may limit the liability of the title insurance company. The guarantee language is, however, standardized. We will consider each of the three forms separately.

§ 5.15.1—Foreclosure Certificate

When a foreclosure is contemplated, either judicially or through the Office of the Public Trustee, counsel for the lienholder must know what documents have been recorded after the lien to be foreclosed. For discussion of the use of a foreclosure certificate in a public trustee's foreclosure, see Holmes, *Public Trustee Foreclosure in Colorado*, 5th ed. (CLE in Colo., Inc. 2015). A foreclosure certificate undertakes to disclose all such subsequently recorded interests in the property that are the security for the lien. In effect, a Foreclosure Certificate is a partial or "stub" abstract of title to the property. It is, of course, certified, and the title insurance company is liable for its negligence in searching the records — but not as an insurer.

Once upon a time, abstracters were bonded for “any and all actual damages . . . to any person . . . on account of any error, deficiency or mistake in any abstract.” C.R.S. § 12-1-105(1) (1973). The statute was repealed by Laws of 1983, Ch. 116, p. 513, effective May 16, 1983. *See* Horlbeck & Houlehan, “Abstracters Ride Off into Sunset,” 11 *Colo. Law.* 2585 (Oct. 1982).

There may be certain language variances in foreclosure certificates:

- One type of certificate declares that the documents listed by book and page or reception number, copies of which are attached, constitute all instruments recorded subsequent to the lien being foreclosed that appear to create an interest in the subject real property. No limit upon the liability of the title insurance company is attempted.
- Another adds a limitation of liability to the principal amount of the lien, plus interest, costs, and advances. Since the amount of the lien is often less than the market value of the property, this limitation could be important.
- A third type of certificate attempts to limit the title insurance company’s liability to the amount paid for the certificate. Obviously, the foreclosing attorney should reject this type of certificate.

Once a Foreclosure Certificate has been issued, update endorsements are available.

§ 5.15.2—Foreclosure Guarantee

Much of the discussion pertaining to the Public Trustee’s Sale Guarantee (§ 5.14) and the Litigation Guarantee (§ 4.11) applies here and may be reviewed. It should be emphasized that the Foreclosure Guarantee is not a policy of title insurance.

In Part 1 of the Foreclosure Guarantee, as in the Public Trustee’s Sale Guarantee, the person to whom the Foreclosure Guarantee is issued is referred to as the “Insured” rather than the “Assured.” The term “Insured” is not defined in the Conditions and Stipulations, leading to the conclusion that the use of “Insured” is an error.

Except for use of the term “Insured,” Part 1 of the Foreclosure Guarantee corresponds to the certification language on the typical Foreclosure Certificate, described above. A maximum liability amount is stated. When a Foreclosure Certificate or Foreclosure Guarantee is ordered from the title insurance company, you may be asked for the original principal amount of the lien. That is a clue that you will be charged on the amount of the lien and not a flat fee or a charge per entry for each recorded instrument disclosed. That is also the amount that will be stated on Part 1 as the title insurance company’s maximum liability. Greater amounts may be obtainable for a larger fee. A lesser amount, such as the present outstanding balance of unpaid principal, can be requested but may not be acceptable to the title insurance company.

Subject to this limitation upon its liability, the title insurance company “assures” the “Insured” that the copies of the instruments, attached to the Foreclosure Guarantee and recorded subsequent to the Deed of Trust (the defined term is “mortgage”), show all persons who appear to have acquired an interest of record affecting title to the land.

Unlike the Litigation Guarantee and the Public Trustee's Sale Guarantee, Part 2 of the Foreclosure Guarantee does not purport to tell you the names (or addresses) of those persons to be named in the foreclosure. Instead, Part 2 describes the subject land, lists by recorded reference the instruments attached, which are guaranteed to be all of the instruments affecting title subsequent to the lien to be foreclosed, and advises that the names of all persons in the described chain of title have been searched for federal tax liens and judgments for a period of years, which should be at least ten years plus 30 days prior to the date of the Foreclosure Guarantee (*see* 26 U.S.C. § 6323(g)(3)), and that copies thereof, if any, are attached. While the latter assurance is welcome, it hardly seems necessary, since the United States and the judgment creditors would surely be "persons" who had acquired an interest affecting title.

To repeat what has been said previously, the printed form of the Conditions and Stipulations that we have examined is identical in all of the Guarantees currently in use except for the Chain of Title Guarantee.

Once a Foreclosure Guarantee has been issued, update endorsements are available.

§ 5.15.3—Foreclosure Commitment

This form is issued only for a public trustee foreclosure. In Schedule B — Section 2, the title insurance commitment will list all liens and other encumbrances, including the deed of trust being foreclosed. A note added to Schedule B will explain which exceptions will not appear on the policy (*i.e.*, they will be extinguished by the foreclosure) if the requirements of Schedule B — Section 1 are met, namely, recording of the Notice of Election and Demand for Sale, Public Trustee's Certificate of Purchase, and Public Trustee's Deed. The rate will be based on the foreclosure sale price or the ultimate resale price and policy amount, whichever is greater. For an additional 10 percent of the rate, the commitment will be held open for the agreed period or until the foreclosing lender finds a purchaser for the property. If cure or redemption by an owner occurs, a cancellation fee may be charged. For a discussion on the hold-open procedure, see § 1.8.8.

FORM 5A • ALTA LOAN POLICY (ADOPTED 6-17-06)

American Land Title Association

Loan Policy
Adopted 6-17-06**LOAN POLICY OF TITLE INSURANCE**

Issued By

BLANK TITLE INSURANCE COMPANY

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

COVERED RISKS

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

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;

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American Land Title Association**Loan Policy
Adopted 6-17-06**

- (b) the character, dimensions, or location of any improvement erected on the Land;
- (c) the subdivision of land; or
- (d) environmental protection
- if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
 7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
 9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.
 10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
 11. The lack of priority of the lien of the Insured Mortgage upon the Title
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
 - (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
 - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
 12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
 13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured



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American Land Title Association

Loan Policy
Adopted 6-17-06**EXCLUSIONS FROM COVERAGE**

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).



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Loan Policy
Adopted 6-17-06

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:
Loan No.:
Address Reference:
Amount of Insurance: \$ [Premium: \$]
Date of Policy: [at a.m./p.m.]

- 1. Name of Insured:
- 2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:
- 3. Title is vested in:
- 4. The Insured Mortgage and its assignments, if any, are described as follows:
- 5. The Land referred to in this policy is described as follows:
- [6. This policy incorporates by reference those ALTA endorsements selected below:

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

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American Land Title Association

**Loan Policy
Adopted 6-17-06**

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

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

[PART I

PART II

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

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Loan Policy
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CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of
- (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) the amount of the principal disbursed subsequent to Date of Policy;
 - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
 - (iv) interest on the loan;
 - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (vi) the expenses of foreclosure and any other costs of enforcement;
 - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - (viii) the amounts to pay taxes and insurance; and
 - (ix) the reasonable amounts expended to prevent deterioration of improvements;
- but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) "Insured": The Insured named in Schedule A.
- (i) The term "Insured" also includes
 - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
 - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (D) successors to an Insured by its conversion to another kind of Entity;


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- (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
- (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured, or
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
- (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;
- (ii) With regard to (A), (B), (C), (D) , and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.
- (f) "Insured Claimant": An Insured claiming loss or damage.
- (g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
- (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (l) "Title": The estate or interest described in Schedule A.
- (m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

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

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Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i)

an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

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

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

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Loan Policy
Adopted 6-17-06**6. DUTY OF INSURED CLAIMANT TO COOPERATE**

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the

Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.

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

- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

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

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



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

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

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

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

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

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

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness,

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

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- (c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.
- (d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

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

11. PAYMENT OF LOSS

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

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) The Company's Right to Recover

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



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American Land Title Association**Loan Policy
Adopted 6-17-06**

Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

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

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors

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

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

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

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

AMERICAN
LAND TITLE
ASSOCIATION



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- (b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY

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

16. CHOICE OF LAW; FORUM

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

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

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

17. NOTICES, WHERE SENT

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

NOTE: Bracketed [] material optional

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FORM 5B • ALTA LOAN POLICY (10-17-92)

This form was decertified by ALTA effective June 17, 2007. It was replaced by the ALTA Loan Policy (6-17-06). See § 5.2.

POLICY OF TITLE INSURANCE
 Issued by
 BLANK TITLE INSURANCE COMPANY

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

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. 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.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____
 PRESIDENT

BY: _____
 SECRETARY

EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE A

AMOUNT OF INSURANCE: \$90,000.00 DATE OF POLICY: October 15, 20XX, at 8:42 a.m.

1. Name of Insured:
SECOND NATIONAL BANK, N.A.
2. The estate or interest in the land which is covered by this policy is:
Fee Simple
3. Title to the estate or interest in the land is vested in:
Donald M. Smith and Darlene N. Smith, as joint tenants
4. The insured mortgage and assignments thereof, if any, are described as follows:
Deed of Trust from Donald M. Smith and Darlene N. Smith to the Public Trustee of Adams County, Colorado, for the benefit of Second National Bank, N.A., dated October 10, 19XX, and recorded October 15, 19XX, in Book 1001 at Page 100, securing the sum of \$90,000.00.
5. The land referred to in this policy is situate in the County of Adams, and State of Colorado and is described as follows:
Lot 207,
Blue Waters Subdivision – Unit 1,
according to the recorded plat thereof.

SCHEDULE B

EXCEPTIONS FROM COVERAGE

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

PART I

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

Exceptions Numbered 1 through 4 are hereby omitted.

5. Taxes and assessments for 20XX and all subsequent years.
6. Lien of any existing or future assessments, taxes, fees or charges on account of the inclusion of the subject property in one or more improvement districts, including but not limited to the Adams Water Conservation District, the Adams Soil Conservation District, and the Blue Waters Fire Protection District.
7. Declaration of Covenants, Conditions, Restrictions and Lien for Blue Waters Recreation Association, recorded June 7, 1982, in Book 640 at Page 109.

PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

Deed of Trust from Donald M. Smith and Darlene N. Smith to the Public Trustee of Adams County, Colorado, for the benefit of Blue Waters, Inc., a Colorado corporation, dated October 10, 19XX, and recorded October 15, 19XX, in Book 1001 at Page 105, securing the sum of \$5,000.00.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

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

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

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

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

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

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

2. CONTINUATION OF INSURANCE.

(a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or

governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

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

(c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

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

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

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

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

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

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

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy,

whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

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

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

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

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

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

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

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

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

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

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

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

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

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

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

7. DETERMINATION AND EXTENT OF LIABILITY.

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

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

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

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

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

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

8. LIMITATION OF LIABILITY.

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

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

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

(d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject,

or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

11. PAYMENT OF LOSS.

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

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

12. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

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

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

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

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

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

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of

insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

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

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

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

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

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

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

15. SEVERABILITY.

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

16. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [] material optional

FORM 5C • ALTA LOAN POLICY 1970

This form was replaced by the 1992 ALTA Loan Policy, which was replaced by the 2006 ALTA Loan Policy. See § 5.2.

POLICY OF TITLE INSURANCE
 Issued by
 BLANK TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, BLANK TITLE INSURANCE COMPANY, a blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land;
4. Unmarketability of such title;
5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon
 - a. usury, or
 - b. any consumer credit protection or truth in lending law;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance; or
8. The invalidity or unenforceability of any assignment, shown in Schedule A, of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

IN WITNESS WHEREOF, Blank Title Insurance Company has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

BLANK TITLE INSURANCE COMPANY

By _____
 President

By _____
 Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy:

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public

records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material);

4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

SCHEDULE A

Date of Policy:

Amount of Insurance: \$ _____

1. Name of Insured:

2. The estate or interest in the land described in this Schedule and which is encumbered by the insured mortgage is:

3. The estate or interest referred to herein is at Date of Policy vested in:

4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

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

SCHEDULE B
PART I

This policy does not insure against loss or damage by reason of the following:

[not part of ALTA form]

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

Exceptions Numbered _____ are hereby omitted.

5. Taxes and assessments for 20__ and all subsequent years.

PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

CONDITIONS AND STIPULATIONS1. Definition of Terms

The following terms when used in this policy mean:

(a) "insured": The insured named in Schedule A. The term "insured" also includes (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of such indebtedness (reserving, however, all rights and defenses as to any such successor who acquires the indebtedness by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next to kin or corporate or fiduciary successors that the Company would have had against the successor's transferor), and further includes (ii) any governmental agency or instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing said indebtedness, or any part thereof, whether named as an insured herein or not, and (iii) the parties designated in paragraph 2(a) of these Conditions and Stipulations.

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

(c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

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

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

(f) "public records": those records which by law impart constructive notice of matters relating to said land.

2. (a) Continuation of Insurance after Acquisition of Title

This policy shall continue in force as of Date of Policy in favor of an insured who acquires all or any part of the estate or interest in the land described in Schedule A by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage, and if the insured is a corporation, its transferee of the estate or interest so acquired, provided the transferee is the parent or wholly owned subsidiary of the insured; and in favor of any governmental agency or instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage; provided that the amount of insurance hereunder after such acquisition, exclusive of costs, attorneys' fees and expenses which the Company may become obligated to pay, shall not exceed the least of:

(i) the amount of insurance stated in Schedule A;

(ii) the amount of the unpaid principal of the indebtedness as defined in paragraph 8 hereof, plus interest thereon, expenses of foreclosure and amounts advanced to protect the lien of the insured mortgage and secured by said insured mortgage at the time of acquisition of such estate or interest in the land; or

(iii) the amount paid by any governmental agency or instrumentality, if such agency or instrumentality is the insured claimant, in the acquisition of such estate or interest in satisfaction of its insurance contract or guaranty.

(b) Continuation of Insurance after Conveyance of Title

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

3. Defense and Prosecution of Actions - Notice of Claim to be given by an Insured Claimant

(a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or defenses, restraining orders injunctions interposed against a foreclosure of the insured mortgage or a defense interposed against an insured in an action to enforce a contract for a sale of the indebtedness secured by

the insured mortgage, or a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

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

(c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provisions of this policy.

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

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for that purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expense so incurred.

4. Notice of Loss - Limitation of Action

In addition to the notices required under paragraph 3(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

5. Options to Pay or Otherwise Settle Claims

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment by the insured claimant under this policy by an insured, the Company shall have the further option to purchase such indebtedness for the amount owing thereon together with all costs, attorneys' fees and expenses which the Company is obligated hereunder to pay. If the Company offers to purchase said indebtedness as herein provided, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage and any collateral securing the same to the Company upon payment therefor as herein provided.

6. Determination and Payment of Loss

(a) The liability of the Company under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in paragraph 2(a) hereof; or
- (iii) the amount of the indebtedness secured by the insured mortgage as determined under paragraph 8 hereof, at the time the loss or damage insured against hereunder occurs, together with interest thereon.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

7. Limitation of Liability

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, or the lien of the insured mortgage, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

8. Reduction of Liability

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto; provided, however, such payments, prior to the acquisition of title to said estate or interest as provided in paragraph 2(a) of these Conditions and Stipulations, shall not reduce pro tanto the amount of the insurance afforded hereunder except to the extent that such payments reduce the amount of the indebtedness secured by the insured mortgage.

Payment in full by any person or voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in paragraph 2(a) hereof.

(b) The liability of the Company shall not be increased by additional principal indebtedness created subsequent to Date of Policy, except as to amounts advanced to protect the lien of the insured mortgage and secured thereby.

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

9. Liability Noncumulative

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

10. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant, except that the owner of the indebtedness secured by the insured mortgage may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness, provided such act occurs prior to receipt by the insured of notice of any claim of title or interest adverse to the title to the estate or interest or the priority of the lien of the insured mortgage and does not result in any loss of priority of the lien of the insured mortgage. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss, but such subrogation shall be in subordination to the insured mortgage. If loss or priority should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

11. Liability Limited to this Policy

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

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

12. Notices, Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at _____.

FORM 5D • ALTA CONSTRUCTION LOAN POLICY (10-17-92)

This form was decertified by ALTA on February 3, 2011. It was replaced by the ALTA Loan Policy (6-17-06) with ALTA Endorsements 32-06, 32.1-06, or 33-06 added. See § 5.3.

POLICY OF TITLE INSURANCE

Issued by

BLANK TITLE INSURANCE COMPANY

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

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignee shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____
PRESIDENT

BY: _____
SECRETARY

EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any lien or right to a lien imposed by law for services, labor or material, heretofore or hereafter furnished, except for any lien the assertion of which by a claimant is recorded in the public records at Date of Policy.
7. Any lack of priority of the lien of the insured mortgage over any lien or encumbrance because, and to the extent that, the proceeds of the loan secured thereby may not have been fully disbursed at Date of Policy.

8. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE A

[File No.] Policy No.
Amount of Insurance \$
[Premium \$]

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

1. Name of Insured:

2. The estate or interest in the land which is encumbered by the insured mortgage is:

3. Title to the estate or interest in the land is vested in:

4. The insured mortgage and assignments thereof, if any, are described as follows:

- [5. The land referred to in this policy is described as follows:]

If Paragraph 5 is omitted, a Schedule C, captioned the same as Paragraph 5, must be used.

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

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

PART I

1. [POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO
2. DESIRED BY ISSUING COMPANY]
3. [VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Rs, ETC.]

4. Note: If there are matters which affect the title to the estate or interest in the land described in Schedule [A][C], but which are subordinate to the lien of the insured mortgage, Part II of Schedule B must be added, or Part I of Schedule B must contain the following statement:

"Matters which affect the title to the estate or interest, but which are subordinate to the lien of the insured mortgage"

PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule [A][C] is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

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

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

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

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

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

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

2. CONTINUATION OF INSURANCE.

(a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or

governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

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

(c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

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

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

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

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

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

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

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy,

whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

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

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

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

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

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

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

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

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

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

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

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

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

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

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

7. DETERMINATION AND EXTENT OF LIABILITY.

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

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

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the proceeds of the loan secured by the insured mortgage disbursed at Date of Policy plus the amount of each succeeding disbursement made in accordance with the terms of the insured mortgage until the aggregate of all disbursements is equal to the Amount of Insurance stated in Schedule A, plus any amount advanced to protect the lien of the insured mortgage and secured thereby, plus interest on those amounts, as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations; or

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

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

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

8. LIMITATION OF LIABILITY.

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

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

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

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE.

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

11. PAYMENT OF LOSS.

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

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

12. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

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

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

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

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

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

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

13. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

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

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

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

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

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

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

15. SEVERABILITY.

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

16. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [] material optional

FORM 5E • ALTA LEASEHOLD LOAN POLICY (10-17-92)

This form was decertified by ALTA in 2001. It was replaced by the ALTA Loan Policy (6-17-06) with ALTA Endorsement 13.1-06 attached. See § 5.4.

POLICY OF TITLE INSURANCE

Issued by

BLANK TITLE INSURANCE COMPANY

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

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. 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.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: PRESIDENT

BY: _____ SECRETARY

EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE A

[File No.] Policy No.

Amount of Insurance \$

[Premium \$]

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

1. Name of Insured:

2. The estate or interest in the land which is encumbered by the insured mortgage is the leasehold estate, as leasehold estate is defined in Section 1(h) of the Conditions and Stipulations of this policy, created by the instrument herein referred to as the Lease which is identified as follows:

3. The leasehold term insured is:

4. Title to the estate or interest in the land is vested in:

5. The insured mortgage and assignments thereof, if any, are described as follows:

- [6. The land referred to in this policy is described as follows:]

If Paragraph 6 is omitted, a Schedule C, captioned the same as Paragraph 6, must be used.

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

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

PART I

1. [POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO
2. DESIRED BY ISSUING COMPANY]
3. [VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Rs, ETC.]
- 4.

Note: If there are matters which affect the title to the estate or interest in the land described in Schedule [A][C], but which are subordinate to the lien of the insured mortgage, Part II of Schedule B must be added, or Part I of Schedule B must contain the following statement:

“Matters which affect the title to the estate or interest, but which are subordinate to the lien of the insured mortgage”

PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule [A][C] is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A. The term "insured" also includes
- (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);
 - (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;
 - (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.
- (h) "leasehold estate": the right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the Lease which limit the right of possession.

2. CONTINUATION OF INSURANCE.

- (a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured

corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

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

(c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

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

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

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

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

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

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

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

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

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

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

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

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

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

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

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

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

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

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

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

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

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

7. DETERMINATION AND EXTENT OF LIABILITY.

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

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

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

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

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

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

8. LIMITATION OF LIABILITY.

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

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

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

(d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE.

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

11. PAYMENT OF LOSS.

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

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

12. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

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

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

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

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

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds,

notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

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

13. VALUATION OF ESTATE OR INTEREST INSURED.

If, in computing loss or damage incurred by the insured, it becomes necessary to determine the value of the estate or interest insured by this policy, the value shall consist of the then present worth of the excess, if any, of the fair market rental value of the estate or interest, undiminished by any matters for which claim is made, for that part of the term stated in Schedule A then remaining plus any renewal or extended term for which a valid option to renew or extend is contained in the Lease, over the value of the rent and other consideration required to be paid under the Lease for the same period.

14. MISCELLANEOUS ITEMS OF LOSS.

In the event the insured acquires all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of these Conditions and Stipulations and thereafter is evicted from possession of all or a part of the land by reason of any matters insured against by this policy, the following, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estate or interest insured by this policy.

(a) The reasonable cost of removing and relocating any personal property which the insured has the right to remove and relocate, situated on the land at the time of eviction, the cost of transportation of that personal property for the initial twenty-five miles incurred in connection with the relocation, and the reasonable cost of repairing the personal property damaged by reason of the removal and relocation. The costs referred to above shall not exceed in the aggregate the value of the personal property prior to its removal and relocation.

"Personal property," above referred to, shall mean chattels and property which because of its character and manner of affixation to the land, can be severed therefrom without causing appreciable damage to the property severed or to the land to which the property is affixed.

(b) Rent or damages for use and occupancy of the land prior to the eviction which the insured as owner of the leasehold estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

(c) The amount of rent which, by the terms of the Lease, the insured must continue to pay to the lessor after eviction from the land, or part thereof, from which the insured has been evicted.

(d) The fair market value, at the time of the eviction, of the estate or interest of the insured in any sublease of all or part of the land existing at the date of the eviction.

(e) Damages which the insured may be obligated to pay to any sublessee on account of the breach of any sublease of all or part of the land caused by the eviction.

15. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the

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

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

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

16. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

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

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

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

17. SEVERABILITY.

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

18. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

American Land Title Association

**ALTA Short Form Residential Loan Policy
Revised 12-03-12**

- ALTA ENDORSEMENT 6.2-06 (Variable Rate-Negative Amortization), if the Insured Mortgage contains provisions which provide for both an adjustable interest rate and negative amortization.
- ALTA ENDORSEMENT 7-06 (Manufactured Housing), if a manufactured housing unit is located on the Land at Date of Policy.
- ALTA ENDORSEMENT 7.1-06 (Manufactured Housing – Conversion; Loan)
- ALTA ENDORSEMENT 8.1-06 (Environmental Protection Lien) – Paragraph b refers to the following state statute(s):
- ALTA ENDORSEMENT 9-06 (Restrictions, Encroachments, Minerals)
- ALTA ENDORSEMENT 14-06 (Future Advance – Priority)
- ALTA ENDORSEMENT 14.1-06 (Future Advance – Knowledge)
- ALTA ENDORSEMENT 14.3-06 (Future Advance – Reverse Mortgage)
- ALTA ENDORSEMENT 22-06 (Location) The type of improvement is a one-to-four family residential structure and the street address is as shown above.
- ALTA ENDORSEMENT 30-06 – (Shared Appreciation Mortgage)

[Witness clause optional]

BY: _____ PRESIDENT

BY: _____ **SECRETARY**

[bracketed material optional—one alternative must be chosen]

SUBJECT TO THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B BELOW, AND ANY ADDENDUM ATTACHED HERETO, BLANK TITLE INSURANCE COMPANY, A _____ CORPORATION, HEREIN CALLED THE "COMPANY," HEREBY INSURES THE INSURED IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (6-17-06), ALL OF WHICH ARE INCORPORATED HEREIN. ALL REFERENCES TO SCHEDULES A AND B SHALL REFER TO SCHEDULES A AND B OF THIS POLICY.



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ALTA Short Form Residential Loan Policy
Revised 12-03-12

SCHEDULE B

EXCEPTIONS FROM COVERAGE AND
AFFIRMATIVE INSURANCES

Except to the extent of the affirmative insurance set forth below, this policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) which arise by reason of:

1. Those taxes and assessments that become due or payable subsequent to Date of Policy. (This does not modify or limit the coverage provided in Covered Risk 11(b).)
2. Covenants, conditions, or restrictions, if any, appearing in the Public Records; however, this policy insures against loss or damage arising from:
 - (a) the violation of those covenants, conditions, or restrictions on or prior to Date of Policy;
 - (b) a forfeiture or reversion of Title from a future violation of those covenants, conditions, or restrictions, including those relating to environmental protection; and
 - (c) provisions in those covenants, conditions, or restrictions, including those relating to environmental protection, under which the lien of the Insured Mortgage can be extinguished, subordinated, or impaired.

As used in paragraph 2(a), the words "covenants, conditions, or restrictions" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not referenced in an addendum attached to this policy.

3. Any easements or servitudes appearing in the Public Records; however, this policy insures against loss or damage arising from (a) the encroachment, at Date of Policy, of the improvements on any easement, and (b) any interference with or damage to existing improvements, including lawns, shrubbery, and trees, resulting from the use of the easements for the purposes granted or reserved.
4. Any lease, grant, exception, or reservation of minerals or mineral rights or other subsurface substances appearing in the Public Records; however, this policy insures against loss or damage arising from (a) any effect on or impairment of the use of the Land for residential one-to-four family dwelling purposes by reason of such lease, grant, exception or reservation of minerals or mineral rights or other subsurface substances, and (b) any damage to existing improvements, including lawns, shrubbery, and trees, resulting from the future exercise of any right to use the surface of the Land for the extraction or development of the minerals or mineral rights or other subsurface substances so leased, granted, excepted, or reserved. Nothing herein shall insure against loss or damage resulting from contamination, explosion, fire, fracturing, vibration, earthquake or subsidence.

NOTICES, WHERE SENT: Any notice of claim or other notice or statement in writing required to be given the Company under this policy must be given to the Company at the following address:

_____.

AMERICAN
LAND TITLE
ASSOCIATION



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**ALTA Short Form Residential Loan Policy
Revised 12-03-12**

ADDENDUM
TO
SHORT FORM RESIDENTIAL LOAN POLICY

Addendum to Policy Number: _____ [File Number: _____]

SCHEDULE B (Continued)

IN ADDITION TO THE MATTERS SET FORTH ON SCHEDULE B OF THE POLICY TO WHICH THIS ADDENDUM IS ATTACHED, THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEYS' FEES OR EXPENSES) THAT ARISE BY REASON OF THE FOLLOWING:



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American Land Title Association

Short Form Residential Loan Policy—
Current Violations
Adopted 04-02-15

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
PRESIDENT

By: _____
SECRETARY

[Bracketed material optional—one alternative must be chosen]

SUBJECT TO THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B BELOW, AND ANY ADDENDUM ATTACHED HERETO, BLANK TITLE INSURANCE COMPANY, A _____ CORPORATION, HEREIN CALLED THE "COMPANY," HEREBY INSURES THE INSURED IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06), ALL OF WHICH ARE INCORPORATED HEREIN. ALL REFERENCES TO SCHEDULES A AND B SHALL REFER TO SCHEDULES A AND B OF THIS POLICY.

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American Land Title Association

Short Form Residential Loan Policy—
Current Violations
Adopted 04-02-15

SCHEDULE B

EXCEPTIONS FROM COVERAGE AND AFFIRMATIVE INSURANCES

Except to the extent of the affirmative insurance set forth below, this policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) which arise by reason of:

1. Those taxes and assessments that become due or payable subsequent to Date of Policy. This does not modify or limit the coverage provided in Covered Risk 11(b).
2. Covenants, conditions, or restrictions, if any, appearing in the Public Records; however, this policy insures against loss or damage arising from:
 - (a) the violation of those covenants, conditions, or restrictions on or prior to Date of Policy;
 - (b) a forfeiture or reversion of Title from a violation at Date of Policy of those covenants, conditions, or restrictions, including those relating to environmental protection; and
 - (c) the invalidation, subordination, or other impairment of the lien of the Insured Mortgage because of a violation at Date of Policy of any provisions in those covenants, conditions, or restrictions, including those relating to environmental protection.

As used in Paragraph 2(a), the words "covenants, conditions, or restrictions" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not referenced in an addendum attached to this policy.

3. Any easements or servitudes appearing in the Public Records; however, this policy insures against loss or damage arising from (a) the encroachment, at Date of Policy, of the improvements on any easement, and (b) any interference with or damage to existing improvements, including lawns, shrubbery, and trees, resulting from the use of the easements for the purposes granted or reserved.
4. Any lease, grant, exception, or reservation of minerals or mineral rights or other subsurface substances appearing in the Public Records; however, this policy insures against loss or damage arising from (a) any effect on or impairment of the use of the Land for residential one-to-four family dwelling purposes by reason of such lease, grant, exception or reservation of minerals or mineral rights or other subsurface substances, and (b) any damage to existing improvements, including lawns, shrubbery, and trees, resulting from the future exercise of any right to use the surface of the Land for the extraction or development of the minerals or mineral rights or other subsurface substances so leased, granted, excepted, or reserved. Nothing herein shall insure against loss or damage resulting from contamination, explosion, fire, fracturing, vibration, earthquake, or subsidence.

NOTICES, WHERE SENT: Any notice of claim or other notice or statement in writing required to be given the Company under this policy must be given to the Company at the following address: *(fill in)*.

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FORM 5H • ALTA RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY (REVISED 8-1-12)

American Land Title Association

ALTA Residential Limited Coverage
Junior Loan Policy
Revised 8-1-12

RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY

Issued By

BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 14 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS AND THE CONDITIONS, and provided that the Land is a one-to-four family residence or condominium unit, Blank Title Insurance Company, a _____ corporation, the Company, insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Grantee not being the named grantee on the last document purporting to vest the Title recorded in the Public Records.
2. The description of the Land in Schedule A not being the same as that contained in the last document purporting to vest the Title recorded in the Public Records.
3. A Monetary Lien recorded in the Public Records.
4. Any ad valorem taxes or assessments of any governmental taxing authority that constitute a lien on the Title and that on Date of Policy appear in the official ad valorem tax records where the Land is located.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____ **PRESIDENT**

BY: _____ **SECRETARY**

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American Land Title Association

**ALTA Residential Limited Coverage
Junior Loan Policy
Revised 8-1-12**

SCHEDULE A

Name and Address of Title Insurance Company:

Policy No.

[Premium: \$_____.]

Amount of Insurance: \$

Date of Policy:

Name of Insured:

Grantee:

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

EXCEPTIONS

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

TAX INFORMATION



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**ALTA Residential Limited Coverage
Junior Loan Policy
Revised 8-1-12**

EXCLUSIONS FROM COVERAGE

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

1. Any invalidity, unenforceability or ineffectiveness of the Insured's Mortgage.
2. Defects, liens, encumbrances, adverse claims or other matters:
 - a. created, suffered, assumed or agreed to by the Insured Claimant;
 - b. known to the Insured Claimant whether or not disclosed in the Public Records;
 - c. resulting in no loss or damage to the Insured Claimant; or
 - d. recorded or filed in the Public Records subsequent to Date of Policy.



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ALTA Residential Limited Coverage
Junior Loan Policy
Revised 8-1-12

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Grantee": The Grantee designated in Schedule A.
- (e) "Indebtedness": The obligation if secured by the Insured's Mortgage. Including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of:
 - (i) the amount of the principal disbursed if secured by the Insured's Mortgage;
 - (ii) interest on the loan;
 - (iii) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (iv) the expenses of foreclosure and any other costs of enforcement;
 but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (f) "Insured": The Insured named in Schedule A if it is the owner of the Indebtedness and each successor in ownership of the Indebtedness, except a successor who is an obligor, reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (g) "Insured Claimant": An Insured claiming loss or damage.
- (h) "Insured's Mortgage": The Mortgage described in JR1.
- (i) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (j) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways.
- (k) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (l) "Monetary Lien": Any Mortgage, deed of trust, judgment lien or other lien affecting the Title securing the obligation to pay money, but not including any lien created in any easement, covenant, condition, restriction, or declaration of condominium or planned unit development, except to the extent that a separate notice of enforcement of a specific delinquent charge or assessment affecting the Title has been recorded in the Public Records.



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ALTA Residential Limited Coverage
Junior Loan Policy
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(m) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.

(n) "Title": The estate or interest described in Schedule A.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured through foreclosure of the lien of the Insured's Mortgage or deed in lieu of foreclosure.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5 of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

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

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 6 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 6 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

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ALTA Residential Limited Coverage
Junior Loan Policy
Revised 8-1-12

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

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

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

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

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

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

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
- (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
- (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

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

7. DETERMINATION AND PAYMENT OF LOSS



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American Land Title Association**ALTA Residential Limited Coverage
Junior Loan Policy
Revised 8-1-12**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
 - (i) the Amount of Insurance,
 - (ii) the Indebtedness, or
 - (iii) the difference between the value of the Title without the matter insured against and the value of the Title subject to the matter insured against by this policy.
- (b) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions then the extent of liability of the Company shall continue as set forth in Section 7(a) of these Conditions.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions. If the loss is caused by a lien insured against by this policy, the difference between the value of the estate or interest in the land encumbered by the insured's mortgage without the lien insured against and the value of that estate or interest subject to the lien insured against by this policy.

8. LIMITATION OF LIABILITY

- (a) If the Company removes an alleged matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations and shall not be liable for any loss or damage with respect to that matter.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Insured with respect to matters insured against by this policy.
- (c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF INSURANCE; TERMINATION OF LIABILITY

- (a) All payments under this policy, except payment made for costs, attorneys' fees and expenses, shall reduce the Amount of Insurance by the amount of the payment.
- (b) The voluntary satisfaction or release of the Insured's Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

10. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in



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ALTA Residential Limited Coverage
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Revised 8-1-12

accordance with these Conditions, the payment shall be made within 30 days.

11. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**(a) The Company's Right to Recover**

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to all rights and remedies of the Insured Claimant in respect to the claim that the Insured Claimant has against any person or property to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

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

(b) The Company's Rights Against Noninsured Obligors

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

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

12. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage relating to the Covered Risks or any other matter shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

13. SEVERABILITY

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

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ALTA Residential Limited Coverage
Junior Loan Policy
Revised 8-1-12**14. CHOICE OF LAW; FORUM**

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

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims insured against by this policy and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

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

15. NOTICES WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company, Attention: Claims Department.

[16. ARBITRATION

Unless prohibited by applicable law, either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.]

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FORM 5I • ALTA SHORT FORM RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY (REVISED 04-02-2013)

American Land Title Association

**ALTA Short Form Residential Limited Coverage
Junior Loan Policy
Revised 04-02-2013**

**SHORT FORM RESIDENTIAL LIMITED COVERAGE
JUNIOR LOAN POLICY**

Issued By

BLANK TITLE INSURANCE COMPANY

Subject to the Exceptions below and in any Addendum attached, BLANK TITLE INSURANCE COMPANY, a _____ Corporation, (the "Company,") insures the Insured as of Date of Policy against loss or damage, not exceeding the Amount of Insurance, as provided by and subject to the terms, Exclusions from Coverage and Conditions set forth in the American Land Title Association Residential Limited Coverage Junior Loan Policy (8-1-12), all of which are incorporated by reference.

Name and Address of Title Insurance Company:

Policy No.

[Premium: \$]

Amount of Insurance: \$

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

Name of Insured:

Grantee:

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

EXCEPTIONS:

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

[TAX INFORMATION:]

____ Addendum containing additional exceptions attached.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____ PRESIDENT

BY: _____ SECRETARY

NOTICES WHERE SENT. All notices required to be given the Company and any statement in writing required to be furnished to the Company shall include the number of this policy and shall be addressed to the Company, Attention: Claims Department, _____.

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ALTA Short Form Residential Limited Coverage
Junior Loan Policy
Revised 04-02-2013

ADDENDUM TO SHORT FORM RESIDENTIAL
LIMITED COVERAGE JUNIOR LOAN POLICY

File No:

Addendum to Policy No.

EXCEPTIONS (CONTINUED)

In addition to the matters set forth as Exceptions on the Short Form Residential Limited Coverage Loan Policy to which this addendum is attached, this policy does not insure against loss or damage by reason of the following:



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FORM 5J • ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — ASSESSMENTS PRIORITY (04-02-15)

American Land Title Association

Expanded Coverage Residential Loan Policy—
Assessments Priority
Adopted 04-02-15

**EXPANDED COVERAGE RESIDENTIAL LOAN POLICY
ASSESSMENTS PRIORITY
FOR ONE-TO-FOUR FAMILY RESIDENTIAL PROPERTY
Issued by
BLANK TITLE INSURANCE COMPANY**

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

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, and 28, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

COVERED RISKS

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk 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) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.

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American Land Title Association

Expanded Coverage Residential Loan Policy—
Assessments Priority
Adopted 04-02-15

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
- the occupancy, use, or enjoyment of the Land;
 - the character, dimensions, or location of any improvement erected on the Land;
 - the subdivision of land; or
 - environmental protection,
- if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk 9 includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage:
- forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - failure of any person or Entity to have authorized a transfer or conveyance;
 - the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - failure to perform those acts necessary to create a document by electronic means authorized by law;
 - a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title:
- as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
 - contracted for or commenced on or before Date of Policy; or
 - contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance;
 - over the lien of any assessments for street improvements under construction or completed at Date of Policy;
 - over any defect in or lien or encumbrance on the Title attaching or created before, on or after Date of Policy; as to each and every advance of proceeds of the loan secured by the Insured Mortgage, which at Date of Policy the Insured has made or is legally obligated to make; and
 - over any environmental protection lien that comes into existence before, on or after Date of Policy pursuant to any federal statute in effect at Date of Policy as to each and every advance of proceeds of the loan secured by the Insured Mortgage, which at Date of Policy the Insured has made or is legally obligated to make.
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 failure of the Land:

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Expanded Coverage Residential Loan Policy—
Assessments Priority
Adopted 04-02-15

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- (a) to have the street address shown in Schedule A, and the failure of the map, if any, attached to this policy to show the correct location and dimensions of the Land according to the Public Record.
- (b) to be improved with a one-to-four family residential structure or, if stated in the description of the Land, a residential condominium unit.
- (c) to be zoned to permit a one-to-four family residential structure or, if stated in the description of the Land, a residential condominium unit.
- (d) to be a lawfully created one-to-four family residential parcel according to state statutes and local ordinances governing subdivision of land.
14. The forced removal, modification, or replacement of any existing one-to-four family residential structure or residential condominium unit located on the Land resulting from the violation of any of the following requirements of any applicable zoning ordinance: area or dimensions of the Land as a building site; floor space area of the structure; height of the structure; or distance of the structure from the boundary lines of the Land.
15. The assessment or taxation of the Land by governmental authority as part of a larger parcel.
16. The failure of the existing one-to-four family residential structure or residential condominium unit or a portion or a future modification or replacement to have been constructed with a valid building permit from the appropriate local government issuing office or agency.
17. The inability to use the existing one-to-four family residential structure or residential condominium unit or a portion of it or a future modification or replacement to it for one-to-four family residential purposes because that use violates a restriction shown in Schedule B.
18. Damage to improvements, lawns, shrubbery or trees constructed or planted on the Land before, on or after Date of Policy resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals, water or any other substance.
19. The encroachment onto the Land of an improvement constructed after Date of Policy.
20. Encroachment of improvements constructed on the Land after Date of Policy onto adjoining property or over any easement or building setback line on the Land.
21. Forgery after Date of Policy of:
- (a) any instrument purporting to subordinate, assign, release, or reconvey the Insured Mortgage; and
- (b) any instrument purporting to convey or encumber the Title.
22. The invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as to Advances made or changes in the rate of interest charged subsequent to any modification of the terms of the Insured Mortgage made after Date of Policy which are secured by the terms of the Insured Mortgage as modified.
23. Damage to improvements, lawns, shrubbery, or trees constructed or planted on the Land before, on or after Date of Policy occasioned by the exercise of the right to use or maintain any easement referred to in Schedule B.
24. Interference with the use for one-to-four family residential purposes of the improvements constructed on the Land before, on or after Date of Policy occasioned by the exercise of the right to use or maintain any easement referred to in Schedule B.
25. Supplemental real estate taxes, including those caused by construction or a change of ownership or use, that occurred before Date of Policy, not previously assessed against the Land for any period before Date of Policy.
26. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title based upon a violation of the usury laws of the state where the Land is located if no other Mortgage is shown as an exception in Schedule B.
27. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title:
- (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

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**Expanded Coverage Residential Loan Policy—
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Adopted 04-02-15**

- (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
28. Any defect in or lien or encumbrance on the Title or other matter insured against by this policy that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

Unless stated to the contrary in Schedule B, the Company incorporates the following American Land Title Association (ALTA) endorsements into this policy by this reference as if these endorsements had been attached to this policy

- (a) ALTA Form 4-06 (Condominium), if a condominium unit is referred to in the description of the Land;
- (b) ALTA Form 5-06 (Planned Unit Development);
- (c) ALTA Form 6-06 (Variable Rate Mortgage);
- (d) ALTA Form 6.2-06 (Variable Rate Mortgage—Negative Amortization);
- (e) ALTA Form 8.1-06 (Environmental Protection Lien) subject to the statutes, if any, shown in Schedule B specifically for this endorsement; and
- (f) ALTA Form 9-06 (Restrictions, Encroachments, Minerals—Loan Policy).

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
PRESIDENT

By: _____
SECRETARY

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

1. (a) any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14, or 16.
- (b) any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14, or 16.
2. Rights of eminent domain. This Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion 5 does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion 6 does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion 7 does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion 8 does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is:
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

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Expanded Coverage Residential Loan Policy—
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Adopted 04-02-15

SCHEDULE B—PART I

Policy Number: Loan Number:
[File Number:]

EXCEPTIONS FROM COVERAGE

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

- [1. The following state statutes, reference to which are made part of the ALTA 8.1-06 (Environmental Protection Lien) endorsement incorporated into this policy:]

SCHEDULE B—PART II

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

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American Land Title Association

Expanded Coverage Residential Loan Policy—
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Adopted 04-02-15**CONDITIONS**

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Advances": Disbursements of Indebtedness made after the Date of Policy as provided by the Insured Mortgage.
- (b) "Amount of Insurance": One hundred twenty-five percent (125%) of the Policy Amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Subsection 8(b) or decreased by Section 10 of these Conditions.
- (c) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (d) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (e) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of:
 - (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) the amount of the principal disbursed subsequent to Date of Policy;
 - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the Advance;
 - (iv) interest on the loan;
 - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (vi) the expenses of foreclosure and any other costs of enforcement;
 - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - (viii) the amounts to pay taxes and insurance; and
 - (ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (f) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes:
 - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Subsection 12(c) of these Conditions;
 - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (D) successors to an Insured by its conversion to another kind of Entity;
 - (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured, or

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- (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
 - (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;
 - (ii) With regard to Subsections 1(f)(i)(A), 1(f)(i)(B), 1(f)(i)(C), 1(f)(i)(D), and 1(f)(i)(E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.
 - (g) "Insured Claimant": An Insured claiming loss or damage.
 - (h) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
 - (i) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
 - (j) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
 - (k) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
 - (l) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
 - (m) "Title": The estate or interest described in Schedule A.
 - (n) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.
2. **CONTINUATION OF INSURANCE**
The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.
3. **NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT**
The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Subsection 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under this policy shall be reduced to the extent of the prejudice.

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American Land Title Association**Expanded Coverage Residential Loan Policy—
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Adopted 04-02-15****4. PROOF OF LOSS**

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

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this Subsection 5(b), it must do so diligently.

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

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under this policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by

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the Insured Claimant provided to the Company pursuant to this Section 6 shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this Subsection 6(b), unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

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

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

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

Upon the exercise by the Company of either of the options provided for in Subsections 7(a)(i) or 7(a)(ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in Subsections 7(a)(i) and 7(a)(ii), shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

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

Upon the exercise by the Company of either of the options provided for in Subsections 7(b)(i) or 7(b)(ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of:
- (i) the Amount of Insurance;
- (ii) the Indebtedness;
- (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy; or
- (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

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- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured:
- (i) the Amount of Insurance shall be increased by 10%; and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Subsection 8(a) of these Conditions.
- (d) In addition to the extent of liability under Subsections 8(a), 8(b), and 8(c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.
9. **LIMITATION OF LIABILITY**
- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
 - (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.
 - (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.
10. **REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**
- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.
 - (b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.
11. **PAYMENT OF LOSS**
When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.
12. **RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**
- (a) **The Company's Right to Recover**
Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
 - (b) **The Insured's Rights and Limitations**
 - (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment,

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- release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.
- (ii) If the Insured exercises a right provided in Subsection 12(b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.
- (c) **The Company's Rights against Non-Insured Obligors**
The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guarantees, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.
The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Subsection 1(f)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.
13. **ARBITRATION**
Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.
14. **LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**
(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.
(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of this policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.
15. **SEVERABILITY**
In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, this policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.
16. **CHOICE OF LAW; FORUM**
(a) **Choice of Law.**
The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

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

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

17. NOTICES, WHERE SENT

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

NOTE: Bracketed [] material optional

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FORM 5K • ALTA SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — ASSESSMENTS PRIORITY (04-02-15)

American Land Title Association

Short Form Expanded Coverage Residential Loan Policy—
Assessments Priority
Adopted 04-02-15

**SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY
ASSESSMENTS PRIORITY
FOR ONE-TO-FOUR FAMILY RESIDENTIAL PROPERTY
Issued by
BLANK TITLE INSURANCE COMPANY**

SCHEDULE A

Name and Address of Title Insurance Company:

Policy Number: _____ Loan Number: _____

[File Number: _____]

Policy Amount: \$ _____ [Premium: \$ _____]

Mortgage Amount: _____ Mortgage Date: _____

Date of Policy: _____

Name of Insured: _____

Name of Borrower(s): _____

Street Address: _____

County and State: _____

The estate or interest in the Land which is encumbered by the Insured Mortgage is fee simple and is, at Date of Policy, vested in the Borrower(s) shown in the Insured Mortgage and named above.

The Land referred to in this policy is described as set forth in the Insured Mortgage.

This policy consists of [one] page(s), [including the reverse side hereof,] unless an addendum is attached and indicated below:

_____ Addendum attached

[The following state statutes are made part of Schedule B, relating to the ALTA 8.1-06 (Environmental Protection Lien) endorsement: _____]

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
PRESIDENT

By: _____
SECRETARY

NOTE: Bracketed [] material optional

SUBJECT TO THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B BELOW, AND ANY ADDENDUM ATTACHED HERETO, BLANK TITLE INSURANCE COMPANY, A _____ CORPORATION, HEREIN CALLED THE "COMPANY," HEREBY INSURES IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY—ASSESSMENTS PRIORITY (04-02-15), ALL OF WHICH ARE INCORPORATED HEREIN. ALL REFERENCES TO SCHEDULES A AND B SHALL REFER TO SCHEDULES A AND B OF THIS POLICY.

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American Land Title Association

Short Form Expanded Coverage Residential Loan Policy—
Assessments Priority
Adopted 04-02-15

SCHEDULE B**EXCEPTIONS FROM COVERAGE**

Except to the extent of the coverage provided in the endorsements listed after Covered Risk 28, this policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) which arise by reason of:

1. Those taxes and special assessments that become due or payable subsequent to Date of Policy. (This does not modify or limit the coverage provided in Covered Risk 11(b) or 25.)
2. Covenants, conditions, and restrictions, if any, appearing in the Public Records, but not including any covenant, condition, or restriction based on race, color, religion, sex, handicap, familial status, sexual orientation, or national origin, unless and only to the extent that said covenant is (a) exempt under Chapter 42, Section 3607 of the United States Code, or (b) related to a handicap but does not discriminate against handicapped persons. (This does not modify or limit the coverage provided in Covered Risk 9, 10, 11(c), or 17.)
3. Any easements or servitudes appearing in the Public Records. (This does not modify or limit the coverage provided in Covered Risk 23 or 24.)
4. Any lease, grant, exception, or reservation of minerals or mineral rights appearing in the Public Records. (This does not modify or limit the coverage provided in Covered Risk 18.)

NOTICES, WHERE SENT: All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at fill in.

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FORM 5L • ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY — CURRENT ASSESSMENTS (04-02-15)

American Land Title Association

Expanded Coverage Residential Loan Policy—
Current Assessments
Adopted 04-02-15

**EXPANDED COVERAGE RESIDENTIAL LOAN POLICY
CURRENT ASSESSMENTS
FOR ONE-TO-FOUR FAMILY RESIDENTIAL PROPERTY
Issued by
BLANK TITLE INSURANCE COMPANY**

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

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, and 28, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

COVERED RISKS

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk 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) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection,
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by

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American Land Title Association

Expanded Coverage Residential Loan Policy—
Current Assessments
Adopted 04-02-15

- Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
 9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk 9 includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage:
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.
 10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
 11. The lack of priority of the lien of the Insured Mortgage upon the Title:
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
 - (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance;
 - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy;
 - (c) over any defect in or lien or encumbrance on the Title attaching or created before, on or after Date of Policy; as to each and every advance of proceeds of the loan secured by the Insured Mortgage, which at Date of Policy the Insured has made or is legally obligated to make; and
 - (d) over any environmental protection lien that comes into existence before, on or after Date of Policy pursuant to any federal statute in effect at Date of Policy as to each and every advance of proceeds of the loan secured by the Insured Mortgage, which at Date of Policy the Insured has made or is legally obligated to make.
 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 failure of the Land:
 - (a) to have the street address shown in Schedule A, and the failure of the map, if any, attached to this policy to show the correct location and dimensions of the Land according to the Public Record.
 - (b) to be improved with a one-to-four family residential structure or, if stated in the description of the Land, a residential condominium unit.
 - (c) to be zoned to permit a one-to-four family residential structure or, if stated in the description of the Land, a residential condominium unit.
 - (d) to be a lawfully created one-to-four family residential parcel according to state statutes and local ordinances governing subdivision of land.
 14. The forced removal, modification, or replacement of any existing one-to-four family residential structure or residential condominium unit located on the Land resulting from the violation of any of

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American Land Title Association**Expanded Coverage Residential Loan Policy—
Current Assessments
Adopted 04-02-15**

- the following requirements of any applicable zoning ordinance: area or dimensions of the Land as a building site; floor space area of the structure; height of the structure; or distance of the structure from the boundary lines of the Land.
15. The assessment or taxation of the Land by governmental authority as part of a larger parcel.
 16. The failure of the existing one-to-four family residential structure or residential condominium unit or a portion or a future modification or replacement to have been constructed with a valid building permit from the appropriate local government issuing office or agency.
 17. The inability to use the existing one-to-four family residential structure or residential condominium unit or a portion of it or a future modification or replacement to it for one-to-four family residential purposes because that use violates a restriction shown in Schedule B.
 18. Damage to improvements, lawns, shrubbery or trees constructed or planted on the Land before, on or after Date of Policy resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals, water or any other substance.
 19. The encroachment onto the Land of an improvement constructed after Date of Policy.
 20. Encroachment of improvements constructed on the Land after Date of Policy onto adjoining property or over any easement or building setback line on the Land.
 21. Forgery after Date of Policy of:
 - (a) any instrument purporting to subordinate, assign, release, or reconvey the Insured Mortgage; and
 - (b) any instrument purporting to convey or encumber the Title.
 22. The invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as to Advances made or changes in the rate of interest charged subsequent to any modification of the terms of the Insured Mortgage made after Date of Policy which are secured by the terms of the Insured Mortgage as modified.
 23. Damage to improvements, lawns, shrubbery, or trees constructed or planted on the Land before, on or after Date of Policy occasioned by the exercise of the right to use or maintain any easement referred to in Schedule B.
 24. Interference with the use for one-to-four family residential purposes of the improvements constructed on the Land before, on or after Date of Policy occasioned by the exercise of the right to use or maintain any easement referred to in Schedule B.
 25. Supplemental real estate taxes, including those caused by construction or a change of ownership or use, that occurred before Date of Policy, not previously assessed against the Land for any period before Date of Policy.
 26. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title based upon a violation of the usury laws of the state where the Land is located if no other Mortgage is shown as an exception in Schedule B.
 27. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title:
 - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
 28. Any defect in or lien or encumbrance on the Title or other matter insured against by this policy that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

Unless stated to the contrary in Schedule B, the Company incorporates the following American Land Title Association endorsements into this policy by this reference as if these endorsements had been attached

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American Land Title Association

**Expanded Coverage Residential Loan Policy—
Current Assessments
Adopted 04-02-15**

to this policy

- (a) ALTA Form 4.1-06 (Condominium), if a condominium unit is referred to in the description of the Land;
- (b) ALTA Form 5.1-06 (Planned Unit Development);
- (c) ALTA Form 6-06 (Variable Rate Mortgage);
- (d) ALTA Form 6.2-06 (Variable Rate Mortgage—Negative Amortization);
- (e) ALTA Form 8.1-06 (Environmental Protection Lien) subject to the statutes, if any, shown in Schedule B specifically for this endorsement; and
- (f) ALTA Form 9.10-06 (Restrictions, Encroachments, Minerals—Current Violations—Loan Policy).

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
PRESIDENT

By: _____
SECRETARY

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American Land Title Association

Expanded Coverage Residential Loan Policy—
Current Assessments
Adopted 04-02-15**EXCLUSIONS FROM COVERAGE**

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

1. (a) any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14, or 16.
- (b) any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14, or 16.
2. Rights of eminent domain. This Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion 5 does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion 6 does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion 7 does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion 8 does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is:
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

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American Land Title Association

**Expanded Coverage Residential Loan Policy—
Current Assessments
Adopted 04-02-15**

SCHEDULE A

Name and Address of Title Insurance Company:

Policy Number:

Loan Number:

[File Number:]

Street Address of the Land:

Policy Amount: \$

[Premium: \$]

Date of Policy:

[at a.m./p.m.]

1. Name of Insured:
2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:
3. Title is vested in:
4. The Insured Mortgage and its assignments, if any, are described as follows:
5. The Land referred to in this policy is described as follows:

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American Land Title Association

**Expanded Coverage Residential Loan Policy—
Current Assessments
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CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Advances": Disbursements of Indebtedness made after the Date of Policy as provided by the Insured Mortgage.
- (b) "Amount of Insurance": One hundred twenty-five percent (125%) of the Policy Amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Subsection 8(b) or decreased by Section 10 of these Conditions.
- (c) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (d) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (e) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of:
 - (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) the amount of the principal disbursed subsequent to Date of Policy;
 - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the Advance;
 - (iv) interest on the loan;
 - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (vi) the expenses of foreclosure and any other costs of enforcement;
 - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - (viii) the amounts to pay taxes and insurance; and
 - (ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (f) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes:
 - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Subsection 12(c) of these Conditions;
 - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (D) successors to an Insured by its conversion to another kind of Entity;
 - (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured, or

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Adopted 04-02-15**

- (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
- (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;
- (ii) With regard to Subsections 1(f)(i)(A), 1(f)(i)(B), 1(f)(i)(C), 1(f)(i)(D), and 1(f)(i)(E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.
- (g) "Insured Claimant": An Insured claiming loss or damage.
- (h) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
- (i) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (j) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (k) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (l) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (m) "Title": The estate or interest described in Schedule A.
- (n) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Subsection 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under this policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company

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may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this Subsection 5(b), it must do so diligently.

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

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under this policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section 6 shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination

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under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this Subsection 6(b), unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

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

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

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

Upon the exercise by the Company of either of the options provided for in Subsections 7(a)(i) or 7(a)(ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in Subsections 7(a)(i) and 7(a)(ii), shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
- (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
- (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in Subsections 7(b)(i) or 7(b)(ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of:
- (i) the Amount of Insurance;
- (ii) the Indebtedness;
- (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy; or
- (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,
- (i) the Amount of Insurance shall be increased by 10%; and
- (ii) the Insured Claimant shall have the right to have the loss or damage determined

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- either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Subsection 8(a) of these Conditions.
- (d) In addition to the extent of liability under Subsections 8(a), 8(b), and 8(c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.
9. **LIMITATION OF LIABILITY**
- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.
10. **REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**
- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.
- (b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.
11. **PAYMENT OF LOSS**
When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.
12. **RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**
- (a) **The Company's Right to Recover**
Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) **The Insured's Rights and Limitations**
- (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.
- (ii) If the Insured exercises a right provided in Subsection 12(b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage

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insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

- (c) **The Company's Rights against Non-Insured Obligors**
The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guarantees, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.
The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Subsection 1(f)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. **ARBITRATION**

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

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

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of this policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. **SEVERABILITY**

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

16. **CHOICE OF LAW; FORUM**

- (a) **Choice of Law.**
The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) **Choice of Forum.**

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**Expanded Coverage Residential Loan Policy—
Current Assessments
Adopted 04-02-15**

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

17. **NOTICES, WHERE SENT**

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

NOTE: Bracketed [] material optional

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Short Form Expanded Coverage Residential Loan Policy—
Current Assessments
Adopted 04-02-15**SCHEDULE B****EXCEPTIONS FROM COVERAGE**

Except to the extent of the coverage provided in the endorsements listed after Covered Risk 28, this policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) which arise by reason of:

1. Those taxes and special assessments that become due or payable subsequent to Date of Policy. (This does not modify or limit the coverage provided in Covered Risk 11(b) or 25.)
2. Covenants, conditions, and restrictions, if any, appearing in the Public Records, but not including any covenant, condition, or restriction based on race, color, religion, sex, handicap, familial status, sexual orientation, or national origin, unless and only to the extent that said covenant is (a) exempt under Chapter 42, Section 3607 of the United States Code, or (b) related to a handicap but does not discriminate against handicapped persons. (This does not modify or limit the coverage provided in Covered Risk 17.)
3. Any easements or servitudes appearing in the Public Records. (This does not modify or limit the coverage provided in Covered Risk 23 or 24.)
4. Any lease, grant, exception, or reservation of minerals or mineral rights appearing in the Public Records. (This does not modify or limit the coverage provided in Covered Risk 18.)

NOTICES, WHERE SENT: All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

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Short Form Expanded Coverage Residential Loan Policy—
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**ADDENDUM
ALTA SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY
CURRENT ASSESSMENTS
FOR ONE-TO-FOUR FAMILY RESIDENTIAL PROPERTY**

Policy Number: Addendum Loan Number:
[File Number:]

**SCHEDULE B
(Continued)**

In addition to the matters set forth on Schedule B of this policy to which this addendum is attached, this policy does not insure against loss or damage by reason of the following:

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FORM 5N • RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY (12-01-14)

American Land Title Association

ALTA Residential Limited Coverage
Mortgage Modification Policy
Adopted 12-01-14
Technical Correction 08-01-16

RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY
Issued By
BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 15 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS, and provided that the Land is a one-to-four family residence or condominium unit, Blank Title Insurance Company, a _____ corporation (the "Company"), insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured's Mortgage upon the Title at Date of Policy as a result of the Modification; and
2. The loss of priority of the lien of the Insured's Mortgage, at Date of Policy, over any defects in or liens or encumbrances on the Title as a result of the Modification.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____
PRESIDENT

BY: _____
SECRETARY

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American Land Title Association

**ALTA Residential Limited Coverage
Mortgage Modification Policy
Adopted 12-01-14
Technical Correction 08-01-16**

EXCLUSIONS FROM COVERAGE

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

1. Any invalidity, unenforceability, or lack of priority of the Insured's Mortgage or the Modification. This Exclusion does not modify or limit the coverage provided under the Covered Risks.
2. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) Known to the Insured Claimant whether or not disclosed in the Public Records;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) not recorded or filed in the Public Records at Date of Policy; or
 - (e) attaching or created subsequent to Date of Policy.
3. Any usury, consumer credit protection, or truth-in-lending law.
4. The status or ownership of the Title.
5. Any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:
 - (a) the Modification being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the Modification being deemed a preferential transfer.

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**ALTA Residential Limited Coverage
Mortgage Modification Policy
Adopted 12-01-14
Technical Correction 08-01-16**

CONDITIONS
1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The Amount of Insurance stated in the Schedule, as decreased by Section 9(a) of these Conditions.
- (b) "Date of Policy": The Date of Policy stated in the Schedule.
- (c) "Indebtedness": The obligation secured by the Insured's Mortgage as modified by the Modification, including one evidenced by electronic means authorized by law.
- (d) "Insured": The Insured named in Item 1 of the Schedule.
 - (i) The term "Insured" also includes:
 - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 11(b) of these Conditions;
 - (B) the person or entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization; and
 - (D) successors to an Insured by its conversion to another kind of entity;
 - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of any matter insured against by this policy.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Insured's Mortgage": The mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law described in Item 2 of the Schedule.
- (g) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (h) "Land": The land described in the Insured's Mortgage, and affixed improvements that by law constitute real property.
- (i) "Modification": The Modification described in Item 3 of the Schedule.
- (j) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (k) "Title": The estate or interest in the Land purported to be encumbered by the Insured's Mortgage.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured through foreclosure of the lien of the Insured's Mortgage or deed in lieu of foreclosure.

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**ALTA Residential Limited Coverage
Mortgage Modification Policy
Adopted 12-01-14
Technical Correction 08-01-16****3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT**

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5 of these Conditions or (ii) in case Knowledge shall come to an Insured of any claim that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

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

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 6 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 6 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

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

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

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.
- (i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

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

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

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

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

- (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

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

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

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of:
- (i) the Amount of Insurance,
 - (ii) the Indebtedness, or
 - (iii) the difference between the value of the Title without the matter insured against and the value of the Title subject to the matter insured against by this policy. The value of the Title shall be determined as of the date that a claim is made under this policy.
- (b) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions then the extent of liability of the Company shall continue as set forth in Section 7(a) of these Conditions.
- (c) In addition to the extent of liability under subsections (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 6 of these Conditions.

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8. LIMITATION OF LIABILITY

- (a) If the Company removes an alleged matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations and shall not be liable for any loss or damage with respect to that matter.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Insured with respect to matters insured against by this policy.
- (c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF INSURANCE; TERMINATION OF LIABILITY

- (a) All payments under this policy, except payment made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.
- (b) The voluntary satisfaction or release of the Insured's Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

10. PAYMENT OF LOSS

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

11. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) **The Company's Right to Recover.**
Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to all rights and remedies of the Insured Claimant in respect to the claim that the Insured Claimant has against any person or property to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.
If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) **The Company's Rights Against Non-insured Obligors.**
The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.
The Company's right of subrogation shall not be avoided by acquisition of the Insured's Mortgage by an obligor who acquires the Insured's Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

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American Land Title Association

**ALTA Residential Limited Coverage
Mortgage Modification Policy
Adopted 12-01-14
Technical Correction 08-01-16**

12. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) This policy is not an abstract of Title or a report of the condition of Title. The Company's liability for any claim of loss or damage, including any claim alleging negligence or negligent misrepresentation that arises out of any matter covered by this policy, shall be restricted to the terms and provisions of this policy.
- (c) The Company shall not be liable under this policy for any indirect, special, or consequential damages.
- (d) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person.
- (e) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not:
 - (i) modify any of the terms and provisions of the policy;
 - (ii) modify any prior endorsement;
 - (iii) extend the Date of Policy; or
 - (iv) increase the Amount of Insurance.

13. SEVERABILITY

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

14. CHOICE OF LAW; FORUM

- (a) Choice of Law.
The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims insured against by this policy and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum.
Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. NOTICES, WHERE SENT

All notices required to be given to the Company and any statement in writing required to be furnished to the Company shall include the number of this policy and shall be addressed to the Company at [fill in], Attention: Claims Department.

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American Land Title Association

**ALTA Residential Limited Coverage
Mortgage Modification Policy
Adopted 12-01-14
Technical Correction 08-01-16**

[16. ARBITRATION

Unless prohibited by applicable law, either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.]

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FORM 50 • ALTA LIMITED PRE-FORECLOSURE POLICY (ADOPTED 12-03-12)

American Land Title Association

Limited Pre-Foreclosure Policy
Adopted 12-03-12**LIMITED PRE-FORECLOSURE POLICY****ONE-TO-FOUR FAMILY**

Issued By

BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 15 of the Conditions.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured and is not an abstract of title or a report of a condition of title.

[This policy is effective only if the Land is improved by a one-to-four family residence and related structures.]

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company"), insures as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of any of the following matters, if not identified in Schedule B:

1. An instrument purporting to change or evidencing a change in the ownership of the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.
2. An instrument purporting to create a right or interest affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.
3. A Mortgage, notice of Mechanic's Lien, Judgment Lien, federal tax lien, or other lien affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.
4. A Judgment Lien or federal tax lien affecting the Title and recorded in the Public Records against the names of the mortgagors of the Insured's Mortgage prior to the recording of the Insured's Mortgage.
5. A Notice of a Judicial Proceeding affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.
6. A Notice of Bankruptcy specified in 11 U.S.C. Section 549 (c), affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records subsequent to the recording of the Insured's Mortgage.
8. Ad valorem real estate taxes and assessments imposed by a governmental authority due and payable at Date of Policy.



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American Land Title Association

**Limited Pre-Foreclosure Policy
Adopted 12-03-12**

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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Limited Pre-Foreclosure Policy
Adopted 12-03-12**EXCLUSIONS FROM COVERAGE**

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations.
- (b) Any governmental police power.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7.
3. Defects, liens, encumbrances, adverse claims, transfers of the Title, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured;
 - (b) Known to the Insured whether or not disclosed in the Public Records;
 - (c) resulting in no loss or damage to the Insured;
 - (d) attaching or created subsequent to Date of Policy;
 - (e) not recorded in the Public Records at Date of Policy; or
 - (f) resulting in loss or damage that would not have been sustained if the Insured had paid value for the Insured's Mortgage.
4. Invalidity, unenforceability, or lack of priority of the Insured's Mortgage, or any assignment of it.
5. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws. This Exclusion does not modify or limit the coverage provided under Covered Risk 6.
6. Any claim that Title to the Land is an Unmarketable Title.

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Limited Pre-Foreclosure Policy
Adopted 12-03-12**CONDITIONS****1. DEFINITION OF TERMS**

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A as it may be decreased by Section 9 of these Conditions.
- (b) "Curative Action": An act, payment or proceeding to eliminate a matter included within the Covered Risks but not excluded by the Exclusions from Coverage or identified in Schedule B.
- (c) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (d) "Indebtedness": The obligation secured by the Insured's Mortgage including one evidenced by electronic means authorized by law and, if that obligation is the payment of a debt, the Indebtedness is the sum of:
 - (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) interest on the loan;
 - (iii) the expenses of foreclosure and any other costs of enforcement;
 - (iv) the amounts to pay taxes and insurance; and
 - (v) the reasonable amounts expended to prevent deterioration of improvements;
 but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) "Insured's Mortgage": The Mortgage described in paragraph 3 of Schedule A.
- (f) "Insured": The Insured named in Schedule A.
- (g) "Judgment Lien": A judgment, abstract of judgment, tax lien (other than a lien for ad valorem real estate taxes or assessments), or support lien recorded in the Public Records, and having the effect of a judgment for the payment of money.
- (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways.
- (j) "Mechanic's Lien": A private, statutory lien or claim of lien, affecting the Title that arises from services provided, labor performed, or materials or equipment furnished for the construction of an improvement or work on the Land.
- (k) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

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Limited Pre-Foreclosure Policy
Adopted 12-03-12

- (l) "Notice of Bankruptcy": A document specified in 11 U.S.C. Section 549 (c) setting forth the nature and venue of and debtor in a bankruptcy proceeding.
- (m) "Notice of a Judicial Proceeding": A notice of *lis pendens* or other document required or permitted under state statutes to provide constructive notice of a judicial proceeding affecting the Title and setting forth the nature and venue of and parties to the proceeding and describing any part of the Land.
- (n) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (o) "Title": The estate or interest described in Schedule A.
- (p) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured's 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. NOTICE OF CLAIM TO BE GIVEN BY INSURED

The Insured shall notify the Company promptly in writing in case Knowledge shall come to the Insured of a matter that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured to provide prompt notice, the Company's liability to the Insured under the policy shall be reduced to the extent of the prejudice.

3. NO DUTY TO DEFEND OR PROSECUTE

The Company shall have no duty to defend or prosecute any action or proceeding to which the Insured is a party, notwithstanding the nature of any allegation in such action or proceeding. However, the Company has the rights listed in Section 4 of these Conditions.

4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF INSURED TO COOPERATE

- (a) In addition to the options contained in Section 6 of these Conditions and whether or not the Company shall be liable to the Insured, the Company shall have the right, but not the obligation, at its own cost, to undertake any Curative Action that in its opinion may prevent or reduce loss or damage to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (b) If the Company brings an action or asserts a defense permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

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Limited Pre-Foreclosure Policy
Adopted 12-03-12

- (c) In all cases where this policy permits the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at the Company's option, the name of the Insured for this purpose.
- (d) If requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that, in the opinion of the Company, may be necessary or desirable to avoid or mitigate a loss under this policy. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

- (a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured furnish a signed proof of loss. The proof of loss must describe the matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
- (b) The Company may reasonably require the Insured to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

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

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

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American Land Title Association**Limited Pre-Foreclosure Policy
Adopted 12-03-12**

- (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, if the Company exercises its rights under Section 4 of these Conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured; or
 - (ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase. When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured's Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy for the claimed loss or damage, other than to make the payments required in those subsections, shall terminate.

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured.
- (i) To pay or otherwise settle with other parties for or in the name of an Insured any claim insured against under this policy. In addition, if the Company exercises its rights under Section 4 of these Conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured; or
 - (ii) To pay or otherwise settle with the Insured the loss or damage provided for under this policy. In addition, if the Company exercises its rights under Section 4 of these Conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), all liability and obligations of the Company to the Insured under this policy for the claimed loss or damage, other than the payments required in those subsections, shall terminate.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured who has suffered loss or damage by reason of matters insured against by this policy.

The extent of liability of the Company for loss or damage under this policy shall not exceed the least of:

- (a) the Amount of Insurance;
- (b) the Indebtedness;
- (c) costs, attorneys' fees, and expenses incurred or authorized in writing by the Company in completing any Curative Action; or
- (d) the difference between the value of the Title without the matter insured against and the value of the Title subject to the matter insured against by this policy.

8. LIMITATION OF LIABILITY

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American Land Title Association**Limited Pre-Foreclosure Policy
Adopted 12-03-12**

- (a) If the Company cures any matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals.
- (c) The Company shall have no liability for loss or damage to the Insured, resulting from any delay in the enforcement of the Insured Mortgage, including lost interest, reduction in the value of the security or collateral, taxes, assessments, insurance or maintenance.
- (d) The Company shall not be liable for loss or damage to, or attorneys' fees, expenses or liability incurred by, the Insured in conducting a Curative Action or settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses under Section 4 of these Conditions, shall reduce the Amount of Insurance by the amount of the payments.
- (b) The voluntary satisfaction or release of the Insured's Mortgage, other than foreclosure of the Insured's Mortgage or the acceptance of delivery of a deed of lieu of foreclosure of the Insured's Mortgage, shall terminate all liability of the Company.

10. PAYMENT OF LOSS

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

11. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) The Company's Right to Recover.

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

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American Land Title Association**Limited Pre-Foreclosure Policy
Adopted 12-03-12**

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

- (b) The Company's Rights Against Noninsured Obligors.

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

The Company's right of subrogation shall not be avoided by acquisition of the Insured's Mortgage by an obligor who acquires the Insured's Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

12. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of a matter insured against by this policy or by any action asserting such matter shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it shall not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

13. SEVERABILITY

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

14. CHOICE OF LAW; FORUM

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

The law of the jurisdiction where the Land is located shall apply to determine the validity of matters insured against under this policy and to interpret and enforce

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Limited Pre-Foreclosure Policy
Adopted 12-03-12

the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

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

15. NOTICES, WHERE SENT

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

[16.ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters, when the Amount of Insurance is \$_____ or less, shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters, when the Amount of Insurance is in excess of \$_____, shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.]

NOTE: Bracketed [] material optional

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**Limited Pre-Foreclosure Policy
Adopted 12-03-12**

Schedule A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:

[Address Reference:]

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

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

1. Name of Insured:

2. The estate or interest in the Land that is the subject of coverage in this policy is:

3. The Insured's Mortgage is described as follows:

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

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**Limited Pre-Foreclosure Policy
Adopted 12-03-12**

Schedule B

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

(List matters identified in accordance with the Covered Risks.)



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FORM 5P • PUBLIC TRUSTEE'S SALE GUARANTEE

This is not an ALTA form. See § 5.14.

PUBLIC TRUSTEE'S SALE GUARANTEE

Liability \$ _____

Order No. _____

Fee \$ _____

Your Ref. No. _____

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE,

BLANK TITLE INSURANCE COMPANY, a corporation, herein called the Company,

GUARANTEES

_____, herein called the Insured,

against loss not exceeding the liability amount stated above which the Insured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, on the date stated below:

1. The title to the herein described estate or interest was vested in the vestee named, subject to the matters shown as Exceptions herein, which Exceptions are not necessarily shown in order of their priority;
2. The names and addresses, if determinable, of the persons who appear to have acquired an interest of record affecting the title to the herein described land are as shown herein.

Dated: _____.

Title to said estate or interest at the date hereof is vested in:

The estate or interest in the land hereinafter described or referred to covered by this Guarantee is:

The land referred to in this Guarantee is situated in the State of Colorado, County of _____, and is described as follows:

EXCEPTIONS:

GUARANTEE CONDITIONS AND STIPULATIONS**1. Definition of Terms.** The following terms when used in this Guarantee mean:

- (a) "land": The land described, specifically or by reference, in this Guarantee and improvements affixed thereto which by law constitute real property;
- (b) "public records": those records which impart constructive notice of matters relating to said land;
- (c) "date": the effective date;
- (d) "the Assured": the party or parties named as the Assured in this Guarantee, or in a supplemental writing executed by the Company;
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

2. Exclusions from Coverage of This Guarantee. The Company assumes no liability for loss or damage by reason of the following:

- (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
- (b) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
- (c) Title to any property beyond the lines of the land expressly described in the description set forth in this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.
- (d) Defects, liens, encumbrances, adverse claims against the title as guaranteed or other matters (1) created, suffered, assumed or agreed to by one or more of the Assured; or (2) resulting in no loss to the Assured.

3. Prosecution of Actions.

(a) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or do any other act which in its opinion may be necessary or desirable to establish or confirm the matters herein guaranteed; and the Company may take any appropriate action under the terms of this Guarantee whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision hereof.

(b) In all cases where the Company does so institute and prosecute any action or proceeding, the Assured shall permit the Company to use, at its option, the name of the Assured for such purpose. Whenever requested by the Company, the Assured shall give the Company all reasonable aid in prosecuting such action or proceeding, and the Company shall reimburse the Assured for any expense so incurred.

4. Notice of Loss — Limitation of Action. A statement in writing of any loss or damage for which it is claimed the Company is liable under this Guarantee shall be furnished to the Company within sixty days after such loss or damage shall have been determined, and no right of action shall accrue to the Assured under this Guarantee until thirty days after such statement shall have been furnished, and no recovery shall be had by the Assured under this Guarantee unless action shall be commenced thereon within two years after expiration of said thirty day period. Failure to furnish such statement of loss or damage or to commence such action within the time hereinbefore specified, shall be a conclusive bar against maintenance by the Assured of any action under this Guarantee.

5. Option to Pay, Settle or Compromise Claims. The Company shall have the option to pay or settle or compromise for in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage, the Company shall have the option to purchase the indebtedness secured by said mortgage. Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage securing the same to the Company upon payment of the purchase price.

6. Limitation of Liability — Payment of Loss.

(a) The liability of the Company under this Guarantee shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurances herein set forth, but in no event shall such liability exceed the amount of the liability stated on the face page hereof.

(b) The Company will pay all costs imposed upon the Assured in litigation carried on by the Company for the Assured, and all costs and attorney's fees in litigation carried on by the Assured with the written authorization of the Company.

(c) No claim for damages shall arise or be maintainable under this Guarantee (1) if the Company after having received notice of an alleged defect, lien or encumbrance not shown as an Exception or excluded herein removes such defect, lien or encumbrance within a reasonable time after receipt of such notice, or (2) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.

(d) All payments under this Guarantee, except for attorney's fees as provided for in paragraph 6(b) hereof, shall reduce the amount of the liability hereunder *pro tanto*, and no payment shall be made without producing this Guarantee for indorsement of such payment unless the Guarantee be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

(e) When liability has been definitely fixed in accordance with the conditions of this Guarantee, the loss or damage shall be payable within thirty days thereafter.

7. Subrogation Upon Payment or Settlement. Whenever the Company shall have settled a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured, and it shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to such claim had this Guarantee not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. The Assured if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving such rights or remedies.

8. Guarantee Entire Contract. Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Guarantee. No provision or condition of this Guarantee can be waived or changed except by a writing endorsed or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.

9. Notices, Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at _____.

10. Fee. The fee specified on the face of this Guarantee is the total fee for title search and examination and for this Guarantee.

FORM 5Q • FORECLOSURE CERTIFICATE

This is not an ALTA form. See § 5.15.1.

PUBLIC TRUSTEE'S FORECLOSURE CERTIFICATE

TO THE PUBLIC TRUSTEE OF THE COUNTY OF _____, STATE OF COLORADO, AND TO THE LEGAL HOLDER OF THE INDEBTEDNESS SECURED BY THE DEED OF TRUST BEING FORECLOSED AND TO THE ATTORNEY FORECLOSING FOR SAID LEGAL HOLDER:

BLANK TITLE INSURANCE COMPANY, a corporation,

hereby certifies to said Public Trustee and to said Legal Holder of the Indebtedness and to said Attorney Foreclosing:

That subsequent to the recording of the Deed of Trust (a copy of which is included for reference only) on _____, 19XX, in Book _____ at Page _____ [Reception No. _____], the attached copies of instruments on record in the office of the clerk and recorder of said County of _____, State of Colorado, show the persons who appear to have acquired an interest of record affecting the title to the following described land:

Documents attached:

This certificate has been prepared for the sole use and benefit of the said Public Trustee and the said Legal Holder of the Indebtedness secured by the Deed of Trust being foreclosed and the said Attorney foreclosing. Any use hereof other than by said Public Trustee, said Legal Holder or said Attorney foreclosing shall render this certificate null and void and shall terminate our liability. The total liability of the Company under this FORECLOSURE CERTIFICATE and Endorsements thereto shall not exceed in the aggregate the principal amount of said Deed of Trust being foreclosed together with interest and costs and advances as provided for in said Deed of Trust.

Certification Date: _____

FORM 5R • FORECLOSURE GUARANTEE

This is not an ALTA form. See § 5.15.2

FORECLOSURE GUARANTEE

LIABILITY \$ _____

ORDER NO. _____

FEE \$ _____

YOUR REF. NO. _____

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE,

BLANK TITLE INSURANCE COMPANY, a corporation, herein called the Company,
GUARANTEES

_____, herein called the Insured,

against loss not exceeding the liability amount stated above which the Insured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, as of the date stated below and subsequent to the recording on _____, 19XX, of the Deed of Trust in Book _____ at Page _____ [Reception No. _____] (said Deed of Trust is included for reference only), that the attached copies of instruments on record in the office of the Clerk and Recorder of the County of _____, State of Colorado, show all the persons who appear to have acquired an interest of record affecting the title to the herein described land.

Dated: _____

INFORMATION FOR INSURED

1. The land referred to in this Guarantee is situated in the State of Colorado, County of _____, and is described as follows:

2. Recorded references attached herewith:

The following listed and attached recorded references are all documents recorded subsequent to the Deed of Trust being foreclosed, and which may affect title to the herein described land:

NOTE: The names of all persons in the chain of title from the date of the Deed of Trust have been searched for Federal Tax Liens and Judgments for a period of ten years and 30 days prior to the date of this Guarantee. Copies of these documents, if any, are also attached.

* Ten years may not be adequate. See C.R.S. § 13-52-102 (child support or maintenance judgments); C.R.S. § 16-18.5-104(5) (crime victim restitution); and 28 U.S.C. § 3201 (judgments in favor of the United States).

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms. The following terms when used in this Guarantee mean:

(a) "land": The land described, specifically or by reference, in this Guarantee and improvements affixed thereto which by law constitute real property;

(b) "public records": those records which impart constructive notice of matters relating to said land;

(c) "date": the effective date;

(d) "the Assured": the party or parties named as the Assured in this Guarantee, or in a supplemental writing executed by the Company;

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

2. Exclusions from Coverage of This Guarantee. The Company assumes no liability for loss or damage by reason of the following:

(a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

(b) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

(c) Title to any property beyond the lines of the land expressly described in the description set forth in this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.

(d) Defects, liens, encumbrances, adverse claims against the title as guaranteed or other matters (1) created, suffered, assumed or agreed to by one or more of the Assured; or (2) resulting in no loss to the Assured.

3. Prosecution of Actions.

(a) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or do any other act which in its opinion may be necessary or desirable to establish or confirm the matters herein guaranteed; and the Company may take any appropriate action under the terms of this Guarantee whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision hereof.

(b) In all cases where the Company does so institute and prosecute any action or proceeding, the Assured shall permit the Company to use, at its option, the name of the Assured for such purpose. Whenever requested by the Company, the Assured shall give the Company all reasonable aid in prosecuting such action or proceeding, and the Company shall reimburse the Assured for any expense so incurred.

4. Notice of Loss — Limitation of Action. A statement in writing of any loss or damage for which it is claimed the Company is liable under this Guarantee shall be furnished to the Company within sixty days after such loss or damage shall have been determined, and no right of action shall accrue to the Assured under this Guarantee until thirty days after such statement shall have been furnished, and no recovery shall be had by the Assured under this Guarantee unless action shall be commenced thereon within two years after expiration of said thirty day period. Failure to furnish such statement of loss or damage or to commence such action within the time hereinbefore specified, shall be a conclusive bar against maintenance by the Assured of any action under this Guarantee.

5. Option to Pay, Settle or Compromise Claims. The Company shall have the option to pay or settle or compromise for in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage, the Company shall have the option to purchase the indebtedness secured by said mortgage. Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage securing the same to the Company upon payment of the purchase price.

6. Limitation of Liability — Payment of Loss.

(a) The liability of the Company under this Guarantee shall be limited to the amount of actual loss sustained by the Assured because of

reliance upon the assurances herein set forth, but in no event shall such liability exceed the amount of the liability stated on the face page hereof.

(b) The Company will pay all costs imposed upon the Assured in litigation carried on by the Company for the Assured, and all costs and attorney's fees in litigation carried on by the Assured with the written authorization of the Company.

(c) No claim for damages shall arise or be maintainable under this Guarantee (1) if the Company after having received notice of an alleged defect, lien or encumbrance not shown as an Exception or excluded herein removes such defect, lien or encumbrance within a reasonable time after receipt of such notice, or (2) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.

(d) All payments under this Guarantee, except for attorney's fees as provided for in paragraph 6(b) hereof, shall reduce the amount of the liability hereunder *pro tanto*, and no payment shall be made without producing this Guarantee for indorsement of such payment unless the Guarantee be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

(e) When liability has been definitely fixed in accordance with the conditions of this Guarantee, the loss or damage shall be payable within thirty days thereafter.

7. Subrogation Upon Payment or Settlement. Whenever the Company shall have

settled a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured, and it shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to such claim had this Guarantee not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. The Assured if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving such rights or remedies.

8. Guarantee Entire Contract. Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Guarantee. No provision or condition of this Guarantee can be waived or changed except by a writing endorsed or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.

9. Notices, Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at _____.

10. Fee. The fee specified on the face of this Guarantee is the total fee for title search and examination and for this Guarantee.

Chapter 6

ENDORSEMENTS

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EXHIBIT

Exhibit 6A—Colorado and ALTA Endorsement Forms Arranged by Subject

§ 6.1 • GENERAL — COVERAGE AFFORDED BY ENDORSEMENT

Endorsements are a means by which a title insurance company provides affirmative insurance against some risk or title defect not otherwise covered by the policy language, or modifies or deletes coverage afforded by the policy. The discussion of endorsement coverages has been grouped into subject headings based on the primary purpose of the endorsement. If a particular endorsement serves

more than one purpose, it may be discussed under more than one subject heading. The following endorsement subjects are discussed as indicated below:

<u>Subject</u>	<u>Discussed</u>
Access	§ 6.5
Advances (including future advances)	§ 6.6
Adverse Possession	§ 6.7
Arbitration	§ 6.8
Assignments of Mortgages and Policies	§ 6.9
Associations (Property Owners)	§ 6.10
Changes in Rate of Interest	§ 6.11
Co-insurance	§ 6.12
Commitment Changes/Corrections/Extensions	§ 6.13
Condominium	§ 6.14
Creditors' Rights	§ 6.15
Doing Business Restrictions	§ 6.16
Easements	§ 6.17
Energy Projects	§ 6.18
Encroachments	§ 6.19
Environmental Protection	§ 6.20
<i>Fairway</i> Protection	§ 6.21
First Loss Payable	§ 6.22
Future Insurance	§ 6.23
Gap Coverage	§ 6.24
Increase Policy Amount/Inflation	§ 6.25
Interest Rate Swaps	§ 6.26
Knowledge, Imputation of	§ 6.27
Last Dollar	§ 6.28
Leasehold, Conversion of Policy	§ 6.29
Manufactured Housing	§ 6.30
Mechanics' Liens	§ 6.31
Mezzanine Financing	§ 6.32
Minerals	§ 6.33
Modification of Mortgages	§ 6.34
Mortgages, Partial Release	§ 6.35
Mortgages, Recording	§ 6.36
Options	§ 6.37
Policy Changes	§ 6.38
Additional insured	§ 6.38.1
Corrections to policies	§ 6.38.2
Change effective date	§ 6.38.3
Delete/insure over exceptions	§ 6.38.4
Electronic signatures	§ 6.38.5
PUD (Planned Unit Development)	§ 6.39
Rescission (Truth in Lending)	§ 6.40
Restrictions, Covenants, and Reverters	§ 6.41

Severable Improvements	§ 6.42
Survey Matters, Including Subdivision of Land	§ 6.43
Taxes and Assessments	§ 6.44
Usury	§ 6.45
Water, Extraction/Development	§ 6.46
Water Rights — Value	§ 6.47
Zoning	§ 6.48

§ 6.2 • ENDORSEMENT FORMS

§ 6.2.1—Colorado Endorsement Forms

Many of the endorsement forms that have been in use in Colorado for many years are based on versions of endorsements approved for use by the California Land Title Association and modified for use in this state, often retaining the same endorsement number, although the coverage provided by the endorsement may have changed. The California Land Title Association continues to adopt and recommend a comprehensive list of endorsements, available at www.clta.org/page/Publications. Be cautious in requesting an endorsement using the CLTA nomenclature and ensure that the coverages you expect are, in fact, provided by the Colorado endorsement. As an example, Colorado Endorsement 122 provides very limited protection for mechanics' liens, whereas the CLTA equivalent with the same number provides much more extensive coverage.

These endorsements, called Colorado Endorsements, are numbered according to their purpose. For example, endorsements in the 100 range provide affirmative coverage over a variety of covenants, conditions, restrictions, and mineral rights, while endorsements in the 103 range provide affirmative coverage over easements and encroachments.

§ 6.2.2—ALTA Endorsement Forms

ALTA continues to promulgate endorsement forms, many of which parallel the Colorado endorsement forms in basic coverage. The ALTA forms usually offer expanded coverages and a broader range of endorsement forms to meet the needs of today's owners and lenders, such as the "Energy Project" endorsements. Because of their general acceptance in many different localities, the ALTA forms are increasingly requested in commercial transactions and in the more complex, high-end, residential transactions. The ALTA forms provide standardized forms understood and accepted nationally. Since the promulgation of the 2006 Owner's Policy and the 2006 Loan Policy, the ALTA endorsements have the suffix "-06" to indicate that the endorsement has been tailored to match the policies.

§ 6.3 • COST OF AND REQUIREMENTS FOR ENDORSEMENTS

The form of endorsement is not filed with the Colorado Division of Insurance, but the rate charged for each endorsement is filed. *See* § 1.7.1. The rate filing will give an indication of the form and purpose, but the title insurance company can amend the form to meet the needs of a transaction, if the amended endorsement falls within the scope of the risk that is the basis for the rate charged.

As one would expect, the costs are based on the risks assumed by the title insurance company. Generally, endorsements will be issued for a fixed rate when the risks are low. For endorsements issued in commercial transactions, the fixed rate will be higher compared to the rate for residential transactions, due to the generally higher liability amounts in commercial transactions. For endorsements insuring over more risky and complex issues — for example, affirmative coverage over mechanics' liens or mineral rights — the rates will be based on a percentage of the rate for the policy being issued, rising from 10 percent of the basic rate to as much as 25 percent of the basic rate.

The rates filed by the title insurance companies, although not uniform — there are variances between the underwriters — are often similar due to the similarity of the risks covered and underwriting standards and practices.

The requirements of the title insurance company to issue an endorsement will correspond to the underwriting practices for issuing the policy, such as requirements for surveys, affidavits, inspections of the property, and review of financial statements if the credit of the insured to back an indemnity will be an important factor in assessing the risk. Local knowledge can and will play a role.

A title insurance company may be more willing to issue an endorsement to a loan policy than to an owner's policy. This is based on the assumption that (1) the risk is less with a loan policy, because of its limited duration (it terminates when the indebtedness is extinguished), and (2) because a claim can only be brought when the lender incurs "actual monetary loss or damage" (Section 8, "Determination and Extent of Liability"). In practice, this will occur with a non-performing loan when the lender will acquire title either through foreclosure, or a deed-in-lieu of foreclosure. However, see *First Citizens Bank & Trust Co. v. Stewart Title Guaranty Co.*, 320 P.3d 406 (Colo. App. 2014), discussed in § 5.2.5.

§ 6.4 • ENDORSEMENT BOILERPLATE

§ 6.4.1—Colorado Endorsement Forms

Most Colorado endorsement forms include one to four paragraphs of standard boilerplate language. The purpose of these paragraphs is to place limits on the title insurance company's liability. Although the paragraphs vary somewhat, the following are most frequently encountered.

Limitation on Policy Amount

Most endorsements contain this limitation, stated in a variety of ways:

The total liability of the Title insurance company under the policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the Conditions thereof to pay.

That seems clear enough. The endorsement, whatever else it may accomplish, does not increase the amount of insurance in force, as stated on the face of the policy. We would not expect to find this limiting language in Colorado Endorsements such as 107.2 and 107.3, which exist to increase the face amount of the policy (*see* § 6.25). In Colorado Endorsement 108.8, which also increases the policy amount as additional advances are made, the above language is modified by the phrase "plus the

amount of said additional advance” (see § 6.6.1). Should this language be omitted in any endorsement, such omission would certainly evoke the possibility of an argument for an intended or unintended policy increase.

Limited by Policy Provisions

The title insurance company intends to apply all the Conditions and Exclusions from Coverage in the policy to anything stated in the endorsement, except to the extent that the endorsement specifically amends the policy language. The following paragraph, in several versions, has found its way into many endorsement forms (bracketed words indicate possible variations):

This endorsement [when countersigned by an authorized officer or agent] is made a part of the policy [or commitment] as of the date thereof and is subject to all of the provisions thereof and of any prior endorsements thereto [the schedules, conditions and stipulations and exclusions from coverage therein contained], except as modified by the provisions hereof.

An endorsement, which by its terms is subject to the policy provisions, will not nullify or abrogate any policy provision unless so stated in the endorsement. 13A Appleman, *Insurance Law & Practice*, § 144 at n. 99.

Date Down Limitation

The title insurance policy provides protection only up to the effective date of the commitment or policy. In such cases, the title insurance company specifically disclaims coverage to any later date, such as the date of issuance of the endorsement.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of the policy [except as herein expressly provided as to the subject matter hereof].

The bracketed language will be used in those endorsements, such as Colorado Endorsement 102.5 (foundations within the property line), where a date down is intended, wholly or partially. See § 6.19.

Comfort Clause

Not all the boilerplate benefits the title insurance company. This clause appears to be inserted for the comfort of the insured:

The Company hereby insures against loss which said insured shall sustain in the event that the assurance herein shall prove to be incorrect.

Obsolete Language

Be careful to check all endorsement forms for accuracy and do not hesitate to challenge the title insurance company if you believe an error is present. In many cases, endorsement forms are not updated when policy forms change. Thus, references to policy provisions may be obsolete, perhaps tailored to an old policy form rather than the policy forms currently being issued.

§ 6.4.2—ALTA Endorsement Forms

The older ALTA endorsement forms (A, B, C, D, 1 through 13 (now decertified), JR1, and JR2) contained this provision:

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

The current versions of the ALTA endorsement forms have the same standard language, with the added assurance that the endorsement controls over inconsistent provisions in the policy or a prior endorsement, to wit:

This endorsement is made [issued as] a 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.

§ 6.4.3—Future Protection

Where an endorsement requested by the buyer is subsequently issued by the title insurance company, it may behoove the buyer to obtain assurances that the same endorsement will be issued to a new buyer when the present buyer becomes a seller, absent any claims thereunder. In some instances, the title insurance company may agree to issue a “future insurance” endorsement. As the name of the endorsement suggests, the title insurance company agrees to provide the same coverage to a future insured. The benefit is that this endorsement is issued at the same time as the endorsement insuring over the adverse matter and eliminates any doubt that the title insurance company may decline to extend the affirmative coverage. This endorsement is particularly important when the title insurance company agrees to extend affirmative coverage (1) over unusual risks, or (2) in a settlement of a claim. *See* § 5.13 in *CREP* and § 6.23.

DISCUSSION OF ENDORSEMENT FORMS BY SUBJECT

§ 6.5 • ACCESS

Owner’s and lender’s policies of title insurance contain affirmative coverage against “lack of a right of access to and from the land.” *See* Covered Risk 4 in both the 2006 Owner’s and Loan policies. When access is not available, the policy can be written with an exception stated in Schedule B for “lack of access.” If access becomes available, the policy can be modified by endorsement to (1) eliminate the exception (*see* § 6.38.4); (2) give affirmative assurance of access; or (3) identify and insure a private easement that provides access (*see* § 2.8.7).

To obtain an access endorsement, a survey certified to the title insurance company should be furnished. See Appendix 7 for information about surveys. The title insurance company may also insist upon a personal inspection by a title officer and proof as to the public nature of the street. This is more difficult where the property is outside the urban areas, where access may be by way of an unpaved road, if a road is not yet constructed, or if property is a large farm or ranch. With the ready access to online mapping websites, the question of access is much easier to determine, particularly from some of the larger county GIS-mapping programs. Many of these GIS programs will show whether there is a public road serving the property. However, these websites should be regarded as an aid to identification of access and not as substitutes for an accurate survey. There are many cases where the public road is not contiguous to the property as the result of a historical gap created in prior subdivisions of the land, and the non-contiguity will not be shown in the GIS mapping or even a physical inspection. This is particularly true for properties in the mountainous areas of the state, where the roads have been constructed around the terrain and do not coincide with the boundaries of the roads shown and dedicated on the recorded plat of subdivision.

The following endorsements are available to provide affirmative assurances of access. These endorsements can be obtained to reinforce the affirmative coverage of access, particularly the ALTA 17-06 and 17.1-06 endorsements, which are very detailed in the scope of the assurances provided.

Colorado Endorsement 103.7 — Direct Access (Owner/Lender)

This endorsement insures that the land abuts upon a physically open (*i.e.*, public) street, which street is specifically identified by name in the endorsement. However, the term “abut” does not necessarily imply legal access. The street may be a limited access highway, for example. It is entirely possible, too, that practical access is absent because of terrain features (*e.g.*, the highway is at the base of a cliff), even though the legal boundary of the land abuts the legal boundary of a physically open street.

Colorado Endorsement 103.4 — Indirect Access (Owner/Lender)

This endorsement insures that the land has ingress to and egress from a public street by way of an easement described in Schedule A. An extra title examination charge may be assessed for issuing this endorsement. Often, access depends on one or more easements, each of which should be examined to confirm that they provide a complete, unbroken, right of access to the public road. See § 2.8.7 and the discussion on insuring easements in Chapter 5 of *CREP*.

ALTA Endorsement 17-06 (Access and Entry)

ALTA Endorsement 17.1-06 (Indirect Access and Entry)

ALTA Endorsement 17.2-06 (Utility Access) (Owner/Lender)

These ALTA Endorsements provide a better solution to a perceived access problem than Colorado Endorsements 103.7 and 103.4. The ALTA forms insure both “actual vehicular and pedestrian access” to a named, physically open, and publicly maintained street via existing curb cuts or entries from the land (ALTA Endorsement 17-06) or from an insured easement that serves the land (ALTA Endorsement 17.1-06). See above regarding the need for an extra title examination. ALTA Endorsement 17.2-06 insures access (surface or underground) of designated utilities or services (*e.g.*, water, electric power, natural gas, sewer, telephone, drainage, or other services as designated) via appurtenant rights of way or easements. An extra title examination charge may be assessed for issuing this endorsement.

A word of caution regarding adding an access easement as part of the insured legal description: while this method will provide insurance that the land has access via the easement, this is still only a legal right of access. The real estate attorney should consider requesting ALTA Endorsement 17.1-06 as well to ensure coverage for any issues relating to the physical access.

§ 6.6 • ADVANCES (INCLUDING FUTURE ADVANCES)

Endorsements relating to advances are intended for lender's policies. As discussed in "Determination and Extent of Liability" in § 5.2.5, the lender requires assurance that its advances to the mortgagor following the date of recording of the mortgage will be secured by the mortgage with priority over liens intervening between the date of recording of the mortgage and the date of the advance. Hence, endorsements in this category insure the priority of the advance. Remember that the definition of "Indebtedness" in the 2006 Loan Policy does not insure the priority of the lien of the advance over other liens attaching post policy, although it does expand the maximum amount of liability by including amounts of the principal disbursed after the date of the policy, plus amounts advanced to secure foreclosure costs, and similar costs to protect the lien and the priority of the insured mortgage, or amounts disbursed pursuant to construction advances the lender was obligated to make at the policy date. This will be important in the Determination and Extent of Liability, Section 8(a) *See* § 5.2.5.

The ability of the title insurance company to offer endorsement protection for advances, particularly optional and revolving credit advances, has been enhanced by the adoption of C.R.S. § 38-39-106, which ensures that any future advance retains the priority of the mortgage:

Any mortgage may, by its terms, secure future advances up to a total maximum principal amount expressly set forth in such mortgage. Such mortgage shall be effective to secure payment of all advances, both obligatory and optional, up to the stated maximum principal amount to the same extent and with the same effect and priority as if such total maximum principal amount had been fully disbursed on or before the date such mortgage was recorded.

C.R.S. § 38-39-106(1).

The necessity for insuring priority in these situations may cause an immediate confrontation with Section 3(d) of the Exclusions from Coverage in the 2006 Loan Policy, which states, with exceptions, that defects, liens, encumbrances, adverse claims, or other matters attaching or created subsequent to the Date of Policy are not covered. Suppose that a junior mortgage, judgment lien, or other encumbrance intervenes between the date of recording of the insured mortgage and the date of the subsequent advance. Section 3(d) could negate coverage of the advance as to priority over the intervening lien. If the endorsement deletes Section 3(d), defects, liens, encumbrances, adverse claims, or other matters attaching or created subsequent to the date of the policy are covered and insured against. Thus, for instance, if the holder of a subsequently-recorded lien claims priority over the insured mortgage because of, or with respect to, upward adjustments in the rate of interest, the title insurance company will defend the seniority of the insured mortgage, as adjusted. Absent deletion of Section 3(d), if the title insurance company should refuse to defend or insure against loss or damage occasioned when priority is

gained by a subsequently attaching or created lien, the policy holder would be required to argue that the express terms of an endorsement override the general policy fine print.

Although you might expect that all endorsements insuring advances would specifically delete Section 3(d), such is not the case. (The same problem occurs where interest is added to principal, as discussed in § 6.11.) Accordingly, endorsements that delete this exception may be preferred, even though the endorsement should control over the policy boilerplate.

To provide assurance of priority following the advancement of additional funds secured by a real property mortgage, numerous endorsement forms are available.

§ 6.6.1—Advances that Increase the Policy Amount

Colorado Endorsement 107.2 — Advances — Increased Policy Amount (Owner/Lender)

This endorsement increases the face amount of the policy to accommodate an additional advance without changing the effective date of the policy or insuring against intervening liens. Or, when attached to an owner's policy, the face amount is increased to recognize a need for increased coverage because of construction of improvements, inflation, etc. The title insurance company may require proof of value.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is not deleted. Compare with Colorado Endorsement 111.7, discussed below.

Colorado Endorsement 107.3 — Advances — Increased Policy Amount (Owner/Lender)

This endorsement increases the face amount of the loan policy to accommodate an additional advance and, in addition, changes the effective date of the policy. When attached to an owner's policy, the face amount is increased to recognize a need for increased insurance because of construction of improvements, inflation, etc. It insures that except as disclosed, there are no intervening liens, encumbrances, or other matters shown by the public records, and title to the land is vested as shown.

Before issuing this endorsement, the title insurance company will search the records and will disclose intervening liens in the endorsement.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is not deleted. Compare with Colorado Endorsement 111.7, discussed below.

Colorado Endorsement 108.8 — Advances — Increased Policy Amount (Lender)

With respect to an additional advance of funds by a lender to a borrower that causes the total indebtedness to exceed the original policy amount, Colorado Endorsement 108.8 insures that (1) title to the land securing the advance is vested in the borrower; (2) no other lien will have priority over the mortgage as to such advance unless disclosed on Schedule B; and (3) the mortgage securing the advance has not been released, modified, or subordinated except as shown.

Before issuing this endorsement, the title insurance company will search the records and will disclose intervening liens in the endorsement.

Section 3(d) of the Exclusions from Coverage is not deleted. Compare with Colorado Endorsement 111.7, discussed below.

Colorado Endorsement 122.9 — Advances — Increased Policy Amount (Lender)

When the lender increases the borrower's credit limit, this endorsement will (1) increase the face amount of the policy to cover the future advances, (2) insure that title to the land securing the advance is vested in the borrower, (3) ensure that no other lien will have priority over the mortgage as to such advance unless disclosed on Schedule B, and (4) assure that the mortgage securing the advance has not been released, modified, or subordinated except as shown.

The title insurance company will search the records and list any intervening exceptions to coverage in the endorsement form.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is not deleted. Compare with Colorado Endorsement 111.7, discussed below.

§ 6.6.2—Advances that Do Not Increase the Policy Amount

Colorado Endorsement 110.7A — Advances Within Policy Amount — Change in Rate (Lender)

See discussion of this multi-purpose endorsement in § 6.11, "Change in Rate of Interest."

Colorado Endorsement 110.7B — Advances Within Policy Amount (Lender)

This endorsement, regardless of how it is numbered, insures the amount of advances that may be outstanding and unpaid at any given time, subject to the limitation that the total amount of advances outstanding does not exceed the face amount of the policy. Thus, it insures a revolving line of credit within the policy limits.

The endorsement is not a date down endorsement and therefore does not extend the effective date of the policy.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is expressly deleted.

Compare this endorsement with Colorado Endorsements 111.7, 122.3, 122.4, and 122.5.

Colorado Endorsement 111.7 — Advances Within Policy Amount (Lender)

If the insured is the owner of the mortgage at the time the advances are made, this endorsement insures that advances made after the Date of Policy that do not exceed the face amount of the policy, are secured by the mortgage, and are made within 10 years of the Date of Policy will (1) be included in the coverage of the policy not to exceed the face amount of the policy, and (2) have the same priority over other liens as advances secured by the mortgage as of the Date of Policy. This endorsement excepts from coverage federal tax liens, bankruptcies occurring prior to the date of such advances that affect the estate of the "vestee" (borrower), and liens known to the insured prior to the date of "creation of indebtedness," other than the creditor's advances to protect the mortgage, which are secured by the mortgage.

Unlike Colorado Endorsements 107.2, 107.3, and 108.8, Colorado Endorsement 111.7 expressly states that the insurance provided by the endorsement is not subject to Section 3(d) of the Exclusions from Coverage, and Section 8(d) of the Conditions and Stipulations. Accordingly, the title insurance company cannot defend on the basis that (1) a defect, lien, adverse claim, etc., attached or was created subsequent to the Date of Policy, or (2) the indebtedness resulting from the advance was created post policy.

The advantages of Colorado Endorsement 111.7 over the other endorsements discussed herein are apparent, considering its scope and presuming a minimal cost. Check the endorsement carefully to be certain all section references are current and correct.

Colorado Endorsement 122 — Advances Within Policy Amount (Lender)

With respect to an obligatory advance under a mortgage that does not exceed the original amount of the policy, this endorsement insures that there are no intervening liens, except as shown, and the borrower still owns the land securing the loan. This endorsement does not insure priority of the advance, as does Colorado Endorsement 108.8.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is not deleted. Compare with Colorado Endorsement 111.7, discussed above.

Note: This endorsement may be issued in the context of the disbursement of funds under a construction loan, discussed in § 6.31.

Colorado Endorsement 122.1 — Advances Within Policy Amount (Lender)

This endorsement has several uses. It insures the lender against loss of lien priority, other than loss of priority to a mechanics' lien. Thus, it could be used to insure maintenance of priority where an advance has been made under a revolving line of credit that does not exceed the face amount of the policy (although the endorsement is not conditional on an advance). It eliminates Section 3(d) of the Exclusions from Coverage and therefore insures against defects, liens, encumbrances, adverse claims, or other matters attaching or created subsequent to Date of Policy (except mechanics' liens). Usury and violation of consumer protection laws are specifically excluded from its coverage.

Consider using this endorsement to augment Colorado Endorsements 108.8, 107.2, 107.3, 122, and 122.2.

Colorado Endorsement 122.2 — Advances Within Policy Amount (Lender)

In a manner similar to Colorado Endorsement 111.7, this endorsement insures that advances made subsequent to the Date of Policy pursuant to a certain identified loan agreement (presumably for a revolving line of credit) and secured by the insured mortgage are covered by the policy, provided the total indebtedness does not exceed the face amount thereof. There is no ten-year limit on advances as in Colorado Endorsement 111.7. Colorado Endorsement 122.2 also insures that such advances shall have the same priority "over" (one of the endorsements reviewed says "under") encumbrances and other matters as to advances made as of the Date of Policy.

Subsequent federal tax liens, liens known to the insured prior to the date of an advance that is made during a period of default under the insured mortgage, and bankruptcies affecting the vestee (borrower) are exempted from coverage.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is not deleted. Compare this endorsement carefully with Colorado Endorsement 111.7. The latter gives broader coverage.

Colorado Endorsement 122.3 — Advances Within Policy Amount — Change in Rate (Lender)

This is a multi-purpose endorsement, insuring lenders against loss of priority because of changes in the rate of interest (*see* § 6.11) as well as loss of priority as to advances. Advances made while a default exists under the insured mortgage, advances made after the “vestee” (borrower) is no longer the owner, violation of usury or consumer credit protection or truth in lending laws, and federal tax liens that gain priority over the advances are excepted from coverage.

Section 3(d) of the Exclusions from Coverage is not deleted. Compare with Colorado Endorsements 111.7 and 122.1, discussed above, and Colorado Endorsement 110.7A, discussed in § 6.11.

Colorado Endorsement 122.4 — Advances Within Policy Amount — Change in Rate (Lender)

This is a multi-purpose endorsement, insuring lenders against loss of priority because of changes in the rate of interest (*see* § 6.11) as well as loss of priority as to advances. Advances made pursuant to the insured mortgage and loan agreement are specifically covered.

This endorsement excepts from coverage (1) advances made after receipt of written notice of transfer of title (to the land, not to the mortgage) or notice of a subsequent lien, (2) usury and violation of consumer credit protection or truth in lending laws, (3) federal tax liens, (4) bankruptcies affecting the estate of the “mortgagor” prior to the date of advancement, and (5) real estate taxes or special assessments.

This endorsement adds a provision insuring the principal amount outstanding at any time, not to exceed the face amount of the policy, whether advances are made before or after repayment; *i.e.*, a revolving line of credit.

This endorsement expressly states that the insurance provided by the endorsement is not subject to Section 3(d) of the Exclusions from Coverage. Accordingly, the title insurance company cannot defend on the ground that a defect, lien, adverse claim, etc., attached or was created subsequent to the Date of Policy. It also states that any advance will not constitute additional principal indebtedness as defined in Section 8(d) of the Conditions and Stipulations.

Compare with Colorado Endorsements 111.7, 122.5, and 110.7A (discussed in § 6.11).

Colorado Endorsement 122.5 — Advances Within Policy Amount — Change in Rate — Usury (Lender)

This is a multi-purpose endorsement, insuring lenders against loss of priority because of changes in the rate of interest (*see* § 6.11) against usury (*see* § 6.43) and against loss of priority as to advances. The language of this endorsement is far more precise than the other endorsement forms pertaining to advances. The endorsement is tailored for a revolving line of credit, including advances made on a credit card.

Excepted from coverage are (1) advances made after the insured has “actual knowledge” of transfer of the estate encumbered by the insured mortgage; (2) an advance made after the insured has actual knowledge of intervening liens if the advance is made during a period of default under the mortgage or loan agreement (of which the insured had actual knowledge); (3) violation of consumer credit protection or truth in lending laws; and (4) advances that exceed the face amount of the policy.

Section 3(d) of the Exclusions from Coverage is deleted, as is the usury exclusion (but not the consumer credit or Truth-in-Lending laws exclusion). Compare this endorsement with Colorado Endorsements 111.7, 122.4, and 110.7A (discussed in § 6.11).

Colorado Endorsement 122.6 — Advances Within Policy Amount (Lender)

This endorsement insures that advances made pursuant to a loan agreement or line of credit agreement, if secured by the insured mortgage, are included within the coverage of the policy, not to exceed the face amount thereof, provided the vestee (borrower) owns the land described in Schedule A on the date the advance is made.

The endorsement insures the priority of the advance, subject to federal tax liens, liens and encumbrances known to the lender prior to the advance, and the borrower’s bankruptcy prior to the advance. The endorsement does not insure against consumer credit and truth-in-lending laws or environmental protection liens.

Section 3(d) of the Exclusions from Coverage is not modified or deleted.

ALTA Endorsements 14-06, 14.1-06, 14.2-06 and 14.3-06 — Advances Within Policy Amount (Lender)

These four ALTA endorsements have separate specialized purposes. All forms of these endorsements exclude Exclusion 3(d) of the 2006 Loan Policy.

ALTA Endorsement 14-06 (Future Advance — Priority)

This endorsement insures, *inter alia*:

- 1) The priority of optional and obligatory advances made after the Date of Policy, including (a) advances of principal made after the Date of Policy as provided in the agreement, (b) expenses of foreclosure, (c) amounts advanced pursuant to the insured mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the insured mortgage before the time of acquisition of the title, and (d) reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
- 2) Invalidity or unenforceability of the insured mortgage as a result of provisions in the agreement (as defined in the endorsement) relating to advances and changes in the rate of interest.
- 3) The priority of the lien of the insured mortgage as a result of interest added to the principal, in accordance with the agreement, caused by changes in the rate of interest.

ALTA Endorsement 14.1-06 (Future Advance — Knowledge)

Endorsement 14.1-06 is intended for use in those states where the lender loses priority for an advance made after the lender has received actual knowledge of an intervening lien (Colorado is not such a state due to the adoption of C.R.S. § 38-39-106). *See* § 6.6. ALTA Endorsement 14.1-06 also provides similar protection for changes in the rate of interest.

Both ALTA Endorsements 14-06 and 14.1-06 exclude advances made after the borrower files bankruptcy; loss of priority to real estate taxes and assessments; loss of priority for advances made 45 days after notice of a federal tax lien has been recorded; loss of priority to a federal or state environmental lien; loss resulting from usury, consumer protection, and truth-in-lending laws; and mechanics' liens (optional).

ALTA Endorsement 14.2-06 (Future Advance — Letter of Credit)

ALTA Endorsement 14.2-06 is designed for use when the mortgage secures the reimbursement obligation under a letter of credit or a bond given as security. Because the Bankruptcy Code and Internal Revenue Code recognize and protect advances made pursuant to a letter of credit or surety bond, the exceptions from coverage under ALTA Endorsement 14.2-06 do not include bankruptcy and federal tax liens. The endorsement omits protection for changes in the rate of interest.

ALTA Endorsement 14.3-06 (Future Advance — Reverse Mortgage)

This endorsement was issued in response to the need for lender protection when reverse mortgages secure advances of the owner's equity. The legal consequences of the mortgagor's bankruptcy, real estate taxes, federal tax liens, environmental liens, usury, and, if requested, mechanics' liens, are excluded from the coverage provided.

ALTA Endorsement 43-06 (Anti-Taint) — Advances Within Policy Amount (Lender)

The loan policy does not insure against post-policy matters or acts of the insured, such as the effect on priority of subsequent advances or payments. When a loan with a defined term and a revolving credit loan are contained in a single loan agreement, so that both types of loans may be outstanding at the same time, this so-called "anti-taint" endorsement insures the lender against loss of lien priority of the term loan because of reductions or increases in the amount of the revolving credit loan. It thereby avoids the exclusion as to post-policy matters or acts of the insured because of the effect on priority on subsequent payments or advances under the revolving credit loan. James L. Gosdin, *Title Insurance: A Comprehensive Overview*, 3rd Ed. (American Bar Association 2007).

§ 6.7 • ADVERSE POSSESSION

Only one endorsement form provides positive coverage against unrecorded possessory rights arising by adverse possession or prescription. Such coverage is available in both owner's and lender's policies by the deletion of standard exceptions 1 and 2, normally accomplished by omitting those exceptions entirely or by endorsement deletion utilizing Colorado Endorsement 110.1, discussed in § 6.38.4.

In addition, the Residential Title Insurance Policy contains affirmative coverage if "someone else owns an interest in your title," a statement that clearly encompasses adverse possession. *See* § 4.5.1.

Colorado Endorsement 130 and Colorado Endorsement 130C — Adverse Possession (Owner)

These endorsements are available as endorsements to the Owner's Policy insuring single family dwellings, including condominiums (130) or commercial properties (130C).

Colorado Endorsement 130 is often referred to as “residential extra protection.” It restates a portion of standard exception No. 1 as affirmative insurance against loss or damage by reason of “rights or claims of parties in possession of the principal dwelling.” Note that protection is afforded only as to the principal dwelling and not for other improvements, outbuildings, detached garages, fences, driveways, retaining walls, plants, common areas, and unimproved land area. Certainly, adverse possession of a dwelling would be a rare occurrence indeed. Thus, Colorado Endorsement 130 is not the equivalent of the deletion of standard exceptions 1 and 2 on an Owner’s Policy (*see* §§ 2.11 and 2.12) or the plain language Residential Title Insurance Policy or Homeowner’s Policy (*see* §§ 4.5 and 4.6).

Colorado Endorsement 130C has been designed to provide similar protection only against parties in possession of commercial buildings, with the same coverage exceptions as Colorado Endorsement 130.

Colorado Endorsements 130 and 130C provide other coverages, as discussed in §§ 6.17, “Easements,” 6.19, “Encroachments,” 6.31, “Mechanics’ Liens,” 6.41, “Restrictions, Covenants, and Reverters,” and 6.48, “Zoning.”

§ 6.8 • ARBITRATION

The Conditions of the 2006 Owner’s and Loan policies allow either the insured or insurer to demand arbitration of all disputes if the amount in controversy is \$2 million or less. For further discussion, see “Arbitration” in § 4.4.5. The \$1 million limit on mandatory arbitration does not apply to the Residential Limited Coverage Junior Loan policy, illustrated at Form 5H. To modify the mandatory aspects of these arbitration clauses, two endorsement forms are available.

Colorado Endorsement 150 — Arbitration (Lender)

Section 13 of the Conditions and Stipulations of the 1992 Loan Policy, and also section 13 of the Conditions of the 2006 Loan Policy, is amended to provide that arbitration requires the consent of both parties, regardless of the amount of the policy.

Colorado Endorsement 150.1 — Arbitration (Owner)

This endorsement amends Section 14 of the Conditions and Stipulations of the 1992 Owner’s Policy (and also section 13 of the Conditions of the 2006 Owner’s Policy) to make arbitration available if either party demands it, regardless of the amount of the policy. *See* Section 16 of the Conditions and Stipulations of the Leasehold Owner’s Policy, Section 8 of the Conditions of the Residential Owner’s Policy, and Paragraph 11 of the Homeowner’s Policy.

§ 6.9 • ASSIGNMENT OF MORTGAGES AND POLICIES

As noted in “Continuation of Insurance” in § 5.2.5, the Loan Policy follows the ownership of the indebtedness and automatically inures to the benefit of the assignee of the indebtedness. Nevertheless, sometimes an assignee wants to be reassured by the title insurance company that the policy now

insures its interest. For this purpose, seven Colorado endorsement forms have been promulgated, five with the basic purpose of naming the assignee as the new owner of the indebtedness (described in these Endorsements as the “beneficial interest in the mortgage”), the other two naming the assignee as the holder of the indebtedness under a collateral assignment as security for a debt owed by the assignor to the assignee. Additional assurances are included for an increased cost, as described below. ALTA Endorsement 10-06 and ALTA Endorsement 10.1-06 provide comparable coverages, as discussed below.

Colorado Endorsement 104 — Mortgage Assignment (Lender)

This endorsement insures the valid assignment of the beneficial interest under a mortgage to a named assignee who is thereafter the insured party under the policy. No additional assurances are provided. The assignee’s name is set out on the endorsement.

Colorado Endorsement 104.1 — Mortgage Assignment — No Releases (Lender)

This endorsement insures the valid assignment of the beneficial interest under a mortgage. In addition, this endorsement insures that the mortgage has not previously been released, modified, or subordinated. The assignee’s name is set out on the endorsement.

Colorado Endorsement 104.2 — Mortgage Assignment — Change Effective Date (Lender)

This endorsement insures the valid assignment of the beneficial interest under a mortgage and changes the effective date of the policy, thereby insuring against intervening encumbrances and changes in ownership of the fee title. The assignee’s name and the new effective date are set out on the endorsement.

Colorado Endorsement 104.3 — Mortgage Collateral Assignment (Lender)

This endorsement insures the valid assignment of the beneficial interest under a mortgage as collateral security for a loan from the assignee to the assignor. The liability of the title insurance company can be limited by insertion of the dollar amount of the consideration paid for the collateral assignment of the loan in the endorsement, regardless of the face amount of the policy. The title insurance company’s total liability will not exceed the face amount of the policy and costs, which the title insurance company is obliged to pay under the Conditions and Stipulations.

Colorado Endorsement 104.4 — Mortgage Collateral Assignment (Lender)

This endorsement insures the valid assignment of the beneficial interest under a mortgage as collateral security for a loan and insures that the mortgage has not been previously released, modified, or subordinated. This endorsement is similar in all other respects to Colorado Endorsement 104.3.

Colorado Endorsement 104.8 — Mortgage Assignment — Expanded Coverage (Lender)

This endorsement “assures” the named assignee that (1) the beneficial interest under the mortgage has been validly assigned; (2) there are no subsisting prior tax or assessment liens except those identified in the endorsement; (3) the validity or priority of the mortgage lien is not impaired except as disclosed; and (4) except as shown, no recorded federal tax liens or bankruptcy proceedings affect the title to the subject land.

The endorsement expressly excludes coverage for the consequences of (1) lack of possession of the original promissory note secured by the assigned mortgage; and (2) absence of a proper endorsement on the original promissory note from the assignor to the assignee.

Colorado Endorsement 104.10 — Mortgage Assignment — Modified Coverage (Lender)

This endorsement provides the same coverage as Colorado Endorsement 104.1, but excludes loss resulting from lack of possession and absence of endorsement, the same as Colorado Endorsement 104.8. The assignee's name is set out in the endorsement.

ALTA Endorsement 10-06 and ALTA Endorsement 10.1-06 — Assignment of Policy (Lender)

ALTA Endorsement 10-06 (Assignment) amends the name of the insured lender to the assignee of the mortgage, and insures the assignee against failure of the assignment document identified in the endorsement to vest title to the mortgage in the assignee. Except as specifically noted in the endorsement, the assignee is also protected against prior recorded modifications or releases. The endorsement is not effective unless the promissory notes secured by the mortgage have been properly endorsed and delivered, or the assignee has "control" of the "transferable record" as defined in electronic transactions laws. An exception for bankruptcy and creditors' rights has been added.

ALTA Endorsement 10.1-06 (Assignment and Date Down) includes the ALTA Endorsement 10-06 coverages and exceptions, while insuring the priority of the insured mortgage to the date of endorsement (*i.e.*, date down) over all recorded encumbrances, including liens for taxes and assessments and bankruptcy. Exceptions to this date-down coverage will be set out on the endorsement form.

ALTA Endorsement 37-06 — Assignment of Rents or Leases (Lender)

This endorsement insures a lender who has taken an assignment of rents or leases to secure a loan that the assignment has been properly executed and no prior assignment of rents or leases has been recorded other than shown in Part II of Schedule B of the loan policy.

§ 6.10 • ASSOCIATIONS (PROPERTY OWNERS)

Home and property owners' associations normally finance their activities by assessments upon the membership. Collection of assessments is assured by an assessment lien granted to the association by a recorded document or, in the case of an association governed by the Colorado Common Interest Ownership Act (CCIOA, C.R.S. §§ 38-33.3-101, *et seq.*), by a lien granted by statute with a six-month statutory priority. C.R.S. § 38-33.3-316(2)(b)(I). A subsequent lender may intend to secure its position by a mortgage lien on all or a portion of the land encumbered by the association's assessment lien, but the assessment lien may have priority of record or priority granted by statute.

The lender will request the title insurance company to insure that its lien is superior to the association's lien. This could be accomplished by a subordination agreement executed by the association and then recorded immediately after the mortgage lien is recorded. Some assessment liens, by their terms, will automatically be subordinate to the lien of a purchase-money mortgage so that no subordination agreement is required. If that is not the case, an endorsement of the policy may be required to satisfy the mortgage lender.

Endorsements intended to provide affirmative coverages for condominiums and planned unit developments may also include affirmative coverage for association liens — for example, Colorado Endorsement 115.1, ALTA Endorsement 4-06 (Condominium), and the ALTA Endorsement 4.1-06

(Condominium), discussed in § 6.14, and Colorado Endorsement 115.2, ALTA Endorsement 5-06, and ALTA Endorsement 5.1-06, discussed in § 6.39.

In addition, title insurers have modified some of the endorsements, such as Colorado Endorsements 100, 100.1, 100.2, 100.6, 115.1, and 115.2, to specifically exclude the CCIOA lien priority.

Colorado Endorsement 100.13 — Assessment Lien — Associations (Lender)

This endorsement insures that any assessment lien fixed or levied pursuant to the covenants referred to in Schedule B of the policy prior to acquisition of title by foreclosure or sale under the insured mortgage is and will be subordinate in all respects to the lien of the insured mortgage. Compare to Colorado Endorsements 100, 115.1, and 115.2, all of which are lender endorsements that provide, among other assurances, similar assurances with respect to the priority of the insured mortgage lien over an assessment lien, but with specific exceptions for liens under the Colorado Common Interest Community Act, C.R.S. §§ 38-33.3-101, *et seq.*

In the event a lender forecloses its lien and thus becomes the owner of land that is subject to the governing provisions of a home or property owners' association, the lender may thereupon be liable for assessments the same as any other owner, despite the priority of the mortgage lien over the association's assessment lien. Some association documents so provide. Others exempt the owner-lender until resale of the land to an actual user or resident. If the lender demands assurances that the association documents are of the latter type, Colorado Endorsement 100.16 can be issued, if supported by the facts.

Colorado Endorsement 100.16 — Association Membership (Lender)

This endorsement insures the lender against judicial enforcement of any mandatory membership provisions in the association documents, which are pre-requisites to the ownership of the land or unit.

§ 6.11 • CHANGE IN RATE OF INTEREST

With the popularity of adjustable, renegotiable, variable, and other floating or non-fixed interest rates on mortgage loans, lenders became concerned about the validity of their mortgages under local laws. The title insurance industry responded to this concern and the demand of the lenders with an ever-expanding series of endorsements for lender policies.

Not only does the lender require insurance as to the validity of its variable rate mortgage, but also priority of its lien following a change, particularly an increase, in the interest rate. In this respect, the concern is similar to that of the lender making an additional advance after the mortgage has been recorded and the policy issued, as discussed in § 6.6. Accordingly, two standard provisions of all lender policy forms must be considered.

Section 3(d) of the Exclusions from Coverage in the 2006 Loan Policy provides that defects, liens, encumbrances, adverse claims, and other matters attaching or created subsequent to the Date of Policy are not covered, except for Covered Risks 11, 13, and 14. If the interest rate on the mortgage in-

creases after the policy is issued, an intervening lien might claim priority over the amount of the increase, and that claim could be excluded from coverage by Section 3(d). *See* “Definition of Terms” in § 5.2.5.

Not all the endorsements pertaining to changes in interest rates delete or negate Section 3(d). Even though endorsements should control over policy boilerplate, you may prefer to select those endorsements that do void Section 3(d) when the rate of interest increases or interest is added to principal. The same problem is encountered where the lender makes advances, as discussed in § 6.6.

Colorado Endorsement 110.7 — Change in Interest Rate — Adjustable Rate Mortgage (Lender)

This endorsement refers to changes in the rate of interest in accordance with the provisions of the insured mortgage, such as an Adjustable Rate Mortgage (ARM). *See also* ALTA Endorsement 6-06.

Loss or damage based upon usury or violation of consumer credit and truth in lending laws is excluded from coverage. These are already excluded in Section 5 of the Exclusions from Coverage in the 2006 Loan Policy. *See* § 5.2.2.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is deleted.

Colorado Endorsement 110.7A — Change in Interest Rate — Advances (Lender)

This is a multi-purpose endorsement encompassing two concepts: changes in the rate of interest and advances pursuant to a revolving line of credit. It insures lenders against loss of priority because of changes in the rate of interest, provided such changes are calculated in accordance with the formula contained in the insured mortgage. It also insures lenders against priority loss resulting from certain described obligatory advances, provided that no event of default exists under the insured mortgage on the date the advance is made. Advances made under this endorsement are excluded from the definition of “additional principal indebtedness” in Section 8(a) of the Conditions and Stipulations of the 1992 Loan Policy. Because of the broad definition of “Indebtedness” in the 2006 Loan Policy, this exclusion is no longer applicable unless the endorsement is modified to amend the definition of “Indebtedness.”

The endorsement excludes coverage for loss or damage based on usury, violation of consumer credit protection or truth in lending laws, and federal tax liens.

Advances are defined as extensions of credit pursuant to the agreement — *i.e.*, the revolving loan agreement between lender and borrower. Extensions of credit occur when the lender honors a check drawn by the vestee (borrower) on an account established by the agreement, or when the lender authorizes a charge for the benefit of the vestee on a credit card issued to the vestee pursuant to the agreement, or when such a credit card charge is made. Compare with the endorsements discussed in § 6.6, particularly Colorado Endorsements 111.7, 122.3, 122.4, and 122.5, and Colorado Endorsement 110.7, discussed above.

Colorado Endorsement 110.8 — Change in Interest Rate — Variable Rate Mortgage (Lender)

This endorsement, which some companies number 110.7 and others number 111.6, follows the general format of Colorado Endorsement 110.7, but refers to a Variable Rate Mortgage (VRM) with negative amortization, the unpaid interest to be added to principal. With this endorsement, the title in-

insurance company insures the lender that its VRM is valid and enforceable and that the priority of its lien will be unaffected by changes in the rate of interest, provided that such changes are calculated pursuant to the formula stated in the mortgage, and additions of unpaid interest to principal as a result of periodic payments that are insufficient to pay the current interest charges (negative amortization).

Loss or damage based on usury or violation of consumer credit protection or truth in lending laws is excluded from coverage. Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is deleted, so that the policy, as endorsed, will cover defects, encumbrances, adverse claims, etc., attaching or created subsequent to the Date of Policy. Compare to Colorado Endorsements 110.9 and 110.10.

Colorado Endorsement 110.9 — Change in Interest Rate — Variable Rate Mortgage (Lender)

This endorsement is similar to Colorado Endorsement 110.8. It applies to a VRM with capitalization of interest based on negative amortization. With this endorsement, the title insurance company insures the lender that its VRM is valid and enforceable and that the priority of its lien will be unaffected by changes in the rate of interest, provided that such changes are calculated pursuant to the formula stated in the mortgage, and the capitalization of interest, defined as additions to principal occasioned by the failure of the periodic payments to pay accruing interest in full (negative amortization), the unpaid increments of interest being added to principal.

Loss or damage based on usury or violation of consumer credit protection and truth in lending laws is excluded from coverage. Section 3(d) of the Exclusions from Coverage is deleted, so that the policy, as endorsed, will protect against defects, encumbrances, adverse claims, etc., attaching or created subsequent to the Date of Policy. Compare to Colorado Endorsements 110.8 and 110.10.

Colorado Endorsement 110.9A (Variation) — Change in Interest Rate — Shared Appreciation Mortgage (Lender)

Some title insurance companies may issue a variation of Colorado Endorsement 110.9 to insure a Shared Equity or Shared Appreciation Mortgage (SAM). With this endorsement, the title insurance company insures the lender that its SAM is valid and enforceable and that the priority of its lien will be unaffected by changes in the rate of interest or the fact that part of the interest payable is calculated upon increases (appreciation) in the value of the land encumbered by the mortgage. Whether this endorsement also insures against the addition of unpaid interest to principal (negative amortization) is unclear, although the face amount of the policy is increased by as much as 150 percent to accommodate such additions to principal as well as “all interest required to be paid in accordance with the provisions of the insured mortgage.”

Loss or damage based on usury, violation of consumer credit protection or truth in lending laws, and failure of the lender to comply with applicable state or federal laws or regulations regarding “shared appreciation loans” is excluded from coverage.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is deleted.

Colorado Endorsement 110.10 — Change in Interest Rate — CARM (Lender)

This endorsement is similar to Colorado Endorsements 110.8 and 110.9, but with the added specific protection of insuring charges for interest on interest. It is used with the so-called Convertible Adjustable Rate Mortgage (CARM). With this endorsement, the title insurance company insures the lender that its CARM is valid and enforceable and that the priority of its lien will be unaffected by changes in the rate of interest, provided that such changes are calculated pursuant to the formula stated in the mortgage; increases in the unpaid principal balance of the mortgage loan resulting from the addition of unpaid interest (negative amortization); and interest charged on the unpaid increments of interest that may be added to the principal amount of the loan. It does not increase the face amount of the policy.

Loss or damage based on usury or violation of consumer credit protection or truth in lending laws is excluded from coverage.

Section 3(d) of the Exclusions from Coverage (defects attaching or created subsequent to Date of Policy) is deleted.

Compare to Colorado Endorsements 110.8 and 110.9.

Colorado Endorsement 122.3 — Change in Interest Rate — Advances (Lender)

See discussion of this multi-purpose endorsement in § 6.6, “Advances.”

Colorado Endorsement 122.4 — Change in Interest Rate — Advances (Lender)

See discussion of this multi-purpose endorsement in § 6.6.1, “Advances that Increase the Policy Amount.”

Colorado Endorsement 122.5 — Change in Interest Rate — Advances (Lender)

See discussion of this multi-purpose endorsement in § 6.6.1, “Advances that Increase the Policy Amount.”

Colorado Endorsement 122.8 — Change in Interest Rate — Balloon Mortgage (Lender)

With this endorsement, the title insurance company insures the lender against invalidity and loss of priority of its mortgage that provides a right to refinance with a change in rate of interest. Usury, violation of consumer protection and truth-in-lending laws, and bankruptcy are not covered.

This endorsement is numbered as Colorado Endorsement 111.9 by some companies.

Colorado Endorsement 122.10 — Change in Rate of Interest — Reverse Mortgage (Lender)

This endorsement insures the lender against invalidity and loss of priority of its mortgage resulting from charging interest on interest, changes in the rate of interest, and addition of unpaid interest to principal.

Advances made after date of policy are not insured as to priority over subsequently-recorded federal tax liens, bankruptcies, and environmental protection liens.

No insurance is provided for usury and violation of consumer protection and truth-in-lending laws.

Colorado Endorsement 122.11 — Change in Rate of Interest — Shared Appreciation Mortgage (Lender)

This endorsement insures against the invalidity or loss of priority of the mortgage resulting from an increase in the rate of interest based upon the value of the insured land. The face amount of the policy is increased by 50 percent if the increased interest causes an addition to principal.

No protection is afforded for usury, violation of consumer protection or truth-in-lending laws, or failure of the lender to comply with state or federal laws or regulations regarding shared appreciation.

Section 3(d) of the Exclusions from Coverage on the Loan Policy is deleted.

ALTA Endorsement 6-06 — Change in Rate of Interest — Variable Rate Mortgage (Lender)

ALTA Endorsement 6-06 is similar to Colorado Endorsement 110.7, discussed above.

ALTA Endorsement 6.2-06 — Change in Rate of Interest — Variable Rate Mortgage — Negative Amortization (Lender)

This endorsement insures validity and priority of the mortgage if changes in the rate of interest occur, if interest is charged on interest, or if unpaid interest is added to principal. Compare to Colorado Endorsement 122.10.

ALTA Endorsement 30-06 — Change in Rate of Interest — SAM (Lender)

ALTA Endorsement 30-06, for a one-to-four family residence only, insures against the invalidity or loss of priority of the mortgage by reason of provisions in the mortgage relating to shared equity or appreciation in the value of the insured land. Such provisions may contravene state laws, such as statutory requirements for a shared appreciation mortgage or laws against the clogging of the equity of redemption.

Compare to Colorado Endorsement 122.11.

ALTA Endorsement 30.1-06 — Commercial Participation Interest (Lender)

This endorsement is designed to ensure that commercial properties in which the lender holds a “participation interest” will be protected against loss or damage resulting from the invalidity or loss of priority of the insured mortgage. Participation interest is defined as interest established by a formula based on the borrower’s equity, appreciation in value of the title, or cash flow.

The endorsement insures against invalidity, unenforceability, and lack of priority as of the Date of Policy of the insured mortgage as security for participation interest. The endorsement includes several common exclusions, such as unconscionability, usury, disputes over the amount of participation interest, failure to comply with applicable laws relating to participation interest, mortgage or intangible taxes, and mechanics’ liens. Other exclusions of the Loan Policy are incorporated, including creditors’ rights and post-policy matters, such as the effect of a later bankruptcy stay or priority lien. This endorsement provides coverage for lenders in the event contingent interest is a feature of the loan transaction. *See* 2012 ALTA Policy Forms Yearbook.

§ 6.12 • CO-INSURANCE

ALTA Endorsement 23-06 — Co-insurance — Single Policy (Owner/Lender)

This endorsement is used only in a co-insurance situation where two or more companies are required independently to examine title and issue policies of title insurance, the aggregate amount of which is the insurance coverage required. *See* § 1.10.2. Instead of issuing its own policy, one of the companies may issue this “me too” endorsement to another title insurance company’s policy, joining therein to the same extent as if the endorsing title insurance company had issued the policy itself, but stating in the endorsement the amount of its liability.

ALTA Endorsement 23.1-06 — Co-insurance — Multiple Policies (Owner/Lender)

The ALTA 23-06 Co-insurance endorsement is available for issuance if two or more co-insurers assume liability under one title insurance policy issued by the “Issuing Co-Insurer.” The ALTA 12-06 and 12.1-06 aggregation endorsements are also available for issuance if the title insurer aggregated liability under multiple policies that were issued on different tracts of land. However, the existing co-insurance endorsement did not contemplate the apportionment of liability by a co-insurer if multiple title insurance policies are being issued on separate tracts of land. ALTA introduced Endorsement 23.1-06 to solve this problem.

Paragraph 2 of this endorsement, which can be issued with either Owner’s or Loan policies, refers to the separate aggregation endorsement of the co-insurer and acknowledges that each co-insurer’s policy liability is aggregated with the liability of the issuing co-insurer (the lead title insurer issuing the policy) if the co-insurer issues its own aggregation endorsement showing that co-insurer’s policy liability and aggregate amount of insurance.

§ 6.13 • COMMITMENT CHANGES/CORRECTIONS/EXTENSIONS

Although most endorsements are attached to a policy, some endorsements pertain to matters in the title commitment.

Colorado Endorsement 110.3 — Correction/Deletion of Commitment/Policy

This is a blank endorsement that can be used to correct errors in commitments and in policies. An error might include an exception listed in Schedule B that should not be listed (but consider also Colorado Endorsement 110.1). Colorado Endorsement 110.3 is also used to extend the term of a commitment. The endorsement can also be used to delete a Schedule B requirement or exception in a commitment or policy.

In practice, most title insurance companies will usually issue a revised commitment incorporating the change. This results in a cleaner commitment without the need to keep and refer to multiple endorsements to review the present status of the commitment.

Colorado Endorsement 130.2 — Policy Change: Delete Exception, Gap Coverage, Inflation on Plain Language Commitment

This multi-purpose endorsement can be added to the commitment for a plain language Residential Title Insurance Policy (*see* § 4.5) to delete printed exceptions, insure the gap, and commit to inflation protection if Colorado Endorsement 130.3 is added to the policy.

Colorado Endorsement 110.3 — Extend Commitment

As discussed in § 2.6.3, a title insurance commitment acts as a binder for a stated period — usually six months. The extension may be approved when the title insurance commitment is issued and the extended date is noted on the title insurance commitment. Alternatively, before its expiration, the title insurance commitment may be extended for an additional specified period. In the latter case, Colorado Endorsement 110.3 can be issued, describing the term of extension. The title insurance company may limit the number of extensions, often to three. A nominal charge may be made for an extension. Colorado Endorsement 110.3 is also used to correct errors.

§ 6.14 • CONDOMINIUMS

When the title insurance company issues a policy insuring the owner's title to, or the lender's lien upon, a condominium or a unit in a common interest community under CCIOA (C.R.S. §§ 38-33.3-101, *et seq.*; *see* § 6.10), undoubtedly it has also insured the validity and effectiveness of the project declaration under local law. No special language or endorsement is required. Nevertheless, because of demand for these types of coverages (primarily from lenders), several endorsements are available to restate the obvious for the benefit of those who are comforted by that approach.

For endorsements pertaining to the assessment lien of owners' associations, *see* § 6.10.

Colorado Endorsement 115 — Condominium (Lender)

This endorsement insures the lender that the estate or interest described in the policy is a condominium as defined in CCIOA, C.R.S. §§ 38-33-103 or 38-33.3-103, and is entitled to be assessed and taxed as a separate parcel. Although some companies purport to issue this endorsement to owners as well as lenders, the endorsement itself refers to "loss" under the "mortgage" and would, therefore, require modification before being attached to an owner's policy. *See also* ALTA Endorsement 4-06 and ALTA Endorsement 4.1-06.

Colorado Endorsement 115.1 — Condominium — Encroachment — Restrictions (Owner/Lender)

This is a multi-purpose lender's endorsement, designed to insure that (1) the unit and its common elements constitute a legal condominium as defined by C.R.S. §§ 38-33-103 or 38-33.3-103; (2) the condominium documents (declaration, map) comply with the Colorado statutes; (3) there are no present violations of the covenants in the condominium documents that restrict use of the unit or its common elements, and such restrictions do not contain a reverter; (4) no lien in the condominium statutes or documents for charges or assessments will gain priority over the insured mortgage, except the six-month statutory lien priority granted to the association under CCIOA by C.R.S. § 38-33.3-316(2)(b) (compare to Colorado Endorsement 100.13; *see* § 6.10); (5) the condominium unit and its

common elements are entitled to be assessed and taxed as a separate parcel; (6) there will be no obligation to remove any improvements because of present or, if unintentional, future encroachment of the unit upon the common elements or other units, or of common elements upon the unit; and (7) no rights exist in others because of failure to comply with a right of first refusal to purchase the unit and its common elements. In some cases, this endorsement may be issued to owners, too.

The coverage afforded by this endorsement adds to the protection of a Loan Policy by reason of the assurances that no existing violations of the restrictive covenants in the declaration are present (*see* § 6.41), and over encroachments (*see* § 6.19). However, because of the cost of this endorsement, borrowers should try to convince their lenders that Colorado Endorsements 100 and 100.13 together provide the same protection at much less expense. The argument is sound, but many lenders will prefer the specific language of Colorado Endorsement 115.1. Compare this endorsement to Colorado Endorsement 115.2, discussed at § 6.39, “PUD (Planned Unit Development).”

Colorado Endorsement 116.2 — Condominium — Encroachment (Owner/Lender)

This endorsement, available to both owners and lenders, insures that the exterior boundary of the common area described in Schedule A lies within the boundaries of the condominium map as filed in the county clerk and recorder’s office. It also insures that the unit numbers are correct and relate to a stated street address. It is difficult to envisage any protection whatsoever in excess of normal loan policy coverage that is provided by this endorsement at additional cost.

ALTA Endorsement 4-06 — Condominiums — Assessment Priority (Owner/Lender)

ALTA Endorsement 4.1-06 — Condominium — Current Assessments (Owner/Lender)

ALTA Endorsement 4-06 is identical in coverage, if not in wording, with Colorado Endorsement 115.1, with two exceptions: (1) ALTA Endorsement 4-06 excepts, and therefore does not insure against, environmental violations; and (2) ALTA Endorsement 4-06 makes no exception, and therefore protects against, the six-month super priority lien contained in C.R.S. § 38-33.3-316(2)(b). If used in Colorado, most likely the six-month exception will be added.

ALTA Endorsement 4.1-06 differs in one aspect from ALTA Endorsement 4-06. Whereas ALTA Endorsement 4-06 insures the priority of the lien of the insured mortgage over future assessment liens, ALTA Endorsement 4.1-06 insures the priority of the lien of the insured mortgage over assessments that are due and unpaid at the date of the policy.

§ 6.15 • CREDITORS’ RIGHTS

ALTA Endorsement 21 — Creditors’ Rights (Owner/Lender)

Decertified by ALTA on February 3, 2010, this endorsement is no longer available, as title insurance companies incurred substantial losses because of claims based on this coverage and arising during the time of the Great Recession from late 2007 to early 2010.

Creditors’ rights coverage insured property owners and their lenders against loss due to the occurrence, on or before the date of the policy, of a fraudulent transfer or voidable preference under federal bankruptcy, state insolvency, or similar creditors’ rights laws. The title insurance company would

defend the insured against the claim of a creditor in bankruptcy that the transfer should be set aside because it was made with the actual intent to hinder, defraud, or delay its creditors, or the debtor received less than reasonably equivalent value in the transfer and was or became insolvent as a result of the transfer.

The coverage also included attorney fees and costs of defense, which could be substantial compared with other types of title defenses due to the fact that the end result could be a total loss of title. *See* Joanne Schreiner and Julie Schoepf, “The Creditor’s Rights Endorsement: What Its Extinction Means for Owners and Lenders,” *available at* www.dinsmore.com/creditors_rights_endorsement (April 8, 2010). See also the discussion on the exclusion of creditor’s rights in the Exclusion from Coverage 4 in the Owner’s Policy, § 4.4.2, and Exclusion from Coverage 6 in the Loan Policy in § 5.2.2.

§ 6.16 • DOING BUSINESS RESTRICTIONS

ALTA Endorsement 24-06 — Doing Business (Lender)

Exclusion No. 4 of the 2006 Loan Policy excludes coverage for a violation of the state “doing business” laws. This ALTA endorsement modifies Exclusion No. 4 to insure the validity of the mortgage despite “doing business” restrictions of state laws. This endorsement is routinely issued in view of the provisions of C.R.S. §§ 7-90-801(2)(g) through (k):

A foreign entity shall not be considered to be transacting business or conducting activities in this state within the meaning of subsection (1) of this section by reason of carrying on in this state any one or more of the following activities:

...

- (g) Creating, as borrower or lender, or acquiring, indebtedness;
- (h) Creating, as borrower or lender, or acquiring, mortgages or other security interests in real or personal property;
- (i) Securing or collecting debts in its own behalf or enforcing mortgages or security interests in land securing such debts;
- (j) Owning, without more, real or personal property;
- (k) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature[.]

§ 6.17 • EASEMENTS

Endorsements pertaining to easements stem from the customer’s requirement for protection against the rights of others. Usually, the easement owner will be a neighbor with an easement appurtenant to the land (the dominant tenement) across the insured land (the servient tenement). However, the easement could also be an easement in gross for a power line or pipeline that crosses the insured land on its interstate or intercity journey.

Since standard Exception No. 2 excludes from coverage “Easements, liens or encumbrances, or claims thereof, not shown by the Public Records,” it will have to be deleted by endorsement (along with standard Exception No. 1) if the insured is to be protected against those easements that arise from usage over the years (the prescriptive easement) or result from implication as an easement by necessity or prior existing use (the quasi-easement). See § 2.8.8. A discussion of the endorsement utilized to delete the standard exceptions can be found at § 6.38.4.

The endorsements customarily issued to insure against known, recorded easements are discussed in this section. If, rather than protection against an easement, the insured desires to add an easement to the description of the insured land, then no endorsement is needed. The easement is simply described in Schedule A along with the insured land it serves (the dominant tenement), as discussed in § 2.8.7.

Colorado Endorsement 100 — Easement — Residence (Lender)

This is a multi-purpose endorsement discussed primarily at § 6.41, “Restrictions, Covenants, and Reverters.” Among its other duties, Colorado Endorsement 100 insures the lender against damage to existing (not future) improvements resulting from the right in others to use or maintain an easement. The title insurance company may require an improvement survey, frequently only an improvement location certificate, before agreeing to issue this endorsement, and if the survey discloses that the improvements (buildings, driveway, fences, etc.) encroach upon an easement, a specific exception therefore will be made in Schedule B of the policy. See Appendix 7 for information about surveys.

Normally this endorsement is only available for one-to-four family residences. On occasion, it may be issued for commercial or industrial properties, for a higher charge than for a residence, although most lenders will request the ALTA 9 endorsement.

Colorado Endorsement 100.3 — Easement — Improved Land (Owner)

With respect to coverage related to easements, Colorado Endorsement 100.3 is identical to Colorado Endorsement 100, but it is available only to owners of improved land. The rate for residences is typically less than for commercial properties.

ALTA Endorsement 28-06 — Existing Building — Damage or Enforced Removal

ALTA Endorsement 28.1-06 — Encroachments — Boundaries and Easements

ALTA Endorsement 28.2-06 — Encroachments, Boundaries, and Easements (Owner/Lender)

These ALTA endorsements, although similar to the easement portion of Colorado Endorsement 100, have significant restrictions on the coverage provided (as more fully discussed in § 6.19). They apply only to an existing building and not to future construction or to landscaping, fences, or non-building structures. They cover damage to, and/or enforced removal of, an existing building on or from the land as a result of the exercise of granted or reserved rights to use or maintain a specific easement identified in Schedule B of the policy.

Colorado Endorsement 102.5 and Colorado Endorsement 102.7 — Easement — Foundations (Lender)

These multi-purpose endorsements insure that the foundations of a building under construction do not encroach onto any easement described in Schedule B.

Colorado Endorsement 103.1 — Easement — Patent Exceptions and Other Easements (Owner/Lender)

This endorsement insures against loss or damage resulting from the use or maintenance of an easement. It could be used to insure against ditches or canals reserved in U.S. patents, the rights of a proprietor of a vein or lode excepted in U.S. patents, and any other easements disclosed by the survey, as shown in the public records or visible on the ground.

With respect to ditches or canals reserved in U.S. patents, the title insurance company knows that the insured will be protected by the compensatory provisions of 43 U.S.C.A. §§ 945a to 945b which, in effect, require the government to condemn and pay value for the right of way for a ditch or canal, despite the reservation in the patent. Reservation is required in all patents on lands west of the 100th meridian (all of Colorado) issued subsequent to the Act of August 30, 1890, 43 U.S.C.A. § 945, effective January 1, 1961. In the 1950s, before passage of this Act by Congress, landowners in Boulder and Larimer (and perhaps other) counties lost uncompensated surface rights for canals constructed by the Bureau of Reclamation for the Northern Colorado Conservancy District and other federal projects.

You would expect the title insurance company to include in Colorado Endorsement 103.1, when issued to protect against the ditches or canals reservation, a provision providing for reimbursement out of funds received from the government for all payments made and costs incurred by the title insurance company (compare Colorado Endorsements 100.30 and 100.31, discussed in § 6.32, “Minerals”). But it is an unusual occurrence when the patent reservation for ditches and canals is invoked. The companies feel safe, apparently. They sometimes delete the exception for the ditches and canals patent reservation in Schedule B if requested to do so, without any endorsement whatsoever.

The right of a miner (proprietor) to follow the vein or lode of his or her mining claim is derived from mining law. The Lode Mining Law of May 10, 1872, 30 U.S.C.A. § 26. The patent gives notice of this easement and extraction right and makes the grant of land confirmed by the patent subject thereto. *See Bate*, “Mineral Exceptions and Reservations in Federal Public Land Patents,” 17 *Rocky Mtn. Min. Law Inst.* 325 (1971). This mining right does not permit surface entry. 2 *Am. Law of Mining* § 37.01[3] (2nd Ed. 1984). It is essentially an easement for a tunnel. Colorado statutes prohibit tunneling under buildings to protect surface improvements against subsidence. C.R.S. § 34-48-102. This affords some assurance to the title insurance company when it issues Colorado Endorsement 103.1. Nevertheless, the endorsement may be denied in regions of known mining activity except where municipal ordinances prohibit mining. Because of the reference to mining, the companies sometimes offer the mineral endorsements discussed in § 6.33.1, but Colorado Endorsement 103.1 is better protection.

Colorado Endorsement 103.3 — Easement — Encroachment (Owner/Lender)

This endorsement insures against loss or damage the insured may sustain as the consequence of the owner of the easement compelling removal of improvements that encroach upon an easement disclosed in Schedule B, whether removal is for a specific purpose, such as maintaining, repairing, enlarging, or replacing an existing pipeline (limited endorsement) or for any purpose (unlimited endorsement).

Colorado Endorsement 115.2 — Easement — PUD (Owner/Lender)

This endorsement is the so-called Planned Unit Development (PUD) form (*see* § 6.39). In addition to other coverages, Colorado Endorsement 115.2 insures the owner or lender that none of the improvements encroach upon any easement described in Schedule B. *See* § 6.19, “Encroachments.” *See also* ALTA Endorsement 5-06.

Colorado Endorsement 130 and Colorado Endorsement 130C — Easement (Owner)

These multi-purpose endorsements insure against the enforced removal of the principal dwelling, including a condominium unit (Colorado Endorsement 130) or a commercial building (Colorado Endorsement 130C) but specifically excluding outbuildings, detached garages, fences, driveways, retaining walls, plants, and common areas, when they encroach onto an easement shown in Schedule B or onto any unrecorded subsurface easement. Compare to Colorado Endorsement 103.3, discussed above, which covers all improvements.

The terms “single family residence” and “principal dwelling” in Colorado Endorsement 130 are replaced with “commercial dwelling” in Colorado Endorsement 130C. Otherwise, the coverage is the same.

ALTA Endorsement 9-06 — Restrictions, Surveys, Environment, Encroachments, Easements, Minerals (Lender)

This multi-purpose lender’s endorsement insures the lender against loss or damage resulting from (1) the future violation of a covenant that affects the lender’s lien, (2) an existing violation of a covenant, (3) the enforced removal of an improvement because of an existing violation of a building setback line, (4) a present violation of an environmental covenant, (5) encroachment of improvements onto or from adjoining land, (6) the forced removal of an improvement as a result of such encroachment, (7) exercise of easement rights causing damage to existing improvements that encroach on the easement, and (8) future exercise of the right to use the surface of the land for the extraction of minerals. The endorsement applies only to improvements existing at the date of policy.

The language in the ALTA endorsements existing at the time was challenged in the case of *Nationwide Life Insurance Co. v. Commonwealth Land Title Insurance Co.*, 579 F. 3d 304 (3d Cir. 2009), where, on appeal, the court construed ALTA Endorsement 9 (in its form at that time) as insuring against an option to repurchase unless the option was specifically excepted, and not excepted by a general reference to a declaration. As a result of the *Nationwide* decision, ALTA revised its Endorsements in the “9” series.

Note that the revised endorsements contain a preamble stating “The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.” Notwithstanding the preamble, the endorsements do provide the coverage you would expect. For example, Section 3 insures over a violation of a Covenant that affects the lien of the insured mortgage, Section 4(b) insures over a removal of an encroachment identified in Schedule B, and Section 4(c) insures over damage to an improvement encroaching over an easement excepted in Schedule B.

However, some of the insuring provisions in the endorsements specifically exclude coverage if “an exception in Schedule B of the policy identifies the violation” (for example, sections 3(b), 3(c), and 3(d)), and “unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i or 4.a.ii.” The cautious real estate attorney is well advised to review the endorsement and the exceptions in Schedule B, Part 2 of the commitment to understand the extent of the coverage offered, and to request amendments to the endorsement, prior to closing. Pro forma endorsements are an invaluable tool in this regard.

ALTA Endorsement 9.7-06 — Restrictions, Encroachments, Minerals, Land Under Development (Lender)

This multi-purpose lender’s endorsement covers present and future improvements to the land, including a building, structure, road, walkway, driveway, curb, lawn, shrubbery, or trees, to be constructed or affixed pursuant to certain identified plans prepared by a named architect or engineer. Loss or damage resulting from the violation of an existing covenant that affects the lender’s lien is insured against. Also covered are the enforced removal of an existing or future improvement because of a violation of a building setback line, an existing violation of a covenant relating to environmental protection, the encroachment of existing or future improvements onto or from adjoining land, easements, and damage to existing or future improvements resulting from mineral development or extraction.

ALTA Endorsement 18.1-06 — Easement — Non-Payment of Taxes — (Multiple Tax Parcel) (Owner/Lender)

The primary purpose of the ALTA Endorsement 18.1-06 appears to be an assurance of the accuracy of assigned tax identification numbers (*see* § 6.44, “Taxes and Assessments”). But, perhaps secondarily, this endorsement also insures that an easement described in Section A of the policy (*i.e.*, an insured easement) will not be “cut off” or “disturbed” by the non-payment of real estate taxes on the servient estate. For access easements, and especially for conservation easements, this could be important coverage.

§ 6.18 • ENERGY PROJECTS

Energy projects, including those designed to harvest wind and solar energy, have accounted for a significant percentage of volume and gross revenue for the title insurance industry for several years and, particularly, in recent years, as our country seeks to reduce its reliance on foreign energy sources. This market segment, perhaps more than any other, seeks to tailor title insurance coverage to fit its needs through endorsements and, in the absence of acceptable endorsements, by adding coverage in the policy schedules.

ALTA Endorsement 36-06 (Energy Project — Leasehold/Easement — Owner’s)

This endorsement is patterned after the ALTA Endorsement 13-06 (Leasehold — Owner’s). This endorsement:

- 1) Adds some energy project-specific definitions;
- 2) Includes coverage for insured easement interests and insured leasehold estates that are often utilized in lieu of or along with leases to create the rights in the land for some or all of the project improvements (as well as other more traditional easement purposes);
- 3) Expands the “Valuation of Title” section to make clear that the computation of loss or damage for a covered defect affecting one parcel or fewer than all parcels shall include resulting loss or damage to the “integrated project”;
- 4) Builds in coverage pertaining to “Severable Improvements” that is also available through ALTA Endorsement 31-06 (Severable Improvements), adopted effective 2/3/11;

- 5) Tailors the “Additional Items of Loss” section as appropriate to the energy project context; and
- 6) Adds a new exclusion addressing costs of remediation resulting from environmental damage or contamination.

ALTA Endorsement 36.1-06 (Energy Project — Leasehold/Easement — Loan)

This endorsement is the Loan Policy counterpart to ALTA Endorsement 36-06, summarized above.

ALTA Endorsement 36.2-06 (Energy Project — Leasehold — Owner’s)

This endorsement deletes the aspects of ALTA Endorsement 36-06 that address insured easement interests for those transactions in which there are no easement interests being insured but that do involve insured leasehold estates. In every other respect, it is identical to ALTA Endorsement 36-06, summarized above.

ALTA Endorsement 36.3-06 (Energy Project — Leasehold — Loan)

This endorsement is the Loan Policy counterpart to ALTA Endorsement 36.2-06, summarized above.

ALTA Endorsement 36.4-06 (Energy Project — Covenants, Conditions and Restrictions — Land Under Development — Owner’s)

This endorsement is patterned after ALTA Endorsement 9.8-06, appropriately tailored to the energy project context, to provide coverage as to Covenants, including for violations or enforced removal of any electricity facility or severable improvement, the definitions of which terms include those existing at Date of Policy and those affixed later in the locations identified on the set of defined plans as more particularly expressed in the endorsement.

However, the endorsement contains significant limitations. The preamble for the endorsement makes the endorsements subject to the Exceptions from Coverage in Schedule B, and, in addition, insofar as Sections 3(a), 3(b), and 3(c) are concerned, there is no coverage for these items, if an exception in Schedule B identifies the violation of the covenant referred to in each subsection. The goal of the real estate attorney will be to convince the title insurance company to issue the policy without reference to any exceptions for violations in Schedule B.

ALTA Endorsement 36.5-06 (Energy Project — Covenants, Conditions and Restrictions — Land Under Development — Loan)

This endorsement is patterned after ALTA Endorsement 9.7-06. It is the Loan Policy counterpart to ALTA Endorsement 36.4-06, summarized above.

However, the endorsement contains significant limitations. The preamble for the endorsement makes the endorsements subject to the Exceptions from Coverage in Schedule B, and, in addition, insofar as Sections 3(a), 3(b), and 3(c) are concerned, there is no coverage for these items, if an exception in Schedule B identifies the violation of the covenant referred to in each subsection. The goal of the real estate attorney will be to convince the title insurance company to issue the policy without reference to any exceptions for violations in Schedule B.

ALTA Endorsement 36.6-06 (Energy Project — Encroachments)

This endorsement provides coverage as to encroachments, including their existence, unless identified in an exception in Schedule B, or enforced removal of any encroaching electricity facility or severable improvement, the definitions of which include those existing at the Date of Policy and those affixed later in the locations identified on the set of defined plans. This endorsement can be issued with either an Owner's or a Loan Policy.

However, the endorsement contains significant limitations. The preamble for the endorsement makes the endorsements subject to the Exceptions from Coverage in Schedule B, and, in addition, insofar as Sections 3(a) and 3(b) are concerned, there is no coverage for these items if an exception in Schedule B identifies the encroachment referred to in each subsection. The goal of the real estate attorney will be to convince the title insurance company to issue the policy without reference to any exceptions for encroachments in Schedule B.

ALTA Endorsement 36.7-06 Energy Project — Fee Estate — Owner's Policy**ALTA Endorsement 36.8-06 Energy Project — Fee Estate — Loan Policy**

Existing ALTA Endorsements 36-06 and 36.2-06 are each applicable to an Owner's Policy where, respectively, both leasehold estates and easement interests are being insured or only leasehold estates are being insured. Endorsements 36.1-06 and 36.3-06 are each applicable to a Loan Policy where, respectively, both leasehold estates and easement interests are being insured or only leasehold estates are being insured. ALTA Endorsement 36.7-06 will apply to an Owner's Policy and be the counterpart to Endorsements 36-06 and 36.2-06 where fee estates are being insured, while ALTA Endorsement 36.8-06 will apply to a Loan Policy and represent the counterpart in the fee estate context to the 36.1-06 and 36.3-06 endorsements. *See* ALTA Policy Forms Yearbooks for 2012 and 2014.

§ 6.19 • ENCROACHMENTS

Endorsements pertaining to encroachments either insure that, based upon a survey, no encroachments exist, or the title insurance company will insure against any loss to a lender resulting from an existing encroachment.

Colorado Endorsement 100 — Encroachment — Easement (Lender)

This is a multi-purpose endorsement discussed primarily at § 6.41, "Restrictions, Covenants, and Reverters." However, as explained in § 6.17, among other things, Colorado Endorsement 100 insures the lender against damage resulting from the encroachment of existing improvements onto easements.

Even more importantly, Colorado Endorsement 100 insures that, except as shown on Schedule B, no buildings, structures, or improvements located on the subject land encroach onto adjoining land and, contrariwise, no buildings, structures, or improvements located on adjoining land encroach onto the subject land. The title insurance company will indemnify the insured against loss, if a final court order requires the removal of the improvements encroaching onto adjoining land.

Accordingly, an improvement location certificate or improvement survey from an approved surveyor will be required, certified to the title insurance company, to obtain this endorsement. See Appendix 7 for information about surveys. If the survey discloses any encroachments, they will be shown as exceptions in Schedule B. Remember that Section 1(c) of the endorsement, which provides the coverage over endorsements, is made subject to exceptions shown in Schedule B.

Colorado Endorsement 100.1 — Encroachment — Unimproved Land (Lender)

A variation of Colorado Endorsement 100, discussed above, Colorado Endorsement 100.1 is attached to policies insuring unimproved land only. Accordingly, the encroachment language is modified to insure only against encroachments onto the subject land by buildings, structures, or improvements located on adjoining land. All reference to damage to or forced removal of improvements on the subject land has been deleted.

Colorado Endorsement 100.2 — Encroachment — Unimproved Land (Owner)

This endorsement for unimproved land is the owner's counterpart of Colorado Endorsement 100.1, discussed above. Accordingly, references to the lien of the insured mortgage are deleted.

Colorado Endorsement 100.3 — Encroachment — Improved Land (Owner)

This owner's endorsement for improved land insures against encroachments of buildings, structures, and improvements onto the land of others or onto the subject land. A survey will be required. *See* Appendix 7.

Colorado Endorsement 102.4 — Encroachment — Foundations (Lender)

This endorsement insures that the foundations of a structure under construction on the land are within the boundaries of the insured land, and, as to location, do not violate the covenants, conditions, or restrictions. *See* Colorado Endorsement 102.5, discussed below. A survey will be required. *See* Appendix 7.

Colorado Endorsement 102.5 — Encroachment — Foundations (Lender)

This endorsement offers the same coverage as Colorado Endorsement 102.4, plus it insures that the foundations do not encroach onto any easements excepted in Schedule B. A survey will be required. *See* Appendix 7.

Colorado Endorsement 102.6 — Encroachment — Foundations (Lender)

This endorsement offers the same coverage as Colorado Endorsement 102.5, but adds a legal description of the land. Coverage for violation of environmental protection is specifically excluded.

Colorado Endorsement 102.7 — Encroachment — Foundations (Lender)

This endorsement offers the same coverage as Colorado Endorsement 102.6, but adds protection if the foundations encroach onto any easement described in Schedule B.

Colorado Endorsement 103.2 — Encroachment Disclosed by Survey (Owner/Lender)

This endorsement insures against loss if the owner of adjoining land obtains a final judgment compelling removal of improvements that encroach onto the adjoining land. This endorsement is used for the lender's protection where the survey discloses an encroachment onto adjoining land. Less often, it is issued for the owner's protection — at a higher cost. In theory, the title insurance company will in-

investigate sufficiently to be assured that the improvements have remained in place for the period of the statute of limitations and that the other elements of adverse possession are present, or, alternatively, a suitable indemnity is provided.

Colorado Endorsement 103.6 — Encroachment — Easement (Lender)

With this endorsement, the lender is insured that none of the improvements on the land encroaches onto the easements identified in Schedule B.

Colorado Endorsement 103.8 — Encroachment — Adjoining Improvements (Lender)

If Schedule B discloses an existing encroachment of improvements from adjoining lands onto the subject land, this endorsement will insure the lender against the obligation to remove such encroachment.

Colorado Endorsement 111.3 — Encroachment — Partial Release of Mortgage (Lender)

Some lenders require this endorsement as a condition of approval of a partial release of acreage from the mortgage lien (*see* § 6.35). Following such partial release, the title insurance company insures that no buildings, structures, or improvements on the land remaining under the mortgage encroach upon the released lands, and that no such improvements on the released lands encroach upon the remainder.

The endorsement may also be used to assure the lender that certain named improvements are located on the land still encumbered by the mortgage.

The title insurance company will require a certified improvement survey plat or improvement location certificate from an approved surveyor.

Colorado Endorsement 115.1 — Encroachment — Condominium (Owner/Lender)

This multi-purpose condominium endorsement is discussed more fully in § 6.14. It insures against encroachments onto or by the subject condominium unit. *See also* ALTA Endorsement 4-06.

Colorado Endorsement 115.2 — Encroachment — Planned Unit Development (Owner/Lender)

This endorsement is the so-called Planned Unit Development (PUD) form (*see* § 6.39). Among other protections afforded, this endorsement insures the owner or lender against the obligation to remove any improvements because of any encroachments existing on the date of issuance onto adjoining land, onto an easement described in Schedule B, or onto the subject land from the adjoining land. As worded, this endorsement is not survey protection as to the placement of all improvements within one PUD. *See also* ALTA Endorsement 5-06.

Colorado Endorsement 130 and Colorado Endorsement 130C — Encroachment (Owner)

These multi-purpose endorsements are the lesser-known owner's counterparts of the lender's Colorado Endorsement 100 (compare with Colorado Endorsement 100.2 and Colorado Endorsement 100.3).

Available only on a single family residence, including a condominium, Colorado Endorsement 130 insures against the forced removal of the principal dwelling resulting from any encroachment thereof on the date of issuance onto adjoining lands or onto a recorded surface easement or a recorded

or unrecorded subsurface easement (*see* § 6.17, “Easements”). Encroachments by such additional improvements as outbuildings, detached garages, fences, driveways, retaining walls, plants, and common areas are not included within the definition of principal dwelling. If standard exception No. 3 is deleted and Colorado Endorsement 130 attached, a logical question arises: Does Colorado Endorsement 130 limit the encroachment coverage that otherwise would be available upon the deletion of exception No. 3 if Colorado Endorsement 130 were not attached? The title insurance company’s answer is yes.

Colorado Endorsement 130C carries a higher charge and is issued for commercial properties. The coverages and exceptions on Colorado Endorsement 130 are repeated on Colorado Endorsement 130C, but the terms “single family residence” and “principal dwelling” are replaced with “commercial building.”

ALTA Endorsement 9-06 — Restrictions, Surveys, Environment, Encroachments, Easements, Minerals (Lender)

This multi-purpose lender’s endorsement insures the lender against loss or damage resulting from (1) the future violation of a covenant that affects the lender’s lien, (2) an existing violation of a covenant, (3) the enforced removal of an improvement because of an existing violation of a building setback line, (4) a present violation of an environmental covenant, (5) encroachments on or from adjoining land, (6) the forced removal of an encroachment, (7) exercise of easement rights causing damage to existing improvements that encroach on the easement, and (8) future exercise of the right to use the surface of the land for the extraction of minerals.

The limitations on the coverage provided by the endorsement are referred to in the discussion on this endorsement in § 6.17, “Easements.”

ALTA Endorsement 9.7-06 — Restrictions, Encroachments, Minerals, Land Under Development (Lender)

This multi-purpose lender’s endorsement covers future improvements to the land, including a building, structure, road, walkway, driveway, curb, lawn, shrubbery, or trees, to be constructed or affixed pursuant to certain identified plans prepared by a named architect or engineer. The endorsement insures against loss or damage resulting from the violation of an existing covenant that affects the lender’s lien. Also covered are the enforced removal of an existing or future improvement because of a violation of a building setback line, an existing violation of a covenant relating to environmental protection, the encroachment of existing or future improvements onto or from adjoining land, easements, and damage to existing or future improvements resulting from mineral development or extraction.

The limitations on the coverage provided by the endorsement are referred to in the discussion on this endorsement in § 6.17, “Easements.”

ALTA Endorsement 9.10-06 — Restrictions, Encroachments, Minerals (Lender)

This multi-purpose lender’s endorsement insures against a violation at Date of Policy affecting the lien of the insured mortgage by reason of encroachments or the extraction of minerals.

The limitations on the coverage provided by the endorsement are referred to in the discussion on the similar endorsements in § 6.17, “Easements.”

ALTA Endorsement 28.1-06 and ALTA Endorsement 28.2-06 — Encroachment, Boundaries and Easements (Owner)

These endorsements cover loss or damage occasioned by encroachments, including the enforced removal of any improvement, such as an existing building.

The coverage extends to improvements that (1) encroach onto adjoining land or onto an easement on the land, or (2) encroach onto the land.

However, the endorsements contain significant limitations. The preamble for both endorsements makes the endorsements subject to the Exceptions from Coverage in Schedule B, and, in addition, insofar as Sections 3(a) and (b) and Section 4 are concerned, there is no coverage for these items, if an exception in Schedule B identifies the encroachment. The goal of the real estate attorney will be to convince the title insurance company to issue the policy without reference to any exceptions for encroachments in Schedule B. In the alternate, request Colorado Endorsement 103.2 or 103.3, or perhaps the ALTA 28-series endorsements.

ALTA Endorsement 28.3-06 — Encroachments — Boundaries and Easements — Described Improvements and Land Under Development (Owner)

This endorsement insures against loss or damage resulting from improvements on the land at Date of Policy, as well as future improvements constructed in accordance with certain identified plans.

The limitations on the coverage provided by the endorsement are referred to in the discussion on Endorsement 28.1-06, above.

§ 6.20 • ENVIRONMENTAL PROTECTION

Coverage against environmental protection liens is offered in Colorado only by the attachment of ALTA Endorsements 8.1-06 and 8.2-06.

ALTA Endorsement 8.1-06 — Environmental Protection Lien (Lender)

ALTA Endorsement 8.2-06 — Commercial Environmental Protection Lien (Owner/Lender)

ALTA Endorsement 8.1-06 is limited to use on land primarily used for residential properties. ALTA Endorsement 8.2-06 can be used for any other type of land. These endorsements insure against loss or damage sustained by the insured from an environmental protection lien, and in the case of ALTA Endorsement 8.1, an environmental protection lien gaining priority over the lien of the insured mortgage. Protection is limited to those federal liens that are recorded in the “public records” or filed with the clerk of the United States district court for the district in which the land is located, or any environmental protection lien provided by state statute in effect at the Date of Policy. By virtue of C.R.S. § 38-25-102(1)(b), the Uniform Federal Lien Registration Act, effective April 28, 1988, all federal liens or notices thereof must be filed in the county clerk and recorder’s office in the county in which the land subject to the lien is situated.

A place is provided for the title insurance company to exclude environmental protection liens afforded by state statutes. Colorado companies currently issue ALTA Endorsement 8.1-06 without listing any Colorado statutes.

§ 6.21 • FAIRWAY PROTECTION

Prior to the adoption of the 2006 Owner's Policy, as a direct result of *Fairway Development Co. v. Title Insurance Co. of Minnesota*, 621 F. Supp. 120 (N.D. Ohio 1985), general partnerships and, by extension, other entities such as limited liability companies and limited partnerships, faced the loss of their title insurance coverage if they were dissolved by operation of law upon a change of partners, even though title to the land was held continuously in the partnership's name and the partnership was reconstituted without interruption. To forestall the reasoning and result of the *Fairway* case, any number of endorsements were offered, most of which are ineffective by their own terms and conditions. With the change to the definition of "insured" in the 2006 Owner's Policy, a *Fairway* endorsement is no longer needed. See "Insured" in § 4.4.5.

Colorado Endorsement F — Fairway Endorsement (Owner)

There is no standard number for this endorsement, so we will call it Colorado Endorsement F. To be effective, this endorsement form must state that the title insurance company will not deny liability because of dissolution or termination of the insured partnership or the formation of a new partnership solely because of a transfer of partnership interests by general or limited partners. Unacceptable qualifications include: (1) "provided no new partnership is explicitly formed," (2) "without the winding up of the business of the partnership," or (3) "so long as one of the partners of the insured partnership continues as a partner." One endorsement, tendered with a straight face and an invoice for \$250, states "provided that the insured partnership has not been dissolved or discontinued by the following events [change of partners] pursuant to applicable state law." Similar endorsements are available that have been tailored to cover other entities, such as limited liability companies and limited partnerships.

Colorado Endorsement F is illustrated in Chapter 7, "Endorsement Forms," because it may be helpful in an analysis of existing *Fairway* endorsements that may become an issue.

§ 6.22 • FIRST LOSS PAYABLE

ALTA Endorsement 20-06 — First Loss – Multiple Parcel Transactions (Lender)

This endorsement is issued when two or more parcels are secured by one insured mortgage. If a title loss is incurred on one of the parcels, the title insurance company incurs no liability if the remaining collateral is adequate security upon foreclosure and sale. With the First Loss Endorsement, however, the title insurance company accepts liability for a title defect in one of the parcels that reduces the value of the collateral below the balance of the indebtedness without requiring the lender to foreclose and sell the other parcels. Some companies may issue other versions of this endorsement.

§ 6.23 • FUTURE INSURANCE

Where an endorsement requested by the buyer is subsequently issued by the title insurance company, it may behoove the buyer to obtain assurances that the same endorsement will be issued to a new buyer when the present buyer becomes a seller. In some instances, the title insurance company may agree to issue a future insurance endorsement. As the name of the endorsement suggests, the title insurance company agrees to provide the same coverage to a future insured. The benefit is that this endorsement is issued at the same time as the endorsement insuring over the adverse matter and eliminates any doubt that the title insurance company may decline to extend the affirmative coverage. This endorsement is particularly important when the title insurance company agrees to extend affirmative coverage over unusual risks.

The agreement to insure in the future will be subject to any intervening matters between the date of the policy and the effective date of any future insurance, and will be issued only if the insured has not filed any claims under the policy, and especially any claims under the particular covered matter.

§ 6.24 • “GAP” COVERAGE

The problem of the “gap” between the effective date of the commitment and the effective date of the policy is discussed in § 2.15. Automatic protection against the “gap” for the benefit of the insured is still not standard practice, but this can be accomplished by obtaining a “gap” endorsement.

Colorado Endorsement GE-1 — Insure the “Gap” (Owner/Lender)

There is no standard number for this endorsement. It is widely known as the “Gap Endorsement.” The form we have reviewed deletes the paragraph of Schedule B — Part II of the commitment that excuses the title insurance company from liability for instruments recorded subsequent to its effective date. Normally this is Exception No. 5 (*see* § 2.15), but the numbering of the printed exceptions varies from title insurance company to title insurance company. Alternatively, Colorado Endorsement 110.3 (*see* § 6.38.4) could be used to delete Exception No. 5 from the commitment. Also, Colorado Endorsement 130.2 can be added to a commitment for a plain language Residential Owner’s Policy (*see* § 4.5) to insure the gap.

Because of the protection afforded by regulations issued by the Colorado Division of Insurance, as discussed in § 2.15.2, concerns about gap protection have diminished considerably for the insured and increased proportionately for the title insurance company.

Colorado Endorsement GE-1 does more than merely delete exception No. 5. It states affirmatively that the title insurance company insures against loss or damage occasioned by instruments that first appear in the public records subsequent to the effective date of the commitment but prior to the effective date of the policy. The endorsement also defines “public records.” The definition as applied to Colorado would be limited to the real estate records in the office of the clerk and recorder of the county in which the land is situated. This could be an important and potentially disastrous limitation for the insured, given Colorado case law with its broader definition. *See* “Public Records” in § 4.4.5.

The title insurance company's liability is conditioned upon (1) the insured's lack of knowledge at the time of closing of the existence of instruments recorded during the "gap," (2) delivery to the title insurance company of properly executed instruments creating the interest of the insured in the land within 24 hours of the closing (presumably before or after), and (3) an agreement of indemnity from the seller to the title insurance company as to instruments recording during the "gap." This last condition is the kicker that may cause the endorsement to be unavailable. An escrow closing, described in § 2.15.4, is an alternative.

§ 6.25 • INCREASED POLICY AMOUNT/INFLATION

If the title insurance company is advised before the policy is issued that the insured desires to increase the amount of insurance, either the title insurance commitment will be rewritten and reissued, or Colorado Endorsement 110.3 will be issued for attachment to the commitment, stating the increased amount. If the amount requested exceeds the purchase price or the loan amount, the insured may be requested to justify the higher sum with a recent appraisal or other evidence of value.

If, rather than a present increase in amount, protection against subsequent inflation in value is desired and the title insurance company is advised before the policy is issued, two possibilities exist for the desired protection. First, some companies still issue a plain language policy on residential property with a built-in inflation rider, and second, an inflation endorsement, described below, may be available.

When the policy has been issued at a stated amount of insurance and later the policy holder wishes to increase that amount, several endorsements are available.

Typically, a lender requests the increased policy amount. The lender has made an additional advance of funds on a loan secured by real property. The additional advance was not anticipated at the time the loan was made. Thus, the loan policy amount is not sufficient to cover the additional advance. An endorsement increasing the amount of insurance is the answer. If the additional advances are anticipated, a future advances endorsement may be provided when the loan policy is issued, as discussed in § 6.6.

Owners, too, may request an increase in policy amount. Inflation of values may have left the owner underinsured. New construction on the land can have the same result. An increase in policy amount by endorsement, or an inflation endorsement issued with the original policy, can provide the owner with the desired protection.

Another way to increase the policy amount is to combine policies. This can be accomplished with ALTA Endorsement 12-06 — Aggregation.

Colorado Endorsement 107.2 — Increase Policy Amount — Advances (Owner/Lender)

Colorado Endorsement 107.3 — Increase Policy Amount — Advances (Owner/Lender)

Colorado Endorsement 108.8 — Increase Policy Amount — Advances (Lender)

See § 6.6.1 for a discussion of these endorsements.

Colorado Endorsement I — Inflation Protection (Owner)

Not all companies will issue an inflation endorsement. If available, the inflation endorsement carries no standard endorsement number. Colorado Endorsement I is one title insurance company's designation. Like many other unnumbered endorsements, it is commonly known as the "inflation endorsement."

It appears that the inflation endorsement is available only on residential properties (one-to-four family single family dwellings). If available, no charge or a nominal charge is made for its attachment to the policy; hence, it should always be requested in a residential transaction, along with Colorado Endorsement 130, whenever the 2006 Owner's Policy is being issued.

The inflation endorsement contains several limitations:

- The increased amount of insurance is added to the original policy amount in cumulative annual adjustments;
- Adjustment occurs each January 1, commencing with that January 1 that is more than six months after the date of policy;
- The increase may be tied to an inflation index (*e.g.*, ENR 20-cities Building Cost Index; U.S. Department of Commerce Composite Construction Cost Index), or it may simply be a percentage of the original amount for a specified number of years;
- The total increase will be subject to a ceiling, usually 150 percent of the original amount;
- The increase in policy amount ceases when a claim is made or discovered; and
- Any reissue rate credits will be based upon the original amount of the policy.

Colorado Endorsement 130.2 and Colorado Endorsement 130.3 — Inflation Protection — Plain Language (Owner)

To provide inflation protection to the policy holder of a plain language Residential Title Insurance Policy, Colorado Endorsement 130.2 is added to the commitment, assuring that Colorado Endorsement 130.3 will be added to the policy when issued. *See* § 4.5. Colorado Endorsement 130.3 provides inflation protection equivalent to Colorado Endorsement I, discussed above.

ALTA Endorsement 12-06 and ALTA Endorsement 12.1-06 — Policy Increase — Combining Policies (Aggregation) (Owner/Lender)

With this ALTA Endorsement, it is possible to increase the policy amount by aggregating the amounts in two or more policies listed in the endorsement form. This could be useful for an assemblage of parcels, each with a separate Owner's or Loan Policy.

§ 6.26 • INTEREST RATE SWAPS**ALTA Endorsement 29-06 — Interest Rate Swap — Direct Obligation (Lender)**

This endorsement insures the validity, enforceability, and priority of the insured mortgage lien granted as security for a designated swap obligation as of a specified date of endorsement. Excepted and excluded are the consequences of bankruptcy or other creditors' rights laws, state or federal; calculation of the amount of the swap obligation; and rights set, created, or confirmed after the date of endorsement.

ALTA Endorsement 29.1-06 — Interest Rate Swap — Additional Interest (Lender)

Containing most of the exceptions and exclusions of ALTA Endorsement 29-06, ALTA Endorsement 29.1-06 insures the lender that its mortgage lien will not be impaired by the terms of the loan documents relating to payment of additional interest.

ALTA Endorsement 29.2-06 — Interest Rate Swap — Direct Obligation — Defined Amount

Like ALTA Endorsement Form 29-06, this endorsement is designed for issuance when insuring the lien of the insured mortgage that secures a swap obligation. A swap obligation is defined as a monetary obligation under the interest rate exchange agreement, and is often evidenced by a master agreement and confirmation. Each endorsement in the 29-series is designed so that it may be issued on or after the Date of Policy as the swap obligations and applicable agreements are executed. This endorsement and other endorsements in the 29-series do not insure with respect to rights or obligations set, created, or confirmed after the Date of Endorsement. Unlike ALTA Endorsement 29-06, ALTA Endorsement 29.2-06 includes an additional amount of insurance applicable only to loss or damage under the endorsement. *See* ALTA Policy Forms Yearbook 2011.

ALTA Endorsement 29.3-06 — Interest Rate Swap — Additional Interest — Defined Amount

Like ALTA Endorsement Form 29.1-06, ALTA Endorsement Form 29.3-06 is designed to be issued when insuring the lien of the insured mortgage that secures a swap obligation considered to be additional interest. Unlike ALTA Endorsement 29.1-06, but like ALTA Endorsement 29.2-06, ALTA Endorsement 29.3-06 includes an additional amount of insurance applicable only to loss or damage under the endorsement. *See* ALTA Policy Forms Yearbook 2011.

§ 6.27 • KNOWLEDGE, IMPUTATION OF

The legal concept of knowledge is important to title insurance. Under the Exclusions from Coverage in the ALTA policies, the title insurance company does not insure against defects known to the insured, not shown by the public records, and not disclosed to the title insurance company in writing prior to issuance of the policy. *See* “Exclusion 3. Acts of the Insured, Etc.” in §§ 4.4.2 (Owner’s Policy) and 5.2.2 (Loan Policy). Knowledge is defined in the Conditions as actual knowledge, not constructive notice given by the public records. *See* §§ 4.4.5 (Owner’s Policy) and 5.2.5 (Loan Policy).

For instance, if the deed is signed by a person who purports to be a general partner of the partnership-seller but who in fact is not such a partner, the public records do not show this fact. With the imputation of knowledge endorsement, the buyer-insured will be protected by the title insurance policy from claims of the partnership to the land unless the lack of authority was known to the insured and was not disclosed in writing to the title insurance company.

When two or more persons take title to real property, either as co-tenants, partners, joint venturers, or trustees, one may have knowledge of an unrecorded defect in the title. Under principles of general law, such knowledge would likely be imputed to all the other owners, though in fact the others had no actual knowledge. This knowledge might be sufficient to void the insurance coverage. Protection by endorsement is available, however, to the co-tenants, partners, venturers, or trustees against such imputation of knowledge. Affidavits from all parties will be required. Lenders typically require this extra coverage when they join with their borrowers in an equity participation, such as a joint venture.

Colorado Endorsement 107.6 — Imputation of Knowledge (Owner/Lender)

The title insurance company agrees not to deny liability to the insured on the ground of knowledge of any matter imputed to the insured by operation of law through a person or entity specifically named in the endorsement form. Originally available only to lenders, this endorsement can be obtained by co-owners in some cases.

The coverage is intended to protect the parties who acquire an interest in the entity without knowledge, and not the entity itself. Hence, the endorsement assures the parties requesting the coverage.

Colorado Endorsement 107.7 — Imputation of Knowledge (Owner/Lender)

This endorsement is basically the same as Colorado Endorsement 107.6 with one exception that is responsible for a doubling in the cost thereof: the person or entity through which knowledge might be imputed is specifically named, but the form also protects the insured if knowledge is imputed through “any other party.”

ALTA Endorsement 15-06 — Imputation of Knowledge (Nonimputation — Full Equity Transfer) (Owner)

ALTA Endorsement 15-06 is designed to protect purchasers of the entire ownership in an entity (corporation, partnership, limited liability company) owning real property against Exclusions from Coverage 3(a), 3(b), and 3(e) of the Owner’s Policy. The purchasers are protected from defenses the title insurance company may have against the sellers, regardless of whether knowledge is imputed by operation of law. Knowledge is defined in Section 1(f) of the Conditions as actual and not constructive knowledge or notice. The endorsement will be attached to a new policy issued to the entity. The purchasers will be named in the endorsement, as will the sellers. The purchasers must acquire the entity for value and without knowledge of the matter insured against by the policy.

ALTA Endorsement 15.1-06 — Imputation of Knowledge (Nonimputation — Additional Insured) (Owner)

ALTA Endorsement 15.1-06 differs from ALTA Endorsement 15-06 in that the purchasers of an interest in the insured entity are added as insured parties under the entity’s existing policy. There is no date-down of the policy. The additional insured parties are named in the endorsement, as are the selling and continuing parties. Other terms are similar to ALTA Endorsement 15-06.

ALTA Endorsement 15.2-06 — Imputation of Knowledge (Nonimputation — Partial Equity Transfer) (Owner)

ALTA Endorsement 15.2-06 will be attached to a new policy issued to a purchaser of an interest in the owner entity. The existing and selling parties will be named in the endorsement. Other terms are similar to ALTA Endorsement 15-06.

ALTA Endorsement 16-06 — Imputation of Knowledge (Mezzanine Financing) (Owner)

This endorsement will be attached to an existing or newly issued Owner’s Policy to protect the mezzanine lender by an assignment to the mezzanine lender of the policy proceeds under the owner’s policy, as more fully explained in § 6.32. The provisions of ALTA Endorsement 16-06 include a non-imputation feature, much like ALTA Endorsement 15.1-06.

§ 6.28 • LAST DOLLAR

Colorado Endorsement LD — Last Dollar (Lender)

This endorsement form has no traditional number, so we have arbitrarily designated it LD for Last Dollar. This endorsement provides that, contrary to Section 9(b) of the Conditions and Stipulations of the 1992 Loan Policy, payments received by the lender on the mortgage reducing the outstanding balance of the indebtedness secured by the insured mortgage will not reduce the amount of insurance until the indebtedness is paid down to the amount of insurance shown in Schedule A.

The 2006 Loan Policy does not include this provision. A payment on the mortgage does not reduce the amount of insurance. Instead, a payment will reduce the indebtedness. Because of this change, the Last Dollar Endorsement is not necessary for the 2006 Loan Policy.

§ 6.29 • LEASEHOLD, CONVERSION OF POLICY

ALTA Endorsement 13-06 and ALTA Endorsement 13.1-06 — Conversion to Leasehold Policy (Owner/Lender)

ALTA withdrew both the Leasehold Owner's and Leasehold Loan policies, considered in §§ 4.9 and 5.4, and adopted ALTA Endorsement Forms 13-06 (owner's) and 13.1-06 (lender's), designed to be added to the 2006 Owner's Policy and the 2006 Loan Policy to provide title insurance coverages to tenants and their lenders. The ALTA endorsements are substantially more comprehensive than the Colorado Endorsements discussed above. The lessee, and the lessee's lender, will prefer the ALTA endorsements for the following reasons.

Definitions

Definitions have been added for clarity:

- Evicted or Eviction;
- Lease;
- Leasehold Estate;
- Lease Term;
- Personal Property;
- Remaining Lease Term; and
- Tenant Leasehold Improvements.

Valuation of the Estate or Interest Insured

The method of evaluating a loss under the endorsement will be the value of the remaining lease term of the leasehold estate and any tenant leasehold improvements existing at the date of the eviction. The tenant has the right to have the leasehold estate and the tenant leasehold improvements valued as a whole or separately. The determination of value will not take into account rent no longer required to be paid for the remaining lease term. *See* § 4.4.5.

Tenant Leasehold Improvements

Tenant leasehold improvements include improvements, such as landscaping, required or permitted to be built on the land by the insured.

Eviction

The definition of eviction covers (1) lawful deprivation of the right to possession contrary to the terms of the lease, and (2) the lawful prevention of the use of the land, or the tenant leasehold improvements, for the purposes permitted by the lease.

Additional Items of Loss

The “miscellaneous items of loss” clause in the old ALTA leasehold policies has been expanded. Moving costs to 100 miles are covered, whereas the limitation in the leasehold policies was 25 miles. More important is the coverage for reasonable replacement costs if the insured is evicted and forced to seek a new leasehold location. Repair of personal property damaged in the move is also covered.

§ 6.30 • MANUFACTURED HOUSING

The increasing mobility of our populace is reflected in housing, too. When it is time to move, hook up the house trailer and be off; or, load the house onto a wide axle and pull it on down the road.

With a bewildering array of state laws affecting the title to such moveable structures, it often becomes essential for the lender to obtain insurance against any unknown imperfection in its lien on improvements affixed to land by its borrower, particularly with respect to any prior lien held by the seller-manufacturer. At present, several endorsement forms are available to the lender.

Colorado Endorsement 115.3 — Manufactured Housing (Lender)

This basic endorsement insures that the manufactured housing unit described in Schedule A of the policy has become a “fixture” and is, therefore, included within the definition of “land” as set out in the Conditions of the Loan Policy. *See* § 5.2.5. The endorsement is silent regarding the critical question of whether a lien or security interest that attached to the unit before it became real property is still valid and thus may have priority over the lender’s real property lien.

Colorado Endorsement 116.5 — Manufactured Housing — Survey (Lender)

This elaborate endorsement “assures” the lender that (1) a manufactured home as defined in the Colorado Titles to Manufactured Homes Act, C.R.S. §§ 38-29-101, *et seq.*, is actually located on the land described in Schedule A of the policy; (2) such improvements are correctly shown on the submitted improvement location certificate (*see* Appendix 7); (3) to the extent that the improvements constitute real property in compliance with the Act, they are included within the definition of the term “land” as set out in the Conditions of the Loan Policy (*see* § 5.2.5); and (4) no protection is afforded against prior liens or security interests, filed pursuant to the Act or any other applicable law. The Act adopts a “certificate of title” scheme to protect lenders of manufactured homes against other liens not shown on the certificate. C.R.S. §§ 38-29-125 to -136.

ALTA Endorsement 7-06 (Manufactured Housing Unit), ALTA Endorsement 7.1-06 (Manufactured Housing-Conversion: Loan), and ALTA Endorsement 7.2-06 (Manufactured Housing-Conversion: Owners)

ALTA Endorsement 7-06 provides the same coverage as Colorado Endorsement 115.3. ALTA Endorsement 7.1-06 provides the same coverage as ALTA Endorsement 7-06, plus it insures against loss or damage if (a) the unit is not located as described in Schedule A; (b) the unit is not real property; (c) the owner of the land is not also the owner of the unit; (d) personal property liens (UCC, motor vehicle, tax, etc.) have attached to the unit; (e) the mortgage lien is not enforceable against the land; or (f) the mortgage lien is not enforceable in a single foreclosure procedure. ALTA Endorsement 7.2-06 for an owner's policy follows the insuring provisions of the ALTA Endorsement 7.1-06 except for references to the insured mortgage.

§ 6.31 • MECHANICS' LIENS

The subject of mechanics' liens is of vital importance to prospective insureds and the title insurance companies that undertake to provide such coverage. In § 2.14, we discussed the use of endorsements to provide or exclude coverage. We consider now the various endorsements that may be added to the policy forms to add coverage regarding recorded and unrecorded mechanics' liens.

Colorado Endorsement 110.1 — Mechanics' Lien — Deletion (Owner/Lender)

If standard Exception No. 4 is to be deleted in the Owner's and Loan policies, thereby affording protection to the insured against unrecorded mechanics' liens, this can be accomplished either by omitting the exception in the policy or adding a statement in Schedule B that the exception is deleted, removing the need for Colorado Endorsement 110.1.

Colorado Endorsement 101 — Mechanics' Lien — Modified Coverage (Owner/Lender)

This endorsement (sometimes referred to as "Colorado Language 52" or "modified coverage") is intended to provide limited mechanics' lien coverage during construction or within the lien filing period following completion of work (normally four months, but not always; *see* C.R.S. §§ 38-22-109(4), (5), and (10)). It adds the following language to standard Exception No. 4 without deleting that exception:

Except to the extent that such liens arise because of work and labor performed or materials furnished and for which payment has been made with funds disbursed by the [title insurance] Company or by the lender with the [title insurance] Company's approval.

The effect of this modified coverage is discussed in §§ 2.14.5 and 2.14.6. It can be a one-time endorsement if construction is complete, or it can be a series of date-down endorsements during construction with coverage extended to the date of the latest disbursement. Coverage is limited by the requirement that the title insurance company must either disburse the funds itself or approve the disbursements by the lender. The title insurance company will require adequate indemnities based on sound financial statements from the borrower and general contractor as well as submission of adequate releases or lien waivers from the general contractor and subcontractors for each draw submitted for payment.

Colorado Endorsement 101.1 — Mechanics' Lien — Insure Over (Owner/Lender)

This endorsement is used to insure over — but not delete — an exception made in Schedule B for a known mechanics' lien recorded or extended on the record within 13 months of the policy date or in the process of foreclosure, as evidenced by a recorded lis pendens. *See* C.R.S. §§ 38-22-109(8) and (10) and -110. For a further discussion of this aspect of mechanics' lien protection, see § 2.14.7. As explained in § 6.38.4, insurance regulations do not permit insuring over a recorded lien unless the title insurance company has funds on hand to pay and release the lien in the event of its successful enforcement against the land. *See* § 5.I of Regulation 8-1-2 in Appendix 3. If the title insurance company is already liable for the lien because of a prior policy, no charge will be made for Colorado Endorsement 101.1 on subsequent policies.

To delete a recorded lien, Regulation 8-1-2 requires funds on hand, securities, bonded obligation, or a letter of credit adequate to discharge the lien. The title insurance company will require 150 percent of the face amount of the lien. This may not be satisfactory to the owner/borrower putting up the indemnity. As soon as the title insurance company is faced with a claim under the policy, it will pay the lien claimant rather than defend protracted litigation in which neither the title insurance company nor the insured has any stake in the outcome. It may be better to substitute a bond for the lien in accordance with the statutory proceeding outlined in C.R.S. §§ 38-22-131 to -133. The statutory bond amount is the same amount — 150 percent of the amount of the lien. Alternatively, the regulation permits the title insurance company to insure over the recorded lien in compliance with the title insurance company's sound underwriting practices and guidelines (*i.e.*, upon receipt of a suitable indemnity).

ALTA Endorsement 32-06 — Construction Loan — Loss of Priority**ALTA Endorsement 32.1-06 — Construction Loan — Loss of Priority — Direct Payment****ALTA Endorsement 32.2-06 — Construction Loan — Loss of Priority — Insured's Direct Payment**

These endorsements insure the lender against the invalidity or unenforceability of the lien of the insured mortgage as security for construction loan advances made prior to date of coverage, defined in ALTA Endorsement 33-06 as the date of the policy or a later date agreed to by the title insurance company. Covered Risk 11(a) is deleted so that the policy does not insure the priority of advances made by the lender over mechanics' liens from funds disbursed by the lender. See the discussion on this in § 5.2.1. Standard Exception 4 is not deleted so that the endorsements provide a form of "controlled" coverage over the risk of mechanics' liens.

The title insurance company insures against loss or damage by reason of:

- Invalidity or unenforceability of the lien of the insured mortgage when an advance is made on or before the date of coverage (all three endorsements);
- Lack of priority of the lien of the insured mortgage for any recorded lien not shown in Schedule B (all three endorsements);
- Lack of priority of the lien of the insured mortgage over any unrecorded mechanics' lien to the extent that loan advances were disbursed on or before the date of coverage for the claimed charges for services, labor, materials, or equipment (Endorsement 32-06);

- Coverage for direct payments to the claimant by the title insurance company or by the insured with the title insurance company's approval (Endorsement 32.1-06); and
- Direct payment that has been made to the mechanics' lien claimant by the insured or on the insured's behalf on or before the Date of Coverage (Endorsement 32.2-06).

ALTA Endorsement 33-06 — Disbursement (Lender)

This endorsement establishes the date of coverage referred to in Endorsement Forms 32-06, 32.1-06, and 32.2-06.

Colorado Endorsement 130 and Colorado Endorsement 130C — Mechanics' Liens (Owner)

Discussion of mechanics' lien endorsement coverages would not be complete without consideration of Colorado Endorsements 130 and 130C.

Available at a minimal charge but only on owner's policies for single family residences (including condominiums), Colorado Endorsement 130 insures against unrecorded mechanics' liens "except for any such lien arising out of construction contracted for or assumed by the insured," provided that construction is completed at Date of Policy.

In any closing in which the usual mechanics' lien affidavits are being requested by the title insurance company for the purpose of deleting standard exception No. 4 from the Loan Policy, it should be routine for the owner's attorney to request (and not be content until obtained) a commitment that Colorado Endorsement 130 will be attached to the 2006 Owner's Policy and standard exception No. 4 will be deleted as well. Alternatively, the plain language Owner's Policy, if available, may be accepted in lieu of Colorado Endorsement 130 and deletion of Exception No. 4. Colorado Endorsement 130 will not be issued with the Owner's Policy.

Colorado Endorsement 130C bears a higher charge and is available for policies that insure title to commercial properties. The terms "single family residence" and "principal dwelling" in Colorado Endorsement 130 are replaced with "commercial building" in Colorado Endorsement 130C. In other respects, the two endorsements are the same.

Colorado Endorsement 122 — Mechanics' Liens (Lender)

This endorsement was discussed in § 6.6.2 as one of the endorsements available to the lender to insure future advances made under a mortgage. It may be used in the context of the disbursement of funds under a construction loan. The endorsement insures that there are no intervening liens, except as shown, and the borrower still owns the land securing the loan. Although it does not provide any mechanics' lien protection to the insured (Standard Exception 4 has not been deleted or modified), it is used to provide the lender with some reassurance that the borrower and the construction project appear to be on track and that the disbursement of construction funds can be made. It is widely used by lenders advancing construction funds due to its minimal cost.

§ 6.32 • MEZZANINE FINANCING

ALTA Endorsement 16-06 — Mezzanine Financing (Lender)

Mezzanine financing is the name applied to the loan advanced on the pledge of ownership interests in an entity (corporation, partnership, limited liability company) that owns a real estate project financed with a loan secured by the land, unsecured loans and, in between, the mezzanine loan. Because the mezzanine lender has no lien on or interest in the land, it has no insurable interest under a loan policy of title insurance. However, the mezzanine lender can take an assignment by the owner-entity of any payments due under an owner's policy for covered losses or damages, much like a lender's loss-payable clause on a casualty policy. To evidence this assignment, the owner-insured will sign ALTA Endorsement 16-06, along with the title insurance company.

ALTA Endorsement 16-06 provides much more than just insurance for the assignment of insurance proceeds. Whether issued on a new or an existing owner's policy, this endorsement will require the mezzanine lender's consent to any subsequent policy changes, provide nonimputation protection (*see* § 6.27), add a *Fairway* provision (*see* § 6.21), and limit the title insurance company's subrogation rights against the borrower or guarantor of the mezzanine loan until the mezzanine lender has recovered its principal, interest, and costs.

§ 6.33 • MINERALS

A title insurance commitment on Colorado land frequently discloses either an outstanding severed mineral interest owned as a fee simple estate, or a mineral leasehold estate. We will consider these two possibilities separately.

§ 6.33.1—Severed Mineral Estate

A brief discussion of severed mineral estates can be found in § 2.8.9. Often the present owner of the severed mineral estate is a former owner or successor of a former owner of the surface. The United States, State of Colorado, and Union Pacific Railroad Company and its assigns are the owners of thousands of acres of severed minerals in Colorado. Beginning in the 1920s, it became popular for farm and ranch owners to reserve a fraction of the minerals when selling real property, usually one-half or one-fourth. (Some of these attempts to reserve minerals failed — *First National Bank v. Allard*, 513 P.2d 455 (Colo. 1973); *Bell Petroleum Co. v. Cross V. Cattle Co.*, 492 P.2d 80 (Colo. App. 1971); *Radke v. Union Pac. RR.*, 334 P.2d 1077 (Colo. 1958); some succeeded — *Corlett v. Cox*, 333 P.2d 619 (Colo. 1959); *Mitchell v. Espinosa*, 243 P.2d 412 (Colo. 1952).) These fractional interests were then sold or passed on to the heirs of the original owners. As development of real estate was extended into formerly rural areas of the state, lenders to developers were concerned that the owners or lessees of such severed mineral interests might exercise their right granted by state law to use so much of the surface as reasonably necessary to extract their minerals without compensation to the surface owner. *See 6 Am. Law of Mining* § 200.02 (2nd Ed. 1984). However, in Colorado, the doctrine of reasonable accommodations has helped protect landowners from reckless mineral lessees and their operations. *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913 (Colo. 1997).

With the advent of open pit and strip mining techniques, protection for development of the surface, whether residential, commercial, or industrial, became even more essential. *Smith v. Moore*, 474 P.2d 794 (Colo. 1970); *Morrison v. Socolofsky*, 600 P.2d 121 (Colo. App. 1979). Lenders would not lend without it. In response, title insurers in Colorado offer several endorsement forms — some for lenders, some for owners. The protection gained by endorsement is expensive and limited. When the severed mineral exception is present, it is important to know when title insurance protection is available and to what extent it will satisfy the client's concerns.

The ability of the title insurance companies to insure over severed mineral interests depends upon a myriad of varying underwriting requirements, such as:

- 1) The type of severance (*e.g.*, all minerals, coal only, minerals above or below a stated depth);
- 2) The presence or absence of limiting language as to entry or surface use;
- 3) Who owns the severed mineral estate (sometimes private owners can be more troublesome than governmental owners);
- 4) Whether the severance is in a known mineralized area;
- 5) Whether mining and drilling activities are restricted by zoning, or possibly by covenants that precede the severance;
- 6) The extent of surface development and press of population in the area;
- 7) The ability of the owner to call upon federal or state statutes for surface protection, bonding, and surface damages or to obtain a long-term agreement with the State of Colorado to restrict mineral development; and
- 8) A subsequent relinquishment of surface rights by the Union Pacific Railroad Company or other private mineral owner.

As to federal statutes for surface protection, bonding, and damages, see, *e.g.*, Coal Lands Acts of 1909-1912, 30 U.S.C.A. §§ 81 and 85; Agricultural Act of 1914, 30 U.S.C.A. § 122; Stock Raising Homestead Act of Dec. 29, 1916, 43 U.S.C.A. § 299; Open Pit Mining Act of June 21, 1949, 30 U.S.C.A. § 54; Surface Mining Control and Reclamation Act of 1977, 30 U.S.C.A. § 1304; 30 U.S.C.A. § 1206(b)(6). For state statutes, see C.R.S. §§ 34-33-114(2)(f), 34-48-102, and 34-48-106.

When minerals reserved by the State of Colorado are to be insured over, the surface landowner may apply for a Long-Term Agreement to Restrict Mineral Development with the State of Colorado. The State's policy concerning this Agreement and a sample form of the Agreement are included in Appendix 10. With the Agreement in place, perhaps with the title insurance company as the contracting party, or with a commitment from the surface landowner that it will not surrender the Agreement prior to the expiration of its term, the title insurance company can be assured that no lessee from the State will enter and disturb the surface. The title insurance company will then provide protection by endorsement. Some expense is involved, and the State must be protected against future offset drainage by oil and gas wells on neighboring properties.

The endorsement forms available in a severed mineral situation and the extent of protection offered thereby are considered next.

Colorado Endorsement 100.3 — Minerals — Existing Improvements (Owner)

This multi-purpose endorsement is available for issuance to owners only with respect to improved land. For residential land, it is much less expensive than Colorado Endorsements 100.29 and 100.31. It could, therefore, be considered an excellent substitute for those endorsements. Among other protections, it offers insurance against loss or damage suffered as a result of the use of the surface for the extraction or development of minerals severed from the surface. The same underwriting guidelines will be applied to this endorsement as to the other mineral protection endorsements. It does not protect against the proprietor of a vein or lode or subsidence (see comments under Colorado Endorsement 100.29, below). It may be available for issuance on commercial properties as well.

Colorado Endorsement 100.26 — Minerals — Existing or Future Improvements — FHA Project (Lender)

This is a specialized endorsement issued to lenders on FHA-approved projects. It insures against loss from damage to existing or future improvements, including lawns, shrubbery, or trees, resulting from any right to use the surface of the land to a depth of 500 feet for the extraction or development of “hydrocarbon substances.”

Colorado Endorsement 100.29 — Minerals — Existing Improvements (Owner/Lender)

This endorsement insures against damage to existing improvements, including lawns, shrubbery, and trees, from the exercise of surface rights in connection with the extraction of minerals. The coverage is tied to a specific mineral estate. Note: this endorsement does not insure title to minerals, damage to improvements constructed on the land in the future, damage to the subsurface from underground operations, or reimbursement for attorney fees expended to successfully defeat a mining claim. The term “damage” is not defined. Arguably, this endorsement covers both physical and aesthetic damages. *Pete Lien & Sons, Inc. v. First Am. Title Ins. Co.*, 478 N.W.2d 824 (S.D. 1991) (endorsement covers only actual damages to surface resulting from the exercise of mining rights). The endorsement is used where United States, Colorado, Union Pacific, or other severed mineral ownerships are present.

Be aware that this endorsement does not offer protection against the exercise of subsurface rights. Consequently, as discussed in §§ 6.32.3 and 6.17, it is not the best protection where a U.S. patent has been issued subject to the rights of the proprietor of a vein or lode.

Consider also that none of the current endorsements protect against subsidence to the surface caused by mining activity prior to the date of policy or from the exercise of subsurface rights. Although Colorado Endorsement 100.29 does not mention “date of policy,” it is unlikely that subsidence could be caused by “exercise of the right to use the surface.”

Colorado Endorsement 100.30 — Minerals — Existing or Future Improvements (Lender)

This endorsement insures against physical, but not aesthetic, damage to improvements, existing or later constructed, from exercise of surface rights in connection with the extraction of minerals. The coverage is tied to a specific mineral estate. Note: this endorsement does not insure title to minerals, damage to the surface, or damage to the subsurface from underground operations. The endorsement is used where United States, Colorado, Union Pacific, or other severed mineral ownerships are present. The title insurance company reserves the right, at its expense, to take any protective measures in the name of the insured available to the insured to minimize damages, such as pursuing legal or administrative remedies, compelling the posting of security or bond, recouping sums paid to the insured

or incurred as expenses, requiring the borrower to cooperate and give prompt notice of threatened damage, and preserving rights against third parties. The comments in the discussion of Colorado Endorsement 100.29 regarding the inapplicability of this endorsement to protect against the rights of a proprietor of a vein or lode or against subsidence are pertinent here as well.

Because coverage is offered for later-constructed improvements, Colorado Endorsement 100.30 is always preferable to Colorado Endorsement 100.29, despite the limitation to physical damage.

Colorado Endorsement 100.31 — Minerals — Existing or Future Improvements (Owner)

This endorsement is the owner's counterpart of Colorado Endorsement 100.30. The same comments apply, including the comments under Colorado Endorsement 100.29.

Colorado Endorsement 100.32 — Minerals — Release of Surface Rights (Owner/Lender)

This endorsement has been developed to assure owners and lenders that a release of surface rights, usually by a private party mineral owner or a successor to the mineral rights reserved by the Union Pacific Railroad, is valid and enforceable, so that development of the surface can proceed without interference by the mineral owner.

ALTA Endorsement 9-06 — Restrictions, Surveys, Environment, Encroachments, Easements, Minerals (Lender)

ALTA Endorsement 9.7-06 — Restrictions, Encroachments, Minerals, Land Under Development (Lender)

These multi-purpose lender's endorsements include insurance for the lender against loss or damage resulting from the future exercise of the right to use the surface of the land for the extraction or development of minerals, or any other subsurface substances excepted from the description of the land or excepted in Schedule B.

ALTA Endorsement 35-06 — Minerals — Buildings

ALTA Endorsement 35.1-06 — Minerals — Improvements

ALTA Endorsement 35.2-06 — Minerals — Described Improvements

ALTA Endorsement 35.3-06 — Minerals — Land Under Development

These mineral and subsurface substances endorsements provide flexibility in the selection of appropriate coverage based on the type of improvements that may be covered based on underwriting issues relating to the particular transaction and land.

These endorsements may be issued on either commercial or residential property and may be issued with either Loan or Owner's policies.

ALTA Endorsement 35-06 (Minerals and Other Subsurface Substances — Buildings)

This endorsement provides indemnity against enforced removal or alteration of buildings located on the land at Date of Policy because of the exercise of the existing right to use the surface for extraction or development of minerals and other subsurface substances.

ALTA Endorsement 35.1-06 (Minerals and Other Subsurface Substances — Improvements)

This endorsement provides indemnity against enforced removal or alteration of improvements (as defined) located on the land at Date of Policy because of the exercise of the existing right to use the surface for extraction or development of minerals and other subsurface substances.

ALTA Endorsement 35.2-06 (Minerals and Other Subsurface Substances —
Described Improvements)

This endorsement provides indemnity against enforced removal or alteration of listed improvements (shown on the endorsement or in an attachment) located on the land at Date of Policy because of the exercise of the existing right to use the surface for extraction or development of minerals and other subsurface substances.

ALTA Endorsement 35.3-06 (Minerals and Other Subsurface Substances —
Land Under Development)

This endorsement provides indemnity against enforced removal or alteration of improvements (as defined) located on the land at Date of Policy, and future improvements (as defined) located on the land after Date of Policy, because of the exercise of the existing right to use the surface for extraction or development of minerals and other subsurface substances.

§ 6.33.2—Mineral Leasehold Estate

When an oil and gas lease (or, more rarely, a coal or hard minerals lease) appears in Schedule B of the title insurance commitment, the purchaser's attorney should ask questions:

- 1) Will the lessee's rights under the lease interfere with the client's proposed use of the land?
No mining is permitted in an incorporated area under a federal lease granted pursuant to the Mineral Lands Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181.
- 2) How do buyer and seller propose to share or release all interest in delay rentals, lease bonuses, and royalties for the year of conveyance and subsequent years?
- 3) Is the lease valid, subsisting, expired, or in default?
- 4) Is any protection from the title insurer needed or available?

Round one begins when the title insurance commitment is delivered. Absent error on the part of the title insurance company, it will disclose in Schedule B — Part II (or possibly in Schedule A as an exception set out as part of the legal description) any recorded oil and gas or other mineral lease that has not been released, no matter how old. If a copy of the lease as recorded is not furnished with the commitment, request it.

In round two, the examining attorney will read the lease, determine the primary term, and inquire about the payment of rentals if the primary term has not expired. If the primary term has expired, then it must be determined whether an extension has been granted (and perhaps not recorded) or whether the lease is currently expired or is held by production of minerals in commercial quantities (or whatever the language of the lease permits). C.R.S. § 38-42-106 helps because it requires that a mineral lessee record an affidavit of production within six months following the date of termination stated in the lease. In the absence of a recorded affidavit of production, and provided the lessee is not in actual possession of the leasehold (an on-site inspection should be made to determine the facts of possession), it can be assumed that the lease has expired. *See* § 5.9, "The Vagaries of Mineral Coverage," in *CREP*.

When the evidence of expiration of the lease has been assembled, but the lessee cannot be located to grant a recorded release (frequently the lease will be assigned on the record and it is the assignee who has expired or disappeared), it is time for round three: the title insurance company will be requested to delete or insure over the mineral lease exception.

Colorado Endorsement 100.23 — Mineral Lease — Surface Damage (Lender)

The endorsement insures the lender against loss to existing improvements, including lawns, shrubbery, or trees, resulting from the operations of a designated oil and gas lessee. You may be able, for a larger rate, to extend the coverage of this endorsement to a surface owner, and against a coal or other mineral lessee.

Colorado Endorsement 100.24 — Mineral Lease — No Surface Entry (Lender)

With this endorsement, the title insurance company insures the lender that a mineral lessee identified in Schedule B does not have any right, under the terms of the lease, to enter upon or use the surface of the land. The title insurance company might be persuaded to offer protection to the owner as well.

Colorado Endorsement 110.1 and Colorado Endorsement 110.3 — Mineral Lease — Deletion (Owner/Lender)

Colorado Endorsement 110.1 is primarily for use in deleting one or more of the standard printed exceptions in a title policy. *See* § 6.38.4. However, it can be used to delete any Schedule B exception, including an expired but unreleased oil and gas or mineral lease. If a release is obtained and recorded, the lease will be deleted from the commitment by the issuance of Colorado Endorsement 110.3, so that the policy, when issued, will show no exception, and contain no endorsement. However, absent a signed release, the Schedule B exception for the lease will not be deleted unless you can prove to the satisfaction of the title insurance company that the lease has, in fact, expired.

Colorado Endorsement 110.2 — Mineral Lease — Insure Over (Owner/Lender)

If the title insurance company refuses to delete all reference to a recorded but unreleased oil and gas or mineral lease (*see* Colorado Endorsements 110.1 and 110.3, discussed above) it may still agree to insure over it. The language of Colorado Endorsement 110.2 admits the existence of the lease on the record, but insures the owner or lender against loss or damage sustained by reason of the enforcement or attempted enforcement thereof. Conceivably, Colorado Endorsement 110.2 could be issued when the lease has not expired but operations thereunder are extremely unlikely, for instance, if drilling is prohibited by zoning or conservation laws. Normally, however, expiration must be proven, and then Colorado Endorsements 110.1 and 110.3 are the preferable endorsements.

§ 6.33.3—Mineral-Related Endorsements

Because they occur as exceptions or reservations in U.S. patents, along with mineral reservations, some related problems should be noted, even though they do not represent an instance of either a severed mineral estate or a mineral leasehold estate:

- U.S. patents issued for Colorado lands since August 30, 1890, reserve a right of way for ditches or canals constructed by the authority of the government. Refer to § 6.17 for a discussion of this reservation. U.S. patents in known mineral-producing areas of Colorado, subsequent to May 10, 1872, were issued subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, in the event such vein or lode penetrated or intersected the patented lands. Some title insurers consider this a reservation of minerals, but it is more properly an underground easement and extraction right granted by mining law and not by the patent. Therefore, Colorado Endorsement 103.1 is appropriate, as discussed in § 6.17. The

mineral endorsements described above provide only protection against surface disturbance and are, therefore, ineffective as insurance against the tunneling rights of a hard rock underground miner.

- On occasion a title commitment will contain an exception for a mineral reservation contained in a U.S. patent to the Union Pacific Railroad Company or its predecessors (*i.e.*, the Denver Pacific and Kansas Pacific railroads), reading substantially as follows: “excepting . . . all mineral lands should any such be found to exist in the tract described in this patent, this exception, as required by statute, not extending to coal or iron lands.” In the landmark case of *Burke v. Southern Pacific Railroad Co.*, 234 U.S. 669 (1914), the U.S. Supreme Court held that the issuance of the patent to the railroad constituted a conclusive determination that the lands granted were non-mineral in character and that those minerals that in fact did exist passed to the railroad. The Colorado Court of Appeals followed the *Burke* decision in a ruling on a patent issued to the Union Pacific. *Knight v. Devonshire Co.*, 736 P.2d 1223 (Colo. App. 1986). *See also United States v. Union Pacific Railroad Co.*, 353 U.S. 112 (1957) (United States retains minerals in grant of non-patented right-of-way lands where no determination of mineral character was made). Accordingly, when this exception appears in the commitment, it should be deleted using Colorado Endorsement 110.3 or reissued without the exception. In the policy, Colorado Endorsement 110.1 would delete it. Alternatively, in the policy, the title insurance company could insure over the effect of the reservation by noting it on Schedule B and then attaching Colorado Endorsement 110.2. Do not confuse this U.S. patent language with a Union Pacific deed reservation. Most deeds out of the Union Pacific Railroad Company contain a reservation of some mineral interests to the grantor. Those reservations are valid and enforceable and, as discussed in § 6.33.1, title insurance protection is available only in special circumstances, such as a relinquishment of surface rights by the railroad.
- On occasion, a title insurance commitment will pick up and repeat the following language from a U.S. patent as an exception to title: “subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts.” This language may be contained in patents issued after the Act of July 9, 1870, 43 U.S.C.A. § 661. Such a patent neither reserves nor grants water rights by virtue of this language. Require deletion from the commitment by Colorado Endorsement 110.3, or from the policy (if it gets that far) by Colorado Endorsement 110.1.

§ 6.34 • MODIFICATION OF MORTGAGE

Whenever a mortgage (the term includes deeds of trust and other real property security instruments) is modified, the lender feels insecure without a comforting endorsement on its title policy insuring that the change has not affected or released the security for the loan in some unknown, unanticipated manner.

Modifications relating to additional advances under the mortgage or partial releases of the collateral security are discussed in other sections of this manual. *See* §§ 6.6 and 6.35.

Colorado Endorsement 110.4 — Mortgage Modification (Lender)

This endorsement insures that a mortgage has been properly modified to accomplish stated objectives as set out in the endorsement (*e.g.*, extend due dates, totally or partially discharge one or more obligors, forgive defaults, or revise certain requirements). The lender is insured that neither the lien nor its priority has been lost or affected by the modification. This endorsement does not insure against intervening liens (*see* Colorado Endorsement 110.5, discussed below), increase the face amount of the policy (*see* Colorado Endorsement 107.3, discussed in § 6.6), or change the effective date of the policy (*see* Colorado Endorsements 107.3 and 107.12, discussed in § 6.38.3). The charge for this endorsement is based upon the unpaid balance of the mortgage, not the original face amount.

Colorado Endorsement 110.5 — Mortgage Modification (Lender)

This endorsement insures the validity and priority of a mortgage following the recording of a modification thereof. However, the objectives of such modification are not stated and insured, as in Colorado Endorsement 110.4. The endorsement does protect against intervening liens, except those specifically noted in Schedule B of the policy. As with Colorado Endorsement 110.4, Colorado Endorsement 110.5 does not increase the amount of insurance in force or change the effective date of the policy. The charge is based upon the unpaid balance of the mortgage.

ALTA Endorsement 11-06 and ALTA Endorsement 11.1-06 — Mortgage Modification (Lender)

With ALTA Endorsement 11-06, the lender is insured against invalidity or lack of priority of the insured mortgage following its modification. Exceptions, if any, will be listed on the endorsement. In effect, it is a date-down endorsement. Excepted from coverage are losses that result from application of creditors' rights laws to the mortgage modification agreement identified in the endorsement. See Section 7 of the Exclusions in the Loan Policy, discussed in § 5.2.2.

ALTA Endorsement 11.1-06 provides the same coverages and exceptions as ALTA Endorsement 11-06, plus it insures the subordination of all matters listed in the endorsement.

ALTA Endorsement 11.2-06 — Mortgage Modification with Additional Amount of Insurance (Lender)

Similar to ALTA Endorsement 11-06 and ALTA Endorsement 11.1-06, this endorsement may be issued to insure the priority of the insured mortgage if a mortgage modification is executed, and to increase the amount of insurance.

ALTA Endorsement 45-06 — *Pari Passu* Mortgage (Lender)

This endorsement addresses the needs of lenders who are obtaining co-equal lien priority with other lenders relating to a specific parcel or parcels of real property collateral of a debtor. This type of transaction typically arises in the context of credit facility transactions where multiple lenders seek to obtain equal lien priority through separately recorded mortgages and an associated intercreditor agreement.

The endorsement insures the lender that the lien will not be invalid or unenforceable due solely to the provisions of the mortgage or intercreditor agreement providing for co-equal lien priority. The endorsement also insures against loss or damage if the insured mortgage does not have equal lien priority with the other *pari passu* lenders. Liability under the endorsement is conditioned upon the insured lender and the other *pari passu* lenders complying with the terms of the mortgages and intercreditor

agreement and requires that all the lenders involved simultaneously foreclose their respective mortgages. Loss or damage arising from preferences for the sharing of indebtedness in the intercreditor agreement is not covered. Finally, if there is a dispute as to the loss payable under the policy for a covered matter, the issuing company has the option of interpleading the loss amount into court, allowing the insured and the other lenders to resolve their differences judicially.

§ 6.35 • MORTGAGES, PARTIAL RELEASE

A lender may agree with the borrower to release from the lien of the mortgage a portion but less than all of the real property encumbered by the mortgage. This partial release may be made pursuant to the express terms of the mortgage instrument, or it may come about as the result of negotiations between borrower and lender.

Typically, in a development loan or construction loan mortgage encumbering a large tract, as buildings are completed and sold, the platted lots on which they are located will be released by the lender, provided all or a portion of the sale proceeds are applied to reduce the loan balance. This frees the lot, as improved, from the construction loan lien so that the purchaser thereof can obtain first lien financing.

When the partial release of a lot occurs, the lender may wish to be assured that its lien remains intact and valid on the remaining encumbered lots, without loss of priority of its lien on those lots. Endorsements to the loan policy for that purpose are available.

Colorado Endorsement 111 — Partial Release of Mortgage (Lender)

This endorsement insures that the execution and recording of a partial release of lands will not impair the priority of the mortgage lien on the balance of the land. The charge is based upon the unpaid balance of the mortgage at the time of issuance.

Colorado Endorsement 111.3 — Partial Release of Mortgage — Encroachment (Lender)

In addition to the coverage afforded by Colorado Endorsement 111, Colorado Endorsement 111.3 insures that the buildings, structures, and improvements on the balance of the unreleased land do not encroach onto adjoining lands, and vice versa; and a described improvement is located on the unreleased remainder. The charge is based upon the unpaid balance of the mortgage.

Colorado Endorsement 111.4 — Partial Release of Mortgage — No Reduction in Amount of Insurance (Lender)

Colorado Endorsement 111.4 insures that partial releases shall not reduce the amount of insurance.

§ 6.36 • MORTGAGES, RECORDING

The following endorsement insures the holder of the insured mortgage against loss or damage resulting from failure to record the mortgage.

ALTA Endorsement 44-06 — Insured Mortgage Recording — Loan (Lender)

Covered Risk 2(a)(vi) appears to provide the same coverage contemplated by this endorsement. However, it is intended to be issued when the policy does not contain the recording information of the insured mortgage. This endorsement then insures that the mortgage has been correctly recorded. It will be used primarily when the loan policy has been issued at the settlement, which, in this state at least, is a rare occurrence.

Note that if the mortgage has not been indexed or is indexed incorrectly, regardless of whether the clerk and recorder accepted it, under C.R.S. § 30-10-409(2) the mortgage will nevertheless be deemed recorded for all purposes, *i.e.*, constructive notice.

§ 6.37 • OPTIONS

ALTA Endorsement 46-06 — Option (Owner)

ALTA Endorsement 46-06 is designed to insure an option to acquire real property. This endorsement is intended for use by title insurance companies operating in states where an option is not regarded as creating an interest in real property, but is only a contractual right. In Colorado, an option is regarded as creating an interest in real property pursuant to C.R.S. § 38-35-111 and usually the 2006 ALTA owner's policy is issued with modification to suit an option. *See* § 4.8.

§ 6.38 • POLICY CHANGES

Once issued, an Owner's or Loan Policy can be changed in various ways to accommodate the needs and desires of policy holders, particularly lenders. Endorsements have been developed for Colorado title insurers to accomplish these changes. Some of the endorsements make a single change; others serve several purposes. We will consider them by category.

§ 6.38.1—Additional Insured

Subsequent to or simultaneously with the issuance of a title insurance policy, it may be necessary to afford policy protection to a party other than or in addition to the original named insured. A loan participant may desire to be named in a loan policy. Heirs or successors by operation of law may acquire an interest in the land and request proof of coverage pursuant to the provisions of Section 1(d) of the Conditions. A seller may seek insurance on the buyer's policy as protection against the insurer's subrogation rights. *See* "Rights of Recovery Upon Payment or Settlement" in § 4.4.5. A donee may request to be named on the donor's policy. Endorsements are available to add additional insureds, whatever the occasion.

Colorado Endorsement 107.9 — Additional Insured (Owner/Lender)

This endorsement adds the name of an additional insured party, but it does not insure that the added party has acquired an interest in the land or that any encumbrance affecting that party, such as an outstanding attachment, judgment, or tax lien, will not attach to that party's interest, if any, in the land. In effect, the endorsement insures practically nothing. But it is cheap.

Colorado Endorsement 107.10 — Additional Insured (Owner/Lender)

This endorsement adds the name of an additional insured party to the policy without limiting language as to the interest acquired or the effect of attachments, judgments, tax liens, etc. The absence, however, of affirmative insuring words leaves doubt in the suspicious mind whether the title insurance company does insure that the added party has acquired an interest in the land and whether that interest, if any, is free and clear of encumbrances. The endorsement does not change the effective date of the policy.

Colorado Endorsement 112.1 — Additional Insured — Bond Holders (Lender)

When an insured mortgage secures bonds issued and held by a trustee, a change in Sections 1 (Definition of Terms) and 7 (Options to Pay or Otherwise Settle Claims; Termination of Liability) of the Conditions of the 2006 Loan Policy may be desirable, if not essential. Accordingly, this endorsement, however it may be numbered, can be issued with the 2006 Loan Policy to evidence that each successor to the named trustee and each succeeding owner of any of the bonds will be considered an additional insured under the policy.

ALTA Endorsement 42-06 — Commercial Lender Group (Lender)

When a commercial loan is held by a group of participants, each participant holding a percentage of the indebtedness is insured to the extent of the participant's ownership against loss or damage sustained by the participant as a result of the invalidity or unenforceability of the lien or loss of priority of the lien of the insured mortgage caused by participation transfers after the Date of Policy. Participants are insured regardless of whether their interests were acquired on or after the Date of Policy. With this insurance in place, participants can sell their interest and new participants can be covered, provided the participant acquired its portion of the indebtedness as a purchaser for value without knowledge of an asserted defect, lien, encumbrance, or other matter insured by the policy.

§ 6.38.2—Corrections to Policies**Colorado Endorsement 110.3 — Errors in Commitment or Policy (Owner/Lender)**

This is a blank endorsement for use in correcting errors in commitments and policies. The error might include an exception listed in Schedule B that should not be listed (but consider also Colorado Endorsement 110.1). As discussed elsewhere, Colorado Endorsement 110.3 is also used to delete or modify other policy provisions for which no specific endorsement is available.

Colorado Endorsement 116.7 — Name Variance — Mortgage Policy (Lender)

With this endorsement, the title insurance company insures the lender against errors and variances between the name of the mortgagor and the name of the owner of the land as shown in Schedule A of the Loan Policy. We have not been able to determine what protection, if any, this endorsement adds to the policy. Perhaps it should be deemed a "comfort" endorsement — and the price is right. Covered Risk 2(a)(iii) should suffice.

§ 6.38.3—Change Effective Date

Colorado Endorsement 107.11 — Change Effective Date (Owner/Lender)

This endorsement extends the policy to a new effective date (known in the industry as a “date down”) and insures that nothing adverse has occurred to the title in the interim. It may also be used to date down any of the guarantees offered by the title insurance company (*see* §§ 5.11 through 5.13), or to insure a lender, following foreclosure, or receipt of deed in lieu, of the continuation of coverage promised in Section 2 of the 2006 Loan Policy’s Conditions. See the discussion on continuation of coverage in § 5.2.5. Compare this endorsement to Colorado Endorsement 107.12.

Colorado Endorsement 107.12 — Change Effective Date — Add Exceptions (Owner/Lender)

This is a multi-purpose endorsement, changing the effective date of the policy (date down) and adding as exceptions to title in Schedule B any intervening liens, encumbrances, or other matters shown by the public records. It may also be used to date down any of the guarantees offered by the title insurance company. Compare this endorsement to Colorado Endorsement 107.11.

Colorado Endorsement 104.2 — Change Effective Date — Mortgage Assignment (Lender)

This is a multi-purpose form, changing the effective date of the policy and insuring the valid assignment of a mortgage (*see* § 6.9).

Colorado Endorsement 107.3 — Change Effective Date — Increase Policy Amount (Owner/Lender)

This is a multi-purpose endorsement, changing the effective date of the policy and increasing the face amount of the policy to insure an additional advance or to cover added improvements or appreciation in value.

§ 6.38.4—Delete/Insure Over Exceptions

There is a difference between deleting or omitting exceptions to title as a means of insuring against them and describing a known title defect in Schedule B of the policy and then affirmatively insuring the policy holder against that defect (“insuring over”). Section § 5.B of Regulation 8-1-2 requires that:

Every title entity shall ensure that the title commitment, as may be amended or modified, fully discloses to all recipients the terms upon which title to the land will be insured, the extent of coverage proposed, all proposed title exceptions, and, in a clear and conspicuous manner, shall show whether the title commitment does or does not commit to insure over or delete those exceptions to the title specified therein, consistent with § 10-11-106, C.R.S.

The regulations follow the Colorado statute that imposes a duty on title insurers to conduct a reasonable examination of the title to be insured:

No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies.

C.R.S. § 10-11-106(1). Again, the regulations establish certain requirements for insuring over a recorded lien or encumbrance:

- I. If a title entity undertakes to insure any person or entity against the possible adverse effect of any recorded lien, recorded encumbrance or other recorded interest, in accordance with § 10-11-106, C.R.S., and any other applicable law, it shall:
 1. Delete such recorded lien, recorded encumbrance or other recorded interest from the schedule of exceptions in its title commitment and have on hand funds, securities, a bonded obligation, or letter of credit payable to the order of said title entity, adequate to discharge such lien, encumbrance or other interest in the event said lien, encumbrance or other interest is perfected to the detriment or possible detriment of the person or entity insured, or any successor in interest to such person or entity;
 2. Insure over and reflect such recorded lien, recorded encumbrance or other recorded interest in the schedule of exceptions in its title commitment, and receive an appropriate indemnity from the responsible party; or
 3. Insure over the defect in accordance with the title entity's sound underwriting practices and guidelines; and
 4. Not raise as a defense to any claim based on, or arising out of, the deletion or insurance over such defect or exception that the insured assumed, agreed to, or had knowledge of the said defect or exception.

Section 5.I of Regulation 8-1-2; *see* Appendix 3. From this statutory and regulatory framework, these conclusions appear evident:

- 1) The title insurance company must search for and disclose to the prospective insured all recorded title defects.
- 2) The title insurance company must not insure over a known title defect except in accordance with sound underwriting practices accepted in the industry.
- 3) If the title insurance company intends to insure over a known title defect, it must disclose the same to the prospective insured in the commitment.
- 4) The title insurance company may not insure over a recorded lien unless it collects sufficient funds in advance or obtains an indemnity to pay and discharge the lien should it be enforced later.

Accordingly, endorsement forms that provide for the deletion of exceptions to title should be utilized only to delete the standard exceptions that do not relate directly to known and recorded defects of title, or to delete exceptions that subsequently have been eliminated as defects. The matter of deleting or insuring over the standard exceptions is discussed in § 2.20.

Colorado Endorsement 110.1 — Delete Exception on Policy (Owner/Lender)

This form is used to delete an exception that appears in Schedule B of the policy. It may also be issued to delete a paid encumbrance that has been released or a lease that has terminated.

Colorado Endorsement 110.2 — Insure over Exception on Policy (Owner/Lender)

With this endorsement, the title insurance company can insure over an exception to title disclosed in Schedule B of the policy. The underwriter's requirements for doing so must, however, be met.

Loss or damage sustained by the insured as a result of enforcement or attempted enforcement of the stated exception is covered. To insure over a recorded mechanics' lien, Colorado Endorsement 101.1 would be used rather than Colorado Endorsement 110.2 (*see* § 6.31). The charge for Colorado Endorsement 110.2 may, in certain cases, exceed 10 percent of the basic rate.

§ 6.38.5—Electronic Signatures

ALTA Endorsement 39-06 — Policy Authentication (Owner/Lender)

This endorsement addresses the concern that a policy and endorsements may be invalid simply because of the use of electronically generated signatures in place of wet signatures. The concern has been based upon the following provision in the Conditions of the Owner's Policy at Section 15(c) and of the Loan Policy at Section 14(c): "Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy."

This endorsement addresses the issue of authentication by acknowledging that the title insurance company will not deny liability solely because the policy or endorsements were issued electronically or lack signatures. The endorsement does not insure or agree that any form bearing the name of the Company will necessarily be treated as valid, if there are other bases for which issues of validity may remain, such as counterfeit forms. *See* ALTA Policy Forms Yearbook 2013.

§ 6.39 • PUD (PLANNED UNIT DEVELOPMENT)

From the legal viewpoint, PUDs are not like condominiums. From the lender's perspective, however, the same concerns arise in the typical transaction involving a loan to a developer or to a unit purchaser. Have the covenants been violated and, if so, will this cause the loan to be impaired? Will an assessment lien, asserted by the owners' association, gain priority over the lien that secures the loan? Are there encroachments that could cause litigation or depreciate the value of the security? Has a right of first refusal been violated, raising the possibility of loss of title? These questions are addressed in the available PUD endorsements.

Colorado Endorsement 115.2 — Planned Unit Development (Owner/Lender)

This endorsement insures against loss or damage resulting from (1) present violations of restrictive covenants; (2) priority of any lien for charges or assessments over the insured mortgage, except for the six-months' statutory lien priority for the property owners' association (*see* C.R.S. § 38-33.3-316(2)(b)); (3) any obligation to remove improvements on the land because of a present encroachment upon adjoining lands or easements, or a present encroachment onto the land by improvements on adjoining land; and (4) failure of title because of a right of first refusal to purchase the land. Though primarily a lender's form, Colorado Endorsement 115.2 sometimes is available to owners, unlike its condominium counterpart, Colorado Endorsement 115.1. When a lender requests this endorsement, the borrower, because of the cost, will argue that Colorado Endorsement 100 and Colorado Endorsement 100.13 provide the same protection and are a reasonable substitute. To compare the endorsements, see §§ 6.41, "Restrictions, Covenants, and Reverters," 6.19, "Encroachments," and 6.10, "Associations (Property Owners)." Failure of title because of a preexisting recorded right of first refusal, unless excepted, would be covered by any Owner's or Loan Policy without an endorsement.

ALTA Endorsement 5-06 and ALTA Endorsement 5.1-06 — Planned Unit Development (Owner/Lender)

These two ALTA endorsements provide essentially the same coverages as Colorado Endorsement 115.2. There is only one difference between these two ALTA Endorsements: ALTA Endorsement 5-06 insures priority of the mortgage over association charges and assessments (this endorsement should be modified in Colorado to contemplate the six-months' statutory lien priority for the property owners' association), whereas ALTA Endorsement 5.1-06 insures the lender against such charges and assessments that are due and unpaid at the date of the policy.

§ 6.40 • RESCISSION (TRUTH IN LENDING)

At present, only one Colorado endorsement and one ALTA endorsement have been developed to protect lenders against the operation of so-called consumer protection laws. Many other endorsements, such as Colorado Endorsements 110.9, 111.5, 111.6, 122.1, 122.3, 122.4, and 122.5, expressly except such coverage, as does Section 5 of the Exclusions from Coverage provisions of all the ALTA loan policy forms (*see also* § 6.45, "Usury").

Colorado Endorsement 125 — Rescission — Truth in Lending (Lender)

This endorsement insures against the valid exercise of a right of rescission under the Federal Truth in Lending Law (15 U.S.C. § 1635(a); 12 C.F.R. § 226.9), which terminates the lender's lien or defeats the lender's foreclosure of the lien. Note: this endorsement gives no protection against rescission or other remedies occurring under the Colorado Uniform Consumer Credit Code or other consumer protection laws. *See* § 5.2.2.

ALTA Endorsement 2-06 — Rescission — Truth in Lending (Lender)

The insuring provisions of ALTA Endorsement 2-06 are identical to Colorado Endorsement 125, discussed above.

§ 6.41 • RESTRICTIONS, COVENANTS, AND REVERTERS

The term "restrictions" as used in this manual covers a broad range of burdens imposed upon land. The restriction most frequently encountered is the protective or restrictive covenant. But a restriction may take the form of a fee simple determinable, fee simple conditional (power of termination), or other type of limited fee (*e.g.*, the liquor reverter).

Title insurance is available by endorsement for both the prospective owner and the lender to insure that a restriction, whatever it may be called, has not been breached as of the moment of conveyance or encumbering. Colorado Endorsement 130 for the owner and Colorado Endorsement 100 for the lender are quite common and inexpensive. Frankly, the title companies have little hope of assessing the risk and seldom make any investigation to determine if there is a risk.

Remember that your client cannot recover for defects known to the client and not disclosed by the public records unless the title insurance company is advised in writing prior to the issuance of the policy. *See* §§ 2.7.2, 4.4.2, and 5.2.2. Appendix 6 contains a sample letter for use in giving notice of defects to the title insurance company. If you are or the client is aware of some state of facts that constitutes a violation of the restrictions and you fail to advise the insurer as required, neither Colorado Endorsement 100, Colorado Endorsement 130, nor any other endorsement, will suffice.

Fifteen Colorado endorsement forms and six ALTA endorsements that pertain to restrictions have been identified. They are considered below.

Colorado Endorsement 100 — Restrictions — Mortgage Protection (Lender)

This multi-purpose endorsement, widely referred to as the Comprehensive Endorsement and normally required by lenders, insures against (1) covenants, conditions, or restrictions that could cut-off, subordinate, or otherwise impair the lien of the mortgage or deed of trust; (2) any present violations of such covenants, conditions, or restrictions except as shown in Schedule B; (3) encroachments of buildings, structures, or improvements upon adjoining lands or onto the subject land; (4) loss or impairment of lien (or loss of title if the lender has foreclosed) resulting from future violations of any covenant, condition, or restriction; (5) damage to existing improvements that encroach on a disclosed easement; and (6) a final court order or judgment to remove any encroachment. The term “covenants, conditions, and restrictions” does not include such provisions contained in a lease. An exception to coverage is stated for the six-months’ super-priority lien of a common interest community assessment under C.R.S. § 38-33.3-316(2)(b). *Note:* Colorado Endorsement 100 is not the equivalent of deleting standard Exceptions Nos. 1 to 4 but rather supplements such coverage.

Owners should understand that there is no protection for them in Colorado Endorsement 100 issued to a lender. But there is an assurance. If Colorado Endorsement 100 is issued to their lender, and if the lender obtains the deletion of standard Exceptions Nos. 1 to 4, then owners can obtain Colorado Endorsement 130 and have standard Exceptions Nos. 1 to 4 deleted, all at minimal cost in the owner’s policy issued simultaneously with the loan policy. The underwriting requirements are the same in both cases. The title insurance company must be furnished with an improvement location certificate or other certified survey (*see* Appendix 7), and both seller and buyer must provide assurance by affidavit as to mechanics’ liens (*see* Appendix 8) and, sometimes, possession and the absence of covenant violations.

Colorado Endorsements 100.1, 100.2, and 100.3, discussed below, are variations of Colorado Endorsement 100, but two of them provide owner’s coverage.

Colorado Endorsement 100.1 — Restrictions — Unimproved Land (Lender)

This endorsement is prepared for issuance to lenders only with respect to unimproved land. Accordingly, the provision in Colorado Endorsement 100 regarding encroachment of buildings onto adjoining lands has been omitted. In all other respects, including requirements for issuance, it is the same as Colorado Endorsement 100.

Colorado Endorsement 100.2 — Restrictions — Unimproved Land (Owner)

This endorsement is prepared for issuance to owners only with respect to unimproved land. Therefore, the following portions of Colorado Endorsement 100 have been omitted: (1) covenant violations will not impair the mortgage lien; (2) no encroachment of buildings onto adjoining lands; and (3) future covenant violations will not result in impairment of the mortgage lien.

In place of the omissions, the title insurance company insures against loss or damage resulting from the unmarketability of title by reason of violations of the covenants occurring prior to acquisition of title (not future violations as in Colorado Endorsement 100). Requirements for issuance are the same as for Colorado Endorsement 100.

Colorado Endorsement 100.2 does not overlap the coverage of Colorado Endorsement 130.

Colorado Endorsement 100.3 — Restrictions — Encroachment — Minerals (Owner)

This endorsement is prepared for issuance to owners only with respect to improved land. It is more expensive when issued for other than residential land. Provisions in Colorado Endorsement 100 relating to the protection of the mortgage lien are omitted, as in Colorado Endorsement 100.2. The title insurance company insures against loss or damage resulting from (1) the unmarketability of title by reason of violations of the covenants, conditions, and restrictions occurring prior to acquisition of title (not future violations as in Colorado Endorsement 100); (2) encroachment onto the land from adjoining lands or by buildings on the land onto adjoining lands; (3) encroachment of buildings onto easements encumbering the land, provided that the easements are being used for their intended use; and (4) use of the surface for the extraction or development of minerals owned by others.

In addition to the requirements for issuance of Colorado Endorsement 100, Colorado Endorsement 100.3 will not be issued unless the underwriting requirements for mineral protection are satisfied, as discussed in § 6.33.

Colorado Endorsement 100.4 — Restrictions — Specific Provision (Lender)

Whenever the lender objects to a specific provision in a certain recorded declaration of covenants, Colorado Endorsement 100.4 is available to insure the lender against impairment of its mortgage lien by reason of a final judgment based upon a violation of that provision occurring prior to the date of the policy. Since only a final judgment will trigger the insurance coverage, the costs of litigation are not included in the title insurance company's responsibility. Colorado Endorsement 100.4 is available only for one-to-four family single family dwellings. See Colorado Endorsements 100.5 and 100.20, discussed below, for broader coverages.

Colorado Endorsement 100.5 — Restrictions — Prior Violations (Owner/Lender)

This endorsement insures against a prior violation of an identified declaration of covenants, conditions, and restrictions. Unlike Colorado Endorsement 100.4, Colorado Endorsement 100.5 insures against any violation of the specified declaration, and is not limited to a stated provision in a specified declaration. This endorsement is available only for one-to-four family dwellings. It insures against enforcement by final judgment, not attempted but unsuccessful enforcement. The difference is the cost of litigation. See Colorado Endorsement 100.20, discussed below, for broader coverage.

Colorado Endorsement 100.6 — Restrictions — Present or Future Violations (Owner/Lender)

This endorsement insures against a final judgment (but not an attempted enforcement) of present or future violations of an identified set of covenants, conditions, and restrictions. It is available on all types of properties, but only in cases where the covenants have been abandoned, voided by court order, are deemed against public policy, or are otherwise known by the title insurance company to be unenforceable — for example, a set of residential covenants in an area long-since dedicated to commercial development).

Colorado Endorsement 100.11 — Liquor Reverter (Owner/Lender)

Although the other 100-series Colorado Endorsements might do the job, this specialized endorsement has been developed in Colorado to insure against forfeiture or reversion of title because of past or future violations of the reverter portion (and only the reverter portion) of restrictions pertaining to the manufacture, sale, and/or use of liquor or alcoholic beverages on the land. The title insurance company is on safe ground. The Colorado Supreme Court has refused to enforce various liquor reverters. *Cole v. Colorado Springs Co.*, 381 P.2d 13 (Colo. 1963); and *Union Colony Co. of Colorado v. Gallie*, 104 Colo. 46, 88 P.2d 120 (1939).

Colorado Endorsement 100.12 — Right of Reverter (Owner/Lender)

This endorsement insures against any exercise or attempt to exercise a right of reverter, re-entry, or power of termination upon breach of an identified set of covenants, conditions, and restrictions. Because of the “attempt to exercise” language, Colorado Endorsement 100.12 might be preferable to Colorado Endorsement 100.11. However, when a liquor reverter is identified on Schedule B — Part II of the commitment, most lenders will prefer the specific language of Colorado Endorsement 100.11. Use of Colorado Endorsement 100.12 is recommended to insure against an Urban Renewal Authority’s right of re-entry for conditions previously broken on those projects undertaken on land acquired by the Authority and sold to a developer.

Colorado Endorsement 100.18 — Right of Reverter — Marketable Title (Lender)

This endorsement contains all the same coverages as Colorado Endorsement 100.12. In addition, it provides protection against unmarketability of title if the lender acquires title.

Colorado Endorsement 100.20 — Restrictions — Attempted Enforcement (Owner/Lender)

This endorsement insures against a prior violation of an identified set of covenants, conditions, and restrictions. Unlike Colorado Endorsement 100.5, it covers attempted but unsuccessful enforcement as well as a judgment of enforcement, so that the title insurance company pays attorney fees to defend successfully or unsuccessfully against attempted enforcement. It covers all types of properties, not just one-to-four family dwellings. For protection against future as well as prior violations, consider Colorado Endorsement 100.6, discussed above.

Colorado Endorsement 102.4 — Restrictions — Foundations (Lender)

This is a multi-purpose endorsement. The title insurance company insures the lender that the foundations of the building under construction are within the boundaries of the land, and do not, by virtue of their location at the date of endorsement, violate an identified set of covenants, conditions, and restrictions. Colorado Endorsement 102.5 adds easement encroachments. The title insurance company will require an improvement location certificate or certified survey. On major projects, construction lenders often require this endorsement to be added to the loan policy as soon as the foundations are in, to confirm before the next construction draw is approved for disbursement that no encroachments exist.

Colorado Endorsement 102.5 — Restrictions — Encroachment on Easement (Lender)

This multi-purpose endorsement includes the same coverages as Colorado Endorsement 102.4 and adds coverage for encroachment of the foundations onto any described easement. The requirements for issuance of this endorsement are identical to Colorado Endorsement 102.4. It may be requested by a lender whenever Schedule B discloses easements that must be avoided by the construction in progress.

Colorado Endorsement 115.1 — Restrictions — Condominium (Owner/Lender)

When a lender on a condominium purchase demands Colorado Endorsement 115.1, among other coverages provided (*see* § 6.14, “Condominiums”), protection is sought against existing (but not future) violations of those covenants that restrict the use of the unit and the condominium regime’s common elements. Further, the title insurance company insures against any reverter in such covenants. Only covenants that occur in the condominium documents are insured. If protection is desired against covenants that predate the condominium, then, in addition to Colorado Endorsement 115.1, Colorado Endorsement 100.5 or Colorado Endorsement 100.20 should be obtained. The title insurance company may require that the seller furnish an affidavit and indemnity as to the absence of covenant violations. *See* Appendix 8. Seller’s attorney should be alert to modify the requested affidavit to define only violations known to the affiant.

Colorado Endorsement 115.2 — Restrictions — PUD (Owner/Lender)

This endorsement is prepared for issuance only for a PUD or planned unit development (*see* § 6.39). Among other coverages, it insures that there is no present violation of the covenants referred to in Schedule B of the policy. The coverage extends only to covenants that restrict the use of the land. The title insurance company also insures that such covenants do not contain a reverter clause. The affidavit requirements for this endorsement may be the same as for Colorado Endorsement 115.1.

Colorado Endorsement 130 and Colorado Endorsement 130C — Restrictions (Owner)

This multi-purpose endorsement is available at a nominal charge on owner’s policies for single family residences, including condominiums and PUDs. Colorado Endorsement 130C may be issued at a higher charge on commercial property. These two endorsements insure the owner against loss or damage suffered as a result of:

- 1) Mechanics’ liens, unless the insured has contracted for the work or assumed the contract, provided construction is complete at date of policy (*see* § 6.31);
- 2) Possessory rights asserted against the principal dwelling (*see* § 6.7);
- 3) The enforced removal of the principal dwelling on account of encroachment onto adjoining lands (*see* § 6.19) or easements (*see* § 6.17), or any violation of building setback lines or covenants, conditions, or restrictions identified in Schedule B of the policy; and
- 4) The violation of any zoning ordinance by use of the land for a single family residence (*see* § 6.48).

The term “principal dwelling” (replaced in Colorado Endorsement 130C with the term “commercial building”) includes condominiums, but does not include outbuildings, detached garages, fences, driveways, retaining walls, plants, and common areas. This endorsement does *not* protect against all violations of the protective covenants, but only those that could lead to the removal of the principal dwelling or commercial building. It could be very difficult to make a good claim under this endorsement as worded. It is not a substitute for deletion of standard Exceptions Nos. 1 to 4, but nevertheless, it should always be requested by the buyer’s attorney when the lender is obtaining Colorado Endorsement 100 unless the plain language Residential Owner’s or Homeowner’s policy is being issued. Consider obtaining Colorado Endorsement 100.3 concurrently, discussed above.

ALTA Endorsement 9-06 — Restrictions, Encroachments, Minerals (Lender)**ALTA Endorsement 9.3-06 — Covenants, Conditions, and Restrictions (Lender)**

The limitations on the coverage provided by the endorsements are referred to in the discussion on ALTA Endorsement 9-06 in § 6.17, “Easements.”

These multi-purpose endorsements provide the ultimate lender protection with respect to restrictions. Insured against are covenants, conditions, and restrictions that cause the mortgage lien to be divested, subordinated, extinguished, invalidated, unenforceable, or impaired. Other than for matters excepted in Schedule B, both endorsements insure that there are no present violations of the covenants or setback lines shown on the plat, and the covenants do not establish an easement on the land or provide a lien.

ALTA Endorsement 9.1-06 — Covenants, Conditions, and Restrictions — Unimproved Land (Owner)

This limited multi-purpose owner’s endorsement insures only against loss or damage from the present violation of an existing covenant, including an enforceable covenant relating to environmental protection. Although the heading states “unimproved land,” the endorsement itself contains no such limitation.

ALTA Endorsement 9.2-06 — Covenants, Conditions, and Restrictions — Improved Land (Owner)

In this limited owner’s endorsement, the title insurance company insures against loss or damages that result from a present violation of an existing enforceable covenant, the enforced removal of an improvement because of a violation of a building setback line, and the existing violation of a covenant relating to environmental protection.

ALTA Endorsement 9.6-06 — Private Rights (Lender)

The title insurance company insures against enforcement of a private right in a covenant that results in the invalidity, unenforceability, or lack of priority of the lien of the insured mortgage. A private right is defined as a private charge or assessment, an option to purchase, a right of first refusal, or a right of prior approval of a future purchaser or occupant.

ALTA Endorsement 9.6.1-06 — Private Rights — Current Assessments (Lender)

ALTA Endorsement 9.6-06 insures against loss or damage “if enforcement of a Private Right in a Covenant affecting the Title at Date of Policy (a) results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or (b) causes a loss of the Insured’s Title acquired in satisfaction or partial satisfaction of the Indebtedness.” A private right includes a private charge or assessment. ALTA Endorsement 9.6.1-06 differs in that it insures as to a private charge or assessment due and payable at Date of Policy. *See* 2015 ALTA Policy Forms Year in Review, available at www.alta.org/publications/policy_forms/year_in_review.cfm.

ALTA Endorsement 9.7-06 — Restrictions, Encroachments, Minerals, Land Under Development (Lender)

This multi-purpose lender’s endorsement covers future improvements to the land, including a building, structure, road, walkway, driveway, curb, lawn, shrubbery, or trees, to be constructed or affixed pursuant to certain identified plans prepared by a named architect or engineer. Loss or damage re-

sulting from the violation of an existing covenant that affects the lender's lien is insured. Also covered are the enforced removal of an existing or future improvement because of a violation of a building setback line, an existing violation of a covenant relating to environmental protection, the encroachment of existing or future improvements onto or from adjoining land, easements, and damage to existing or future improvements resulting from mineral development or extraction.

The limitations on the coverage provided by the endorsement are referred to in the discussion on this endorsement in § 6.19, "Encroachments."

ALTA Endorsement 9.8-06 — Restrictions, Land Under Development (Owner)

This owner's endorsement covers existing and future improvements to the land, including a building, structure, road, walkway, driveway, curb, lawn, shrubbery, or trees, to be constructed or affixed pursuant to certain identified plans prepared by a named architect or engineer. Loss or damage is insured if it results from the violation of a covenant by an existing or future improvement, the enforced removal of an existing or future improvement because of a violation of a building setback line, or an existing violation of a covenant relating to environmental protection.

The limitations on the coverage provided by the endorsement are referred to in the discussion on this endorsement in § 6.19, "Encroachments."

ALTA Endorsement 9.9-06 — Private Rights (Owner)

This endorsement is the owner's counterpart of ALTA Endorsement 9.6-06. It insures against loss of title based on a transfer of title on or before the Date of Policy caused by enforcement of a private right. A private right for purposes of this endorsement means an option to a purchaser, a right of first refusal, or a right of prior approval of a buyer or occupant. Like ALTA Endorsement 9.6-06, this endorsement would include Section 4.d, which would allow the Company to remove from the coverage an identified private right. *See* ALTA Policy Forms Yearbook 2013.

ALTA Endorsement 34-06 — Identified Risk (Owner)

This endorsement insures against loss or damage resulting from an "identified risk," such as a title defect, restriction, encumbrance, or other matter. The title insurance company is obligated to the insured if a final order or decree enforces the identified risk in favor of an adverse party, or if a prospective purchaser, lessee, or lender is released as a result of the identified risk. Some exceptions apply. The title insurance company is not obligated under this endorsement to establish the title free of the identified risk.

§ 6.42 • SEVERABLE IMPROVEMENTS

The following ALTA Endorsement does *not* insure title to personal property.

ALTA Endorsement 31-06 — Severable Improvements (Owner/Lender)

Severable improvements affixed to land may not be considered real property in some circumstances because of the nature of attachment to the land and because the improvement can be severed from the land without causing material injury to the land or improvement. These types of improve-

ments are often encountered in commercial projects, such as wind farms and power projects, but the insured will want insurance that takes into consideration the severable improvements in determination of the amount of insurance and in the calculation of loss because of a defect against the title to the land otherwise insured against by the policy.

Absent an endorsement clarifying consideration of severable improvements that are personal property, the loss because of a defect against the title to land would not include any consideration of such improvements, because the valuation of land would include only improvements that by law constitute real property.

This endorsement recognizes that if a defect insured against by the policy results in loss, then the calculation of loss will include the diminution in value of the insured's interest in the severable improvements because of the defect, as well as specified costs of removal or relocation and transportation because of the defect.

The endorsement and the policy do not insure against loss relating to ownership of, or defects, liens, or encumbrances on the title to, the severable improvements; consequently, the endorsement does not in any manner constitute personal property title insurance. *See* ALTA Policy Forms Yearbook 2011.

§ 6.43 • SURVEY MATTERS, INCLUDING SUBDIVISION OF LAND

Numerous endorsements could be discussed under the heading of “surveys,” including all of the encroachment forms (*see* § 6.19) and those, like Colorado Endorsement 100 and Colorado Endorsement 130, that require an improvement location certificate or survey certified to the title insurance company. *See* Appendix 7 for information about surveys. However, we have narrowed the subject to forms that deal directly with surveys.

Colorado Endorsement 116 — Survey Protection — Improvements (Lender)

This endorsement insures that certain improvements, described in the endorsement, are located upon the insured land as identified by its street address. It also insures that the map attached to the policy (normally an “improvement survey plat” as described in § 3 of Appendix 7) shows the correct location and dimensions of the land according to those records that, under state law, impart constructive notice as to said land. Given a reasonable interpretation, such records would include a recorded plat of subdivision, a recorded official government survey, a boundary survey recorded pursuant to C.R.S. § 38-44-112, or any other real estate record filed or recorded in the office of the clerk and recorder of the county in which the land is situate (or, arguably in the Bureau of Land Management). *See* “Public Records” in § 4.4.5.

Normally, all that will be required for issuance of Colorado Endorsement 116 is an improvement location certificate or other survey properly certified to the title insurance company by the surveyor. A minimum fee applies if the map is attached when the policy is issued. A higher charge may be imposed if the endorsement is attached to the policy thereafter, and an additional inspection fee may be charged.

Some companies issue a variation of Colorado Endorsement 116, deleting the provisions regarding street address when the subject land is unimproved, or including only the provisions regarding street address when the subject land is improved.

Colorado Endorsement 116.1 — Survey — Property Identification (Owner/Lender)

This endorsement insures that the subject land is the same as that delineated on a plat of survey attached to and made a part of the policy. The term “plat of survey” is not defined in the statute. Unlike Colorado Endorsement 116, this endorsement is available to owners.

Colorado Endorsement 116.4 — Survey — Contiguous Parcels (Owner/Lender)

A most useful endorsement, Colorado Endorsement 116.4 insures owners and lenders that two tracts described and insured in the policy are contiguous to each other, or that one tract described and insured in the policy is contiguous to another tract described in the endorsement. The insured wants assurance that there are no strips or gores between the boundaries of the two tracts. The title insurance company, in effect, insures the survey submitted by the insured showing such contiguity, which must be certified to the title insurance company.

Colorado Endorsement 116.5 — Survey — Manufactured Housing (Lender)

If improvements located on land are manufactured housing within the definition of the Colorado Titles to Manufactured Homes Act, C.R.S. §§ 38-29-101, *et seq.*, then this endorsement is available, upon submission to the title insurance company of an acceptable improvement location certificate (*see* Appendix 7), to assure a lender that (1) improvements meeting that definition are located on the land; (2) the improvement location certificate correctly shows the location and attachment of said improvements; and (3) the improvements are included within the policy definition of “land” to the extent that, upon compliance with the Act, the improvements will constitute real property. *See also* § 6.30, “Manufactured Housing.”

Colorado Endorsement 116.6 — Survey — Legal Description (Lender)

For the nervous lender, this endorsement has been designed for the sole purpose of assurance that the legal description on the mortgage is identical to the legal description on Schedule A of the Loan Policy.

ALTA Endorsement 19-06 — Contiguity — Multiple Parcels (Owner/Lender)

If the policy describes two or more parcels of land, this ALTA endorsement insures that the parcels are contiguous with no gaps, strips, or gores separating the parcels (*e.g.*, Parcel A is contiguous to Parcel B, and Parcel B is contiguous to Parcel C, or whatever the survey discloses). *See also* Colorado Endorsement 116.4, discussed above.

ALTA Endorsement 19.1-06 — Contiguity — Single Parcel (Owner/Lender)

If the policy describes only one parcel but the insured wants protection against gaps, strips, or gores between the insured parcel and neighboring land not described in the policy, this ALTA endorsement can be issued to provide such insurance. *See also* Colorado Endorsement 116.4, discussed above.

ALTA Endorsement 19.2-06 — Contiguity — Specified Parcels (Owner/Lender)

When the parcels are identified by surveyed legal descriptions, this ALTA endorsement insures that they are contiguous, except as shown on the survey.

ALTA Endorsement 22-06 — Survey Location (Owner/Lender)

ALTA Endorsement 22-06 insures that a described improvement is located on the land with a stated street address as of the Date of Policy. The title insurance company will require submission of an improvement location certificate or a survey.

ALTA Endorsement 22.1-06 — Survey Location and Map (Owner/Lender)

This endorsement provides the same coverage as ALTA Endorsement 22-06 and adds coverage that an attached map correctly shows the location and dimensions of the land according to the public records. The title insurance company will require, at a minimum, a land survey plat.

ALTA Endorsement 25-06 and ALTA Endorsement 25.1-06 — Survey — Same As (Owner/Lender)

If the insured wants to be covered in case the land described on Schedule A of the policy is not the same land as described on a designated plat of survey (ALTA Endorsement 25-06), or a particular parcel shown on a plat of survey (ALTA Endorsement 25.1-06), then one of these endorsement forms can be attached to provide that assurance.

ALTA Endorsement 26-06 — Subdivision (Owner/Lender)

This endorsement insures against the consequences of an unlawful or illegal parcel formed by failure of the subdivider to comply with state statutes or local subdivision ordinances. The restrictions of Senate Bill 72-35 on unincorporated areas or similar subdivision regulations in nearly all municipalities in Colorado should cause this ALTA endorsement to be quite useful. *See* C.R.S. § 30-28-101(10).

§ 6.44 • TAXES AND ASSESSMENTS

Surprisingly, we have no Colorado endorsement forms offering protection against liens for real estate assessments or taxes. In Colorado, special district liens especially pose a threat to mortgage priority but are routinely excepted from coverage by standard policy language. *See* § 2.17. The ALTA endorsements provide insurance in minimum risk situations only. But ALTA endorsements do offer insurance for purchasers of tax credits.

ALTA Endorsement 1-06 — Street Assessments (Lender)

By this ALTA endorsement, the lender is insured against loss of its mortgage's priority to a lien for street assessments for improvements under construction or completed at date of policy. Because this endorsement provides identical coverage to Covered Risk 11(b), it is no longer required for the 2006 Loan Policy.

ALTA Endorsement 18-06 — Single Tax Parcel (Owner/Lender)

This ALTA endorsement insures the owner or lender that the insured land is a separate tax parcel for real estate tax purposes. This could be useful for insuring a condominium unit or a divided interest, such as a time share or a co-tenant's undivided interest.

ALTA Endorsement 18.1-06 — Multiple Tax Parcels (Owner/Lender)

This ALTA endorsement insures the accuracy of listed tax identification numbers assigned to designated parcels. It also insures against easements described in Schedule A of the policy being cut off or disturbed by the non-payment of taxes on the servient estate.

ALTA Endorsement 18.2-06 — Multiple Tax Parcel

ALTA Endorsement 18.1-06 (Multiple Tax Parcel) insures that the identified tracts of land are assessed for real estate taxes under the listed tax identification numbers and do not include additional land, and the easements described in Schedule A, if any, will not be cut off or disturbed by nonpayment of real estate taxes, assessments, or other charges on the servient estate by a governmental authority. However, in many transactions, the second coverage concerning easements is not applicable, because there are no insured easements, state law does not provide for priority of the easements over ad valorem taxes applicable to the servient estates, or taxes are not paid through the year that the easements are recorded. ALTA Endorsement 18.2-06 (Multiple Tax Parcel) removes the insurance regarding priority of easements over taxes applicable to the servient estate.

ALTA Endorsement 38-06 — Mortgage Tax (Lender)

If a fee or charge (tax) is required to be paid when a mortgage is recorded, this endorsement insures the lender, who ultimately pays the tax and any penalties, that the mortgage will not be invalid or lose priority by reason of a failure to pay the tax at the time the mortgage was recorded.

ALTA Endorsement 40-06 — Tax Credit

ALTA Endorsement 40-06 — Tax Credit (Owner's Policy) addresses the need of tax credit investors in real estate projects. To many such investors, the tax benefit to be gained under the Internal Revenue Code or other applicable law is their main incentive to invest in the real estate venture. ALTA Endorsement 40-06 provides greater flexibility than previous independent iterations of the endorsement because it is not limited to a specific type of tax credit, *i.e.*, it can be used for any tax credit benefit for which an investor might qualify under the Internal Revenue Code or any other state or local tax law. In addition, it contains an explicit assignment by the insured to the tax credit investor of any loss otherwise payable under the policy that arises solely as a result of a loss of an available tax credit. The endorsement protects the title insurance industry in that liability is only triggered when a defect, lien, encumbrance, or other matter insured against in the policy triggers the loss of the available tax credit. No liability attaches to the insurer until the tax credit investor proves the existence of loss of a tax credit as a result of the title defect and the amount of that loss. Since tax credits are used to promote real estate development, this endorsement will be issued on commercial real estate projects.

ALTA Endorsement 40.1-06 — Tax Credit — Defined Amount (Owner)

ALTA Endorsement 40.1-06 — Tax Credit — Defined Amount (Owner) is intended for those unique situations in which the tax credit investor wants a specific, defined, maximum amount of coverage for its estimated tax credit benefit. That amount is denoted in the endorsement as “Additional Amount of Insurance,” and is an amount attributable only to loss of a tax credit benefit. It leaves the amount of policy paid to the insured unaffected by payment of any tax credit loss as the additional amount of insurance. As with ALTA Endorsement 40-06, loss under ALTA Endorsement 40.1-06 is triggered only when the loss of a tax credit is triggered by a defect, lien, encumbrance, or other matter insured against in the policy. The tax credit investor has the same burden of proof of loss of an available tax credit and its amount as in ALTA Endorsement 40-06. ALTA Policy Forms Yearbook 2014.

§ 6.45 • USURY

To some extent, all of the lender endorsement forms insure the validity and enforceability of the mortgage. Although the ALTA loan policy forms purport not to protect the lender against invalidity or unenforceability of a mortgage lien because of a violation of usury laws, ALTA relented with a usury endorsement form in 2008. Usury, it was argued, has nothing to do with title. But lenders persuaded title insurance companies to protect them against the charge of usury, despite the specific disclaimer in Section 5 of the Exclusions from Coverage provisions of the ALTA loan policy forms. *See* § 5.2.2.

Though usury is not a likely occurrence in Colorado because of our liberal usury statute, C.R.S. § 5-12-103, at least two Colorado endorsements and one ALTA endorsement insuring lenders against usury are offered by most companies. There is no standard number for the Colorado usury endorsement form, so we have dubbed it “Colorado Endorsement U.”

Colorado Endorsement U — Usury Protection (Lender)

This endorsement insures the lender against loss or damage sustained by reason of a final judgment that the mortgage lien is invalid or unenforceable by reason of usury under Colorado law. The costs of litigating the usury question are not covered. If the lender wins the lawsuit and the loan is held to be non-usurious, the lender pays its own costs, including attorney fees. The coverage continues even after the loan has been satisfied. Thus, if the borrower later sues and obtains a judgment for damages, the title insurance company has the risk, not exceeding, however, the face amount of the policy.

Although Section 5 of the Exclusions from Coverage provisions of the 2006 Loan Policy is not specifically deleted, the endorsement boilerplate provides that the endorsement is subject only to the schedules, conditions, and stipulations, and then only to the extent they are not modified by the endorsement.

ALTA Endorsement 27-06 — Usury Protection (Lender)

The lender is protected by this endorsement if its lien is held invalid or unenforceable because the loan violates Colorado’s usury law.

Colorado Endorsement 122.5 — Usury Protection — Change in Rate — Advances (Lender)

This multi-purpose endorsement, discussed in detail at § 6.6, insures a lender that its mortgage is not invalid or unenforceable because of a charge that the loan is usurious. This is accomplished by the express deletion of the usury provisions of Section 5 of the Exclusions from Coverage in all ALTA loan policy forms (*see* § 5.2.1). However, exclusions for the violation of consumer protection and truth in lending laws are not deleted. Thus, if a consumer protection law includes a usury provision (*e.g.*, the Uniform Consumer Credit Code), the title insurance company may still have a defense. For this reason, Colorado Endorsement U or ALTA Endorsement 27-06, discussed above, may be preferable if usury is indeed a possibility.

§ 6.46 • WATER EXTRACTION/DEVELOPMENT

In the same manner that ALTA has issued endorsements to insure against loss or damage by reason of mineral development, four endorsements offer protection against the enforced removal or alteration of existing improvements by the extraction or development of water. In Colorado, the construction of new municipal water reservoirs or water treatment plants comes to mind. One major difference is clear: mineral development generally is not the result of the exercise of eminent domain proceedings by the developer, whereas the entity extracting or developing water resources would likely enjoy a right to condemn. The 2006 ALTA Owner's Policy contains an exclusion from coverage for exercise of the right of eminent domain. See "Exclusion 2. Eminent Domain" in § 4.4.2. These endorsements are specifically made subject to the exclusions from coverage contained in the policy.

ALTA Endorsements 41-06, 41.1-06, 41.2-06, and 41.3-06 are designed for issuance on commercial or residential property. Each of the water endorsements is similar to the ALTA 35-series "Minerals and Other Subsurface Substances" endorsements. Those endorsements insure against loss or damage by reason of the enforced removal or alteration of any improvement because of the future exercise of any right existing at the Date of Policy to use the surface of the land for extraction or development of minerals or other subsurface substances excepted from the description or excepted in Schedule B. Each of the Water Endorsements provides similar insurance with respect to extraction or development of water and contains an Exclusion No. 4 that includes loss or damage resulting from contamination, explosion, fire, vibration, fracturing, earthquake, subsidence, or negligence by a person or entity exercising a right to extract or develop water.

ALTA Endorsement 41-06 — Water — Buildings

For purposes of this water endorsement, "improvements" means a building.

ALTA Endorsement 41.1-06 — Water — Improvements

For purposes of this water endorsement, "improvements" means a building, structure located on the surface of the land, and any paved road, walkway, parking area, driveway, or curb affixed to the land at the Date of Policy and that by law constitutes real property, but excluding crops, landscapes, lawn, shrubbery, or trees.

ALTA Endorsement 41.2-06 — Water — Described Improvements

For purposes of this water endorsement, "improvements" means those improvements listed in the endorsement or in an attachment.

ALTA Endorsement 41.3-06 — Water — Land Under Development (Owner)

This water endorsement insures with respect to the existing improvements and future improvements as shown on referenced plans.

§ 6.47 • WATER RIGHTS — VALUE

Title to water rights will not be insured in a policy of title insurance in Colorado. Some of the title insurance companies exercise caution with a specific disclaimer. *See* § 2.16. Other companies have no disclaimer, but are careful not to describe water rights in Schedule A in either general or specific terms.

When Denver International Airport was created, an endorsement form was requested by the airport's legal staff to protect the city. Some very large title insurance policies were issued to insure the city's title to more than 50 square miles of land for the airport that were acquired by condemnation or purchase. Included in the value of those lands were decreed and undecreed water rights — tributary, nontributary, and not nontributary. In the condemnation hearings, considerable value had been placed on those water rights by appraisers hired by the landowners. The airport attorneys became concerned that a future claim against the city's title insurance policies could be reduced by the value of the water rights, which were not insured. As a solution to this possibility, the endorsement described below was created. Compare Colorado Endorsement W to ALTA Endorsement 31-06.

Colorado Endorsement W — Water Rights — Value (Owner)

In this specialized endorsement form, the title insurance company agrees that the value of the insured land, for purposes of a claim, will not be reduced by the value of the water rights appurtenant to the land. Stated another way, a \$100,000 policy will be available to satisfy a \$100,000 claim and will not be reduced to \$50,000 because the value of the water appurtenant to the land is 50 percent of the appraised market value of the land. Under similar circumstances, where your client is the purchaser of land whose value would be substantially reduced if the water rights were eliminated, you may want to consider this endorsement. Of course, the seller who is paying for a title insurance policy with a face amount inflated by the value of those same water rights will argue that the amount of title insurance purchased by the seller for the buyer's benefit should be reduced to the market value of the land minus the uninsured water rights.

§ 6.48 • ZONING

Zoning and other governmental laws, rules, regulations, and ordinances pertaining to the subdivision and regulation of the use of the land are excluded from coverage in the 2006 Owner's Policy and the 2006 Loan Policy unless a notice of violation has been recorded. *See* §§ 4.4.2 and 5.2.2.

Zoning coverage can, however, be obtained to some extent. The plain language Residential Title Insurance and Homeowner's policies protect the residential buyer against having to move an existing structure (other than a wall or fence) or a subsequent inability to use the land for a single family residence because of an existing zoning law. As discussed, various endorsement forms may be available to be added to the Owner's Policy or the Loan Policy.

For some unknown reason, however, Colorado Endorsement 100 does not contain zoning protection. Except in major transactions, lenders seldom require zoning endorsements, preferring to rely upon certificates obtained from the local zoning authority or upon opinions from their counsel or borrower's counsel.

Colorado Endorsement 123.1 — Zoning — Vacant Land (Owner/Lender)

This endorsement insures that the vacant land described in the policy bears a stated zoning classification according to the applicable zoning ordinance, and the zoning classification allows certain uses (that are stated in the endorsement) subject to compliance with the zoning ordinance and the procurement of any necessary consents or authorizations. Colorado Endorsement 123.2, discussed below, is available for improved land. The title insurance company does not incur liability under this endorsement based on a subsequent determination of invalidity of the zoning ordinance, the effect of which is to deny the uses stated in the endorsement to be permitted until a final decree denying such uses has been sustained in a court of competent jurisdiction. Stated another way, the title insurance company will not pay off simply because a district court has held a zoning ordinance to be invalid unless no appeal is taken or the district court's opinion is affirmed by the appellate courts.

Coverage does not include loss or damage because of the refusal of any person to purchase, lease, or lend money on the land. This is one of the most expensive endorsements regularly available in Colorado. The title insurance company normally inspects the land and satisfies its underwriter's requirements without assistance from buyer or seller.

Colorado Endorsement 123.2 — Zoning — Improved Land (Owner/Lender)

This endorsement offers the same coverage as Colorado Endorsement 123.1, except that Colorado Endorsement 123.2 applies to improved land. In addition to the same protections afforded by Colorado Endorsement 123.1, Colorado Endorsement 123.2 insures against loss or damage arising from a final court decree:

- 1) That the present use of the structure on the land is prohibited; or
- 2) Requiring such structure to be removed or altered because of a past or present (but not a future) violation of the zoning ordinance as to (a) the suitability of the building site for the structure, (b) adequate floor space in the structure, (c) setback of the structure from the property lines, or (d) height of the structure.

The limitations of Colorado Endorsement 123.1 apply to Colorado Endorsement 123.2 as well, which, like Colorado Endorsement 123.1, is expensive. The title insurance company normally inspects the land, and will probably require an improvement survey, certified to the title insurance company, to establish the building floor space, setback, height of the structure, and characteristics (slope, drainage, dimensions) of the site. *See Appendix 7* as to surveys; *see also* ALTA Endorsement 3.1-06.

Colorado Endorsement 130 and Colorado Endorsement 130C — Zoning (Owner)

This multi-purpose endorsement is available at a nominal charge on owner's policies for single family residences, including condominiums and townhomes (PUDs). Colorado Endorsement 130C may be issued at a higher charge on commercial property. Among other things (*see* §§ 6.7, 6.17, 6.19, 6.31, and 6.41), these two endorsements insure the owner against loss or damage suffered as a result of the enforced removal of the principal dwelling or commercial building on account of any violation, at

the date of the policy, of any zoning ordinance. The terms “principal dwelling” and “commercial building” do not include any outbuildings, detached garage, fence, driveway, retaining wall, plants, or common areas. If a condominium is described, only the space within the boundaries of the unit is included in the coverage. The term “zoning ordinance” excludes building codes, occupancy regulations, and subdivision laws. This endorsement does, however, supersede, to the extent stated, the Exclusions from Coverage portion of the 2006 Owner’s Policy (§ 4.4.2). *See* ALTA Endorsement 3.1-06.

Compare this zoning protection with the plain language Residential Owner’s and Homeowner’s policies, discussed in § 4.5.5.

ALTA Endorsement 3-06 — Zoning — Uses Prohibited (Owner/Lender)

This ALTA Endorsement undertakes the unenviable task of providing coverage if the land is *not* in a specified zone district, and if certain uses listed on the endorsement are *not* allowed in the specified zone district. Exclusions from coverage are failure to comply with the zoning ordinance or to secure necessary consents or authorizations, invalidity of the zoning ordinance unless decreed by final court order, and refusal of any person to purchase, lease, or lend money on the insured land.

ALTA Endorsement 3.1-06 — Zoning — Uses Allowed (Owner/Lender)

For improved land, this ALTA endorsement insures against loss or damage following a final court decree that use of the land with an existing structure is prohibited, or requiring removal or alteration of the structure because of certain listed violations of the ordinance.

ALTA Endorsement 3.2-06 — Zoning — Land Under Development (Owner/Lender)

Coverage is extended to a future development according to plans prepared by a named architect or engineer identified and described in the endorsement.

**EXHIBIT 6A • COLORADO AND ALTA ENDORSEMENT FORMS
ARRANGED BY SUBJECT**

The endorsement forms are reproduced in Chapter 7. The reference given here is to the discussion of a particular endorsement form. ALTA Endorsements can be identified by the suffix “-06”.

<u>Subject</u>	<u>Endorsement Form</u>	<u>Reference</u>
Access	103.7, 17-06, 17.1-06, 17.2-06	§ 6.5
Additional Insured	107.9, 107.10, 112.1, 15.1-06, 42-06	§ 6.38.1
Adjustable Rate Mortgage		See “Change in Rate of Interest”
Advances (Future Advances)	107.2, 107.3, 108.8, 110.7A, 110.7B, 111.7, 122, 122.1, 122.2, 122.3, 122.4, 122.5, 122.6, 122.9, 14-06, 14.1-06, 14.2-06, 14.3-06, 43-06, ALTA JR 1, JR 2	§ 6.6
Arbitration	150, 150.1	§ 6.8
Assessment Lien		See “Associations, Taxes and Assessments”
Assignment of Mortgage	104, 104.1, 104.2, 104.3, 104.4, 104.8, 104.10	§ 6.9
Assignment of Loan Policy	15, 10-06, 10.1-06	§ 6.9
Assignment of Rents or Leases	37-06	§ 6.9
Associations	100.13, 100.16, 115.1, 115.2, 4-06, 4.1-06, 5-06, 5.1-06	§§ 6.10, 6.14, 6.39
Balloon Mortgage		See “Change in Rate of Interest”
Bond Holders	112.1	§ 6.38.1
Capitalization of Interest		See “Change in Rate of Interest”
Change in Policy		See “Policy Changes”
Change in Rate of Interest	110.6, 110.7, 110.7A, 110.8, 110.9, 110.9A, 110.10, 122.3, 122.4, 122.5, 122.8, 122.9, 122.10, 122.11, 6-06, 6.2-06, 30-06	§ 6.11
Co-Insurance	23-06	§ 6.12
Collateral Assignment		See “Assignment of Mortgage”
Commitment, Modification of		See “Policy Changes”

Conditions		See "Restrictions"
Condominium	115, 115.1, 116.2, 4-06, 4.1-06	§ 6.14
Consumer Protection Laws		See "Rescission"
Contiguous Parcels		See "Survey"
Conversion to Leasehold	L, 13-06, 13.1-06	§ 6.29
Corrections	110.3	§ 6.38.2
Covenants		See "Restrictions"
Creditors' Rights	ALTA 21 (decertified 2-3-10)	§ 6.15
Declaration of Covenants		See "Restrictions"; "Condominium"
Deed of Trust, Partial Release		See "Partial Release of Mortgage"
Deletion of Exceptions		See "Exceptions"
Ditches and Canals		See "Easements"
Doing Business	24-06	§ 6.16
Donee		See "Additional Insured"; see also §§ 4.4.5 and 2.9.1
Easement	100, 100.3, 102.5, 103.1, 103.3, 115.2, 130, 130C, 18.1-06, 28-06, 28.1-06, 28.2-06	§ 6.17
Effective Date	104.2, 107.3, 107.11, 107.12	§ 6.38.3
Electronic Signatures	39-06	§ 6.38.5
Encroachments	100, 100.1, 100.2, 100.3, 102.4, 102.5, 102.6, 102.7, 103.2, 103.6, 103.8, 111.3, 115.1, 115.2, 116.2, 130, 130C, 9-06, 9.1-06, 9.2-06, 9.3-06, 9.10-06, 28.1-06, 28.2-06	§ 6.19
Energy Project	36-06, 36.1-06, 36.2-06, 36.3-06, 36.4-06, 36.5-06, 36.6-06, 36.7-06, 36.8-06	§ 6.18
Environmental Protection	8.1-06, 8.2-06, 9-06, 9.1-06, 9.2-06, 9.3-06	§ 6.20
Errors	110.3, 116.7	§ 6.38.2
Exceptions, Deletion of	110.1, 110.3, 130.2	§ 6.38.4
Exceptions, Insured Over	110.2	§ 6.38.4
Extensions	110.3	§ 6.38.3
Fairway	F	§ 6.21
First Loss Payable	20-06	§ 6.22

Foundations		See “Encroachments”
Future Advances		See “Advances”
Gap Coverage	GE-1, 130.2	§ 6.24
Gift		See “Additional Insured”; see also §§ 4.4.5 and 2.9.1
Gores and Strips		See “Survey”
Identified Risk	34-06	§ 6.41
Improvements		See “Survey Matters”; “Encroachments”
Imputation of Knowledge		See “Knowledge”
Increased Policy Amount and Inflation	I, 107.2, 107.3, 108.8, 130.1, 130.2, 130.3, 12-06	§§ 6.6, 6.25
Interest, Change in Rate		See “Change in Rate of Interest”
Interest Rate Swap	29-06, 29.1-06	§ 6.26
Junior Lien	ALTA JR-1, JR-2	§ 5.7
Knowledge	107.6, 107.7, 15-06, 15.1-06, 15.2-06, 16-06	§ 6.27
Last Dollar	LD	§ 6.28
Leasehold	L, 13-06, 13.1-06	§ 6.29
Liquor Reverter		See “Restrictions, Covenants, and Reverters”
Lien Protection		See “Environmental Lien”; “Mechanics’ Lien,” “Mortgage Associations,” “Taxes and Assessments”
Manufactured Housing	115.3, 116.5, 7-06, 7.1-06, 7.2-06	§ 6.30
Mechanics’ Lien	101, 101.1, 101.2, 101.2A, 101.3, 110.1, 130, 130C, ALTA A, ALTA B, ALTA C, ALTA D, 32.1-06, 32.2-06	§ 6.31
Mezzanine Financing	16-06	§ 6.32
Minerals	100.3, 100.23, 100.24, 100.26, 100.29, 100.30, 100.31, 103.1, 110.1, 110.2, 110.3, 9-06, 9.1-06, 9.2-06, 9.3-06, 9.10-06, 35-06, 35.1-06, 35.2-06, 35.3-06	§ 6.33
Mining		See “Minerals”
Modification of Mortgage	110.4, 110.5, 11-06, 11.1-06, 45-06	§ 6.34

Mortgage, Adjustable Rate		<i>See</i> “Change in Rate of Interest”
Mortgage, Advances Under		<i>See</i> “Advances”
Mortgage, Assignment of		<i>See</i> “Assignment of Mortgage”
Mortgage, Balloon Payment		<i>See</i> “Change in Rate of Interest”
Mortgage, Capitalization of Interest		<i>See</i> “Change in Rate of Interest”
Mortgage, Change in Rate of Interest		<i>See</i> “Change in Rate of Interest”
Mortgage, Modification of		<i>See</i> “Modification of Mortgage”
Mortgage, Partial Release of		<i>See</i> “Partial Release of Mortgage”
Mortgage, Participation	42-06	<i>See</i> “Additional Insured”
Mortgage, Recording	44-06	§ 6.36
Mortgage, Renegotiable Rate		<i>See</i> “Change in Rate of Interest”
Mortgage, Reverse		<i>See</i> “Advances”
Mortgage, Revolving Credit		<i>See</i> “Revolving Credit Mortgage”
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Mortgage, Subordination	11.1-06	§ 6.34
Mortgage, Tax	38-06	§ 6.44
Mortgage, Variable Rate		<i>See</i> “Change in Rate of Interest”
Obligatory Advances		<i>See</i> “Advances”
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Partial Release of Mortgage	111, 111.3, 111.4	§ 6.35
Partnership Dissolution	F	§ 6.21
Patents, U.S. and Colorado		<i>See</i> “Easements”; “Minerals”
Policy, Assignment of	15, 10-06, 10.1-06	§ 6.9
Policy Changes	107.9, 107.10, 112.1, 110.3, 116.7, 107.11, 107.12, 104.2, 107.3, 110.1, 110.2	§ 6.38

Private Rights	9.6-06, 9.6.1-06, 9.9-06	See "Restrictions"
PUD (Planned Unit Development)	115.2, 5-06, 5.1-06	§ 6.39
Possession		See "Adverse Possession"
Property Owners Association		See "Associations"
Proprietor of Vein or Lode		See "Easements"; "Minerals"
Protective Covenants		See "Restrictions"
Public Street		See "Access"
Rate of Interest, Change in		See "Change in Rate of Interest"
Recording, Mortgage	42-06	§ 6.36
Releases		See "Partial Release of Mortgage"
Renegotiable Rate Mortgage		See "Change in Rate of Interest"
Rescission	125, 2-06	§ 6.40
Restrictions	100, 100.1, 100.2, 100.3, 100.4, 100.5, 100.6, 100.11, 100.12, 100.18, 100.20, 102.4, 102.5, 115.1, 115.2, 130, 130C, 9-06, 9.1-06, 9.2-06, 9.3-06, 9.6-06, 9.9-06	§ 6.41
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Streets		See "Access"; "Taxes and Assessments"
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Chapter 7

ENDORSEMENT FORMS

SYNOPSIS

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ALTA Construction Loan Policy Endorsement B — Mechanics' Lien (Decertified)

ALTA Construction Loan Policy Endorsement C — Mechanics' Lien (Decertified)

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Future Policy Endorsement

**ALTA CONSTRUCTION LOAN POLICY ENDORSEMENT A •
MECHANICS' LIEN (DECERTIFIED)**

ENDORSEMENT

ALTA Endorsement A

Attached to Construction Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material, for that portion of the cost thereof the payment for which the insured has advanced funds, and which services, labor or material were furnished prior to _____ for an improvement or work related to the land.

This endorsement does not insure against loss or damage by reason of failure by the insured to comply with or to enforce the provisions of any agreement to which the insured is a party which relate to advancing the proceeds of the loan secured by the insured mortgage.

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

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

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**ALTA CONSTRUCTION LOAN POLICY ENDORSEMENT B •
MECHANICS' LIEN (DECERTIFIED)**

ENDORSEMENT

ALTA Endorsement B

Attached to Construction Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material heretofore or hereafter furnished for that portion of the proceeds of the loan secured by the insured mortgage now or hereafter advanced in compliance with a legal obligation to advance contained in a written agreement which must exist at the date of this endorsement.

This endorsement does not insure against loss or damage by reason of failure by the insured to comply with or to enforce the provisions of any agreement to which the insured is a party which relate to advancing the proceeds of the loan secured by the insured mortgage.

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

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

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**ALTA CONSTRUCTION LOAN POLICY ENDORSEMENT C •
MECHANICS' LIEN (DECERTIFIED)**

ENDORSEMENT

ALTA Endorsement C

Attached to Construction Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material heretofore or hereafter furnished for that portion of the proceeds of the loan secured by the insured mortgage now or hereafter advanced prior to the filing of any assertion of a statutory lien or right thereto in the public records or thereafter advanced with the written consent of the Company.

This endorsement does not insure against loss or damage by reason of failure by the insured to comply with or to enforce the provisions of any agreement to which the insured is a party which relate to advancing the proceeds of the loan secured by the insured mortgage.

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

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

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**ALTA CONSTRUCTION LOAN POLICY ENDORSEMENT D •
MECHANICS' LIEN (DECERTIFIED)**

ENDORSEMENT

ALTA Endorsement D

Attached to Construction Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material heretofore or hereafter furnished.

This endorsement does not insure against loss or damage by reason of failure by the insured to comply with or to enforce the provisions of any agreement to which the insured is a party which relate to advancing the proceeds of the loan secured by the insured mortgage.

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

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

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COLORADO ENDORSEMENT F • PARTNERSHIP DISSOLUTION (FAIRWAY)

ENDORSEMENT

Colorado Endorsement F

Attached to Owner's Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby assures and agrees with the insured that, notwithstanding anything to the contrary contained in this policy, in the event of loss or damage insured against under this policy, the Company shall not deny liability under this policy to the insured on the ground that after the effective date of this policy a dissolution or termination of the insured partnership has occurred or a new partnership has been formed solely by reason of any one or more transfers of all or any part of the partnership interests of:

(i) any one or more of the general partners of the insured to a Designated Transferee; and/or

(ii) any one or more of the limited partner(s) of the insured; and/or

(iii) any one or more of the limited partner's interest to the current general partner or a Designated Transferee (hereafter called "Permitted Transfers").

The Company hereby agrees that it shall be and remain liable to any successor of the named insured resulting from any such Permitted Transfer, in accordance with all of the terms and provisions of this policy, notwithstanding any such transfer of partnership interests or admission of new or substituted general or limited partners. The benefits of the insurance coverage provided for herein shall be limited to the date of the policy and shall be subject to the Exclusions from Coverage, the Schedules and the Conditions and Stipulations of the Policy, and any rights or defenses the Company would have had against the named insured or its constituent partners before or after any withdrawal or substitution thereof. A Designated Transferee shall be:

This endorsement should not be construed as providing any insurance (a) as to matters attaching or created after date of policy; or (b) as to the status of the insured after any permitted transfer.

This endorsement is made a part of the commitment or policy. It is subject to all the terms of the commitment or policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amount of the commitment or policy and prior endorsements are not changed.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT GE-1 • GAP COVERAGE

ENDORSEMENT

Colorado Endorsement GE-1
Attached to Commitment No.

Issued by
BLANK TITLE INSURANCE COMPANY

Said Commitment is hereby amended by deleting Paragraph 6 of Schedule B, Section 2.

The Company hereby insures against loss or damage by reason of there being recorded any deeds, mortgages, lis pendens, liens or other title encumbrances which first appear in the public records subsequent to the effective date of the Commitment, but prior to the effective date of the Policy. "Public records" as used herein means those records in which under state statutes deeds, mortgages, judgment liens or lis pendens must be recorded in order to impart constructive notice to purchasers of the land for value without knowledge.

This endorsement does not insure against such loss or damage if the existence of such deeds, mortgages, lis pendens, liens or other title encumbrances is actually known to the proposed insured prior to or at the time of the closing. The closing is defined herein as being the time of the execution and delivery to the proposed insured of the documents creating the interest of the proposed insured.

Protection under this endorsement is conditioned by the following requirements:

- (a) Properly executed instruments creating the estate or interest to be insured must be delivered to the Company issuing the Commitment within 24 hours of the closing.
- (b) Affidavit, Agreement and Lien Guaranty attached hereto must be fully executed by the party or entity described in Paragraph 3 of Schedule A.

This endorsement is made a part of the Commitment and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Commitment and prior endorsements, if any, nor does it extend the effective date of the Commitment and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT I • INFLATION

ENDORSEMENT

Colorado Endorsement I

Attached to Owner's Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company, recognizing the current effect of inflation on real property valuation and intending to provide additional monetary protection to the Insured Owner named in said Policy, hereby modifies said Policy, as follows:

1. Notwithstanding anything contained in said Policy to the contrary, the amount of insurance provided by said Policy, as stated in Schedule A thereof, is subject to cumulative annual upward adjustments in the manner and to the extent hereinafter specified.
2. "Adjustment Date" is defined, for the purpose of this Endorsement, to be 12:01 a.m. on the first January 1 which occurs more than six months after the Date of Policy, as shown in Schedule A of the Policy to which this Endorsement is attached, and on each succeeding January 1.
3. An upward adjustment will be made on each of the Adjustment Dates, as defined above, by increasing the maximum amount of insurance provided by said Policy (as said amount may have been increased theretofore under the terms of this Endorsement) by the same percentage, if any, by which the United States Department of Commerce Composite Construction Cost Index (base period 1972) for the month of September immediately preceding exceeds the highest Index number for the month of September in any previous year which is subsequent to Date of Policy; provided, however, that the maximum amount of insurance in force shall never exceed ___% of the amount of insurance stated in Schedule A of said Policy, less the amount of any claim paid under said Policy which, under the terms of the Conditions and Stipulations, reduces the amount of insurance in force. There shall be no annual adjustment in the amount of insurance for years in which there is no increase in said Construction Cost Index.
4. In the settlement of any claim against the Company under said Policy, the amount of insurance in force shall be deemed to be the amount which is in force as of the date on which the insured claimant first learned of the assertion or possible assertion of such claim, or as of the date of receipt by the Company of the first notice of such claim, whichever shall first occur.

Nothing herein contained shall be construed as extending or changing the effective date of said Policy.

This Endorsement, when countersigned below by a Validating Signatory, is made a part of said Policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

NOTE: In connection with a future application for title insurance covering said land, reissue credit on premium charges (if applicable at all) will be allowed only upon the original face amount of insurance as stated in Schedule A of said Policy.

ALTA ENDORSEMENT JR 1 • SUPPLEMENTAL COVERAGE

American Land Title Association

Endorsement JR 1
Revised 8-1-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. This endorsement is subject to the Exclusions from Coverage, the Exceptions contained in Schedule A and the Conditions in the policy.
2. Date of Endorsement: _____ [or the date of recording of the Insured's Mortgage, whichever is more recent].
3. The Insured's Mortgage means: *(describe the Insured's Mortgage)*.
4. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. Any document purporting to vest the Title recorded in the Public Records subsequent to Date of Policy and on or prior to Date of Endorsement, except:
 - [i.
 - ii.
 - iii.]
 - b. Any Monetary Lien other than the Insured's Mortgage, recorded in the Public Records subsequent to Date of Policy and on or prior to Date of Endorsement except:
 - [i.
 - ii.
 - iii.]
5. If the box is checked, this policy incorporates the ALTA Form JR 2 Endorsement:

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

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ALTA ENDORSEMENT JR 2 • FUTURE ADVANCE

American Land Title Association

Endorsement JR 2 (Future Advance)
Revised 8-1-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. This endorsement is subject to the Exclusions from Coverage, the Exceptions contained in Schedule A and the Conditions in the policy.

2. This endorsement applies if:
 - a. The Insured's Mortgage creates a valid and enforceable lien on the Title;
 - b. The borrower named in the Insured's Mortgage ("Borrower") is the owner of the Title at the date an advance is made pursuant to the note or agreement secured by the Insured's Mortgage;
 - c. The Insured's Mortgage secures repayment of future advances; and
 - d. The policy has been endorsed with an ALTA JR 1.

3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A future advance secured by the Insured's Mortgage not having the same priority over a Monetary Lien as the Insured's Mortgage except for the following matters:
 - i. Ad Valorem taxes or assessments;
 - ii. Federal tax liens;
 - iii. Environmental protection liens;
 - iv. Monetary Liens or claims of lien Known to the Insured prior to the date of an advance; or
 - v. Monetary Liens or claims of lien for services, labor, materials or equipment.
 - b. The invalidity or unenforceability of the lien of the Insured's Mortgage resulting from the provisions of the Insured's Mortgage which provide for changes in the rate of interest.
 - c. Loss of priority of the lien of the Insured's Mortgage resulting from changes in the rate of interest calculated in accordance with the formula provided in the Insured's Mortgage at the date it is recorded in the Public Records.

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American Land Title Association

**Endorsement JR 2 (Future Advance)
Revised 8-1-12**

4. This Endorsement does not insure:
- a. That the Borrower owns the Title nor that the Insured's Mortgage creates a lien on the Title, nor the validity, enforceability, or priority of the lien of the Insured's Mortgage, except to the extent expressly stated; nor
 - b. Against loss or damage resulting from (1) usury, (2) any consumer credit protection or truth in lending law, or (3) bankruptcy or insolvency proceedings of the Borrower.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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COLORADO ENDORSEMENT L • LEASEHOLD (OWNER'S)

ENDORSEMENT

Colorado Endorsement L

Attached to Owner's Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Said policy is hereby amended in the following particulars:

- A. Section 1 of the Conditions and Stipulations is hereby amended by adding a subsection (h) as follows:
- (h) "leasehold estate": The right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the Lease which limit such right of possession.
- B. Sections 14, 15, 16 and 17 of the Conditions and Stipulations is hereby renumbered as Sections 16, 17, and 19, respectively.
- C. The Conditions and Stipulations are amended by adding Sections 14 and 15 as follows:
14. Valuation of Estate or Interest Insured. If, in computing loss or damage incurred by the insured, it becomes necessary to determine the value of the estate or interest insured by this policy, the value shall consist of the then present worth of the excess, if any, of the fair market rental value of the estate or interest, undiminished by any matters for which claim is made, for that part of the term stated in Schedule A then remaining plus any renewal or extended term for which a valid option to renew or extend is contained in the Lease, over the value of the rent and other consideration required to be paid under the Lease for the same period.
15. Miscellaneous Items of Loss. In the event the insured is evicted from possession of all or a part of the land by reason of any matters insured against by this policy, the following, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estate or interest insured by this policy.
- (a) The reasonable cost of removing and relocating any personal property which the insured has the right to remove and relocate, situated on the land at the time of eviction, the cost of transportation of that personal property for the initial twenty-five miles incurred in connection with the relocation, and the reasonable cost of repairing the personal property damaged by reason of the removal and relocation. The costs referred to above shall not exceed in the aggregate the value of the personal property prior to its removal and relocation.
- "Personal property," above referred to, shall mean chattels and property which because of its character and manner of affixation to the land, can be severed therefrom without causing appreciable damage to the property severed or to the land to which the property is affixed.
- (b) Rent or damages for use and occupancy of the land prior to the eviction which the insured as owner of the leasehold estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

(c) The amount of rent which, by the terms of the Lease, the insured must continue to pay to the lessor after eviction for the land, or part thereof, from which the insured has been evicted.

(d) The fair market value, at the time of the eviction, of the estate or interest of the insured in any sublease of all or part of the land existing at the date of the eviction.

(e) Damages which the insured may be obligated to pay to any sublessee on account of the breach of any sublease of all or part of the land caused by the eviction.

The total liability of the Company under said policy and any endorsement therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT L • LEASEHOLD (LOAN)

ENDORSEMENT

Colorado Endorsement L

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Said policy is hereby amended in the following particulars:

- A. Section 1 of the Conditions and Stipulations is hereby amended by adding a subparagraph (h) as follows:

(h) "leasehold estate": The right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the Lease which limit such right of possession.

- B. Sections 13, 14, 15 and 16 of the Conditions and Stipulations is hereby renumbered as Sections 15, 16, 17 and 18, respectively.

- C. The Conditions and Stipulations are amended by adding Sections 13 and 14, as follows:

13. Valuation of Estate or Interest Insured. If, in computing loss or damage incurred by the insured, it becomes necessary to determine the value of the estate or interest insured by this policy, the value shall consist of the then present worth of the excess, if any, of the fair market rental value of the estate or interest, undiminished by any matters for which claim is made, for that part of the term stated in Schedule A then remaining plus any renewal or extended term for which a valid option to renew or extend is contained in the Lease, over the value of the rent and other consideration required to be paid under the Lease for the same period.

14. Miscellaneous Items of Loss. In the event the insured acquires all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of these Conditions and Stipulations and thereafter is evicted from possession of all or a part of the land by reason of any matters insured against by this policy, the following, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estate or interest insured by this policy.

(a) The reasonable cost of removing and relocating any personal property which the insured has the right to remove and relocate, situated on the land at the time of eviction, the cost of transportation of the personal property for the initial twenty-five miles incurred in connection with the relocation, and the reasonable cost of repairing the personal property damaged by reason of the removal and relocation. The costs referred to above shall not exceed in the aggregate the value of the personal property prior to its removal and relocation.

"Personal property," above referred to, shall mean chattels and property which because of its character and manner of affixation to the land, can be severed therefrom without causing appreciable damage to the property severed or to the land to which the property is affixed.

(b) Rent or damages for use and occupancy of the land prior to the eviction which the insured as owner of the leasehold estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

(c) The amount of rent which, by the terms of the Lease, the insured must continue to pay to the lessor after eviction for the land, or part thereof, from which the insured has been evicted.

(d) The fair market value, at the time of the eviction, of the estate or interest of the insured in any sublease of all or part of the land existing at the date of the eviction.

(e) Damages which the insured may be obligated to pay to any sublessee on account of the breach of any sublease of all or part of the land caused by the eviction.

The total liability of the Company under said policy and any endorsement therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT LD • LAST DOLLAR

ENDORSEMENT

Colorado Endorsement LD

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The liability of the Company under this policy will not be reduced under Paragraph 9(b) of the Conditions and Stipulations as the result of payment on the indebtedness secured by the insured mortgage, except to the extent such payments reduce the total indebtedness secured by the insured mortgage below the Amount of Insurance stated in Schedule A.

The total liability of the Company under said Policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said Policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said Policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions thereof.

This endorsement is not to be construed as insuring the title as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

This Endorsement is made a part of the policy and is subject to all the terms and provision thereof and of any prior endorsement thereto. Except to the extent expressly stated, this Endorsement neither modifies any of the terms and provisions of the policy and prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT U • USURY

ENDORSEMENT

Colorado Endorsement U

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the insured against loss which said insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and adjudges that the lien of the mortgage referred to in Schedule A is invalid or unenforceable because of usury, under the laws of the State of Colorado.

This coverage shall continue after the loan has been satisfied.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT W • WATER RIGHTS — VALUE

ENDORSEMENT

Colorado Endorsement W

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby agrees with the Insured that solely for the purposes of valuing the insured estate or interest in the Land in the settlement of any claim made under the terms of this Policy, the value of said estate shall be the value of the Land, and water rights appurtenant to the Land. The Policy and this Endorsement do not insure title to or rights in and to the water rights.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

ALTA ENDORSEMENT 1-06 (STREET ASSESSMENTS)

American Land Title Association

**Endorsement 1-06 (Street Assessments)
Adopted 6-17-06**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company 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 lien of any assessments for street improvements under construction or completed at Date of Policy.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 2-06 (TRUTH IN LENDING) (DECERTIFIED)

American Land Title Association

**Endorsement 2-06 (Truth in Lending)
Adopted 6-17-06**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

any final judgment of a court of competent jurisdiction that either the lien of the Insured Mortgage has been terminated or the Title of an Insured, who has acquired all or any part of the Land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner, that discharges the lien of the Insured Mortgage, has been defeated by a valid exercise of the right of rescission conferred by the Federal Truth-in-Lending Act and that the right or rights of rescission existed because neither the credit transaction evidenced by the Insured Mortgage nor the right of rescission was exempted or excepted by the provisions of Regulation Z (12 CFR 226).

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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ALTA ENDORSEMENT 3-06 (ZONING)

American Land Title Association

**Endorsement 3-06 (Zoning)
Adopted 06-17-06**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,
 - a. According to applicable zoning ordinances and amendments, the Land is not classified Zone _____;
 - b. The following use or uses are not allowed under that classification:

2. There shall be no liability under this endorsement based on
 - a. Lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.a. does not modify or limit the coverage provided in Covered Risk 5.
 - b. The invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.
 - c. The refusal of any person to purchase, lease or lend money on the Title covered by this policy.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 3.1-06 (ZONING — COMPLETED STRUCTURE)

American Land Title Association

Endorsement 3.1-06 (Zoning-Completed Structure)
Revised 10-22-09**ENDORSEMENT**

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,
 - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone _____;
 - b. the following use or uses are not allowed under that classification:
 - c. There shall be no liability under paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.

2. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing structure, as specified in paragraph 1.b. or requiring the removal or alteration of the structure, because, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:
 - a. Area, width, or depth of the Land as a building site for the structure
 - b. Floor space area of the structure
 - c. Setback of the structure from the property lines of the Land
 - d. Height of the structure, or
 - e. Number of parking spaces.

3. There shall be no liability under this endorsement based on:
 - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
 - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANYBy: _____
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ALTA ENDORSEMENT 3.2-06 (ZONING — LAND UNDER DEVELOPMENT)

American Land Title Association

Endorsement 3.2-06 (Zoning – Land Under Development)

Revised 04-02-2012

Technical Correction 10-18-2012, 12-01-2015

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement:
 - a. "Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.
 - b. "Plans" means those site and elevation plans made by [name of architect or engineer] dated _____, last revised _____, designated as [name of project] consisting of ___ sheets.

2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy
 - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone _____;
 - b. the following use or uses are not allowed under that classification:
 - c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.

3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any Improvement, as specified in paragraph 2.b. or requiring the removal or alteration of the Improvement, because of a violation of the zoning ordinances and amendments in effect at Date of Policy with respect to any of the following matters:
 - a. Area, width, or depth of the Land as a building site for the Improvement
 - b. Floor space area of the Improvement
 - c. Setback of the Improvement from the property lines of the Land
 - d. Height of the Improvement, or
 - e. Number of parking spaces.

4. There shall be no liability under this endorsement based on:
 - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
 - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.



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American Land Title Association

Endorsement 3.2-06 (Zoning – Land Under Development)

Revised 04-02-2012

Technical Correction 10-18-2012, 12-01-2015

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 4-06 (CONDOMINIUM — ASSESSMENTS PRIORITY)

American Land Title Association

**Endorsement 4-06
(Condominium—Assessments Priority)
Adopted 06-17-2006, Revised 10-16-2008, 02-03-2010
Technical Correction 12-01-2016**

**ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY**

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

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. The priority of any lien for charges and assessments provided for in the condominium statutes and condominium documents at Date of Policy over the lien of any Insured Mortgage identified in Schedule A.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal, to purchase the unit and its common elements that was exercised or could have been exercised at Date of Policy.

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

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 4.1-06 (CONDOMINIUM — CURRENT ASSESSMENTS)

American Land Title Association

Endorsement 4.1-06
 (Condominium—Current Assessments)
 Adopted 06-17-2006, Revised 10-16-2008
 Technical Correction 12-01-2016

ENDORSEMENT
 Attached to Policy No. _____
 Issued by
BLANK TITLE INSURANCE COMPANY

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

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at Date of Policy.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.

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

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
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**ALTA ENDORSEMENT 5-06
(PLANNED UNIT DEVELOPMENT — ASSESSMENTS PRIORITY)**

American Land Title Association

**Endorsement 5-06
(Planned Unit Development—Assessments Priority)
Adopted 06-17-2006 Revised 10-16-2008, 02-03-2010
Technical Correction 12-01-2016, 12-01-2017**

**ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY**

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

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
2. The priority of any lien for charges and assessments in favor of any association of owners that are provided for in any document at Date of Policy and referred to in Schedule B over the lien of any Insured Mortgage identified in Schedule A.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

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

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
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**ALTA ENDORSEMENT 5.1-06
(PLANNED UNIT DEVELOPMENT — CURRENT ASSESSMENTS)**

American Land Title Association

Endorsement 5.1-06
(Planned Unit Development—Current Assessments)
Adopted 06-17-2006 Revised 10-16-2008
Technical Correction 12-01-2016, 12-01-2017

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

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

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
2. Any charges or assessments in favor of any association of owners, that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

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

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 6-06 (VARIABLE RATE MORTGAGE)

American Land Title Association

Endorsement 6-06 (Variable Rate Mortgage)

Revised 10-16-08

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

1. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for changes in the rate of interest.
2. Loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon:

1. usury, or
2. any consumer credit protection or truth in lending law.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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**ALTA ENDORSEMENT 6.2-06
(VARIABLE RATE MORTGAGE — NEGATIVE AMORTIZATION)**

American Land Title Association

**Endorsement 6.2-06
(Variable Rate Mortgage-Negative Amortization)
Revised 10-16-08**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

1. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for (a) interest on interest, (b) changes in the rate of interest, or (c) the addition of unpaid interest to the principal balance of the loan.
2. Loss of priority of the lien of the Insured Mortgage as security for the principal balance of the loan, including any unpaid interest which was added to principal in accordance with the provisions of the Insured Mortgage, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by (a) changes in the rate of interest, (b) interest on interest, or (c) increases in the unpaid principal balance of the loan resulting from the addition of unpaid interest.

"Changes in the rate of interest", as used in this endorsement shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon:

1. usury, or
2. any consumer credit protection or truth in lending law.

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

[Witness clause optional]

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ALTA ENDORSEMENT 7-06 (MANUFACTURED HOUSING UNIT)

American Land Title Association

Endorsement 7-06 (Manufactured Housing Unit)
Adopted 6-17-06

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The term "Land" includes the manufactured housing unit located on the land described in Schedule A at Date of Policy.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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**ALTA ENDORSEMENT 7.1-06
(MANUFACTURED HOUSING — CONVERSION; LOAN)**

American Land Title Association

**Endorsement 7.1-06
(Manufactured Housing—Conversion; Loan)
Adopted 06-17-06**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The term "Land" includes the manufactured housing unit located on the land described in Schedule A at Date of Policy.
2. Unless excepted in Schedule B, the Company insures against loss or damage sustained by the Insured if, at Date of Policy:
 - a. A manufactured housing unit is not located on the land described in Schedule A.
 - b. The manufactured housing unit located on the land is not real property under the law of the state where the Land described in Schedule A is located.
 - c. The owner of the land is not the owner of the manufactured housing unit.
 - d. Any lien is attached to the manufactured housing unit as personal property, including
 - i. a federal, state, or other governmental tax lien,
 - ii. UCC security interest,
 - iii. a motor vehicular lien, or
 - iv. other personal property lien.
 - e. The lien of the Insured Mortgage is not enforceable against the Land.
 - f. The lien of the Insured Mortgage is not enforceable in a single foreclosure procedure.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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**ALTA ENDORSEMENT 7.2-06
(MANUFACTURED HOUSING — CONVERSION; OWNERS)**

American Land Title Association

**Endorsement 7.2-06
(Manufactured Housing— Conversion; Owners)
Adopted 06-17-06**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The term "Land" includes the manufactured housing unit located on the land described in Schedule A at Date of Policy.
2. Unless excepted in Schedule B, the Company insures against loss or damage, sustained by the Insured if, at Date of Policy:
 - a. A manufactured housing unit is not located on the land described in Schedule A.
 - b. The manufactured housing unit located on the land is not real property under the law of the state where the Land described in Schedule A is located.
 - c. The Insured is not the owner of the manufactured housing unit.
 - d. Any lien is attached to the manufactured housing unit as personal property, including
 - i. a federal, state, or other governmental tax lien,
 - ii. UCC security interest,
 - iii. a motor vehicular lien, or
 - iv. other personal property lien.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

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ALTA ENDORSEMENT 8.1-06 (ENVIRONMENTAL PROTECTION LIEN)

American Land Title Association

Endorsement 8.1-06 (Environmental Protection Lien)
Adopted 6-17-06

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The insurance afforded by this endorsement is only effective if the Land is used or is to be used primarily for residential purposes.

The Company insures against loss or damage sustained by the Insured by reason of lack of priority of the lien of the Insured Mortgage over

- (a) any environmental protection lien that, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided by any state statute in effect at Date of Policy, except environmental protection liens provided by the following state statutes:

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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**ALTA ENDORSEMENT 8.2-06
(COMMERCIAL ENVIRONMENTAL PROTECTION LIEN)**

American Land Title Association

**Endorsement 8.2-06
(Commercial Environmental Protection Lien)
Adopted 10-16-08**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

**By: _____
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ALTA ENDORSEMENT 9-06 (RESTRICTIONS, ENCROACHMENTS, MINERALS — LOAN POLICY)

American Land Title Association

Endorsement 9-06
(Restrictions, Encroachments, Minerals – Loan Policy)
Revised 04-02-12
Technical Correction 08-01-16

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
 - b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of an Improvement located on the Land as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.



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American Land Title Association**Endorsement 9-06
(Restrictions, Encroachments, Minerals – Loan Policy)****Revised 04-02-12
Technical Correction 08-01-16**

4. The Company insures against loss or damage sustained by reason of:
- a. An encroachment of:
 - i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or
 - ii. an Improvement located on adjoining land onto the Land at Date of Policy
unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.;
 - b. A final court order or judgment requiring the removal from any land adjoining the Land of an encroachment identified in Schedule B; or
 - c. Damage to an Improvement located on the Land, at Date of Policy:
 - i. that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
 - ii. resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
 - c. except as provided in Section 3.d, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
 - d. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; or
 - e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory



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ALTA ENDORSEMENT 9.1-06 (COVENANTS, CONDITIONS, AND RESTRICTIONS — UNIMPROVED LAND — OWNER’S POLICY)

American Land Title Association

**Endorsement 9.1-06
(Covenants, Conditions and Restrictions –
Unimproved Land – Owner’s Policy)
Revised 04-02-12**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 9.2-06 (COVENANTS, CONDITIONS, AND RESTRICTIONS — IMPROVED LAND — OWNER'S POLICY)

American Land Title Association

Endorsement 9.2-06
(Covenants, Conditions and Restrictions –
Improved Land – Owner's Policy)
Revised 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

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American Land Title Association

**Endorsement 9.2-06
(Covenants, Conditions and Restrictions –
Improved Land – Owner’s Policy)
Revised 04-02-12**

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

[Witness clause optional]

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ALTA ENDORSEMENT 9.3-06 (COVENANTS, CONDITIONS, AND RESTRICTIONS — LOAN POLICY)

American Land Title Association

**Endorsement 9.3-06
(Covenants, Conditions and Restrictions – Loan Policy)
Revised 04-02-12**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to the Land at Date of Policy that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
 - b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

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American Land Title Association

**Endorsement 9.3-06
(Covenants, Conditions and Restrictions – Loan Policy)
Revised 04-02-12**

-
- 4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.d, any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 9.6-06 (PRIVATE RIGHTS — LOAN POLICY)

American Land Title Association

**Endorsement 9.6-06
(Private Rights – Loan Policy)
Revised 04-02-13**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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**ALTA ENDORSEMENT 9.6.1-06
(PRIVATE RIGHTS — CURRENT ASSESSMENTS — LOAN POLICY)**

American Land Title Association

**Endorsement 9.6.1-06
(Private Rights—Current Assessments—Loan Policy)
Adopted 04-02-15**

**ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY**

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - (a) "Covenant" means a covenant, condition, limitation, or restriction in a document or instrument recorded in the Public Records at Date of Policy.
 - (b) "Private Right" means:
 - (i) a private charge or assessment due and payable at Date of Policy;
 - (ii) an option to purchase;
 - (iii) a right of first refusal; or
 - (iv) a right of prior approval of a future purchaser or occupant.
3. The Company insures against loss or damage sustained by the Insured under the policy if enforcement of a Private Right in a Covenant affecting the Title at Date of Policy:
 - (a) Results in the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage; or
 - (b) Causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - (a) Any Covenant contained in an instrument creating a lease;
 - (b) Any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; [or]
 - (c) Any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or
 - (d) Any Private Right in an instrument identified in Exception(s) _____ in Schedule B].

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
AUTHORIZED SIGNATORY

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ALTA ENDORSEMENT 9.7-06 (RESTRICTIONS, ENCROACHMENTS, MINERALS — LAND UNDER DEVELOPMENT — LOAN POLICY)

American Land Title Association

Endorsement 9.7-06
(Restrictions, Encroachments, Minerals –
Land Under Development – Loan Policy)
Adopted 04-02-12
Technical Correction 08-01-16

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Future Improvement" means a building, structure, road, walkway, driveway, curb, lawn, shrubbery or trees to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property.
 - c. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.
 - d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer), dated _____, last revised _____, designated as (insert name of project or project number) consisting of _____ sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
 - b. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.



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American Land Title Association

Endorsement 9.7-06
(Restrictions, Encroachments, Minerals –
Land Under Development – Loan Policy)
Adopted 04-02-12
Technical Correction 08-01-16

4. The Company insures against loss or damage sustained by reason of:
- a. An encroachment of:
 - i. an Improvement located on the Land at Date of Policy or a Future Improvement, onto adjoining land or onto that portion of the Land subject to an easement; or
 - ii. an Improvement located on adjoining land onto the Land at Date of Policy,
 unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.;
 - b. Damage to an Improvement located on the Land at Date of Policy or a Future Improvement:
 - i. that encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
 - ii. resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
 - c. except as provided in Section 3.d, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
 - d. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; or
 - e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 9.8-06 (COVENANTS CONDITIONS AND RESTRICTIONS — LAND UNDER DEVELOPMENT — OWNER'S POLICY)

American Land Title Association

Endorsement 9.8-06
(Covenants Conditions and Restrictions –
Land Under Development – Owner's Policy)
Adopted 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Future Improvement" means a building, structure, road, walkway, driveway, curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - c. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated _____, last revised _____, designated as (*insert name of project or project number*) consisting of _____ sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
 - b. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
 - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

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American Land Title Association

**Endorsement 9.8-06
(Covenants Conditions and Restrictions –
Land Under Development – Owner’s Policy)
Adopted 04-02-12**

-
- 4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
 - c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or
 - d. contamination, explosion, fire, vibration, fracturing, earthquake or subsidence.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 9.9-06 (PRIVATE RIGHTS — OWNER'S POLICY)

American Land Title Association

Endorsement 9.9-06
(Private Rights – Owner's Policy)
Adopted 04-02-13

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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American Land Title Association

**Endorsement 9.9-06
(Private Rights – Owner’s Policy)
Adopted 04-02-13**

By: _____
Authorized Signatory

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**ALTA ENDORSEMENT 9.10-06 (RESTRICTIONS, ENCROACHMENTS,
MINERALS — CURRENT VIOLATIONS — LOAN POLICY)**

American Land Title Association

Endorsement 9.10-06
(Restrictions, Encroachments, Minerals –
Current Violations – Loan Policy)
Adopted 04-02-13
Technical Correction 08-01-16

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation at Date of Policy of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
 - b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of an Improvement located on the Land as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. The Company insures against loss or damage sustained by reason of:
 - a. An encroachment of:
 - i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or
 - ii. an Improvement located on adjoining land onto the Land at Date of Policy unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.;



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American Land Title Association

**Endorsement 9.10-06
(Restrictions, Encroachments, Minerals –
Current Violations – Loan Policy)
Adopted 04-02-13
Technical Correction 08-01-16**

- b. A final court order or judgment requiring the removal from any land adjoining the Land of an encroachment identified in Schedule B; or
- c. Damage to an Improvement located on the Land, at Date of Policy:
 - i. that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
 - ii. resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
- 5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
 - c. except as provided in Section 3.d., any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
 - d. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; or
 - e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 10-06 (ASSIGNMENT)

American Land Title Association

Endorsement 10-06 (Assignment)
Revised 02-03-10

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The name of the Insured at Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read: _____.
2. The Company insures against loss or damage sustained by the Assignee by reason of:
 - a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee: _____;
 - b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____;

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the assignment being deemed a fraudulent conveyance or fraudulent transfer; or
2. the assignment being deemed a preferential transfer.

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee, or (2) if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transactions laws.

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.

Date of Endorsement: _____

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 10.1-06 (ASSIGNMENT AND DATE DOWN)

American Land Title Association

Endorsement 10.1-06 (Assignment and Date Down)

Revised 02-03-10

Technical Correction 08-01-16

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

- 1 The name of the Insured at Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read: _____.
2. The Company insures against loss or damage sustained by the Assignee by reason of:
 - a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee: _____;
 - b. Any liens for taxes or assessments affecting the Title that are due and payable on Date of Endorsement, except: _____;
 - c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except: _____;
 - d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to Date of Policy in the Public Records and on or prior to Date of Endorsement, except: _____;
 - e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____.

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the assignment being deemed a fraudulent conveyance or fraudulent transfer; or
2. the assignment being deemed a preferential transfer.

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American Land Title Association

Endorsement 10.1-06 (Assignment and Date Down)

Revised 02-03-10

Technical Correction 08-01-16

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee, or, (2) if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transaction laws.

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.

Date of Endorsement: _____

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 11-06 (MORTGAGE MODIFICATION)

American Land Title Association

**Endorsement 11-06 (Mortgage Modification)
Adopted 6-17-06**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

1. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title at Date of Endorsement as a result of the agreement dated _____, recorded _____ ("Modification"); and
2. The lack of priority of the lien of the Insured Mortgage, at Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: [Specify exceptions, if any]

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the Modification being deemed a fraudulent conveyance or fraudulent transfer; or
2. the Modification being deemed a preferential transfer except where the preferential transfer results from the failure
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or to a judgment or lien creditor.

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.

Date of Endorsement: _____

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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**ALTA ENDORSEMENT 11.1-06
(MORTGAGE MODIFICATION WITH SUBORDINATION)**

American Land Title Association

**Endorsement 11.1-06
(Mortgage Modification with Subordination)
Adopted 10-22-09**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

1. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title at Date of Endorsement as a result of the agreement dated _____, recorded _____ ("Modification"); and
2. The lack of priority of the lien of the Insured Mortgage, at Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: [Specify exceptions, if any]
3. The following matters not being subordinate to the lien of the Insured Mortgage: [Specify subordinate matters, if any]

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the Modification being deemed a fraudulent conveyance or fraudulent transfer; or
2. the Modification being deemed a preferential transfer except where the preferential transfer results from the failure
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or to a judgment or lien creditor.

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.

Date of Endorsement: _____

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 11.2-06 (MORTGAGE MODIFICATION WITH ADDITIONAL AMOUNT OF INSURANCE)

American Land Title Association

Endorsement 11.2-06
(Mortgage Modification with Additional Amount of Insurance)
Adopted 12-02-13

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement only:
 - a. "Modification" means the agreement between _____ and _____ dated _____ [and recorded _____ as document number] _____.
 - b. "Date of Endorsement" means _____.

2. The Amount of Insurance is increased to \$_____.

3. Subject to the exclusions in Section[s] 4 [and 5] of this endorsement, the Exclusions from Coverage, the Exceptions contained in Schedule B, and the Conditions contained in the policy, and any exclusion or exception in any prior endorsement, the Company insures as of Date of Endorsement against loss or damage sustained by the Insured by reason of any of the following:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title as a result of the Modification;
 - b. The lack of priority of the lien of the Insured Mortgage over defects in or liens or encumbrances on the Title, except: [*Specify additional exceptions, if any*];
 - c. The failure of the following matters to be subordinate to the lien of the Insured Mortgage: [*Specify matters to be insured as subordinate, if any*].

4. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:
 - a. the Modification being deemed a fraudulent conveyance or fraudulent transfer; or
 - b. the Modification being deemed a preferential transfer except where the preferential transfer results from the failure
 - i. to timely record the instrument of transfer; or
 - ii. of such recordation to impart notice to a purchaser for value or to a judgment or lien creditor.

- [5. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of *the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage because all applicable mortgage recording or similar intangible taxes were not paid* at time of recording of the Modification].

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

[Witness clause optional]

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American Land Title Association

**Endorsement 11.2-06
(Mortgage Modification with Additional Amount of Insurance)
Adopted 12-02-13**

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 12-06 (AGGREGATION — LOAN)

American Land Title Association

Endorsement 12-06 (Aggregation – Loan)
Revised 04-02-13

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

- 1. The following policies are issued in conjunction with one another:

<u>POLICY NUMBER:</u>	<u>STATE:</u>	<u>AMOUNT OF INSURANCE:</u>
_____		\$ _____
_____		\$ _____
_____		\$ _____

- 2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.
- 3. Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under these policies is \$ _____.
- 4. Section 7(a)(i) of the Conditions of this policy is amended to read:

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

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

- (a) to pay or tender payment of the lesser of the value of the Title as insured or the Aggregate Amount of Insurance applicable under this policy at the date the claim was made by the Insured Claimant, or to purchase the Indebtedness.
- (i) to pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable under this policy together with any cost, attorneys' fees, and costs 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

- 5. Section 8(a) and 8(b) of the Conditions of this policy are amended to read:

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
 - (i) the Aggregate Amount of Insurance,

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American Land Title Association

**Endorsement 12-06 (Aggregation – Loan)
Revised 04-02-13**

- (ii) the Indebtedness,
 - (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
 - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as the date it is settled and paid.

6. Section 10 of the Conditions of this policy is amended to read:

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Aggregate Amount of Insurance by the amount of the payment.
- (b) However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Aggregate Amount of Insurance afforded under this endorsement except to the extent that the payments reduce the Indebtedness.
- (c) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company under this policy, except as provided in Section 2 of these Conditions, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this endorsement.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 12.1-06 (AGGREGATION — STATE LIMITS — LOAN)

American Land Title Association

Endorsement 12.1-06 (Aggregation – State Limits - Loan)
Adopted 04-02-13

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The following policies are issued in conjunction with one another:

<u>POLICY NUMBER:</u>	<u>STATE:</u>	<u>AMOUNT OF INSURANCE:</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.

3. The Aggregate Amount of Insurance under this policy is either:

- a. \$ _____; or.
- b. If the Land is located in one of the states identified in this subsection, then the Aggregate Amount of Insurance is restricted to the amount shown below:

<u>STATE</u>	<u>AGGREGATE AMOUNT OF INSURANCE</u>
_____	\$ _____
_____	\$ _____

4. Section 7(a)(i) of the Conditions of this policy is amended to read:

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

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

- (a) to pay or tender payment of the lesser of the value of the Title as insured or the Aggregate Amount of Insurance applicable under this policy at the date the claim was made by the Insured Claimant, or to purchase the Indebtedness.
- (i) To pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable under this policy, together with any cost, attorneys' fees, and costs and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of

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American Land Title Association

Endorsement 12.1-06 (Aggregation – State Limits - Loan)
Adopted 04-02-13

payment or tender of payment and that the Company is obligated to pay;
or

5. Section 8(a) and 8(b) of the Conditions of this policy are amended to read:

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
- (i) the Aggregate Amount of Insurance for the State where the Land is located,
 - (ii) the Indebtedness,
 - (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
 - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as the date it is settled and paid.

6. Section 10 of the Conditions of this policy is amended to read:

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the applicable Aggregate Amount of Insurance by the amount of the payment.
- (b) If this policy insures the Title to Land located in a state identified in Section 3 b. of this endorsement:
- (i) all payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Aggregate Amount of Insurance by the amount of the payment; but
 - (ii) a payment made for loss or damage on Land insured in one of the policies identified in Section 1 on Land located outside this state shall not reduce the Aggregate Amount of Insurance in Section 3.b. of this endorsement until the Aggregate Amount of Insurance in Section 3.a. is reduced below the Aggregate Amount of Insurance in Section 3.b .
- (c) However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Aggregate Amount of Insurance afforded under this endorsement except to the extent that the payments reduce the Indebtedness.

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American Land Title Association

**Endorsement 12.1-06 (Aggregation – State Limits - Loan)
Adopted 04-02-13**

(d) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company under this policy, except as provided in Section 2 of these Conditions, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this endorsement.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 13-06 (LEASEHOLD — OWNER'S)

American Land Title Association

Endorsement 13-06 (Leasehold – Owner's)
Revised 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms shall mean:
 - a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
 - b. "Lease": the lease described in Schedule A.
 - c. "Leasehold Estate": the right of possession granted in the Lease for the Lease Term.
 - d. "Lease Term": the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
 - e. "Personal Property": property, in which and to the extent the Insured has rights, located on or affixed to the Land on or after Date of Policy that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.
 - f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted.
 - g. "Tenant Leasehold Improvements": Those improvements, in which and to the extent the Insured has rights, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.
2. Valuation of Estate or Interest Insured:

If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction of the Insured, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

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American Land Title Association**Endorsement 13-06 (Leasehold – Owner's)
Revised 04-02-12****3. Additional items of loss covered by this endorsement:**

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(ii) of the Conditions:

- a. The reasonable cost of (i) removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, (ii) transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, (iii) repairing the Personal Property damaged by reason of the removal and relocation, and (iv) restoring the Land to the extent damaged as a result of the removal and relocation of the Personal Property and required of the Insured solely because of the Eviction.
 - b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
 - c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.
 - d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
 - e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
 - f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.
 - g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.
4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

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.

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American Land Title Association

**Endorsement 13-06 (Leasehold – Owner's)
Revised 04-02-12**

[Witness clause optional]

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ALTA ENDORSEMENT 13.1-06 (LEASEHOLD — LOAN)

American Land Title Association

Endorsement 13.1-06 (Leasehold – Loan)
Revised 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms shall mean:
 - a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
 - b. "Lease": the lease described in Schedule A.
 - c. "Leasehold Estate": the right of possession granted in the Lease for the Lease Term.
 - d. "Lease Term": the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
 - e. "Personal Property": property, in which and to the extent the Insured has rights, located on or affixed to the Land on or after Date of Policy that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.
 - f. "Remaining Lease Term": the portion of the Lease Term remaining after the Tenant has been Evicted.
 - g. "Tenant": the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.
 - h. "Tenant Leasehold Improvements": Those improvements, in which and to the extent the Insured has rights, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Tenant's expense or in which the Tenant has an interest greater than the right to possession during the Lease Term.
2. Valuation of Estate or Interest Insured:

If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction of the Tenant, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

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American Land Title Association**Endorsement 13.1-06 (Leasehold – Loan)
Revised 04-02-12****3. Additional items of loss covered by this endorsement:**

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(iii) of the Conditions:

- a. The reasonable cost of (i) removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, (ii) transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, (iii) repairing the Personal Property damaged by reason of the removal and relocation, and (iv) restoring the Land to the extent damaged as a result of the removal and relocation of the Personal Property and required of the Insured solely because of the Eviction.
 - b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
 - c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.
 - d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
 - e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
 - f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.
 - g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.
4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

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.

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American Land Title Association

**Endorsement 13.1-06 (Leasehold – Loan)
Revised 04-02-12**

[Witness clause optional]

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ALTA ENDORSEMENT 14-06 (FUTURE ADVANCE — PRIORITY)

American Land Title Association

Endorsement 14-06 (Future Advance – Priority)
Revised 2-3-11

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.
 - a. "Agreement," as used in this endorsement, shall mean the note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.
 - b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
 - c. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.
 - c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances.
3. The Company also insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.
 - b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

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American Land Title Association**Endorsement 14-06 (Future Advance – Priority)
Revised 2-3-11**

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor;
 - b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy;
 - c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);
 - d. Any federal or state environmental protection lien; or
 - e. Usury, or any consumer credit protection or truth-in-lending law. [; or
 - f. Any mechanic's or materialmen's lien.]
5. The Indebtedness includes Advances.

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

[Witness clause optional]

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ALTA ENDORSEMENT 14.1-06 (FUTURE ADVANCE — KNOWLEDGE)

American Land Title Association

Endorsement 14.1-06 (Future Advance – Knowledge)
Revised 2-3-11**ENDORSEMENT**

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.
 - a. "Agreement," as used in this endorsement, shall mean the note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.
 - b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
 - c. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.
 - c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances.
3. The Company also insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.
 - b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

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American Land Title Association**Endorsement 14.1-06 (Future Advance – Knowledge)
Revised 2-3-11**

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor;
 - b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy;
 - c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);
 - d. Any federal or state environmental protection lien;
 - e. The lack of priority of any Advance made after the Insured has Knowledge of the existence of liens, encumbrances or other matters affecting the Land intervening between Date of Policy and the Advance, as to the intervening lien, encumbrance or other matter; or
 - f. Usury, or any consumer credit protection or truth-in-lending law. [; or
 - g. Any mechanic's or materialmen's lien.]
5. The Indebtedness includes Advances.

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

[Witness clause optional]

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By: _____
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ALTA ENDORSEMENT 14.2-06 (FUTURE ADVANCE — LETTER OF CREDIT)

American Land Title Association

Endorsement 14.2-06 (Future Advance — Letter of Credit)
Revised 2-3-11**ENDORSEMENT**

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Section 2 of this endorsement is subject to the exclusions in Section 3 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.
 - a. "Agreement," as used in this endorsement, shall mean the letter of credit and its reimbursement agreement, the repayment of Advances under which is secured by the Insured Mortgage.
 - b. "Advance," as used in this endorsement, shall mean only an advance made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.
 - c. The invalidity or unenforceability or loss of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances.
3. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy; or
 - b. Any federal or state environmental protection lien; or
 - c. Limitations, if any, imposed under the Bankruptcy Code (11 U.S.C.) on the amount that may be recovered from the mortgagor's estate. [;or
 - d. Any mechanic's or materialmen's lien.]
4. The Indebtedness includes Advances.

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American Land Title Association

**Endorsement 14.2-06 (Future Advance — Letter of Credit)
Revised 2-3-11**

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

[Witness clause optional]

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ALTA ENDORSEMENT 14.3-06 (FUTURE ADVANCE — REVERSE MORTGAGE)

American Land Title Association

Endorsement 14.3-06 (Future Advance – Reverse Mortgage)

Revised 2-3-11

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions in the Policy, except Exclusion 3(d), the provisions of the Conditions and the exceptions contained in Schedule B.
 - a. "Agreement," as used in this endorsement, shall mean the note or loan agreement, repayment of Advances under which is secured by the Insured Mortgage.
 - b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
 - c. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.
 - c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no Indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances, (iv) failure of the Insured Mortgage to state the term for Advances, or (v) failure of the Insured Mortgage to state the maximum amount secured by the Insured Mortgage.
 - d. The invalidity or unenforceability of the lien of the Insured Mortgage because of the failure of the mortgagors to be at least 62 years of age at Date of Policy.
3. The Company also insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the principal portion of the Indebtedness.
 - b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

"Interest," as used in this paragraph 3, shall include lawful interest based on appreciated value.

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American Land Title Association Endorsement 14.3-06 (Future Advance – Reverse Mortgage)
Revised 2-3-11

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor;
 - b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy;
 - c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);
 - d. Any federal or state environmental protection lien; or
 - e. Usury, or any consumer credit protection or truth-in-lending law. [; or
 - f. Any mechanic's or materialmen's lien.]

5. The Indebtedness includes Advances.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

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COLORADO ENDORSEMENT 15 • ASSIGNMENT OF POLICY**ENDORSEMENT**

Colorado Endorsement 15

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby agrees that it will consent to the assignment of this policy to any of the following:

- (a) Successor(s) by change of name;
- (b) successor(s) by dissolution, merger, consolidation or reorganization;
- (c) statutory trustee(s) of the Insured in the event it forfeits its charter;
- (d) any corporate grantee or assignee of the Insured under a deed or assignment conveying the land described in Schedule A, the stock of which is wholly owned by the Insured, or any such corporate grantee assignee which wholly owns the stock of the Insured, or any affiliated company of the Insured provided the stock of such affiliated company and the stock of the Insured are both wholly owned by the same corporation;
- (e) the stockholders of the Insured in the event it distributed the property described in Schedule of the policy to such stockholders.

This agreement is subject to the following:

- (1) The customary charge for the assignment of a policy.
- (2) Such term successor(s) shall include no other grantees of the Insured whether voluntary or involuntary.
- (3) Nothing herein contained shall be construed as an agreement to extend the effective date of the policy, nor shall any consent by this Company to any of such assignments be construed as extending such date.
- (4) No liability is assumed hereunder or under any consent by the Company to any of such assignments for defects or encumbrances attained or created subsequent to the date of the policy.
- (5) The rights of any assignee aforesaid under said policy shall be subject to the defenses, if any, which the Company may have against the original Insured.
- (6) No liability will be assumed under any consent to any such assignments for loss or damage resulting from any failure to record the instrument or instruments necessary to evidence of record the assignee's estate or interest in the land described in Schedule A of the policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

ALTA ENDORSEMENT 15-06 (NONIMPUTATION — FULL EQUITY TRANSFER)

**American Land Title Association Endorsement 15-06 (Nonimputation —Full Equity Transfer)
Adopted 6-17-06**

[Entity as the named Insured and vestee of the insured estate or interest identified in Schedule A]

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify exiting or contributing partner(s) of the insured partnership entity, member(s) or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

whether or not imputed to the Insured by operation of law, provided

[identify the “incoming” partners, members, or shareholders]

acquired the Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 15.1-06 (NONIMPUTATION — ADDITIONAL INSURED)

American Land Title Association Endorsement 15.1-06 (Nonimputation-Additional Insured)
 Adopted 6-17-06

[Entity as the named Insured in the policy and vestee of the insured estate or interest identified in Schedule A]

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

For purposes of the coverage provided by this endorsement,

[identify the “incoming” partner, member or shareholder]

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

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify, as applicable, the existing and/or exiting partner(s) of the insured partnership entity, member(s) or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

whether or not imputed to the Additional Insured by operation of law, to the extent of the percentage interest in the Insured acquired by Additional Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

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

AGREED AND CONSENTED TO:

 INSURED

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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**ALTA ENDORSEMENT 15.2-06
(NONIMPUTATION — PARTIAL EQUITY TRANSFER)**

American Land Title Association

**Endorsement 15.2-06
(Nonimputation-Partial Equity Transfer)
Adopted 6-17-06
Technical Correction 08-01-15**

[Incoming partner, member, or shareholder, as the named Insured in its own policy, where the vestee of the insured estate or interest identified in Schedule A is a partnership, limited liability company, or corporation]

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[Identify, as applicable, the existing and/or exiting partner(s) of the vestee partnership entity, member(s) or manager(s) of the vestee limited liability company entity, or officer(s) and/or director(s) of the vestee corporate entity]

whether or not imputed to the entity identified in paragraph 3 of Schedule A or to the Insured by operation of law, but only to the extent that the Insured acquired the Insured's interest in the entity as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 16-06 (MEZZANINE FINANCING)

American Land Title Association

Endorsement 16-06 (Mezzanine Financing)
Adopted 6-17-06

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Mezzanine Lender is: _____ and each successor in ownership of its loan ("Mezzanine Loan") reserving, however, all rights and defenses as to any successor that the Company would have had against the Mezzanine Lender, unless the successor acquired the indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy as affecting Title.
2. The Insured
 - a. assigns to the Mezzanine Lender the right to receive any amounts otherwise payable to the Insured under this policy, not to exceed the outstanding indebtedness under the Mezzanine Loan; and
 - b. agrees that no amendment of or endorsement to this policy can be made without the written consent of the Mezzanine Lender.
3. The Company does not waive any defenses that it may have against the Insured, except as expressly stated in this endorsement.
4. In the event of a loss under the policy, the Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b) or (e) to refuse payment to the Mezzanine Lender solely by reason of the action or inaction or Knowledge, as of Date of Policy, of the Insured, provided
 - a. the Mezzanine Lender had no Knowledge of the defect, lien, encumbrance or other matter creating or causing loss on Date of Policy.
 - b. this limitation on the application of Exclusions from Coverage 3(a), (b) and (e) shall
 - i. apply whether or not the Mezzanine Lender has acquired an interest (direct or indirect) in the Insured either on or after Date of Policy, and
 - ii. benefit the Mezzanine Lender only without benefiting any other individual or entity that holds an interest (direct or indirect) in the Insured or the Land.
5. In the event of a loss under the Policy, the Company also agrees that it will not deny liability to the Mezzanine Lender on the ground that any or all of the ownership interests (direct or indirect) in the Insured have been transferred to or acquired by the Mezzanine Lender, either on or after the Date of Policy.
6. The Mezzanine Lender acknowledges
 - a. that the Amount of Insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is hereafter executed by an Insured and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment under this policy; and
 - b. that the Company shall have the right to insure mortgages or other conveyances of an interest in the Land, without the consent of the Mezzanine Lender.
7. If the Insured, the Mezzanine Lender or others have conflicting claims to all or part of the loss payable under the Policy, the Company may interplead the amount of the loss into Court. The Insured and the Mezzanine Lender shall be jointly and severally liable for the Company's reasonable cost for the interpleader and subsequent proceedings, including attorneys' fees. The Company shall be entitled to

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American Land Title Association

**Endorsement 16-06 (Mezzanine Financing)
Adopted 6-17-06**

payment of the sums for which the Insured and Mezzanine Lender are liable under the preceding sentence from the funds deposited into Court, and it may apply to the Court for their payment.

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

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

AGREED AND CONSENTED TO:

(Insert name of Insured)

(Insert name of Mezzanine Lender)

By: _____

By: _____

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 17-06 (ACCESS AND ENTRY)

American Land Title Association

**Endorsement 17-06 (Access and Entry)
Adopted 6-17-06**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

**By: _____
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ALTA ENDORSEMENT 17.1-06 (INDIRECT ACCESS AND ENTRY)

American Land Title Association

Endorsement 17.1-06 (Indirect Access and Entry)
Adopted 6-17-06**ENDORSEMENT**

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the easement identified [as Parcel _____] in Schedule A (the "Easement") does not provide that portion of the Land identified [as Parcel _____] in Schedule A both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 17.2-06 (UTILITY ACCESS)

American Land Title Association

Endorsement 17.2-06 (Utility Access)
Adopted 10-16-08

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services: **[CHECK ALL THAT APPLY]**

- Water service
- Natural gas service
- Telephone service
- Electrical power service
- Sanitary sewer
- Storm water drainage
- _____]
- _____]
- _____]

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

- (1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;
- (2) a gap between the boundaries of the rights-of-way or easements ; or
- (3) a termination by a grantor, or its successor, of the rights-of-way or easements.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 18-06 (SINGLE TAX PARCEL)

American Land Title Association

Endorsement 18-06 (Single Tax Parcel)
Adopted 6-17-06

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 18.1-06 (MULTIPLE TAX PARCEL — EASEMENTS)

American Land Title Association

**Endorsement 18.1-06
(Multiple Tax Parcel – Easements)
Adopted 06-17-2006
Technical Correction 12-01-2016**

**ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY**

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

- 1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel:	Tax Identification Numbers:
---------	-----------------------------
- 2. the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes, assessments or other charges imposed on the servient estate by a governmental authority.

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

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 18.2-06 (MULTIPLE TAX PARCEL)

American Land Title Association

Endorsement 18.2-06 (Multiple Tax Parcel)
Adopted 08-01-2016

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of those portions of the Land identified below not being assessed for real estate taxes under the listed Tax Identification Numbers or those Tax Identification Numbers including any additional land:

Parcel: _____ Tax Identification Numbers: _____

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 19-06 (CONTIGUITY — MULTIPLE PARCELS)

American Land Title Association

Endorsement 19-06 (Contiguity – Multiple Parcels)
Adopted 6-17-06

[For use when multiple separate parcels make up the Land]

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

1. the failure [of the _____ boundary line of Parcel A] of the Land to be contiguous to [the _____ boundary line of Parcel B] **[for more than two parcels, continue as follows: “; of [the _____ boundary line of Parcel B] of the Land to be contiguous to [the _____ boundary line of Parcel C] and so on until all contiguous parcels described in the policy have been accounted for];** or
2. the presence of any gaps, strips, or gores separating any of the contiguous boundary lines described above.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 19.1-06 (CONTIGUITY — SINGLE PARCEL)

American Land Title Association

Endorsement Form 19.1-06 (Contiguity-Single Parcel)
Adopted 6-17-06

[For use when the Insured desires contiguity coverage between the Land and some other parcel of land]

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 19.2-06 (CONTIGUITY — SPECIFIED PARCELS)

American Land Title Association

Endorsement 19.2-06
(Contiguity—Specified Parcels)
Adopted 04-02-15

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of there being any gaps, strips, or gores lying within or between [Example: Parcel A, B, C or Tract 1, 2, 3] of the Land[except as depicted on the survey made by _____ dated _____, and designated Job No. _____].

This endorsement is issued as part of the policy and is subject to the policy's (i) Exclusions from Coverage, (ii) Conditions, and (iii) Exceptions from Coverage contained in Schedule B, in addition to (iv) exceptions and exclusions, if any, in this endorsement. Except as expressly stated, this endorsement does not (i) modify the policy or any other endorsement to the policy, (ii) extend the Date of Policy, or (iii) increase the Amount of Insurance. To the extent the policy or any previously issued endorsement to the policy is inconsistent with this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any other endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
AUTHORIZED SIGNATORY

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ALTA ENDORSEMENT 20-06 (FIRST LOSS — MULTIPLE PARCEL TRANSACTIONS)

American Land Title Association Endorsement 20-06 (First Loss-Multiple Parcel Transactions)
Adopted 6-17-06

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

This endorsement is effective only if the Collateral includes at least two parcels of real property.

1. For the purposes of this endorsement:
 - a. "Collateral" means all property, including the Land, given as security for the Indebtedness.
 - b. "Material Impairment Amount" means the amount by which any matter covered by the policy for which a claim is made diminishes the value of the Collateral below the Indebtedness.

2. In the event of a claim resulting from a matter insured against by the policy, the Company agrees to pay that portion of the Material Impairment Amount that does not exceed the extent of liability imposed by Section 8 of the Conditions without requiring:
 - a. maturity of the Indebtedness by acceleration or otherwise,
 - b. pursuit by the Insured of its remedies against the Collateral, or
 - c. pursuit by the Insured of its remedies under any guaranty, bond or other insurance policy.

3. Nothing in this endorsement shall impair the Company's right of subrogation. However, the Company agrees that its right of subrogation shall be subordinate to the rights and remedies of the Insured. The Company's right of subrogation shall include the right to recover the amount paid to the Insured pursuant to Section 2 of this endorsement from any debtor or guarantor of the Indebtedness, after payment or other satisfaction of the remainder of the Indebtedness and other obligations secured by the lien of the Insured Mortgage. The Company shall have the right to recoup from the Insured Claimant any amount received by it in excess of the Indebtedness up to the amount of the payment under Section 2.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 21-06 — CREDITOR'S RIGHTS (DECERTIFIED 2-3-2010)

ENDORSEMENT

ALTA Endorsement 21-06 (*Decertified 2-3-2010*)

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the avoidance in whole or in part, or a court order providing some other remedy, based on the voidability of any estate, interest, or Insured Mortgage because of the occurrence on or before Date of Policy of a fraudulent transfer or a preference under federal bankruptcy, state insolvency, or similar creditors' rights laws.

The coverage provided by this endorsement shall include the payment of costs, attorneys' fees, and expenses necessary to defend the Insured against those counts, and no others, of any litigation seeking a court order which will result in loss or damage against which this endorsement provides insurance to the extent provided in the Conditions.

This endorsement does not insure against loss or damage if the Insured (a) knew when it acquired any estate, interest, or Insured Mortgage that the transfer, conveyance, or Insured Mortgage was intended to hinder, delay, or defraud any creditor, or (b) is found by a court not to be a transferee or purchaser in good faith.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By _____
Authorized Signatory

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ALTA ENDORSEMENT 22-06 (LOCATION)

American Land Title Association

**Endorsement 22-06 (Location)
Adopted 6-17-06**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of a (*description of improvement*), known as (*street address*), to be located on the Land at Date of Policy.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

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ALTA ENDORSEMENT 22.1-06 (LOCATION AND MAP)

American Land Title Association

Endorsement 22.1-06 (Location and Map)
Adopted 6-17-06

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of (i) a *(description of improvement)*, known as *(street address)*, to be located on the Land at Date of Policy, or (ii) the map, if any, attached to this policy to correctly show the location and dimensions of the Land according to the Public Records.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 23-06 (CO-INSURANCE — SINGLE POLICY)

American Land Title Association

Endorsement 23-06 (Co-Insurance – Single Policy)
Revised 10-16-08

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

(“Issuing Co-Insurer”)

CO-INSURANCE ENDORSEMENT

Attached to and made a part of Issuing Co-Insurer’s Policy No. _____ (“Co-Insurance Policy”). Each title insurance company executing this Co-Insurance Endorsement, other than the Issuing Co-Insurer, shall be referred to as a “Co-Insurer.” Issuing Co-Insurer and each Co-Insurer are collectively referred to as “Co-Insuring Companies.”

- 1. By issuing this endorsement to the Co-Insurance Policy, each of the Co-Insuring Companies adopts the Co-Insurance Policy’s Covered Risks, Exclusions, Conditions, Schedules and endorsements, subject to the limitations of this endorsement.

Co-Insuring Companies	Name and Address	Policy Number [File Number]	Amount of Insurance	Percentage of Liability
Issuing Co-Insurer			\$	
Co-Insurer			\$	
Co-Insurer			\$	
Co-Insurer			\$	
Aggregate Amount of Insurance			\$	

- 2. Each of the Co-Insuring Companies shall be liable to the Insured only for its Percentage of Liability of: (a) the total of the loss or damage under the Co-Insurance Policy, but in no event greater than its respective Amount of Insurance set forth in this endorsement; and (b) costs, attorneys’ fees and expenses provided for in the Conditions.
- 3. Any notice of claim and any other notice or statement in writing required to be given under the Co-Insurance Policy must be given to each of the Co-Insuring Companies at its address set forth above.
- 4. Any endorsement to the Co-Insurance Policy issued after the date of this Co-Insurance Endorsement must be signed by each of the Co-Insuring Companies by its authorized officer or agent.
- 5. This Co-Insurance Endorsement is effective as of the Date of Policy of the Co-Insurance Policy. This Co-Insurance Endorsement may be executed in counterparts.

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American Land Title Association

**Endorsement 23-06 (Co-Insurance – Single Policy)
Revised 10-16-08**

This endorsement is issued as part of the Coinsurance 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.

DATED: _____

Issuing Co-Insurer:

Blank Title Insurance Company

By: _____

Co-Insurer:

Blank Title Insurance Company

By: _____

Co-Insurer:

Blank Title Insurance Company

By: _____

Co-Insurer:

Blank Title Insurance Company

By: _____

[Additional Co-Insurer signatures may be added if needed.]

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ALTA ENDORSEMENT 23.1-06 (CO-INSURANCE — MULTIPLE POLICIES)

American Land Title Association

**Endorsement 23.1-06
(Co-Insurance – Multiple Policies)
Adopted 08-01-2016
Revised 08-01-2017**

ALTA 23.1-06 (CO-INSURANCE — MULTIPLE POLICIES) ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

("Issuing Co-Insurer")

Attached to and made a part of Issuing Co-Insurer's Policy No. _____ ("Co-Insurance Policy"). Each title insurance company executing this Co-Insurance Endorsement, other than the Issuing Co-Insurer, shall be referred to as a "Co-Insurer." The Issuing Co-Insurer and each Co-Insurer are collectively referred to as "Co-Insuring Companies."

1. By issuing this Co-Insurance Endorsement to the Co-Insurance Policy, each of the Co-Insuring Companies adopts the Co-Insurance Policy's Covered Risks, Exclusions, Conditions, Schedules, and endorsements, except an ALTA 12-06 or ALTA 12.1-06 Aggregation Endorsement, if any, issued by any other of the Co-Insuring Companies, subject to the limitations of this Co-Insurance Endorsement.

Co-Insuring Companies	Name and Address	Policy Number [File Number]	Amount of Insurance	Percentage of Liability
Issuing Co-Insurer			\$	
Co-Insurer			\$	
Co-Insurer			\$	
Co-Insurer			\$	
Total	Co-Insurance		\$	
Amount				

2. Aggregation of Policy Liability
 - a. The Issuing Co-Insurer's liability under the Co-Insurance Policy may be aggregated with other policy liabilities issued by the Issuing Co-Insurer with either an ALTA 12-06 or ALTA 12.1-06 Aggregation Endorsement.
 - b. Each Co-Insurer may aggregate its liability under the Co-Insurance Policy with other policy liabilities issued by that Co-Insurer, but only if this Co-Insurance Endorsement is issued with that Co-Insurer's ALTA 12-06 or ALTA 12.1-06 Aggregation Endorsement.
 - c. Policy liability assumed by each of the Co-Insuring Companies may not be aggregated with other policy liabilities assumed by any other of the Co-Insuring Companies.
3. Each of the Co-Insuring Companies shall be liable to the Insured only for its Percentage of Liability of:
 - a. the total loss or damage under the Co-Insurance Policy, but in no event greater than its respective Aggregate Amount of Insurance set forth in its ALTA 12-06 or ALTA 12.1-06 Aggregation Endorsement, if any, and
 - b. the costs, attorneys' fees, and expenses provided for in the Conditions.
4. Any notice of claim and any other notice or statement in writing required to be given under the Co-Insurance Policy must be given to each of the Co-Insuring Companies at the addresses set forth above.
5. Any endorsement to the Co-Insurance Policy issued after the date of this Co-Insurance Endorsement must be signed by each of the Co-Insuring Companies by its authorized officer or agent.

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American Land Title Association

**Endorsement 23.1-06
(Co-Insurance – Multiple Policies)
Adopted 08-01-2016
Revised 08-01-2017**

- 6. This Co-Insurance Endorsement is effective as of the Date of Policy of the Co-Insurance Policy. This Co-Insurance Endorsement may be executed in counterparts.

This endorsement is issued as part of the Co-Insurance 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.

DATED: _____

**Issuing Co-Insurer:
BLANK TITLE INSURANCE COMPANY**

By: _____

**Co-Insurer:
_____ TITLE INSURANCE COMPANY**

By: _____

**Co-Insurer:
_____ TITLE INSURANCE COMPANY**

By: _____

**Co-Insurer:
_____ TITLE INSURANCE COMPANY**

By: _____

[Additional Co-Insurer signatures may be added if needed.]

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ALTA ENDORSEMENT 24-06 (DOING BUSINESS)

American Land Title Association

**Endorsement 24-06 (Doing Business)
Adopted 10-16-08**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage on the ground that making the loan secured by the Insured Mortgage constituted a violation of the "doing - business" laws of the State where the Land is located because of the failure of the Insured to qualify to do business under those laws.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

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ALTA ENDORSEMENT 25-06 (SAME AS SURVEY)

American Land Title Association

**Endorsement 25-06 (Same as Survey)
Adopted 10-16-08**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by _____ dated _____, and designated Job No. _____.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

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ALTA ENDORSEMENT 25.1-06 (SAME AS PORTION OF SURVEY)

American Land Title Association

**Endorsement 25.1-06 (Same as Portion of Survey)
Adopted 10-16-08**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified as [Example: Parcel A, B, C or Parcel 1, 2, 3] on the survey made by _____ dated _____, and designated Job No. _____.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

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ALTA ENDORSEMENT 26-06 (SUBDIVISION)

American Land Title Association

Endorsement 26-06 (Subdivision)
Adopted 10-16-08

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

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ALTA ENDORSEMENT 27-06 (USURY)

American Land Title Association

**Endorsement 27-06 (Usury)
Adopted 10-16-08**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage as security for the Indebtedness because the loan secured by the Insured Mortgage violates the usury law of the state where the Land is located.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

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**ALTA ENDORSEMENT 28-06
(EASEMENT — DAMAGE OR ENFORCED REMOVAL)**

**American Land Title Association Endorsement 28-06 (Easement – Damage or Enforced Removal)
Revised 02-03-10**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if the exercise of the granted or reserved rights to use or maintain the easement(s) referred to in Exception(s) _____ of Schedule B results in:

- (1) damage to an existing building located on the Land, or
- (2) enforced removal or alteration of an existing building located on the Land .

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

**By: _____
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**ALTA ENDORSEMENT 28.1-06
(ENCROACHMENTS — BOUNDARIES AND EASEMENTS)**

American Land Title Association

**Endorsement 28.1-06
(Encroachments – Boundaries and Easements)
Adopted 04-02-12**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 28.2-06 (ENCROACHMENTS — BOUNDARIES AND EASEMENTS — DESCRIBED IMPROVEMENTS)

American Land Title Association

**Endorsement 28.2-06
(Encroachments – Boundaries and Easements –
Described Improvements)
Adopted 04-02-13**

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

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

[The Company may list any Exceptions appearing in Schedule B for which it will not provide insurance pursuant to Section 3.c. or Section 3.d. The Company may insert "None" if it does not intend to limit the coverage.]

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory



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**ALTA ENDORSEMENT 28.3-06
(ENCROACHMENTS — BOUNDARIES AND EASEMENTS —
DESCRIBED IMPROVEMENTS AND LAND UNDER DEVELOPMENT)**

American Land Title Association

**Endorsement 28.3-06
(Encroachments—Boundaries and Easements—
Land Under Development)
Adopted 04-02-2015
Technical Correction 12-01-2016**

**ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY**

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

(The Company may list any Exceptions appearing in Schedule B for which it will not provide insurance pursuant to Section 3(c) or Section 3(d). The Company may insert "None" if it does not intend to limit the coverage.)

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

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 29-06 (INTEREST RATE SWAP ENDORSEMENT — DIRECT OBLIGATION)

American Land Title Association

Endorsement 29-06
(Interest Rate Swap Endorsement – Direct Obligation)
Adopted 02-03-10
Technical Correction 04-02-14 08-01-2016

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 3 of this endorsement, the Exclusions from Coverage in the policy, the Exceptions from Coverage contained in Schedule B, and the Conditions. As used in this endorsement:
 - a. "Date of Endorsement" is _____.
 - b. "Swap Obligation" means a monetary obligation under the interest rate exchange agreement dated _____, between _____ and the Insured existing at Date of Endorsement and secured by the Insured Mortgage. The Swap Obligation is included as a part of the Indebtedness.
2. The Company insures against loss or damage sustained by the Insured by reason of the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for the payment of the Swap Obligation at Date of Endorsement.
3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:
 - a. rights or obligations set, created or confirmed after the Date of Endorsement under a master interest rate exchange agreement existing on or after Date of Endorsement;
 - b. the stay, rejection or avoidance of the lien of the Insured Mortgage as security for the Swap Obligation, or a court order providing some other remedy, by the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws;
 - c. the calculation of the amount, if any, determined by a court of competent jurisdiction as the amount of the Swap Obligation[; or]
 - d. [the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for repayment of the Swap Obligation because all applicable mortgage recording or similar intangible taxes were not paid; or]
 - e. [if Date of Endorsement is after Date of Policy, add any necessary additional exceptions here].

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

[Witness clause optional]

TITLE INSURANCE COMPANY

BY: _____

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**ALTA ENDORSEMENT 29.1-06
(INTEREST RATE SWAP ENDORSEMENT — ADDITIONAL INTEREST)**

American Land Title Association

Endorsement 29.1-06
(Interest Rate Swap Endorsement – Additional Interest)
Adopted 02-03-10
Technical Correction 04-02-14 08-01-2016

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 3 of this endorsement, the Exclusions from Coverage in the Policy, the Exceptions from Coverage contained in Schedule B, and the Conditions. As used in this endorsement:
 - a. "Date of Endorsement" is _____.
 - b. "Swap Obligation" means a monetary obligation under the interest rate exchange agreement dated _____, between _____ and the Insured existing at Date of Endorsement and secured by the Insured Mortgage.
 - c. "Additional Interest" means the additional interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Endorsement for repayment of the Swap Obligation.
2. The Company insures against loss or damage sustained by the Insured by reason of the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for the payment of the Additional Interest at Date of Endorsement.
3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:
 - a. rights or obligations set, created or confirmed after the Date of Endorsement under a master interest rate exchange agreement existing on or after Date of Endorsement;
 - b. the stay, rejection or avoidance of the lien of the Insured Mortgage as security for the payment of the Additional Interest, or a court order providing some other remedy, by the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws;
 - c. the calculation of the amount, if any, determined by a court of competent jurisdiction as the amount of the Additional Interest; [or]
 - d. the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for repayment of the Swap Obligation because all applicable mortgage recording or similar intangible taxes were not paid [; or]
 - e. [if Date of Endorsement is after Date of Policy, add any necessary additional exceptions here].



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American Land Title Association

**Endorsement 29.1-06
(Interest Rate Swap Endorsement – Additional Interest)
Adopted 02-03-10
Technical Correction 04-02-14 08-01-2016**

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory



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ALTA ENDORSEMENT 29.2-06 (INTEREST RATE SWAP ENDORSEMENT — DIRECT OBLIGATION — DEFINED AMOUNT)

American Land Title Association

Endorsement 29.2-06
(Interest Rate Swap Endorsement –
Direct Obligation - Defined Amount)
Adopted 08-01-11
Technical Correction 04-02-14 08-01-2016

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 3 of this endorsement, the Exclusions from Coverage in the policy, the Exceptions from Coverage contained in Schedule B, and the Conditions. As used in this endorsement:
 - a. "Date of Endorsement" is _____.
 - b. "Swap Obligation" means a monetary obligation under the interest rate exchange agreement dated _____, between _____ and the Insured existing at Date of Endorsement and secured by the Insured Mortgage. The Swap Obligation is included as a part of the Indebtedness.
 - c. "Additional Amount of Insurance" is \$ _____ that is in addition to the Amount of Insurance stated in Schedule A and is applicable only to loss or damage under this endorsement.
2. The Company insures against loss or damage sustained by the Insured, not to exceed the Additional Amount of Insurance, by reason of the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the payment of the Swap Obligation at Date of Endorsement.
3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:
 - a. rights or obligations set, created, or confirmed after the Date of Endorsement under a master interest rate exchange agreement existing on or after Date of Endorsement;
 - b. the stay, rejection, or avoidance of the lien of the Insured Mortgage as security for the Swap Obligation, or a court order providing some other remedy, by the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws;
 - c. the calculation of the amount, if any, determined by a court of competent jurisdiction as the amount of the Swap Obligation[; or]
 - d. [the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for repayment of the Swap Obligation because all applicable mortgage recording or similar intangible taxes were not paid; or]
 - e. [if Date of Endorsement is after Date of Policy, add any necessary additional exceptions here].

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American Land Title Association

**Endorsement 29.2-06
(Interest Rate Swap Endorsement –
Direct Obligation - Defined Amount)
Adopted 08-01-11
Technical Correction 04-02-14 08-01-2016**

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory



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ALTA ENDORSEMENT 29.3-06 (INTEREST RATE SWAP ENDORSEMENT — ADDITIONAL INTEREST — DEFINED AMOUNT)

American Land Title Association

Endorsement 29.3-06
(Interest Rate Swap Endorsement –
Additional Interest - Defined Amount)
Adopted 08-01-11
Technical Correction 04-02-14 08-01-2016

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 3 of this endorsement, the Exclusions from Coverage in the policy, the Exceptions from Coverage contained in Schedule B, and the Conditions. As used in this endorsement:
 - a. "Date of Endorsement" is _____.
 - b. "Swap Obligation" means a monetary obligation under the interest rate exchange agreement dated _____, between _____ and the Insured existing at Date of Endorsement and secured by the Insured Mortgage.
 - c. "Additional Interest" means the additional interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Endorsement for repayment of the Swap Obligation.
 - d. "Additional Amount of Insurance" is \$ _____ that is in addition to the Amount of Insurance stated in Schedule A and is applicable only to loss or damage under this endorsement.
2. The Company insures against loss or damage sustained by the Insured, not to exceed the Additional Amount of Insurance, by reason of the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the payment of the Additional Interest at Date of Endorsement.
3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:
 - a. rights or obligations set, created, or confirmed after the Date of Endorsement under a master interest rate exchange agreement existing on or after Date of Endorsement;
 - b. the stay, rejection, or avoidance of the lien of the Insured Mortgage as security for the payment of Additional Interest, or a court order providing some other remedy, by the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws;
 - c. the calculation of the amount, if any, determined by a court of competent jurisdiction as the amount of the Additional Interest; or]
 - d. [the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for repayment of the Swap Obligation because all applicable mortgage recording or similar intangible taxes were not paid; or]
 - e. [if Date of Endorsement is after Date of Policy, add any necessary datedown exceptions here].

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.

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Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 30-06 (SHARED APPRECIATION MORTGAGE)

American Land Title Association

**One to Four Family Shared Appreciation
Mortgage Endorsement 30-06
Adopted 07-26-10**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The insurance afforded by this endorsement is only effective if the Land is a one to four family residence.

For the purposes of this endorsement, "Shared Appreciation" shall mean increases in the Indebtedness secured by the Insured Mortgage by reason of shared equity or appreciation in the value of the Land.

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

- (a) The invalidity or unenforceability of the lien of the Insured Mortgage as security for the Indebtedness caused by the provisions for Shared Appreciation; or
- (b) Loss of priority of the lien of the Insured Mortgage as security for the Indebtedness caused by the provisions for Shared Appreciation.

Nothing contained in this endorsement shall be construed as insuring against loss or damage sustained or incurred by reason of:

- (a) usury;
- (b) any consumer credit protection or truth-in-lending law;
- (c) costs, expenses or attorneys' fees required to obtain a determination, by judicial proceedings or otherwise, of the amount of the Shared Appreciation;
- (d) failure to comply with applicable laws and regulations regarding Shared Appreciation;
- (e) the stay, rejection or avoidance of the lien of the Insured Mortgage as security for the Shared Appreciation, or a court order providing some other remedy, by the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws; or
- (f) the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness because all applicable mortgage recording or similar intangible taxes were not paid.

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.

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American Land Title Association

**One to Four Family Shared Appreciation
Mortgage Endorsement 30-06
Adopted 07-26-10**

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 30.1-06 (COMMERCIAL PARTICIPATION INTEREST)

American Land Title Association

**Endorsement 30.1-06
(Commercial Participation Interest)
Adopted 8-1-12**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. This endorsement is subject to the exclusions in Section 4 of this endorsement, the Exclusions from Coverage in the policy, the Exceptions from Coverage contained in Schedule B, and the Conditions.
2. As used in this endorsement,
 - a. "Loan Documents" means those documents, as they exist at Date of Policy, creating the Indebtedness.
 - b. "Participation Interest" means those elements of interest, established and calculated pursuant to the formula provided in the Loan Documents, that are payable or allocated to the Insured based upon:
 - i. the borrower's equity in the Title;
 - ii. the increase in value of the Title; or
 - iii. cash flow.
3. The policy insures as of Date of Policy against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from the provisions in the Insured Mortgage or in the Loan Documents which provide for Participation Interest.
 - b. Lack of priority of the lien of the Insured Mortgage at Date of Policy as security for (i) the unpaid principal balance of the loan and (ii) the interest on the loan, including the Participation Interest, if any, which lack of priority is caused by the provisions in the Loan Documents for payment or allocation to the Insured of any Participation Interest.
4. The policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:
 - a. usury; unconscionability; or any consumer credit protection or truth-in-lending law;
 - b. disputes over the amount of Participation Interest;
 - c. failure to comply with applicable laws and regulations regarding Participation Interest;
 - d. the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Participation Interest because all applicable mortgage recording or similar intangible taxes were not paid; or
 - e. any statutory lien for services provided, labor performed, or materials or equipment furnished arising after Date of Policy.

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American Land Title Association

**Endorsement 30.1-06
(Commercial Participation Interest)
Adopted 8-1-12**

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 31-06 (SEVERABLE IMPROVEMENTS)

American Land Title Association

Endorsement 31-06 (Severable Improvements)
Adopted 2-3-11

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, "Severable Improvement" means property affixed to the Land on or after Date of Policy that by law does not constitute real property because:
 - a. of its character and manner of attachment to the Land; and
 - b. it can be severed from the Land without causing material damage to it or to the Land.

2. In the event of a loss by reason of a defect, lien, encumbrance, or other matter covered by this Policy ("Defect"), the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other endorsement to the Policy):
 - a. the diminution in value of the Insured's interest in any Severable Improvement resulting from the Defect, reduced by the salvage value of the Severable Improvement; and
 - b. the reasonable cost actually incurred by the Insured in connection with the removal or relocation of the Severable Improvement resulting from the Defect and the cost of transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the relocation.

3. This endorsement relates solely to the calculation of the Insured's loss resulting from a claim based on a defect, lien, encumbrance or other matter otherwise insured against by the Policy. This Policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
 - a. the attachment, perfection or priority of any security interest in the Severable Improvement;
 - b. the vesting or ownership of title to or rights in any Severable Improvement;
 - c. any defect in or lien or encumbrance on the title to any Severable Improvement; or
 - d. the determination of whether any specific property is real or personal in nature.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 32-06 (CONSTRUCTION LOAN — LOSS OF PRIORITY)

American Land Title Association

Endorsement 32-06 (Construction Loan –
Loss of Priority)
Adopted 2-3-11**ENDORSEMENT**

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
 - a. "Date of Coverage", is [_____] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
 - b. "Construction Loan Advance," shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - c. "Mechanic's Lien," shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
 - c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

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American Land Title Association**Endorsement 32-06 (Construction Loan –
Loss of Priority)
Adopted 2-3-11**

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, material or equipment:
- a. furnished after Date of Coverage; or
 - b. not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 32.1-06 (CONSTRUCTION LOAN — LOSS OF PRIORITY — DIRECT PAYMENT)

American Land Title Association

**Endorsement 32.1-06
(Construction Loan – Loss of Priority - Direct Payment)
Revised 04-02-13**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
 - a. "Date of Coverage", is [_____] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
 - b. "Construction Loan Advance," shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - c. "Mechanic's Lien," shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
 - c. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Company or by the Insured with the Company's written approval.

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American Land Title Association**Endorsement 32.1-06
(Construction Loan – Loss of Priority - Direct Payment)
Revised 04-02-13**

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, material or equipment:
- a. furnished after Date of Coverage; or
 - b. to the extent that the Mechanic's Lien claimant was not directly paid by the Company or by the Insured with the Company's written approval.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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ALTA ENDORSEMENT 32.2-06 (CONSTRUCTION LOAN — LOSS OF PRIORITY — INSURED'S DIRECT PAYMENT)

American Land Title Association

Endorsement 32.2-06
(Construction Loan –Loss of Priority – Insured's Direct Payment)
Revised 04-02-13

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
 - a. "Date of Coverage," is [_____] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
 - b. "Construction Loan Advance," shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - c. "Mechanic's Lien," shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
 - c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Insured or on the Insured's behalf on or before Date of Coverage.

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American Land Title Association

**Endorsement 32.2-06
(Construction Loan –Loss of Priority – Insured’s Direct Payment)
Revised 04-02-13**

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) by reason of any Mechanic’s Lien arising from services, labor, materials or equipment:
- a. Furnished after Date of Coverage; or
 - b. To the extent that the Mechanic’s Lien claimant was not directly paid by the Insured or on the Insured’s behalf.

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

[Witness clause optional]

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ALTA ENDORSEMENT 33-06 (DISBURSEMENT)

American Land Title Association	Endorsement 33-06 (Disbursement) Adopted 2-3-11
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ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Date of Coverage is amended to _____.

[a. The current disbursement is: \$ _____]

[b. The aggregate amount, including the current disbursement, recognized by the Company as disbursed by the Insured is: \$ _____]

2. Schedule A is amended as follows:

3. Schedule B is amended as follows:

[Part I]

[Part II]

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


[Witness clause optional]

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ALTA ENDORSEMENT 34-06 (IDENTIFIED RISK COVERAGE)

American Land Title Association

Endorsement 34-06 (Identified Risk Coverage)
Adopted 08-01-11

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

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

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

[Witness clause optional]

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**ALTA ENDORSEMENT 35-06
(MINERALS AND OTHER SUBSURFACE SUBSTANCES — BUILDINGS)**

American Land Title Association

**Endorsement 35-06
(Minerals and Other Subsurface Substances – Buildings)
Adopted 04-02-12
Technical Correction 08-01-16**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only, "Improvement" means a building on the Land at Date of Policy.
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of any Improvement resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; [or]
 - b. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances[; or
 - c. the exercise of the rights described in (_____)]. *

* Instructional note: identify the interest excepted from the description of the Land in Schedule A or excepted in Schedule B that you intend to exclude from this coverage.

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

[Witness clause optional]

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**ALTA ENDORSEMENT 35.1-06
(MINERALS AND OTHER SUBSURFACE SUBSTANCES — IMPROVEMENTS)**

American Land Title Association

**Endorsement 35.1-06
(Minerals and Other Subsurface Substances – Improvements)
Adopted 04-02-12
Technical Correction 08-01-16**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only, "Improvement" means a building, structure located on the surface of the Land, and any paved road, walkway, parking area, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of any Improvement, resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; [or]
 - b. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances; or
 - c. the exercise of the rights described in (_____)]. *

* Instructional note: identify the interest excepted from the description of the Land in Schedule A or excepted in Schedule B that you intend to exclude from this coverage.

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

[Witness clause optional]

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ALTA ENDORSEMENT 35.2-06 (MINERALS AND OTHER SUBSURFACE SUBSTANCES — DESCRIBED IMPROVEMENTS)

American Land Title Association

**Endorsement 35.2-06
(Minerals and Other Subsurface Substances –
Described Improvements)
Adopted 04-02-12
Technical Correction 08-01-16**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only, "Improvement" means each improvement on the Land at Date of Policy itemized [on the exhibit attached to this endorsement] [below:]
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of any Improvement resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; [or]
 - b. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances; or
 - c. the exercise of the rights described in (_____)]. *

* Instructional note: identify the interest excepted from the description of the Land in Schedule A or excepted in Schedule B that you intend to exclude from this coverage.

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.

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ALTA ENDORSEMENT 35.3-06 (MINERALS AND OTHER SUBSURFACE SUBSTANCES — LAND UNDER DEVELOPMENT)

American Land Title Association

Endorsement 35.3-06
(Minerals and Other Subsurface Substances –
Land Under Development)
Adopted 04-02-12
Technical Correction 08-01-16

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Improvement" means a building, structure located on the surface of the Land, and any paved road, walkway, parking area, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - b. "Future Improvement" means a building, structure, and any paved road, walkway, parking area, driveway, or curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - c. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer), dated ____, last revised _____, designated as (insert name of project or project number), consisting of ____ sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of an Improvement or a Future Improvement, resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; [or]
 - b. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances; or
 - c. the exercise of the rights described in (_____)]. *

* Instructional note: identify the interest excepted from the description of the Land in Schedule A or excepted in Schedule B that you intend to exclude from this coverage.



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American Land Title Association

**Endorsement 35.3-06
(Minerals and Other Subsurface Substances –
Land Under Development)
Adopted 04-02-12
Technical Correction 08-01-16**

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

[Witness clause optional]

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ALTA ENDORSEMENT 36-06 (ENERGY PROJECT — LEASEHOLD/EASEMENT — OWNER'S)

American Land Title Association

Endorsement 36-06
(Energy Project – Leasehold/Easement – Owner's)
Adopted 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. "Easement" means each easement described in Schedule A.
 - c. "Easement Interest" means the right of use granted in the Easement for the Easement Term.
 - d. "Easement Term" means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
 - e. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - f. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.
 - g. "Lease" means each lease described in Schedule A.
 - h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
 - i. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
 - j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer), dated _____, last revised _____, designated as (insert name of project or project number), consisting of ___ sheets.

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American Land Title Association

**Endorsement 36-06
(Energy Project – Leasehold/Easement – Owner's)
Adopted 04-02-12**

-
- k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.
- l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
3. Valuation of Title as an Integrated Project:
- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.
 - b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.
 - c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.
 - d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.
4. Valuation of Severable Improvements:
- a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.
 - b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
 - i. the attachment, perfection or priority of any security interest in any Severable Improvement;
 - ii. the vesting or ownership of title to or rights in any Severable Improvement;
 - iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
 - iv. the determination of whether any specific property is real or personal in nature.

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American Land Title Association**Endorsement 36-06
(Energy Project – Leasehold/Easement – Owner's)
Adopted 04-02-12**

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.
- b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.
- c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.
- e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.
- f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.
- g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

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American Land Title Association

**Endorsement 36-06
(Energy Project – Leasehold/Easement – Owner’s)
Adopted 04-02-12**

-
- 6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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**ALTA ENDORSEMENT 36.1-06
(ENERGY PROJECT — LEASEHOLD/EASEMENT — LOAN)**

American Land Title Association

Endorsement 36.1-06
(Energy Project – Leasehold/Easement – Loan)
Adopted 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. "Easement" means each easement described in Schedule A.
 - c. "Easement Interest" means the right of use granted in the Easement for the Easement Term.
 - d. "Easement Term" means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
 - e. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - f. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.
 - g. "Lease" means each lease described in Schedule A.
 - h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
 - i. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

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American Land Title Association

Endorsement 36.1-06
(Energy Project – Leasehold/Easement – Loan)
Adopted 04-02-12

- j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated _____, last revised _____, designated as (insert name of project or project number) consisting of ___ sheets.
- k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.
- l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
- m. "Tenant" means the tenant under the Lease or a grantee under the Easement, as applicable, and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.
3. Valuation of Title as an Integrated Project:
- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.
- b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.
- c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.
- d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.
4. Valuation of Severable Improvements:
- a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

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American Land Title Association

**Endorsement 36.1-06
(Energy Project – Leasehold/Easement – Loan)
Adopted 04-02-12**

- b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
- i. the attachment, perfection or priority of any security interest in any Severable Improvement;
 - ii. the vesting or ownership of title to or rights in any Severable Improvement;
 - iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
 - iv. the determination of whether any specific property is real or personal in nature.
5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.
- b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.
- c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.
- e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

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American Land Title Association

**Endorsement 36.1-06
(Energy Project – Leasehold/Easement – Loan)
Adopted 04-02-12**

- f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.
 - g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.
6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 36.2-06 (ENERGY PROJECT — LEASEHOLD — OWNER'S)

American Land Title Association

Endorsement 36.2-06
(Energy Project – Leasehold – Owner's)
Adopted 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - c. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
 - d. "Lease" means each lease described in Schedule A.
 - e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
 - f. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
 - g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated _____, last revised _____, designated as (insert name of project or project number), consisting of _____ sheets.
 - h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.
 - i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

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American Land Title Association**Endorsement 36.2-06
(Energy Project – Leasehold – Owner's)
Adopted 04-02-12****3. Valuation of Title as an Integrated Project:**

- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.
- b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.
- c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.
- d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

- a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.
- b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
 - i. the attachment, perfection or priority of any security interest in any Severable Improvement;
 - ii. the vesting or ownership of title to or rights in any Severable Improvement;
 - iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
 - iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

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American Land Title Association

**Endorsement 36.2-06
(Energy Project – Leasehold – Owner’s)
Adopted 04-02-12**

- b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
 - c. The amount of rent or damages that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.
 - d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.
 - e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.
 - f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.
 - g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.
6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 36.3-06 (ENERGY PROJECT — LEASEHOLD — LOAN)

American Land Title Association

Endorsement 36.3-06
(Energy Project – Leasehold – Loan)
Adopted 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - c. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
 - d. "Lease" means each lease described in Schedule A.
 - e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
 - f. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
 - g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated _____, last revised _____, designated as (insert name of project or project number) consisting of _____ sheets.
 - h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.
 - i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
 - j. "Tenant" means the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

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American Land Title Association**Endorsement 36.3-06
(Energy Project – Leasehold – Loan)
Adopted 04-02-12****3. Valuation of Title as an Integrated Project:**

- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.
- b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.
- c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.
- d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

- a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.
- b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
 - i. the attachment, perfection or priority of any security interest in any Severable Improvement;
 - ii. the vesting or ownership of title to or rights in any Severable Improvement;
 - iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
 - iv. the determination of whether any specific property is real or personal in nature.

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American Land Title Association

**Endorsement 36.3-06
(Energy Project – Leasehold – Loan)
Adopted 04-02-12**

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.
- b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent or damages that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.
- e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.
- f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.
- g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

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American Land Title Association

**Endorsement 36.3-06
(Energy Project – Leasehold – Loan)
Adopted 04-02-12**

- 6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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**ALTA ENDORSEMENT 36.4-06
(ENERGY PROJECT — COVENANTS, CONDITIONS AND RESTRICTIONS —
LAND UNDER DEVELOPMENT — OWNER'S)**

American Land Title Association

**Endorsement 36.4-06
(Energy Project – Covenants, Conditions and
Restrictions – Land Under Development – Owner's)
Adopted 04-02-12**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Electricity Facility" means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - c. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated ____, last revised _____, designated as (insert name of project or project number) consisting of __ sheets.
 - d. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of an enforceable Covenant by any Electricity Facility or Severable Improvement, unless an exception in Schedule B of the policy identifies the violation;
 - b. Enforced removal of any Electricity Facility or Severable Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection, describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

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American Land Title Association

**Endorsement 36.4-06
(Energy Project – Covenants, Conditions and
Restrictions – Land Under Development – Owner's)
Adopted 04-02-12**

- 4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease or easement;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.c., any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

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

[Witness clause optional]

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**ALTA ENDORSEMENT 36.5-06
(ENERGY PROJECT — COVENANTS, CONDITIONS AND RESTRICTIONS —
LAND UNDER DEVELOPMENT — LOAN)**

American Land Title Association

**Endorsement 36.5-06
(Energy Project – Covenants, Conditions and
Restrictions – Land Under Development – Loan)
Adopted 04-02-12**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Electricity Facility" means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - c. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated _____, last revised _____, designated as (insert name of project or project number), consisting of _____ sheets.
 - d. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage;
 - ii. results in the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage; or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness.

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American Land Title Association**Endorsement 36.5-06
(Energy Project – Covenants, Conditions and
Restrictions – Land Under Development – Loan)
Adopted 04-02-12**

- b. A violation of an enforceable Covenant by any Electricity Facility or Severable Improvement, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of any Electricity Facility or Severable Improvement, as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection, describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease or easement;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.d., any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

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

[Witness clause optional]

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ALTA ENDORSEMENT 36.6-06 (ENERGY PROJECT — ENCROACHMENTS)

American Land Title Association

Endorsement 36.6-06
 (Energy Project – Encroachments)
 Adopted 04-02-12
 Technical Correction 08-01-16

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Electricity Facility" means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - b. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated _____, last revised _____, designated as (insert name of project or project number) consisting of _____ sheets.
 - c. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. An encroachment of any Electricity Facility or Severable Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;
 - b. An encroachment of an improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
 - c. Enforced removal of any Electricity Facility or Severable Improvement, as a result of an encroachment by the Electricity Facility or Severable Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Electricity Facility or Severable Improvement; [or]



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American Land Title Association

**Endorsement 36.6-06
(Energy Project – Encroachments)
Adopted 04-02-12
Technical Correction 08-01-16**

d. Damage to any Electricity Facility or Severable Improvement that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved [; or]

[e. The coverage of Sections 3.c. and 3.d. shall not apply to the encroachments listed in Exception(s) _____ of Schedule B].

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence.

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

[Witness clause optional]

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ALTA ENDORSEMENT 36.7-06 (ENERGY PROJECT — FEE ESTATE — OWNER'S POLICY)

American Land Title Association

Endorsement 36.7-06
(Energy Project – Fee Estate – Owner's Policy)
Adopted 12-01-14

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - (a) "Constituent Parcel" means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.
 - (b) "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance, and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale, or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - (c) "Ejected" or "Ejection" means (i) the lawful divestment, in whole or in part, of the Title to the Land or (ii) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.
 - (d) "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by *(insert name of architect or engineer)* dated _____, last revised _____, designated as *(insert name of project or project number)* consisting of _____ sheets.
 - (e) "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.
3. Valuation of Title as an integrated project:
 - (a) If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Insured is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.
 - (b) A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.
 - (c) The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.

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American Land Title Association**Endorsement 36.7-06
(Energy Project – Fee Estate – Owner's Policy)
Adopted 12-01-14**

- (d) The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.
4. Valuation of Severable Improvements:
- (a) In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.
- (b) The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to: (i) the attachment, perfection, or priority of any security interest in any Severable Improvement; (ii) the vesting or ownership of title to or rights in any Severable Improvement; (iii) any defect in or lien or encumbrance on the title to any Severable Improvement; or (iv) the determination of whether any specific property is real or personal in nature.
5. Additional items of loss covered by this endorsement:
- If the Insured is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.
- (a) The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.
- (b) Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.
- (c) The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.
- (d) Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.
- (e) The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services, and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.
- (f) If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, landscaping, and cancellation fees related to the foregoing.

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American Land Title Association

**Endorsement 36.7-06
(Energy Project – Fee Estate – Owner's Policy)
Adopted 12-01-14**

-
- 6. This endorsement does not insure against loss, damage, or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

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

[Witness clause optional]

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ALTA ENDORSEMENT 36.8-06 (ENERGY PROJECT — FEE ESTATE — LOAN POLICY)

American Land Title Association

Endorsement 36.8-06
(Energy Project – Fee Estate – Loan Policy)
Adopted 12-01-14

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - (a) "Constituent Parcel" means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.
 - (b) "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance, and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale, or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - (c) "Ejected" or "Ejection" means (i) the lawful divestment, in whole or in part, of the Title to the Land or (ii) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.
 - (d) "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by *(insert name of architect or engineer)* dated _____, last revised _____, designated as *(insert name of project or project number)* consisting of _____ sheets.
 - (e) "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.
 - (f) "Vestee" means the party in which the Title is vested as stated in Schedule A and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.
3. Valuation of Title as an integrated project:
 - (a) If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Vestee is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.
 - (b) A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.

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American Land Title Association**Endorsement 36.8-06
(Energy Project – Fee Estate – Loan Policy)
Adopted 12-01-14**

- (c) The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.
- (d) The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.
4. Valuation of Severable Improvements:
- (a) In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.
- (b) The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to: (i) the attachment, perfection, or priority of any security interest in any Severable Improvement; (ii) the vesting or ownership of title to or rights in any Severable Improvement; (iii) any defect in or lien or encumbrance on the title to any Severable Improvement; or (iv) the determination of whether any specific property is real or personal in nature.
5. Additional items of loss covered by this endorsement:
- If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:
- (a) The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.
- (b) Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.
- (c) The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.
- (d) Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.
- (e) The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services, and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.

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American Land Title Association

**Endorsement 36.8-06
(Energy Project – Fee Estate – Loan Policy)
Adopted 12-01-14**

- (f) If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, landscaping, and cancellation fees related to the foregoing.
- 6. This endorsement does not insure against loss, damage, or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

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

[Witness clause optional]

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ALTA ENDORSEMENT 37-06 (ASSIGNMENT OF RENTS OR LEASES)

American Land Title Association

Endorsement 37-06 (Assignment of Rents or Leases)
Adopted 12-03-12

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. any defect in the execution of the [Insert Title of Assignment of Rents or Leases Document] referred to in paragraph ____ [of Part II] of Schedule B; or
 - b. any assignment of the lessor's interest in any lease or leases or any assignment of rents affecting the Title and recorded in the Public Records at Date of Policy other than as set forth in any instrument referred to in Schedule B.

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

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ALTA ENDORSEMENT 38-06 (MORTGAGE TAX)

American Land Title Association

Endorsement 38-06 (Mortgage Tax)
Adopted 12-03-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Sections 4 and 5 of this endorsement, the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only, "Mortgage Tax" means a recordation, registration or related tax or charge required to be paid when the Insured Mortgage is recorded in the Public Records.
3. Upon payment of any deficiency in the Mortgage Tax, including interest and penalties, by the Insured, the Company insures against loss or damage sustained by the Insured by reason of:
 - a. the invalidity or unenforceability of the lien of the Insured Mortgage as security for the Indebtedness resulting from the failure to pay, at the time of recording, any portion of the Mortgage Tax; or
 - b. the lack of priority of the lien of the Insured Mortgage as security for the Indebtedness resulting from the failure to pay, at the time of recording, any portion of the Mortgage Tax.
4. The Company does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the failure of the Insured to pay the Mortgage Tax deficiency, together with interest and penalties.
5. The Company is not liable for the payment of any portion of the Mortgage Tax, including interest or penalties.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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ALTA ENDORSEMENT 39-06 (POLICY AUTHENTICATION)

American Land Title Association

**Endorsement 39-06
(Policy Authentication)
Adopted 04-02-13**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

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

[Witness clause optional]

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ALTA ENDORSEMENT 40-06 (TAX CREDIT — OWNER'S POLICY)

American Land Title Association

Endorsement 40-06
(Tax Credit – Owner's Policy)
Adopted 04-02-14

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. This endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Tax Credit Investor" means _____.
 - b. "Tax Credit" means a tax credit in effect at Date of Policy pertaining to the Land that is available to the Tax Credit Investor under an applicable section of the Internal Revenue Code or other applicable law.
3. The Company insures against loss or damage, not exceeding the Amount of Insurance, sustained by the Tax Credit Investor by a reduction in a Tax Credit that is caused solely by a defect, lien, encumbrance, or other matter insured against by the policy, subject to the limitations in Section 8(a) of the Conditions. The Company has no liability to the Tax Credit Investor under this endorsement until:
 - a. its liability and the extent of a loss insured against by the policy have been definitely fixed in accordance with the Conditions; and
 - b. the Tax Credit Investor establishes the reduction in the amount of a Tax Credit.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) incurred in defending or establishing:
 - a. the eligibility of the Tax Credit Investor or the Land for a Tax Credit;
 - b. that the Tax Credit Investor or the Land is entitled to a Tax Credit; or
 - c. the existence, ownership, or amount of a Tax Credit.
5. The calculation of loss or damage under this endorsement shall be subject to Section 11 of the Conditions. In addition, the Company shall not be liable for duplicate recoveries of loss or damage to the Insured and Tax Credit Investor.
6. The Insured:
 - a. assigns to the Tax Credit Investor the right to receive any payment or portion of a payment for loss or damage otherwise payable to the Insured under Section 12 of the Conditions, but only to the extent of the reduction in the amount of a Tax Credit; and
 - b. acknowledges that any payment made by the Company to the Tax Credit Investor under this endorsement shall reduce the Amount of Insurance as provided in Section 10 of the Conditions.

This endorsement is issued as part of the policy. Except to the extent expressly stated, 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

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American Land Title Association

**Endorsement 40-06
(Tax Credit – Owner's Policy)
Adopted 04-02-14**

controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Agreed and Consented to:

Insured

[Tax Credit Investor]

BLANK TITLE INSURANCE COMPANY

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**ALTA ENDORSEMENT 40.1-06
(TAX CREDIT — DEFINED AMOUNT — OWNER’S POLICY)**

American Land Title Association

Endorsement 40.1-06
(Tax Credit –Defined Amount – Owner’s Policy)
Adopted 04-02-14

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. This endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. “Tax Credit Investor” means _____.
 - b. “Tax Credit” means a tax credit in effect at Date of Policy pertaining to the Land that is available to the Tax Credit Investor under an applicable section of the Internal Revenue Code or other applicable law.
 - c. “Additional Amount of Insurance” means \$_____. It is in addition to the Amount of Insurance stated in Schedule A and is applicable only to loss or damage payable to the Tax Credit Investor under this endorsement.
3. The Company insures against loss or damage, not exceeding the Additional Amount of Insurance, sustained by the Tax Credit Investor by a reduction in a Tax Credit that is caused solely by a defect, lien, encumbrance or other matter insured against by this policy. The Company has no liability to the Tax Credit Investor under this endorsement until:
 - a. its liability and the extent of a loss insured against by the policy have been definitely fixed in accordance with the Conditions; and
 - b. the Tax Credit Investor establishes the reduction in the amount of a Tax Credit.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) incurred in defending or establishing:
 - a. the eligibility of the Tax Credit Investor or the Land for a Tax Credit;
 - b. that the Tax Credit Investor or the Land is entitled to a Tax Credit; or
 - c. the existence, ownership, or amount of a Tax Credit.

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

[Witness clause optional]

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ALTA ENDORSEMENT 41-06 (WATER — BUILDINGS)

American Land Title Association

**Endorsement 41-06
(Water – Buildings)
Adopted 12-02-13**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only, "Improvement" means a building on the Land at Date of Policy.
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of any Improvement resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of water excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; [or]
 - b. negligence by a person or an Entity exercising a right to extract or develop water; or
 - c. the exercise of the rights described in (_____)]. *

* Instructional note: identify the interest excepted from the description of the Land in Schedule A or excepted in Schedule B that you intend to exclude from this coverage.

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

[Witness clause optional]

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ALTA ENDORSEMENT 41.1-06 (WATER — IMPROVEMENTS)

American Land Title Association

**Endorsement 41.1-06
(Water – Improvements)
Adopted 12-02-13**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only, "Improvement" means a building, structure located on the surface of the Land, and any paved road, walkway, parking area, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of any Improvement, resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of water excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; [or]
 - b. negligence by a person or an Entity exercising a right to extract or develop water[; or]
 - c. the exercise of the rights described in (_____)]. *

* Instructional note: identify the interest excepted from the description of the Land in Schedule A or excepted in Schedule B that you intend to exclude from this coverage.

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

[Witness clause optional]

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ALTA ENDORSEMENT 41.2-06 (WATER — DESCRIBED IMPROVEMENTS)

American Land Title Association

**Endorsement 41.2-06
(Water – Described Improvements)
Adopted 12-02-13**

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only, "Improvement" means each improvement on the Land at Date of Policy itemized [on the exhibit attached to this endorsement.] [below:]
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of any Improvement resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of water excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; [or]
 - b. negligence by a person or an Entity exercising a right to extract or develop water[; or]
 - c. the exercise of the rights described in (_____)]. *

* Instructional note: identify the interest excepted from the description of the Land in Schedule A or excepted in Schedule B that you intend to exclude from this coverage.

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

[Witness clause optional]

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ALTA ENDORSEMENT 41.3-06 (WATER — LAND UNDER DEVELOPMENT)

American Land Title Association

Endorsement 41.3-06
(Water – Land Under Development)
Adopted 12-02-13

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Improvement" means a building, structure located on the surface of the Land, and any paved road, walkway, parking area, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - b. "Future Improvement" means a building, structure, and any paved road, walkway, parking area, driveway, or curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - c. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer), dated _____, last revised _____, designated as (insert name of project or project number), consisting of _____ sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of an Improvement or a Future Improvement, resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of water excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence; [or]
 - b. negligence by a person or an Entity exercising a right to extract or develop water[; or]
 - c. the exercise of the rights described in (_____)]. *

* Instructional note: identify the interest excepted from the description of the Land in Schedule A or excepted in Schedule B that you intend to exclude from this coverage.

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American Land Title Association

**Endorsement 41.3-06
(Water – Land Under Development)
Adopted 12-02-13**

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

[Witness clause optional]

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ALTA ENDORSEMENT 42-06 (COMMERCIAL LENDER GROUP ENDORSEMENT)

American Land Title Association

Endorsement 42-06
(Commercial Lender Group Endorsement)
Adopted 12-02-13

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is
 - a. subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy, and
 - b. only effective if the Land is not improved with a one-to-four family residential dwelling.

2. For the purposes of this endorsement only:
 - a. "Lender Group" means a group of lenders owning portions of the Indebtedness. The composition of the Lender Group may change by the addition or withdrawal of Participants during the term of the Insured Mortgage.
 - b. "Participant" means a member of the Lender Group, but does not include a non-insured obligor as described in Section 12(c) of the Conditions. A Participant is an Insured under the policy to the extent of its ownership of a portion of the Indebtedness, whether it acquires its portion of the Indebtedness on or after Date of Policy.

3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage caused by transfers after the Date of Policy of portions of the Indebtedness by the Participants.
 - b. Loss of priority of the lien of the Insured Mortgage, which loss of priority is caused by transfers after the Date of Policy of portions of the Indebtedness by the Participants.

4. The Company reserves all rights and defenses as to any Participant that the Company would have had against any other Insured under the policy, unless the Participant acquired its portion of the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

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

[Witness clause optional]

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ALTA ENDORSEMENT 43-06 (ANTI-TAINT)

American Land Title Association

Endorsement 43-06
(Anti-Taint)
Adopted 12-02-13

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
 - a. "Loan Agreement" means [a document governing the terms of the loan or loans secured by the Insured Mortgage at Date of Policy] [the _____ Agreement dated _____, by and between the Insured and _____].
 - b. "Revolving Credit Loan" means the portion of the Indebtedness that is a revolving credit facility as more particularly defined in the Loan Agreement.
 - c. "Term Loan" means the portion of the Indebtedness that is a term loan facility as more particularly defined in the Loan Agreement.
3. The Company insures against loss or damage sustained by the Insured by reason of the loss of priority of the lien of the Insured Mortgage, as security for the amount of the Indebtedness advanced as the Term Loan, resulting from reductions and subsequent increases of the outstanding principal amount of the Indebtedness payable as the Revolving Credit Loan.

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

[Witness clause optional]

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ALTA ENDORSEMENT 44-06 (INSURED MORTGAGE RECORDING — LOAN)

American Land Title Association

Endorsement 44-06
(Insured Mortgage Recording - Loan)
Adopted 12-02-13

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. The Company insures against loss or damage sustained by the Insured by reason of the failure of the Insured Mortgage to have been recorded in the Public Records as set forth in Section 3 below.
3. Paragraph 4 of Schedule A is amended to read as follows:

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

Mortgage [Deed of Trust][Deed to Secure Debt]:
 Mortgagor:
 Mortgagee:
 Dated:
 Recorded:
 Recording/Instrument Number:

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
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ALTA ENDORSEMENT 45-06 (PARI PASSU MORTGAGE — LOAN POLICY)

American Land Title Association

Endorsement 45-06
 (Pari Passu Mortgage – Loan Policy)
 Adopted 12-01-14

ENDORSEMENT
 Attached to Policy No. _____
 Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement, the Exclusions from Coverage in the policy, the Exceptions from Coverage contained in Schedule B, and the Conditions.
2. For the purpose of this endorsement only:
 - (a) "Intercreditor Agreement" means each agreement described in Exceptions ____ of Schedule B of the policy among the *Pari Passu* Lenders;
 - (b) "*Pari Passu* Lender" means each respective lender secured by a *Pari Passu* Mortgage that has a policy issued by the Company insuring its Insured Mortgage or *Pari Passu* Mortgage; and
 - (c) "*Pari Passu* Mortgage" means the Insured Mortgage and each mortgage described in Exceptions ____ of Schedule B of the policy.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - (a) the invalidity or unenforceability of the lien of the Insured Mortgage resulting solely from the provisions of a *Pari Passu* Mortgage or Intercreditor Agreement establishing lien priority; or
 - (b) the lack of equal lien priority of the Insured Mortgage to the other *Pari Passu* Mortgages.
4. The Company does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - (a) the failure of the Insured or any *Pari Passu* Lender to comply with the terms of the *Pari Passu* Mortgage or Intercreditor Agreement;
 - (b) the failure of the Insured and each other *Pari Passu* Lender to simultaneously foreclose the Insured Mortgage with each other *Pari Passu* Mortgage; or
 - (c) any provision in the Intercreditor Agreement that creates a preference among the *Pari Passu* Lenders for the sharing of the Indebtedness.
5. If the Insured, any other *Pari Passu* Lender, or others have conflicting claims to all or part of the loss payable under the policy, the Company may interplead the amount of the loss into court. The Insured and any other *Pari Passu* Lender shall be jointly and severally liable for the Company's reasonable cost for the interpleader and subsequent proceedings, including attorneys' fees. The Company shall be entitled to payment of the sums for which the Insured and any other *Pari Passu* Lender are liable under the preceding sentence from the funds deposited into court, and it may apply to the court for their payment.

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

[Witness clause optional]

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ALTA ENDORSEMENT 46-06 (OPTION)

American Land Title Association

**Endorsement 46-06
(Option)
Adopted 08-01-15**

ENDORSEMENT

Attached to Policy No. _____

Issued By

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions contained in Section 4 of this endorsement, the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement:
 - (a) "Option" means the document recorded in the Public Records on (Insert date of recording) at: (Insert recording information).
 - (b) "Option Parcel" means the Land [or that portion of the Land] described in Schedule A [as: (Insert land description)].
 - (c) "Optionor" means the person who executed the Option as the grantor.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - (a) Any defect in the execution of the Option resulting from:
 - (i) forgery, incompetency, incapacity, or impersonation of the Optionor;
 - (ii) failure of the Optionor to have authorized the Option; or
 - (iii) the Option not being properly signed, witnessed, sealed, acknowledged, notarized, or delivered by the Optionor.
 - (b) Any right to acquire an estate or interest in the Option Parcel granted to another person in a document recorded in the Public Records at Date of Policy if the document is not excepted in Schedule B.
4. This endorsement does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:
 - (a) The invalidity or unenforceability of the Option, but this exclusion does not limit the coverage provided in Section 3(a) above;
 - (b) The failure of the Insured to fulfill the terms and conditions of the Option;
 - (c) The unenforceability, avoidance, or rejection of the Option under the provisions of the Bankruptcy Code of the United States, state insolvency, state or federal receivership, or creditors' rights laws; or
 - (d) The failure of the recorded Option to impart constructive notice, but this exclusion does not limit the coverage provided in Section 3(a)(iii) above.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

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**COLORADO ENDORSEMENT 100 •
RESTRICTIONS, EASEMENT, ENCROACHMENT**

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss which said insured shall sustain by reason of any of the following matters:

1. Any incorrectness in the assurance which the Company hereby gives:
 - (a) that there are no covenants, conditions, or restrictions under which the lien of the mortgage or deed of trust referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
 - (b) that, except as shown in Schedule B, there are no present violations on said land of any enforceable covenants, conditions, or restrictions;
 - (c) that, except as shown in Schedule B, there are no encroachments of buildings, structures, or improvements located on said land, onto adjoining lands, nor any encroachments onto said land of buildings, structures, or improvements located on adjoining lands.

2. Any future violations on said land of any covenants, conditions, or restrictions occurring prior to acquisition of title to said estate or interest by the insured, provided such violations result in loss or impairment of the lien of the mortgage or deed of trust referred to in Schedule A or result in loss of the title to said estate or interest if the insured shall acquire such title in satisfaction of the indebtedness secured by such mortgage or deed of trust.

3. Damage to existing improvements which are located or encroach upon that portion of the land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purposes for which the same was granted or reserved.

4. Any final court order or judgment requiring removal from any land adjoining said land of any encroachment shown in Schedule B.

Whenever in this endorsement any or all of the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants and conditions contained in any lease referred to in Schedule A. Whenever the mortgage or deed of trust referred to in Schedule A encumbers real estate in a common interest community, as defined in C.R.S. §38-33.3-103(8), the Company does not insure against any lien for assessments arising under C.R.S. §38-33.3-316(2)(b).

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy as of the date thereof and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Nothing herein contained shall be construed as extending or changing the effective date of the aforesaid policy or commitment, unless otherwise expressly stated.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.1 • RESTRICTIONS, ENCROACHMENT

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insured against loss which the Insured shall sustain by reason of any of the following matters:

- 1. Any incorrectness in the assurance which the Company hereby gives:
 - (a) That there are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired, except for any lien securing assessments arising under C.R.S. § 38-33.3-316(2)(b);
 - (b) That there are no present violations on said land of any enforceable covenants, conditions, or restrictions;
 - (c) That, except as shown in Schedule B, there are no present encroachments onto the land of buildings, structures, or improvements located on adjoining lands.
- 2. Any future violations on the land of any covenants, conditions, or restrictions occurring prior to acquisition of title to the estate or interest by the Insured, provided such violations result in impairment or loss of the lien of the mortgage referred to in Schedule A, or result in impairment or loss of title to the estate or interest if the Insured shall acquire the title in satisfaction of the indebtedness secured by the mortgage.

Wherever in this endorsement any or all of the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants and conditions contained in any lease referred to in Schedule A.

The total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.2 • RESTRICTIONS, ENCROACHMENT

ENDORSEMENT

Attached to Owner's Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insured against loss which said Insured shall sustain by reason of any of the following matters:

- 1. Any incorrectness in the assurance which the Company hereby gives:
 - (a) That there are no present violations on the land of any enforceable covenants, conditions or restrictions;
 - (b) That, except as shown in Schedule B, there are no present encroachments onto the land of buildings, structures or improvements located on adjoining lands.
- 2. Unmarketability of the title to the estate or interest by reason of any violations on the land, occurring prior to acquisition of title to the estate or interest by the Insured, of any covenants, conditions or restrictions.

Wherever in this endorsement any or all of the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants and conditions contained in any lease referred to in Schedule A. Whenever the mortgage or deed of trust referred to in Schedule A encumbers real estate in a common interest community, as defined in C.R.S. §38-33.3-103(8), the Company does not insure against any lien for assessments arising under C.R.S. §38-33.3-316(2)(b).

The total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy as of the date thereof and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 100.3 •
RESTRICTIONS, EASEMENT, ENCROACHMENT, MINERALS**

ENDORSEMENT

Attached to Owner's Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss which said Insured shall sustain by reason of any of the following matters:

1. Any incorrectness in the assurance which the Company hereby gives:
 - (a) That there are no present violations on the land of any enforceable covenants, conditions or restrictions;
 - (b) That, except as shown in Schedule B, there are no encroachments of buildings, structures, or improvements located on the land onto adjoining lands, nor any encroachments onto the land of buildings, structures or improvements located on adjoining lands.
2. Unmarketability of the title to the estate or interest by reason of any violations on the land, occurring prior to acquisition of title to the estate or interest by the Insured, of any covenants, conditions or restrictions.
3. Damage to existing building improvements,
 - (a) which are located or encroach upon the portion of the land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain the easement for the purposes for which the same was granted or reserved;
 - (b) resulting from the exercise of any right to use the surface of the land for the extraction or development of the minerals excepted from the description of the land or shown as a reservation in Schedule B.
4. Any final court order or judgment requiring removal from any land adjoining said land of any encroachment shown in Schedule B.

Whenever in this endorsement any or all of the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants and conditions contained in any lease referred to in Schedule A.

The total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.4 • RESTRICTIONS

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in Section 4 of Schedule A against loss which said insured shall sustain by reason of any final judgment enforcing the covenants, conditions, and restrictions referred to in Section ____ of Schedule B, Part I, based upon a violation on said land prior to the date of said policy, of that provision of said covenants, conditions, and restrictions which provides that:

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

The endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.5 • RESTRICTIONS

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss which the Insured shall sustain by reason of any final judgment enforcing the covenants, conditions, and restrictions referred to in Item ____ of Schedule B, based upon a violation thereof on said land prior to the date of this policy.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

The endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.6 • RESTRICTIONS

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the insured against loss which the Insured shall sustain by reason of any final judgment enforcing the covenants, conditions, and restrictions referred to in Paragraph ____ of Schedule B,* based upon a violation thereof on said land, present or future, except for any lien securing assessments arising under C.R.S. § 38-33.3-316(2)(b).

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

The endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.11 • LIQUOR REVERTER

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The restrictions shown in item ____, Schedule B,* are accompanied by a right of reverter. As to that portion of said restrictions pertaining to the manufacture, sale and/or use of liquor or alcoholic beverages on the premises and to that portion only, this policy insures that said restrictions have not been violated and further insures against any loss or damage as a result of any past or future violations causing a forfeiture or reversion of title.

This endorsement is made a part of the policy or commitment and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.12 • REVERTER

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures that any reverter, right of re-entry or any right or power of termination of the estate upon breach of the covenants, conditions and restrictions referred to in Schedule B is not enforceable, and the Company hereby insures against loss or damage occasioned by the exercise or attempt to exercise any such reverter, right of re-entry or right or power of termination.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 100.13 •
ASSESSMENT LIEN, ASSOCIATIONS, CONDOMINIUMS**

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures that the lien of any assessment which may be fixed or levied pursuant to the Restrictions referred to in Schedule B of this policy prior to acquisition of title to said estate or interest by foreclosure or sale under said mortgage is and will be subject and subordinate in all respects to the lien of said mortgage and the Company hereby insures against loss which said Insured shall sustain in the event that the assurance herein shall prove incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.16 • ASSOCIATIONS

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss which said Insured shall sustain by reason of any judicial enforcement of those provisions of the Declaration of Restrictions (or Deed) referred to in Paragraph ____ of Schedule B – Part I or of those provisions of the by-laws of _____ [insert name of corporation], a non-profit corporation, purporting to require membership in said association as a prerequisite to the ownership of the estate or interest described in Schedule B – Part I.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.18 • RESTRICTIONS — REVERTER

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss which said Insured shall sustain by reason of:

- a. The exercise or attempt to exercise any provisions for a reverter, right of re-entry or any right or power of termination of the estate or interest referred to in Schedule A upon breach of the covenants, conditions and restrictions referred to in paragraph ___ of Schedule B;
- b. Unmarketability of the title to the estate or interest referred to in Schedule A due to the provision for a reverter, right of re-entry, or a right or power of termination upon breach of said covenants, conditions and restrictions should the Insured acquire title to the estate or interest referred to in Schedule A pursuant to the provisions of the conditions and stipulations of said policy.

For purposes of this endorsement, the words “covenants,” “conditions,” or “restrictions” shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.20 • RESTRICTIONS

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss which the Insured shall sustain by reason of the enforcement, or attempted enforcement of the covenants, conditions and restrictions referred to in Exception ___ of Schedule B,* based on a violation thereof on said land prior to the date of said policy.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.23 • MINERALS, LEASE

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in Schedule A against loss which the insured shall sustain by reason of damage to existing improvements, including lawns, shrubbery or trees resulting from the exercise of any right to use the surface of said land for the extraction or development of the minerals leased under the oil and gas lease shown in paragraph _____ of Schedule B.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.24 • MINERALS, LEASE

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company assures the owner of the indebtedness secured by the mortgage referred to in Schedule A that the lessee under the lease referred to in paragraph _____ of Schedule B, does not, under the terms of said lease, have any right to enter upon or use the surface of said land.

The Company hereby insures the Insured against loss which the Insured shall sustain in the event that the assurance herein shall prove to be incorrect.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.26 • MINERALS, FHA

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss which said insured shall sustain by reason of damage to improvements constructed or to be constructed in accordance with the plans and specifications in F.H.A. Project No. _____ (name of project) which plans were approved by and are now on file in the _____ office of the Federal Housing Administration, including lawns, shrubbery or trees, resulting from the exercise of any right to use the surface of said land or any portion thereof lying above a depth of 500 feet below the present surface of said land, for the extraction or development of oil, petroleum and other hydrocarbon substances excepted from the description of said land.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.29 • MINERALS

ENDORSEMENT

Attached to _____ Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss which the Insured shall sustain by reason of damage to existing improvements, including lawns, shrubbery or trees, resulting from the exercise of any right to use the surface of said land for the extraction or development of the minerals excepted from the description of said land or shown as a reservation in Schedule B.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.30 • MINERALS**ENDORSEMENT**

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss which the Insured shall sustain by reason of physical, but not aesthetic, damage to improvements existing on the land at Date of Policy or constructed thereon thereafter, resulting from the exercise subsequent to the Date of Policy of any rights to use the surface of the land under the mineral interest referred to in Exception No. ____ of Schedule B – Part I (the “mineral rights”), subject, however, to the following terms and conditions:

1. The Insured shall notify the Company promptly in writing in case knowledge shall come to an Insured hereunder of any actual or threatened exercise of the mineral rights.

2. The Company shall have the right, at its cost, to take any action which in its opinion may be necessary or desirable in order for the Company to avoid or minimize the extent of its liability under this endorsement, including, but not limited to, any or all of the following:

(a) in the Company’s own right, or in the name of the Insured or of the borrower under the indebtedness secured by the insured mortgage for the Company’s benefit to institute, prosecute and pursue to final determination any proceedings at law or in equity, or before any municipal, administrative, or regulatory tribunal or board;

(b) in the Company’s own right, or in the name of the Insured or of the borrower under the indebtedness secured by the insured mortgage for the Company’s benefit, to compel the giving of security, bond or undertaking by the person or persons from whom the Insured or such borrower is entitled by law to such security, bond or undertaking, and in the same amount or amounts to which the Insured or such borrower would have been so entitled had this endorsement not been issued; and

(c) to retain or be paid out of any such security, bond or undertaking, or out of any compensation or funds recovered by the Company or by the Insured or by the borrower under the indebtedness secured by the insured mortgage, such amount as will reimburse the Company for all payments made to the Insured by the Company by reason of the insurance afforded by this endorsement, together with all costs and expenses incurred by the Company in connection therewith, including attorney’s fees.

3. The Insured shall take all reasonable steps to require the borrower under the indebtedness secured by the insured mortgage to cooperate fully with the Company in any action taken by the Company pursuant to the provisions of paragraph 2 hereof, and also to require such borrower to notify the Insured promptly in writing in case knowledge shall come to such borrower of any actual or threatened exercise of the mineral rights.

4. No rights, benefits or defenses are intended to or shall be deemed to flow or be made available to any person or entity other than the Insured by reason of the insurance afforded by this endorsement, and the Insured agrees that all of the Insured’s rights and remedies against third parties relating to the subject matter of this endorsement shall be deemed to have remained intact, in the same manner as if this endorsement had not been issued.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.31 • MINERALS

ENDORSEMENT

Attached to Owner's Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss which the Insured shall sustain by reason of physical, but not aesthetic, damage to improvements existing on the land at Date of Policy or constructed thereon thereafter resulting from the exercise subsequent to the Date of Policy of any rights to use the surface of the land under the mineral interest referred to in Exception No. ____ of Schedule B (the "mineral rights"), subject, however, to the following terms and conditions:

1. The Insured shall notify the Company promptly in writing in case knowledge shall come to an Insured hereunder of any actual or threatened exercise of the mineral rights.

2. The Company shall have the right, at its cost, to take any action which in its opinion may be necessary or desirable in order for the Company to avoid or minimize the extent of its liability under this endorsement, including, but not limited to, any or all of the following:

(a) in the Company's own right, or in the name of the Insured for the Company's benefit, to institute, prosecute and pursue to final determination any proceedings at law or in equity, or before any municipal, administrative, or regulatory tribunal or board;

(b) in the Company's own right, or in the name of the Insured for the Company's benefit, to compel the giving of security bond or undertaking by the person or persons from whom the Insured is entitled by law to such security, bond or undertaking, and in the same amount or amounts to which the Insured would have been so entitled had this endorsement not been issued; and

(c) to retain or be paid out of any such security, bond or undertaking, or out of any compensation or funds recovered by the Company or the Insured, such amount as will reimburse the Company for all payments made to the Insured by the Company by reason of the insurance afforded by this endorsement, together with all costs and expenses incurred by the Company in connection therewith, including attorney's fees.

3. No rights, benefits or defenses are intended to or shall be deemed to flow or be made available to any person or entity other than the Insured by reason of the insurance afforded by this endorsement, and the Insured agrees that all of the Insured's rights and remedies against third parties relating to the subject matter of this endorsement shall be deemed to have remained intact, in the same manner as if this endorsement had not been issued.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 100.32 • MINERALS

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby assures the insured that by a deed dated _____, recorded _____, the owner of * _____ which was ** _____ reserved by _____ in the deed, recorded _____ in book _____, page _____, Official Records, conveyed *** _____ to the record owners of the surface thereof.

The Company hereby insures said assured against loss which said assured shall sustain in the event that the assurance herein shall prove to be incorrect.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

* Description of mineral interest

** In a proper case modify to "conveyed by"

*** Description of surface rights released

COLORADO ENDORSEMENT 101 • MECHANICS' LIEN

ENDORSEMENT

Attached to _____ Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The following is added to Item 4, Schedule B:*

Except to the extent that such liens arise because of work and labor performed or materials furnished and for which payment has been made with funds disbursed by the Company or by the lender with the Company's approval.

The total liability of the Company under said policy and any endorsement thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement, when countersigned by an authorized officer or agent, is made a part of said policy as of the policy date thereof and is subject to the Schedules, Conditions and Stipulations and Exclusions from Coverage therein contained, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 101.1 • MECHANICS' LIEN

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage incurred by reason of the enforcement or attempted enforcement of the mechanic's lien shown in item ____, Schedule B.*

The total liability of the Company under said policy and any endorsement thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement, when countersigned by an authorized officer or agent, is made a part of said policy as of the policy date thereof and is subject to the Schedules, Conditions and Stipulations and Exclusions from Coverage therein contained, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 101.2 • MECHANICS' LIEN

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage by reason of the lack of priority of the lien of the insured mortgage over any lien imposed by law for services, labor or material, for that portion of the cost thereof the payment for which the insured has disbursed funds, and which services, labor or material were furnished prior to (insert date) for an improvement on the land.

This endorsement does not insure against loss or damage by reason of any failure by the insured to comply with or to enforce any of the provisions of law known to the insured or of any agreement to which the insured is a party which relate to the disbursement of the proceeds of the loan secured by the insured mortgage.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Sections 3(d), 6 and 7 of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 101.2A • MECHANICS' LIEN

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage by reason of the lack of priority of the lien of the insured mortgage over any lien imposed by law for services, labor or material, for that portion of the cost thereof the payment for which the Insured has disbursed funds secured by the insured mortgage, and which services, labor or material were furnished prior to (insert date) for an improvement on the land.

This Endorsement does not insure against loss or damage by reason of any failure by the Insured to comply with or to enforce any of the provisions of law known to the Insured or of any agreement to which the Insured is a party which relate to the disbursement of the proceeds of the loan secured by the insured mortgage.

This Endorsement is made a part of the Policy and is subject to all the terms and provisions thereof and of any prior Endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and prior Endorsements, nor does it extend the effective Date of Policy and any prior Endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 101.3 • MECHANICS' LIEN

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

Said policy is hereby modified as follows:

- A. The following assurance is hereby added to the policy as an additional insuring clause:
 - 8. Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
- B. Sections 6 and 7 of the Exclusions From Coverage are hereby deleted;
- C. Sub-section (d) of Section 3 of the Exclusions From Coverage is hereby modified to read as follows:
 - (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material).

This endorsement is made a part of the policy or commitment and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 102.4 • ENCROACHMENT, RESTRICTIONS

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures

(1) That the foundations of the structure under construction on said land at the date hereof are within the boundary lines of said land;

(2) That the location of said foundations does not, as of the date hereof, violate the covenants, conditions, or restrictions referred to in Schedule B.

The Company hereby insures against loss which the insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 102.5 • ENCROACHMENT, EASEMENT, RESTRICTIONS

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures

- (1) That the foundations of the structure under construction on said land at the date hereof are within the boundary lines of said land;
- (2) That the location of said foundations does not, as of the date hereof, violate the covenants, conditions and restrictions referred to in Schedule B.
- (3) Said foundations do not, as of the date hereof, encroach onto any of the easements referred to in Schedule B.

The Company hereby insures against loss which said insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 102.6 • ENCROACHMENT, FOUNDATIONS

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company assures the owner of the indebtedness secured by the mortgage referred to in Schedule A:

That the foundations of the structure under construction on that portion of the land described as:

at the date hereof are within the boundary lines of the above described portion of the land;

That the location of the foundations does not violate the covenants, conditions or restrictions referred to in Schedule B.

The Company hereby insures said assured against loss which said assured shall sustain in the event that the assurance herein shall prove to be incorrect.

The liability of the Company under this endorsement shall not exceed the sum of \$ _____ and costs which the Company is obligated under the Conditions and Stipulations of the policy to pay; and the total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 102.7 • ENCROACHMENT, FOUNDATIONS

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company assures the owner of the indebtedness secured by the mortgage referred to in Schedule A:

That the foundations of the structure under construction on that portion of the land described as:

at the date hereof are within the boundary lines of the above described portion of the land;

That the location of the foundations does not, as of the date hereof, violate the covenants, conditions or restrictions referred to in Schedule B;

Said foundations do not, as of the date hereof, encroach onto any of the easements referred to in Schedule B.

The Company hereby insures said assured against loss which said assured shall sustain in the event that the assurance herein shall prove to be incorrect.

The liability of the Company under this endorsement shall not exceed the sum of \$ _____ and costs which the Company is obligated under the Conditions and Stipulations of the policy to pay; and the total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 103.1 • EASEMENT

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage which the Insured shall sustain as a result of any exercise of the right of use or maintenance of the easement referred to in item ____ of Schedule B* over or through said land.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 103.2 • ENCROACHMENT

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage which the Insured shall sustain in the event that the owner of adjoining land shall compel, pursuant to final judgment or court decree, the removal of any portion of the improvements on the insured Land which encroach upon said adjoining land as referred to in item ____ of Schedule B.*

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 103.3 • ENCROACHMENT, EASEMENT

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage which the Insured shall sustain in the event that the owner of the easement referred to in item ____ of Schedule B* shall, for the purpose of ** compel the removal of any portion of the improvements on said land which encroach upon said easement.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

*NOTE: For a loan policy, the reference would be to an item in Schedule B – Part I

**Insert use against which insurance is to be given, *e.g.*,

- (1) Insurance limited to loss by reason of maintenance and repair of specific existing structure: “maintaining and repairing the existing storm drain structure within said easement,”
- (2) Insurance same as (1) plus enlarging or replacing existing structure: “maintaining, repairing, enlarging, or replacing the existing storm drain within said easement,”
- (3) Insurance unlimited: “exercising the right of use or maintenance of said easement,”

COLORADO ENDORSEMENT 103.6 • ENCROACHMENT, EASEMENT

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in paragraph _____ of Schedule A that none of the improvements located on the land encroach onto the easement shown as paragraph _____ of Schedule B.

The Company hereby insures the insured against loss which the insured shall sustain in the event the assurance herein shall prove to be incorrect.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 103.7 • ACCESS

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby assures the Insured that said land abuts upon a physically open street known as (insert name of street); and the Company hereby insures said Insured against loss which said Insured shall sustain in the event said assurances herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules and the Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 103.8 • ENCROACHMENT, ADJOINING IMPROVEMENTS

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures against any loss or damage which the Insured shall sustain by reason of any obligation to remove any improvements on the land because of any present encroachment onto the land by improvements on adjoining land as referred to in Paragraph _____ of Schedule B, Part I.

The total liability of the Company under said Policy and any Endorsements thereto shall not exceed, in the aggregate, the face amount of said Policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This Endorsement is made a part of said Policy and is subject to the schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This Endorsement is not to be construed as insuring the title to said estate or interest as of any later date than Date of Policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 104 • ASSIGNMENT OF MORTGAGE

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures _____ (the
“Insured”) that by a valid assignment or assignments the beneficial interest under the mortgage referred to
in paragraph 3 of Schedule A has been transferred to the Insured.

The Company hereby insures against loss or damage sustained in the event that the assurances
herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto shall not
exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under
the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and
Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any
later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 104.1 • ASSIGNMENT OF MORTGAGE

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures _____ (the "Insured"):

- (a) that by a valid assignment or assignments the beneficial interest under the mortgage referred to in paragraph 3 of Schedule A has been transferred to the Insured;
- (b) that no release, either full or partial, of said mortgage, or any modification or subordination thereof, appears of record.

The Company hereby insures against loss or damage which the Insured shall sustain in the event that the assurances herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 104.2 •
ASSIGNMENT OF MORTGAGE, POLICY CHANGE: EFFECTIVE DATE**

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures _____ (the "Insured"):

- (a) that the date of said policy is changed to read _____.
- (b) that by a valid assignment or assignments the beneficial interest under the mortgage referred to in paragraph 3 of Schedule A has been transferred to the Insured.

The Company hereby insures against loss or damage sustained in the event that the assurances herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 104.3 • ASSIGNMENT, COLLATERAL

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures _____ (the "Insured") that the beneficial interest under the mortgage referred to in Schedule A of this policy has been assigned to the Insured as collateral security.

The Company hereby insures against loss of principal, interest or other sums secured by said mortgage, which the Insured shall sustain in the event that the assurances herein shall prove to be incorrect.

The liability of the Company under this endorsement shall not exceed the sum of \$_____ and costs which the Company is obligated under the conditions and stipulations of said policy to pay.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement, when countersigned by an authorized officer or agent, is made a part of said policy as of the policy date thereof and is subject to the Schedules, Conditions and Stipulations and Exclusions from Coverage therein contained, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 104.4 • ASSIGNMENT, COLLATERAL

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures _____ (the "Insured"):

- (a) that the beneficial interest under the mortgage referred to in paragraph 3 of Schedule A has been assigned to the Insured as collateral security;
- (b) that no release, either full or partial, of said mortgage, or any modification or subordination thereof, appears of record.

The Company hereby insures against loss or damage which the Insured shall sustain in the event that the assurances herein shall prove to be incorrect.

The liability of the Company under this endorsement shall not exceed the sum of \$_____ and costs which the Company is obligated under the Conditions and Stipulations of said policy to pay; and the total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 104.8 • ASSIGNMENT OF MORTGAGE

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company assures:

- a. That by a valid assignment or assignments the beneficial interest under the mortgage referred to in paragraph ____ of Schedule ____ has been transferred to said assured;
- b. That there are no subsisting tax or assessment liens which are prior to said mortgage except:
- c. That there are no matters affecting the validity or priority of the lien of said mortgage, other than those shown in said policy, except:
- d. That there are no United States tax liens or bankruptcy proceedings affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except:

The Company hereby insures said assured against loss which said assured shall sustain in the event that the assurances herein shall prove to be incorrect.

Impairment, loss or failure of title to the beneficial interest transferred to the assured is expressly excluded from the coverage hereof if resulting from:

- a. lack of possession of the original promissory note secured by the insured mortgage, or
- b. the absence from the original promissory note of a proper endorsement to the insured assignee.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 104.10 • ASSIGNMENT OF MORTGAGE

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company assures:

- a. That by a valid assignment or assignments the beneficial interest under the mortgage referred to in paragraph _____ of Schedule _____ has been transferred to said assured;
- b. That no release, either full or partial, of said mortgage, or any modification or subordination thereof, appears of record.

The Company hereby insures said assured against loss which said assured shall sustain in the event that the assurances herein shall prove to be incorrect.

Impairment, loss or failure of title to the beneficial interest transferred to the assured is expressly excluded from the coverage hereof if resulting from:

- a. lack of possession of the original promissory note secured by the insured mortgage, or
- b. the absence from the original promissory note of a proper endorsement to the insured assignee.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 107.2 •
POLICY CHANGE: INCREASED AMOUNT, ADVANCES**

ENDORSEMENT

Attached to _____ Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company does hereby increase the face amount of said policy from
\$ _____ to \$ _____, effective as of the date of said policy.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 107.3 •
POLICY CHANGE: INCREASED AMOUNT, ADVANCES**

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company does hereby increase the face amount of said policy from \$ _____, to \$ _____, and the effective date of said policy is hereby changed to read _____.

The Company hereby insures:

- (1) That, except as otherwise expressly provided herein, there are no liens, encumbrances or other matters shown by the public records, affecting said estate or interest, other than those shown in said policy, except: _____
- (2) That, as shown by the public records, the title to said estate or interest is vested in the vestees shown in Schedule A;

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 107.6 • KNOWLEDGE

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby assures _____
that, notwithstanding any terms or provisions in this policy to the contrary, in the event of loss or damage insured against under the terms of said policy, the Company will not deny its liability thereunder to said Insured on the ground that said Insured had knowledge of any matter solely by reason of notice thereof imputed to it through _____, by operation of law.

The total liability of the Company under said policy and any endorsements therein shall not exceed in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 107.7 • KNOWLEDGE

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby assures _____ that, notwithstanding any terms or provisions in this policy to the contrary, in the event of loss or damage insured against under the terms of said policy, the Company will not deny its liability thereunder to said Insured on the ground that said Insured had knowledge of any matter solely by reason of notice thereof imputed to it through _____, by operation of law.

The total liability of the Company under said policy and any endorsements therein shall not exceed in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 107.9 •
POLICY CHANGE: ADDITIONAL INSURED**

ENDORSEMENT

Attached to _____ Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Said policy is hereby amended by adding as a named insured therein:

(Name of Added Insured)

This endorsement does not extend the coverage of said policy to any later date than the date of said policy, nor does it impose any liability on the Company for loss or damage resulting from (1) failure of such added insured to acquire an insurable estate or interest in said land, or (2) any defect, lien or encumbrance attaching by reason of the acquisition of an estate or interest in the land by such added insured.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 107.10 •
POLICY CHANGE: ADDITIONAL INSURED**

ENDORSEMENT

Attached to _____ Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Said policy is hereby amended by adding as a named insured therein _____.

This endorsement does not extend the coverage of said policy to any later date than the date of said policy.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 107.11 • POLICY CHANGE: EFFECTIVE DATE

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The effective date of said policy is hereby changed from _____, 20 __, at _____ A.M. to
_____, 20 __, at _____.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 107.12 • POLICY CHANGE: EFFECTIVE DATE

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The effective date of said policy is hereby changed from _____, 20____, at _____ A.M. to _____, 20____, at _____.

The Company hereby insures:

- (1) That, except as otherwise expressly provided herein, there are no liens, encumbrances or other matters shown by the public records, affecting said estate or interest, other than those shown in said policy, except: _____
- (2) That, as shown by the public records, the title to said estate or interest is vested in the vestees shown in Schedule A.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 108.8 •
POLICY CHANGE: INCREASED AMOUNT, ADVANCES**

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Upon the representation and assurance by the Insured, that said Insured has made an additional advance to _____ in the sum of \$ _____, evidenced by a promissory note for the amount, executed by said party, or parties, dated _____, and secured by the mortgage referred to in Schedule A, the Company hereby insures the Insured against loss which said Insured shall sustain by reason of

- (1) Title to said estate or interest being vested at the date of this endorsement, in other than the maker or makers of the promissory note evidencing said additional advance, except as affected by the following matters: _____.
- (2) Priority over said mortgage, insofar as the same secures said additional advance, of any lien or encumbrance existing at the date of this endorsement which is not shown or referred to in Schedule B as prior to said mortgage nor excluded from coverage in the Conditions and Stipulations or Schedule of Exclusions from Coverage, except as affected by the following matters: _____.
- (3) Any release, full or partial, or modification or subordination of said mortgage shown by the public records at the date of this endorsement, except for the following instruments: _____.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy, plus the amount of said additional advance, and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.1 • POLICY CHANGE: DELETE EXCEPTION

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

Said Policy is hereby amended by deleting item ____ of Schedule B.*

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.2 • POLICY CHANGE: INSURE EXCEPTION

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss or damage which the insured shall sustain by reason of the enforcement or attempted enforcement thereof against the land in connection with Item _____, Schedule B.*

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement, when countersigned by an authorized officer or agent, is made a part of said policy as of the policy date thereof and is subject to the Schedules, Conditions and Stipulations and Exclusions from Coverage therein contained, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.3 • POLICY CHANGE: EXTENSION

ENDORSEMENT

Attached to _____ Policy [Commitment] No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

This endorsement is made a part of the policy or commitment and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.4 • MORTGAGE MODIFICATION

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures that by an agreement executed by _____
and recorded _____, the mortgage referred to in Schedule A has been properly modified to
provide:

(Quote provision to be covered, i.e., time for payment.)

The Company hereby insures against loss or damage which said Insured shall sustain in the event
that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto shall not
exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under
the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and
stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any
later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.5 • MORTGAGE MODIFICATION

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures that by an agreement executed by _____
dated _____, recorded _____, the mortgage referred to in Schedule A or the
obligation secured thereby has been modified and that said mortgage is prior to any liens or encumbrances
affecting said estate or interest, other than those shown in Schedule B as prior to said mortgage, except:
_____.

The Company hereby insures against loss or damage which said Insured shall sustain in the event
that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto shall not
exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under
the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and
stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any
later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.6 • CHANGE IN RATE

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Upon assurances by the Insured that the insured mortgage is made pursuant to the Federal Home Loan Bank Board regulations authorizing Renegotiable Rate Mortgage loans (12 Code of Federal Regulations, § 545.6-4a), the Company hereby assures the Insured that the lien of said mortgage is valid and enforceable.

The Company further assures the Insured that the priority of the lien of said mortgage shall be unaffected by changes in the interest rate so long as they are in accordance with 12 CFR §545.6-4a(c).

The Company hereby insures against loss or damage which said Insured shall sustain in the event that the assurances of the Company herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.7 • CHANGE IN RATE

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage by reason of:

- (1) The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
- (2) Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by said changes in the rate of interest.

“Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any other prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.7A • ADVANCES, CHANGE IN RATE

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in Section 4 of Schedule A against loss which said insured shall sustain by reason of:

- (1) The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
- (2) Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by said changes in the rate of interest. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.
- (3) Loss of priority of the lien of the insured mortgage as to each and every advance which the insured is obligated to make pursuant to the provisions of the insured mortgage and provided, however, no coverage is given by this Paragraph 3 as to any advance made during any period in which an event of default exists under the terms of the insured mortgage.

The Company further assures the Insured that the advances described above shall not constitute "additional principal indebtedness", as referred to in Section 8(d) of the conditions and stipulations of the policy for the purpose of limiting liability under the provisions of that section.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) federal tax liens.

For purposes of this endorsement, and notwithstanding any terms or provisions in this policy to the contrary, the following terms shall be defined as follows: Advances shall mean extensions of credit under and pursuant to the terms and provisions of the _____ ("Agreement"). An extension of credit shall occur on the date on which and at the time when the Insured pursuant to its contractual obligations under the said Agreement either honors a check drawn by the Vestee (as shown in Section 3 of Schedule A of this policy) on the account established by said Agreement or authorizes a charge for the benefit of Vestee under/on the credit card issued to Vestee pursuant to the said Agreement, or a credit card charge is actually made.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Nothing herein contained shall be construed as extending or changing the effective date of said policy, unless otherwise expressly stated.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.7B • ADVANCES

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

This policy shall provide insurance coverage for the amount of all advances outstanding and unpaid at any given time (up to the face amount of the policy) notwithstanding the fact that prior advances may have been made and previously repaid.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions from Coverage of the policy. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsement, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

This Endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Nothing herein contained shall be construed as extending or changing the effective date of said policy, unless otherwise expressly stated.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.8 • CHANGE IN RATE

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage by reason of:

- (1) The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest, and for additions to the principal balance of accrued unpaid interest and for interest to be charged thereon.
- (2) Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, if the loss of priority is caused by either the adding of unpaid accrued interest to the principal or a change in the rate of interest, either being made pursuant to the terms of the insured mortgage.

“Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions from Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it increase the face amount thereof.

This Endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Nothing herein contained shall be construed as extending or changing the effective date of said policy, unless otherwise expressly stated.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.9 • CHANGE IN RATE

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage by reason of:

- (1) The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest, or capitalization of interest.
- (2) Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, including any capitalized interest, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by said changes in the rate of interest or capitalization of interest.

“Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

“Capitalization of interest,” as used in this endorsement, shall mean only those additions to principal arising by the failure of the payments provided in the insured mortgage to pay in full the accrued interest as it becomes due, whereupon said unpaid amounts are thereafter treated as principal.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions from Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.9A • CHANGE IN RATE

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

Based upon representation by the insured that the insured mortgage shown in Schedule A of this policy secures a loan pursuant to which certain interest rates may be increased in accordance with the provisions thereof, and/or includes an increase in interest based upon the value of the insured premises, and/or that the increase may cause an addition to the principal sum of the mortgage, the Company agrees that the insurance under this Policy is increased to an amount equal to 150% of the amount stated in Schedule A.

The Company hereby insures against loss or damage, including all interest required to be paid in accordance with the provisions of the insured mortgage (Stated Interest and Contingent Deferred Interest), by reason of:

- (1) The invalidity or unenforceability of the lien of the insured mortgage or any of the terms or provisions of the insured mortgage; and
- (2) Any loss of priority of the lien of the insured mortgage; based in whole or in part on the fact that the insured mortgage contains provisions therein for changes in the rate of interest or the fact that part of the interest payable is calculated upon increases in the value of the premises securing the debt of the mortgage.

This Endorsement does not insure against loss or damage based upon (a) usury, (b) any consumer credit protection or truth in lending law, or (c) failure of the insured to comply with applicable State and Federal laws or Regulations regarding Shared Appreciation Loans.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions from Coverage of any ALTA Loan Policy. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 110.10 • CHANGE IN RATE

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss or damage which the Insured shall sustain by reason of the loss of priority of the lien of the insured mortgage arising by reason of an action taken in accordance with the terms of the insured mortgage.

This Endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions from Coverage of any ALTA Loan Policy. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 111 • PARTIAL RELEASE

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage which the Insured shall sustain by reason of any loss of priority of the lien thereof on the estate or interest referred to in Schedule A in the remainder of the land described in Schedule A occasioned by the execution of a partial release dated _____ and recorded _____.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 111.3 • PARTIAL RELEASE, ENCROACHMENT

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage which the Insured shall sustain by reason of any impairment of the lien thereof on the estate or interest in the remainder of the land described in Schedule A, occasioned by the execution of a partial release dated _____ and recorded _____.

The Company further insures that there are no encroachments of buildings, structures, or improvements located on the said remainder of land described in Schedule A onto adjoining lands, nor any encroachments of buildings, structures, or improvements located on adjoining lands onto said remainder of land described in Schedule A; and that at the date of this endorsement there is located on said remainder of land described in Schedule A _____ known as _____.

The Company hereby insures against loss or damage which the Insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said land as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 111.4 • PARTIAL RELEASE

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby agrees that the release of any portion but less than all of the land from the lien and encumbrance of the insured mortgage shall not reduce the amount of insurance stated in Schedule A of this policy and that no written consent from the Company to any such release will be required, provided that at the time of the release the insured has no knowledge of any claim under this policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 111.7 • ADVANCES

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company assures the Insured that, notwithstanding any terms or provisions in this policy to the contrary, advances made after the Date of Policy which are secured by the insured mortgage and made within ten years of Date of Policy, shall be included within the coverage of this policy not to exceed the face amount of said policy, provided that the insured vestee is the owner of the estate or interest covered by the policy at the date any advances are made and subject to the limitations as described.

The Company also insures that subsequent advances shall have the same priority over liens, encumbrances and other matters disclosed by the public records, as do advances secured by the insured mortgage as of the Date of Policy except for the following matters, if any, disclosed by the public records, subsequent to policy date:

- a. Federal tax liens,
- b. Bankruptcies affecting the estate of the vestee prior to date of such advances, and
- c. Liens, encumbrances or other matters, the existence of which are actually known to the Insured prior to date such indebtedness is created except as to any indebtedness created to protect the lien of the insured mortgage and secured thereby.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is subject to neither Section 3(d) of the Exclusions from Coverage nor Section 8(d) of the Conditions and Stipulations.

Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 112.1 • BOND HOLDERS

ENDORSEMENT

Attached to Policy No. _____
 Issued by
 BLANK TITLE INSURANCE COMPANY

Section 1 of the Conditions and Stipulations of this policy is hereby amended by deleting therefrom subparagraph (a) and substituting in lieu thereof the following:

- a. “insured”: the insured named in Schedule A, together with each owner or legal holder of any of the bonds secured by the insured mortgage. The term “insured” also includes
 - i. each successor of the named insured, as Trustee under the Indenture referred to in the insured mortgage, provided the successor is the parent or wholly-owned subsidiary of the named insured, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds;
 - ii. each successor in ownership of any of the bonds secured by the insured mortgage (reserving, however, all rights and defenses as to any such successor that the Company would have had against any predecessor insured, unless the successor acquired the bond or bonds as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest referred to in Schedule A in the land);
 - iii. any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guarantee insuring or guaranteeing the indebtedness evidenced by said bonds, or any part thereof, whether named as an insured herein or not;
 - iv. the parties designated in Section 2(a) of these Conditions and Stipulations.

Section 1 of the Conditions and Stipulations of this policy is further hereby amended by adding subparagraph (h) thereto to read as follows:

- (h) “bond” or “bonds”: the evidences of indebtedness, whether one or more, secured by said mortgage.

Section 6 of the Conditions and Stipulations of said policy is hereby amended by deleting the printed text thereof and substituting in lieu thereof the following:

- 6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

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

- a. To Pay or Tender Payment of the Amount of Insurance or to Purchase the Bonds.
 - i. to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys’ fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

- ii. to purchase the bond or bonds secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase said bond or bonds as herein provided, such insured shall transfer, assign and deliver said bond or bonds and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

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

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

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

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

If this endorsement is attached to an ALTA Loan Policy - 1970, then in that event, the foregoing references to Section 1 and subparagraphs (a) and (h) thereof, Section 2(a) and to Section 6, all of the Conditions and Stipulations, shall be deemed to refer to Paragraph 1 and subparagraphs (a) and (g) thereof, Paragraph 2(a) and to Paragraph 5, respectively, all of the Conditions and Stipulations.

Any loss under this policy shall be payable to the insured as their respective interests may appear. If payment is made to any owner or legal holder of any of said bonds, such payment shall be made ratably with other bondholders.

Payment by the Company to any owner or legal holder of any of said bonds shall reduce pro tanto the liability of the Company under this policy to such owner or legal holder.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 115 • CONDOMINIUM

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company assures the Insured that the estate or interest described in Schedule A is a condominium as defined in C.R.S. § 38-33-103 [or C.R.S. § 38-33.3-103(8)], in fee, and as such is entitled to be assessed and taxed as a separate parcel.

The Company hereby insures said Insured against any loss of principal, interest, or other sums accrued by said mortgage, which said Insured shall sustain in the event that the assurances herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 115.1 •
CONDOMINIUM, ENCROACHMENT, RESTRICTIONS**

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage by reason of:

- (1) The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
- (2) The failure of the documents required by said condominium statutes to comply with the requirements of said statutes to the extent that such failure affects the title to the unit and its common elements.
- (3) Present violations of any restrictive covenants which restrict the use of the unit and its common elements and which are contained in the condominium documents. Said restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of title.
- (4) The priority of any lien for charges and assessments provided for in the condominium statutes and condominium documents over the lien of any insured mortgage identified in Schedule A, except for any lien securing assessments arising under C.R.S. § 38-33.3-316(2)(b).
- (5) The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
- (6) Any obligations to remove any improvements which exist at date of policy because of any present encroachment or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
- (7) The failure of title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at date of policy.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, if any, nor does it extend the effective date of the policy and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 115.2 •
PUD, EASEMENT, ENCROACHMENT, RESTRICTIONS**

ENDORSEMENT

Attached to _____ Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage by reason of:

- (1) Present violations of any restrictive covenants specifically referred to in Schedule B which restrict the use of the land. Said restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of title.
- (2) The priority of any lien for charges and assessments provided for in any document specifically referred to in Schedule B over the lien of any insured mortgage identified in Schedule A, except for any lien securing assessments arising under C.R.S. § 38-33.3-316(2)(b).
- (3) Any obligations to remove any improvements on the land because of (a) any present encroachment by such improvements upon adjoining land or upon any easement specifically referred to in Schedule B or, (b) any present encroachment onto the land by improvements on adjoining land.
- (4) The failure of title by reason of a right of first refusal to purchase the land which was exercised or could have been exercised at date of policy.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, if any, nor does it extend the effective date of the policy and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 115.3 • MANUFACTURED HOUSING

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company agrees that the Manufactured Housing Unit described under Schedule A is included within the term "land" when used in this policy.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, nor does it extend the effective date of the policy and prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 116 • SURVEY

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company assures the Insured that at the date of this policy there is located on said land a _____, known as _____, and that the map attached to this policy shows the correct location and dimensions of said land according to those records which under the recording laws impart constructive notice as to said land.

The Company hereby insures against loss or damage which said Insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 116.1 • SURVEY

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures that said land is the same as that delineated on the plat of a survey made by _____ on _____, 20 __, designated Job No. _____, which is attached hereto and made a part hereof.

The Company hereby insures against loss or damage which said Insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 116.2 • CONDOMINIUM, ENCROACHMENT

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company assures the Insured that at the date of this Policy, the dimensions of the exterior boundary of (the common area) referred to in Schedule A of this Policy, which is also the exterior boundary of the project, are correctly shown on the map recorded in the office of the County Recorder of _____ County.

The Company further assures the Insured that the estate in said land referred to in Schedule A includes a (residence and a garage) , within the project boundaries, which (residence and garage) , is designated as (Units 4 and 5) , as shown on that map recorded in Book _____, Page _____, of _____, in the office of the County Recorder of _____ County, and known as (street address) .

The Company hereby insures the Insured against loss or damage which said Insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein contained.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 116.4 • SURVEY CONTIGUITY

ENDORSEMENT

Attached to _____ Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures that the land described in Schedule A is contiguous to

_____.

The Company hereby insures against loss or damage which said Insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 116.5 • MANUFACTURED HOUSING, SURVEY

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company assures the insured that at the date of this policy

- (1) there is located on the land described in Schedule A hereof, improvements meeting the definition of a “manufactured home” under the Colorado Titles to Manufactured Homes Act, Article 29, Title 38, Colorado Revised Statutes;
- (2) that said improvements are located and attached to said land in the manner and as shown on the attached Improvement Location Certificate issued by _____ as of the date of said Certificate;
- (3) that the said improvements are included within the term “land”, as defined and used in this policy, to the extent the improvements constitute real property upon compliance with the above Act; and
- (4) this endorsement does not insure against any unpaid mortgage or secured lien against the improvements which may have been filed pursuant to the above Act or any prior applicable law.

The Company hereby insures against loss or damage which the Insured shall sustain in the event that the assurances herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements thereto, including this endorsement, shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 116.6 • SURVEY

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the Mortgage described in Schedule A against loss or damage which said insured shall sustain by reason of the invalidity or unenforceability of the lien of the mortgage upon said estate by reason of the land described in the insured mortgage not being legally identical with the land described in Schedule A.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 116.7 • NAME VARIANCE

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the mortgage described in Schedule A against loss or damage which said insured shall sustain by reason of the invalidity or unenforceability of the lien of the mortgage upon said estate by reason of there being variances between the name of the mortgagor in the insured mortgage and the name in which the title to the estate or interest described in Schedule A is vested as shown in Schedule A.

This Endorsement is made a part of said Policy and is subject to all of the terms and provisions thereof and of any prior Endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior Endorsements, nor does it extend the effective Date of Policy and any prior Endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122 • ADVANCES

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures:

- (1) That, except as otherwise expressly provided herein, there are no liens, encumbrances or other matters shown by the public records, affecting said estate or interest, other than those shown in said policy, except: _____
- (2) That, as shown by the public records, the title to said estate or interest is vested in the vestees shown in Schedule A:

Upon assurance by the Insured that said Insured has made an advance to _____ in the sum of \$_____, which is a portion of the indebtedness evidenced by the note or notes secured by said mortgage, the Company hereby insures against loss which the Insured shall sustain in the event that the assurances of the Company herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.1 • ADVANCES

ENDORSEMENT

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss or damage which the insured shall sustain by reason of the loss of priority of the lien of the insured mortgage, other than loss or damage caused by any statutory liens for labor or material.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions from Coverage from any ALTA loan policy. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.2 • ADVANCES

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby assures the Insured that, notwithstanding any terms or provisions in this Policy to the contrary:

Advances made subsequent to the Date of Policy pursuant to the terms of the “_____”, which are secured by the insured mortgage, shall be included within the coverage of this Policy not to exceed the face amount of the policy, provided that the vestee is the owner of the estate covered by the policy at the date any such advances are made and subject to the limitations hereinafter set forth.

The Company further assures the Insured that the subsequent advances shall have the same priority over liens, encumbrances and other matters disclosed by the public records as do advances secured by the insured mortgage as of Date of Policy, except for the following matters, if any, disclosed by the public records subsequent to policy date:

- (a) Federal tax liens.
- (b) Liens, encumbrances or other matters, the existence of which are actually known to the Insured prior to date of the advances if the advances are made subsequent to the occurrence of the event of default under the terms of the insured mortgage and prior to a cure of the default.
- (c) Bankruptcies affecting the estate or interest of the vestee prior to date of the advances.

The total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, if any, nor does it extend the effective date of the policy and any prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.3 • ADVANCES, CHANGE IN RATE

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Owner of the indebtedness secured by the mortgage referred to in Section 4 of Schedule A against loss which said insured shall sustain by reason of :

- (1) The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
- (2) Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by said changes in the rate of interest. "Changes in the rate of interest", as used in this endorsement shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.
- (3) Loss of priority of the lien of the insured mortgage as to each and every advance which the insured makes pursuant to the provisions of the insured mortgage provided however no coverage is given by this paragraph 3 as to any advance made during any period in which a default exists under the terms of the insured mortgage, or the vestee shown in Schedule A is no longer the owner of the estate or interest covered by the policy.

The Company further assures the Insured that the advances described above shall not constitute "additional principal indebtedness," as referred to in Section 8(d) of the conditions and stipulations of the policy for the purpose of limiting liability under the provisions of that section.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) Federal Tax Liens.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the exclusions from coverage of the policy. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.4 • ADVANCES, CHANGE IN RATE**ENDORSEMENT**

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in Schedule A against loss which said insured shall sustain by reason of :

- (1) The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
- (2) Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by said changes in the rate of interest. "Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.
- (3) Loss of priority of the lien of the insured mortgage as to each and every advance which the insured makes pursuant to the provisions of the insured mortgage and loan agreement, EXCEPT as to any advances made after receipt of written notice of transfer of title or any subsequent lien or encumbrance against the premises insured hereunder.
- (4) Subject to the provisions of paragraph (3) of this endorsement insurance coverage will extend to the principal amount at any time outstanding of the loan secured by the mortgage insured hereunder, and will increase to include each additional advancement up to the face amount of the policy, whether such advancements are made before or after any repayment of all or any part of the outstanding principal amount of the loan secured by the mortgage insured hereunder.

The Company further assures the Insured that the advances described above shall not constitute "additional principal indebtedness," as referred to in Section 8(d) of the Conditions and Stipulations of the policy for the purpose of limiting liability under the provisions of that section.

This endorsement does not insure against loss or damage based upon: (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) Federal Tax Liens, or (d) Bankruptcies affecting the estate or interest of the mortgagor prior to the date of any advancement, or (e) Real Estate Taxes or Special Assessments.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions from Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.5 • ADVANCES, CHANGE IN RATE, USURY**ENDORSEMENT**

Attached to Loan Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in Section 4 of Schedule A against loss which said Insured shall sustain by reason of :

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions contained in the _____ Agreement and Disclosure Statement (“Agreement”) secured thereby which provide for changes in the rate of interest.

2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan evidenced by the Agreement together with interest as changed in accordance with the provisions of the Agreement, which loss of priority is caused by said changes in the rate of interest. “Changes in the rate of interest”, as used in Paragraphs 1 and 2 of this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the Agreement.

3. Loss of priority of the lien of the insured mortgage as to each and every advance which the Insured makes pursuant to the provisions of the insured mortgage or the Agreement; provided, however, that no coverage is given by this Paragraph 3 as to any advance made after the Insured has actual knowledge of any sale or transfer of all or any portion of the estate or interest encumbered by the insured mortgage and provided further that no coverage is given by this Paragraph 3 as to liens, encumbrances or other matters affecting title, the existence of which is actually known to the Insured prior to the date of such advance if the advance is made subsequent to the occurrence of a default (of which the Insured has actual knowledge) under the terms of the Agreement and prior to the cure by the vestee or waiver by the Insured of such default.

4. The invalidity, unenforceability or loss of priority of the lien of the insured mortgage as to each and every advance which the Insured makes after the terms or conditions of the Agreement are changed in accordance with the Agreement (and all interest charged thereon); provided, however, that no coverage is given by this Paragraph 4 as to liens, encumbrances or other matters affecting title, the existence of which is actually known to the Insured prior to the date of an advance made (or the charging of interest on advances) after any such change to the extent that any such advance (or interest charged thereon) is greater as a result of such change than such advance (or interest charged thereon) would have been absent such change.

5. The Company further assures the Insured that the advances described above shall not constitute “additional principal indebtedness,” as referred to in Section 8(d) of the conditions and stipulations of the Policy for the purpose of limiting liability under the provisions thereof.

6. The policy is hereby amended by deleting therefrom the usury provisions of Section 5 of the Exclusions from Coverage of the policy.

This endorsement does not insure against loss or damage based upon any consumer credit protection or Truth-in-Lending law.

For purposes of this endorsement, and notwithstanding any terms or provisions in this policy to the contrary, the following terms shall be defined as follows:

Advances mean extensions of credit under and pursuant to the terms and provisions of the Agreement. An extension of credit shall occur on the date on which and at the time when the Insured either honors a check drawn by Vestee (as shown in Section 3 of Schedule A of this policy) on the account established by the Agreement or authorizes a charge for the benefit of Vestee under/on the credit card issued to Vestee pursuant to the Agreement, or a credit card charge is actually made, or an advance is otherwise made pursuant to said Agreement.

This policy shall provide insurance coverage for the amount of all advances outstanding and unpaid at any given time (up to the face amount of the policy) notwithstanding the fact that prior advances may have been made and previously repaid.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions from Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the effective date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.6 • ADVANCES

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby assures the insured that, notwithstanding any terms or provisions in the policy to the contrary:

Advances made subsequent to Date of Policy pursuant to the terms of the _____, which are secured by the insured mortgage, shall be included within the coverage of this policy not to exceed the face amount of the Policy, provided that the vestee is the owner of the estate or interest referred to in Schedule A covered by the policy at the date any such advances are made and subject to the limitations hereinafter set forth.

The Company further assures the insured that the subsequent advances shall have the same priority over liens, encumbrances and other matters disclosed by the public records as do advances secured by the insured mortgage as of Date of Policy, except for the following matters, if any, occurring subsequent to policy date:

- a. Federal tax liens.
- b. Liens, encumbrances or other matters, the existence of which are actually known to the insured prior to date of the advances.
- c. Bankruptcies affecting the estate or interest referred to in Schedule A of the vestee prior to date of the advances.

This endorsement does not insure against loss or damage based upon

- a. any consumer credit protection or truth-in-lending law, or
- b. Environmental protection liens.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.8 • BALLOON MORTGAGE

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures the insured mortgagee against loss or damage by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a Conditional Right to Refinance and a change in the rate of interest as set forth in the Mortgage Rider.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest thereon, which loss of priority is caused by the exercise of the Conditional Right to Refinance and the extension of the loan term to the New Maturity Date set forth on the Rider and a change in the rate of interest, provided that all the conditions set forth in paragraphs 2 and 5 of the Balloon Mortgage Rider have been met, and there are no other liens, defects, encumbrances, or other adverse matters affecting title arising subsequent to Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury or (b) any consumer credit protection or truth-in-lending law or (c) bankruptcy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.9 • ADVANCES

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. Upon the representation and assurance by the insured, that the insured has increased the borrower’s credit limit under the _____ (agreement) in the sum of \$ _____, as evidenced by _____, dated _____, and secured by the mortgage referred to in Schedule A, the Company hereby insures the insured against loss which the insured shall sustain by reason of
 - a. Title to the estate or interest referred to in Schedule A being vested according to the public records, at date of this endorsement, in other than the vestee(s) shown in paragraph 3 of Schedule A, except as affected by the following matters:
 - b. Priority over the mortgage, insofar as the same secures the increase in the credit limit, of any lien or encumbrance shown by the public records at the date of this endorsement which is not shown or referred to in Part II of Schedule B as prior to the mortgage nor otherwise excluded from coverage of the policy, except as affected by the following matters:
 - c. Any release full or partial, or modification or subordination of the mortgage shown by the public records at the date of this endorsement, except for the following instruments:
2. The Company hereby further assures the insured that the assurances contained in the Colorado Endorsement ____ endorsement attached to the policy will benefit and protect subsequent advances made under the increased credit limit mentioned above, except no insurance is hereby given for subsequent advances against the matters, if any, shown in paragraph A of this endorsement.

The total liability of the Company under said Policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said Policy, plus the amount of the increase in the credit limit (which together now constitute the new “face amount” of the policy) and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.10 • CHANGE IN RATE**ENDORSEMENT**

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for: (a) interest on interest; (b) changes in the rate of interest; or (c) the addition of unpaid interest to the principal balance of the loan.
2. Loss of priority of the lien of the insured mortgage as security for the principal balance of the loan, including any unpaid interest which was added to principal in accordance with the provisions of the insured mortgage, interest on interest, or interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by (a) changes in the rate of interest; (b) interest on interest; or (c) increases in the unpaid principal balance of the loan resulting from the addition of unpaid interest.
3. The invalidity, unenforceability or loss of priority of the lien of the insured mortgage as security for the payment of the advances made for Principal, or amounts payable as Contingent or Noncontingent Interest as set forth and defined in the Mortgage, Loan Agreement or Note, provided that such invalidity, unenforceability or loss of priority is caused or created by the provisions of the Mortgage, Loan Agreement or Note.

This endorsement does not insure that advances made after date of policy pursuant to the Mortgage, Loan Agreement or Note have priority over the following matters, recorded subsequent to date of policy:

- a. Federal Tax Liens.
- b. Bankruptcies affecting the estate or interest of the vestee.
- c. Environmental Protection Liens.

This endorsement does not insure that advances made after date of policy pursuant to the Mortgage, Loan Agreement or Note have priority over the following matters, recorded subsequent to date of policy:

- a. Liens, encumbrances or other matters entitling the Insured to declare a default pursuant to the provisions of the Loan Documents, the existence of which are actually known to the Insured prior to the date of any such advance(s).
- b. Advances made subsequent to the recording of a notice of default of the insured mortgage and prior to a rescission of the recorded notice of default.

“Changes in the rate of interest”, as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth-in-lending law.

If this endorsement is attached to a former ALTA Loan Policy - 1970, then the reference hereinafter referred to as Section 8(d) shall be deemed to refer to Paragraph 8(b).

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is subject to neither Section 3(d) of the Exclusions From Coverage nor Section 8(d) of the Conditions and Stipulations. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 122.11 • CHANGE IN RATE

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

Upon representation by the Insured that the insured mortgage shown in Schedule A of this Policy secures a loan pursuant to which certain interest rates may be increased in accordance with the provisions thereof, and/or includes an increase in interest based upon the value of the insured premises, and that the increase may cause an addition to the principal sum of the mortgage, the Company agrees that the insurance under this Policy is increased in an amount equal to 50% of the amount stated in Schedule A.

The Company hereby insures against loss or damage, including all interest required to be paid in accordance with the provisions of the insured mortgage (Stated Interest and Contingent Deferred Interest), by reason of:

- 1. The invalidity or unenforceability of the lien of the insured mortgage or any of the terms or provisions of the insured mortgage; and
- 2. Any loss of priority of the lien of the insured mortgage; based in whole or in part on the fact that the insured mortgage contains provisions therein for changes in the rate of interest or on the fact that part of the interest payable is calculated upon increases in the value of the premises securing the debt of the mortgage.

This endorsement does not insure against loss or damage based upon:

- a. usury; or
- b. any consumer credit protection or truth-in-lending law;
- c. failure of the Insured to comply with applicable State and Federal Laws or Regulations regarding Shared Appreciation Loans.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3(d) of the Exclusions From Coverage of any ALTA Loan Policy. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 123.1 • ZONING

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures that, as of Date of Policy:

- (a) According to applicable zoning ordinances and amendments thereto, the land is classified Zone _____.
- (b) The following use or uses are allowed under said classification subject to compliance with any conditions, restrictions or requirements contained in said zoning ordinances and amendments thereto, including but not limited to the securing of necessary consents or authorization as a prerequisite to such use or uses: _____.

There shall be no liability under this endorsement based upon the invalidity of said ordinances and amendments thereto until after a final decree of a court of competent jurisdiction adjudicating such invalidity, the effect of which is to prohibit such use or uses.

Loss or damage as to the matters insured against by this endorsement shall not include loss or damage sustained or incurred by reason of the refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, if any, nor does it extend the effective date of the policy and any prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 123.2 • ZONING

ENDORSEMENT

Attached to _____ Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures that, as of Date of Policy:

- (a) According to applicable zoning ordinances and amendments thereto, the land is classified Zone _____.
- (b) The following use or uses are allowed under said classification subject to compliance with any conditions, restrictions or requirements contained in said zoning ordinances and amendments thereto, including but not limited to the securing of necessary consents or authorizations as a prerequisite to such use or uses: _____.

There shall be no liability under this endorsement based on the invalidity of said ordinances and amendments thereto until after a final decree of a court of competent jurisdiction adjudicating such invalidity, the effect of which is to prohibit such use or uses.

The Company hereby further insures against loss or damage arising from a final decree of a court of competent jurisdiction:

- (a) prohibiting the use of the land, with any structure presently located thereon, as specified in Paragraph 1(b) above, or
- (b) requiring the removal or alteration of said structure.

on the basis that as of Date of Policy said ordinances and amendments thereto have been violated with respect to any of the following matters: (i) area, width or depth of the land as a building site for said structure; (ii) floor space area of said structure; (iii) setback of said structure from the property lines of the land; and (iv) height of said structure.

Loss or damage as to the matters insured against by this endorsement shall not include loss or damage sustained or incurred by reason of the refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, if any, nor does it extend the effective date of the policy and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 125 • RESCISSION — TRUTH IN LENDING

ENDORSEMENT

Attached to Loan Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss or damage which the Insured shall sustain by reason of any final judgment of a court of competent jurisdiction that either the lien of the insured mortgage has been terminated or the title of the insured who has acquired all or any part of the estate or interest in the land described in Schedule A by foreclosure, trustee’s sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage, has been defeated by a valid exercise of the right of rescission conferred by the Federal Truth in Lending Act, hereinafter referred to, and that such right or rights of rescission existed because neither the credit transaction evidenced by the insured mortgage nor the right of rescission thereof was exempted or excepted by the provisions of Section 226.3 or 226.9(g) of Regulation Z (12CFR226), and amendments thereto, issued by the Board of Governors of the Federal Reserve System pursuant to Title I. (Truth in Lending Act) and Title V. (General Provisions) of the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146, *et seq.*).

This endorsement is made a part of the policy or commitment and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 130 • ADVERSE POSSESSION, EASEMENT, ENCROACHMENT, MECHANICS' LIEN, RESTRICTIONS, ZONING

ENDORSEMENT

Attached to Owner's Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Provided there is situated on the land described under Schedule A of the Policy a single family residence, the policy is hereby amended as follows:

Notwithstanding anything therein to the contrary, the policy insures against loss or damage by reason of the following:

- (1) Any unfiled lien for labor or material furnished for improvements on the land (except for any such lien arising out of construction contracted for or assumed by the insured), provided construction of all improvements is completed at date of policy;
- (2) Rights or claims of parties in possession of the principal dwelling.
- (3) The enforced removal of the principal dwelling on account of, at Date of Policy:
 - (a) any encroachment of said principal dwelling onto adjoining lands or onto any easement shown as an exception in Schedule B or onto any unrecorded subsurface easement.
 - (b) any violation of building setback lines or covenants, conditions or restrictions referred to in Schedule B of the Policy.
 - (c) any violation of any zoning ordinance if the land is used only for a single family residence.

The term "principal dwelling" means any single family residential structure on the land whether detached or not. If the principal dwelling is a condominium unit it refers to the space within the boundaries of the unit. Additional improvements and areas such as out-buildings, detached garages, fences, driveways, retaining walls, plants and common areas are not included within this definition. The term "zoning ordinance" does not include building codes, occupancy regulations and subdivision laws.

This endorsement is made a part of the Policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and prior endorsements, if any, nor does it extend the effective date of the Policy and prior endorsements or increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 130C • ADVERSE POSSESSION, EASEMENT, ENCROACHMENT, MECHANICS' LIEN, RESTRICTIONS, ZONING

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Provided there is situated on the land described under Schedule A of the Policy, commercial building(s), the Policy is hereby amended as follows:

Notwithstanding anything therein to the contrary, the Policy insures against loss or damage by reason of the following:

- 1. Any unfiled lien for labor or material furnished for improvements on the land (except for any such lien arising out of construction contracted for or assumed by the insured), provided construction of all improvements are completed at date of Policy;
- 2. Rights or claims of parties in possession of the commercial building(s);
- 3. The enforced removal of the commercial building on account of, at Date of Policy:
 - (a) encroachment of said commercial building(s) onto adjoining lands or onto any easement shown as an exception in Schedule B or onto any unrecorded subsurface easement;
 - (b) Any violation of building setback lines or covenants, conditions or restrictions referred to in Schedule B of Policy;
 - (c) Any violation of any zoning ordinance if the land is used only for commercial building(s).

The term "commercial building" means the building on the land as built. Additional improvements and areas such as outbuildings, detached garages, fences, driveways, retaining walls, plants and common areas are not included within this definition. The term "zoning ordinance" does not include building codes, occupancy regulations and subdivision laws.

This Endorsement is made a part of said Policy and is subject to all the terms and provisions thereof and of any prior Endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior Endorsements, nor does it extend the effective Date of Policy and prior Endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 130.1 • INFLATION

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company, recognizing the current effect of inflation on real property valuation and intending to provide additional monetary protection to the Insured Owner named in the Policy, hereby modifies the Policy, as follows:

1. Notwithstanding anything contained in the Policy to the contrary, the amount of insurance provided by the Policy, as stated in Schedule A thereof, is subject to cumulative annual upward adjustments in the matter and to the extent hereinafter specified.
2. "Adjustment Date" is defined, for the purpose of this Endorsement, to be 12:01 a.m. on the first January 1 which occurs more than six months after the Date of Policy, as shown in Schedule A of the Policy to which this Endorsement is attached, and on each succeeding January 1.
3. An upward adjustment will be made on each of the Adjustment Dates, as defined above, by increasing the maximum amount of insurance provided by the Policy (as said amount may have increased theretofore under the terms of this Endorsement) by the same percentage, if any, by which the United States Department of Commerce Composite Construction Cost Index (base period 1972) for the month of September immediately preceding exceeds the highest Index number for the month of September in any previous year which is subsequent to Date of Policy; provided, however, that the maximum amount of insurance in force shall never exceed _____ % of the amount of insurance stated in Schedule A of said Policy, less the amount of any claim paid under said Policy which, under the terms of the Conditions and Stipulations, reduces the amount of insurance in force. There shall be no annual adjustment in the amount of insurance for years in which there is no increase in the Construction Cost Index.
4. In the settlement of any claim against the Company under the Policy, the amount of insurance in force shall be deemed to be the amount which is in force as of the date on which the insured claimant first learned of the assertion or possible assertion of the claim, or as of the date of receipt by the Company of the first notice of the claim, whichever shall first occur.

Nothing herein contained shall be construed as extending or changing the effective Date of Policy.

This endorsement is made a part of the Policy and is subject to the Schedules, Exclusions, Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

**COLORADO ENDORSEMENT 130.2 • POLICY CHANGE:
DELETE EXCEPTION, GAP COVERAGE, INFLATION**

ENDORSEMENT

Attached to Commitment No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

Said Commitment is hereby amended by deleting Paragraph 2 of the Conditions.

The Company hereby insures against loss or damage by reason of there being recorded any deeds, mortgages, lis pendens, liens or other title encumbrances which first appear in the public records subsequent to the effective Date of Commitment, but prior to the effective Date of Policy. "Public records" as used herein means those records in which under statutes deeds, mortgages, judgment liens or lis pendens must be recorded in order to impart constructive notice to purchasers of the land for value without knowledge.

This Endorsement does not insure against such loss or damage if the existence of such deeds, mortgages, lis pendens, liens or other title encumbrances is actually known to the proposed insured prior to or at the time of the closing. The closing is defined herein as being the time of the execution and delivery to the proposed insured of the documents creating the interest of the proposed insured.

Protection under this Endorsement is conditioned by the following requirement:

- 1. We must conduct the closing of the transaction to be insured under this Commitment or properly executed instruments creating the estate or interest to be insured must be delivered to the title company issuing the Commitment within 24 hours of the closing.
- 2. Affidavit and Indemnity attached hereto must be fully executed by the party or entity described in Paragraph 3 of Schedule A.

The Commitment is hereby amended further by the deletion of items _____ inclusive, appearing on Schedule B - Section 2 Exceptions. An ALTA Plain Language Policy will be issued.

A Colorado Endorsement 130.3 Endorsement will be attached to the ALTA Plain Language Policy automatically increasing the Policy amount by 10% of the face amount on each of the first five anniversaries of the Policy date.

Protection under this Endorsement is to be afforded to the proposed insured owner shown on Schedule A when the land is a 1-to-4 family residential lot.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 130.3 • INFLATION

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

The above referenced Policy is hereby amended by adding the following to Schedule A following the Policy amount.

The Policy amount will automatically increase by 10% of the amount shown above on each of the first five anniversaries of the Policy date.

This Endorsement is effective only when attached to an ALTA Plain Language Policy insuring a 1-to-4 family residence.

This Endorsement is made a part of said Policy and is subject to all the terms and provisions thereof and of any prior Endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of this Policy and any prior Endorsements, nor does it extend the effective Date of Policy and any prior Endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 150 • ARBITRATION

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby assures the insured that paragraph 13 of the Conditions and Stipulations of the Policy, requiring arbitration, is hereby amended to read:

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or breach of a policy provision or other obligation. All arbitrable matters shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy, shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

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

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

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

COLORADO ENDORSEMENT 150.1 • ARBITRATION

ENDORSEMENT

Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby assures the insured that paragraph 14 of the Conditions and Stipulations of the Policy, requiring arbitration, is hereby amended to read:

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or breach of a policy provision or other obligation. All arbitrable matters shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy, shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

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

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

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____

FUTURE POLICY ENDORSEMENT

FUTURE POLICY ENDORSEMENT

Attached to and Made a Part of

Policy No. _____

Issued by _____

The Company agrees that if, within 5 years after the date of this Policy, application is made to increase the face amount of the Policy or to issue a new Policy (in an amount not to exceed 150% of the amount of insurance in this Policy), the Company will issue additional title insurance policies, or increase the face amount of this Policy insuring such title or interest as may then exist in the insured or the insured's designee, provided: (1) such increased amount represents the then value of the land and improvements, or, in the event of the issuance of a new Policy, the amount of such Policy is in the amount of the purchase price, the value of the leasehold, or the amount of the loan, whichever is applicable; (2) reinsurance in an amount satisfactory to the Company is available at regular rates; (3) at the time of such increase in amount, or at the time an application is made for such new Policy, and after a continuation of the title examination to such date, neither the insured nor the Company has knowledge of any defects in or liens or encumbrances upon the title as herein insured which are not herein excepted; (4) that the Company shall not have notice of a claim of loss under this Policy, which shall not have been settled between the Company and the insured; (5) the insured pays the Company's premium applicable to such increase, or such new Policy; and (6) the Company is not prohibited from issuing such increase in amount or such new Policy by legislation or regulation.

If the date of this Policy is required to be extended beyond its present date, or a new Policy is issued, exception will be made to any defects, liens, encumbrances, adverse claims or other matters, if any, created and first appearing in the public records or attaching subsequent to the date hereof.

The foregoing provisions with respect to the availability of reinsurance and premium do not apply to the issuance of the Policy of title insurance with respect to a construction as previously agreed to by the Company.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the effective date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

Chapter 8

TITLE INSURANCE CLAIMS

Robert W. “Rob” Reed, Esq.

SYNOPSIS

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Unlike automobile and home insurance, where insurance companies may increase future premiums if a claim is made on a policy, there is no reason to refrain from filing a title insurance claim. This is because the premium for a title insurance policy is paid at closing and cannot be subject to future increases. Thus, if a client comes into an attorney's office with an issue concerning title to her property, counsel should not hesitate to investigate whether the client has title insurance and, if so, counsel should review the policy and consider submitting a claim. It is always better to tender a claim early because if there is coverage, the title company will pay fees and costs associated with resolving the issue.

§ 8.2 • PRELIMINARY QUESTIONS**§ 8.2.1—Who is Insured?**

The title insurance company's obligations under a title insurance policy run only to the named insured and specific successors and grantees of the insured under the definition of "insured" in the Conditions. Thus, even though the seller usually pays for the buyer's title insurance policy, the title insurance policy does not cover the seller, and the title company has no liability to the seller. *Jimerson v. First American Title Ins. Co.*, 989 P.2d 258 (Colo. App. 1999); *Campbell v. Summit Plaza Associates*, 192 P.3d 465 (Colo. App. 2008). The owner's policy defines the insured as "the Insured named on Schedule A, successors by operation of law, successors by dissolution, merger, consolidation, distribution or reorganization, successors by conversion into another kind of entity and grantees in specific ownership transfers." 2006 ALTA Owner's Policy, Conditions (1) (d). The lender's policy also protects the holders of the indebtedness secured by the insured deed of trust and entities in control of the transferrable record, but not the borrowers. 2006 ALTA Loan Policy, Conditions (1)(e).

§ 8.2.2—What Property is Insured?

Schedule A of the title insurance policy describes the property that is insured. *See* §§ 2.8.5 to 2.8.9 of this book. In addition, if an existing improvement located on the insured property encroaches onto adjoining property, then the policy covers that encroachment under Covered Risk 2(c), but only to the extent that there is no Schedule B exception.

References in this chapter to title insurance policies are to the 2006 ALTA Owner's and Loan Policies. *See* Chapters 4 and 5 of this book.

§ 8.3 • DETERMINING WHETHER THERE IS COVERAGE

To determine whether there is coverage for a specific issue, counsel and the claims administrator will compare the Covered Risks against the Exclusions and Exceptions from Coverage.

§ 8.3.1—Review Policy Form, Endorsements, and Exceptions

The starting point for determining coverage is the title insurance policy itself. Counsel should carefully review the policy, the endorsements, and the documents identified as exceptions. If the insured does not have the policy or copies of the exceptions (which is very common for an older policy), counsel should be able to obtain them from the title insurance agent that handled the closing. The title insurance company may accept proof that a policy would have been issued — for example, a closing statement showing that a premium was paid, commitment, and evidence that the transaction closed, such as the deed with the title insurance company logo or other identifying marker on the deed.

If, for example, the client is concerned about someone asserting an easement across Lot 1, Schedule B, the title insurance policy may specifically except coverage for the easement, which would mean there is no coverage for the easement issue. In addition, the title insurance policy may exclude matters shown on a plat. If the easement was created by the plat, then the easement is probably excluded from coverage (unless affirmative coverage was provided by way of an endorsement).

Although reviewing the title insurance policy is always the starting point in determining whether there is a viable claim, it is wise to look deeper by reviewing the title insurance commitment provided to the client prior to closing. There should be no exceptions in the title insurance policy unless those exceptions also appeared in the final title insurance commitment at the date of closing, or unless the insured agreed to have a requirement moved to the title exceptions. If the title insurance policy does not follow the final version of the title insurance commitment, then counsel should ask that a corrected title insurance policy be issued in accordance with the title insurance commitment.

Finally, although rare, title insurance agents sometimes send the wrong policy jacket when they issue the policy. It is, therefore, a good idea to verify that the version of the title insurance policy referenced in the title insurance commitment is the form received by the insured. If the wrong form of title insurance policy was issued to the insured, then counsel should ask that the correct title insurance policy form be issued in accordance with the commitment.

§ 8.3.2—Where to Make the Claim

The policies or guarantees provide an address to which a claim or correspondence should be sent (paragraph 18 of the Owner's Policy and paragraph 17 of the Loan Policy). Because some title insurance companies have moved corporate headquarters, it is a good idea to send a copy of the claim letter to both the address in the policy and the address of the new corporate headquarters. Finally, contacting the closer or the title insurance agent can help expedite an urgent claim.

§ 8.3.3—What to Say in a Claim Letter

There is no specific structure to a title insurance claim letter. The best letters will identify the name of the insured, the title insurance agent, the policy date, the policy number, and the property address or description, and will describe in detail the matters giving rise to the claim and the reasons the matters are covered. If more information can be provided, it will greatly assist a speedier resolution. In addition, it is very important when making a title insurance claim that you advise the title insurance company if there is litigation or an enforcement proceeding with upcoming deadlines or upcoming hearings, or if the insured will suffer damages if the claim is not immediately addressed. It is a good practice to attach copies of the complaint or other pleadings for review by the title insurance company.

§ 8.4 • WHAT TO EXPECT IN RESPONSE TO A CLAIM**§ 8.4.1—Acknowledgment of Claim**

Title insurance companies are obligated to promptly acknowledge receipt of a claim. Typically, a title insurance company will send a written acknowledgement of claim via email or U.S. mail. The acknowledgement will identify the claims administrator and provide a claim number. When corresponding in the future with the claims administrator, providing the claim number on any correspondence or in any communications will save you and the title insurance company time.

§ 8.4.2—Anti-fraud Warning

Colorado law requires title insurance companies to provide a disclosure to the claimant regarding the obligations of the insured regarding fraud:

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

C.R.S. § 10-1-128(6). Because the title insurance company is required to provide this disclosure (usually when acknowledging receipt of the claim), the insured should not interpret this notice as a veiled threat against the insured for some misdeed.

§ 8.4.3—A Determination of Coverage

Once the title insurance company has analyzed the claim and researched the situation, it will make a determination of coverage. There are four common responses: accepting the claim, denying the claim, accepting some issues but not others, or accepting a claim under reservation of rights.

**§ 8.5 • ACCEPTED CLAIMS (INCLUDING ACCEPTANCE
UNDER RESERVATION OF RIGHTS)**

If the title insurance company determines the claim is covered, it will notify the insured or its counsel that it is accepting coverage. If the title insurance company has doubts about coverage, it may accept coverage under a reservation of rights. By accepting coverage under a reservation or rights, the title insurance company provides a defense of the insured's title, but reserves the right to seek reimbursement of its fees and costs from the insured if it is determined that the policy did not cover the issue or cause of loss.

The next step for the title insurance company is to determine what options it has under the policy.

§ 8.5.1—Title Insurance Company's Options

Section 5 of the Conditions in both the 2006 Owner's Policy and 2006 Loan Policy provides the title insurance company with the option of prosecuting an action to correct the title defect or defending actions brought against the insured to protect or establish the insured's title. If the title insurance company elects to prosecute or defend an action, then it will retain counsel of its choosing to represent the insured. Generally, title insurance companies do not retain the insured's attorney to prosecute or defend an action. Instead, most title insurance companies will retain counsel they are familiar with and who the title insurance company believes has good knowledge of the subject matter. Importantly, the title insurance company will only pay the fees and costs of the attorney it hires. Therefore, if a client is served with litigation, it is important to tender the claim early so that the title insurance company's obligation to pay fees and costs is triggered.

In addition to its rights under Section 5, Section 7 of the Conditions in both the 2006 Owner's Policy and 2006 Loan Policy set forth the title insurance company's options if it accepts a claim:

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

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

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

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

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

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

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

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

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

Under this Section 7, the title insurance company can either pay policy limits or resolve the claim by settling with the insured or the adverse party. These options can create friction between the insured and the title insurance company because an insured may not want to see the title insurance company pay a settlement to the neighbor the insured has been fighting. However, there is nothing in the policy requiring the insured to consent to the title insurance company's settlement with the neighbor.

Colorado courts have generally recognized that the insurer's duty to defend the insured is broader than the duty to indemnify. *Hecla Mining Co. v. New Hampshire Ins. Co.*, 811 P.2d 1083 (Colo. 1991). The Colorado Supreme Court has held:

The duty to defend concerns an "insurance company's duty to affirmatively defend its insured against pending claims." *Constitution Assoc. v. N.H. Ins. Co.*, 930 P.2d 556, 563 (Colo. 1996). We have long held that to determine whether a duty to defend exists, courts must look no further than the four corners of the underlying complaint (the "four corners or complaint" rule). *See Hecla Mining Co. v. N.H. Ins. Co.*, 811 P.2d 1083, 1089 (Colo. 1991). An insurer is not excused from this duty "unless there is no factual or legal basis on which the insurer might eventually be held liable to indemnify the insured." *Id.* at 1090. Hence, if the alleged facts even potentially trigger coverage under the policy, the insurer is bound to provide a defense. *Constitution Assoc.*, 930 P.2d at 563; *Hecla*, 811 P.2d at 1089.

Cyprus Amax Minerals Co. v. Lexington Ins. Co., 74 P.3d 294 (Colo. 2003).

Historically, if any claim is asserted against the insured for which there is coverage, then the insurer must pay for the defense of all claims asserted against the insured. *Flannery v. Allstate Insurance Co.*, 49 F. Supp. 2d 1223 (D. Colo. 1999). However, the court in *Flannery* noted that the insurer had

been unable to cite a policy provision allowing for the apportionment of fees. *Id.* Section 5(a) of the conditions to the 2006 Owner's Policy limits the title insurance company's obligation to defend to only those claims that are covered, meaning that the insured must pay the fees and costs of defending against claims in the underlying litigation that are not covered by the policy. No Colorado cases have addressed the title insurance company's obligation to defend all claims in light of the 2006 policy language.

The concepts of *Hecla Mining* and *Cyprus Amax* were applied with respect to title insurance companies in *Wheeler v. Reece*, where the court applied the *Hecla* standards and held a title insurance company liable for the attorney fees and costs incurred by the insured, both in the underlying attack on the insured's title and in the insured's action against the title insurance company for breach of the duty to defend. *Wheeler v. Reece*, 835 P.2d 572 (Colo. App. 1992), citing *Hedgecock v. Stewart Title Guaranty Co.*, 676 P.3d 1208 (Colo. App. 1983). However, in 2014, another panel of the court of appeals held that the American Rule applies to suits brought by insureds against their insurers. In *First Citizens Bank & Trust Co. v. Stewart Title Guaranty Co.*, 320 P.3d 406 (Colo. App. 2014), the court upheld a trial court judgment in favor of an insured lender on a coverage issue, but held that the insured could not recover its attorney fees for the litigation against the title insurance company regarding coverage. The court noted that creation of a new exception to the American Rule is best left to the legislature. *Id.* See also § 4.4.5.

§ 8.5.2—Calculation of Loss

If there is a title defect that is not removed, the measure of damages under the title insurance policy is the diminution in value of the property caused by the defect. Section 8(a) of the Conditions. In other words, damages are measured by the difference in value between the property with and without the encumbrance, measured as of the date of discovery of the encumbrance. *Sullivan v. Transamerica Title Ins. Co.*, 532 P.2d 356 (Colo. App. 1975). Under Section 8 of the policy, if the diminution in value exceeds policy limits, then the policy limit controls. Typically, the title insurance company will ask the insured to produce a diminution in value appraisal or proof of loss. If the insurer agrees with the insured's appraisal or proof, then it will pay that amount; if not, the title insurance company will obtain its own diminution in value appraisal and will offer to pay the amount determined by its appraiser.

§ 8.5.3—Time of Payment

Pursuant to Section 9(a) of the Conditions in the 2006 Owner's Policy, if the title insurance company works to remove or cure the title defect in a reasonably diligent manner, then it has no liability to the insured until those efforts have been exhausted. If the title insurance company cures the defect, then it is not liable to the insured for breach of the insurance contract. *First Federal Sav. & Loan Assn. v. Transamerica Title Ins. Co.*, 793 F. Supp. 265 (D. Colo. 1992). If the title insurance company litigates to defend the insured's title or to cure the insured's title defect, but fails to cure the defect, then the title insurance company's obligation to pay the loss is triggered by the adverse outcome under Section 8(b) of the Conditions. Under Section 8, if the title insurance company prosecutes or defends an action to cure the defect or protect the title as insured (under Section 5 of the Conditions) and does not prevail, then the amount of insurance is increased 10 percent, and the insured has the right to elect the date of determination of loss between the date the claim was made or the date the title insurance company settled or paid.

§ 8.5.4—Insured’s Duty to Cooperate

Section 6 of the Conditions of the title insurance policy provides that if the title insurance company prosecutes or defends an action under the policy, then the insured has a duty to cooperate with the prosecution, defense, or settlement. The insured must help in securing evidence, obtaining witnesses, and providing additional assistance deemed necessary by the title insurance company to assist the title insurance company in adjudicating the covered matters. If an insured’s failure to cooperate prejudices the title insurance company, then coverage may be terminated. *Quorum Heath Res. v. Maverick County Hosp. Dist.*, 308 F.3d 451 (5th Cir. 2002). In addition to helping the title insurance company secure witnesses and evidence, this provision may compel the insured to submit to an examination under oath and to produce documents that pertain to the damages the insured has suffered. If an insured fails to cooperate, the title insurance company will not be liable for breach of the insurance contract or bad faith. *Bryant v. Sagamore Ins. Co.*, 597 Fed. App’x 968 (10th Cir. 2015). An insured is not permitted to settle a claim without the title insurance company’s consent so long as the title insurance company has not disclaimed coverage and is acting diligently and in good faith in defending the insured’s title. *Franklin v. Oklahoma City Abstract & Title Co.*, 584 F.2d 964 (10th Cir. 1978).

§ 8.6 • IF COVERAGE IS DENIED**§ 8.6.1—Straight Denial**

If the claims administrator determines there is no coverage, then the title insurance company will send written correspondence to the insured denying coverage, with an adequate explanation for the reason for the denial of coverage. If the denial is lacking, the insured should demand that the title insurance company explain its denial, pointing to the sections of the title insurance policy that are the basis for the denial. If, for example, an insured tenders a claim relating to an easement that is clearly excluded from coverage, the insured should expect a prompt denial, even if there is pending litigation relating to the easement. Importantly, courts have held that the title insurance company bears the burden of establishing that an exclusion or exception applies to deny coverage. *First Citizens Bank & Trust Co. v. Stewart Title Guaranty Co.*, 320 P.3d 406 (Colo. App. 2014). Interpretation of insurance policies is based upon general principles of contract law; any ambiguity is construed in favor of providing coverage. *Id.*

§ 8.6.2—Declaratory Relief, Reformation, or Rescission

Sometimes title insurance companies will have reason to believe that a mistake was made in issuing the policy or that there are facts that would justify denial of coverage, but the title insurance company wishes to avoid any risk of a bad faith denial. If either of these circumstances is present, then the title insurance company may institute an action against the insured to ask a court to reform the policy, to interpret the policy in light of facts that could affect coverage, or to rescind the policy due to fraud or misrepresentation of the insured.

Reformation is an equitable remedy that may be available where a contract fails to express the intention of the parties due to a scrivener’s error. *Dennett v. Mt. Harvard Development Co.*, 604 P.2d 699 (Colo. App. 1979). “There can be no reformation unless there is a preliminary or prior agreement, either written or verbal between the parties, furnishing the basis for rectification, or to which the instrument can be reformed. In other words, the alteration sought to be made to the written instrument must

be one to which the parties have earlier assented and which by mistake was either omitted or incorrectly set forth in the final instrument.” *Segelke v. Kilmer*, 360 P.2d 423, 426 (Colo. 1961). In theory, at least, a title insurance company could prevail on a reformation claim where a title insurance commitment clearly excluded a matter and that exclusion was not carried over to the policy.

If an action is filed against an insured and the title insurance company believes the claims against the insured are not covered, then the title insurance company must either defend under a reservation of rights or file a declaratory judgment action to adjudicate coverage after the underlying case has been adjudicated. *Hecla Mining Co. v. New Hampshire Ins. Co.*, 811 P.2d 1083 (Colo. 1991).

If a title insurance company believes the policy was issued based upon fraud or misrepresentation of the insured, it could seek to rescind the contract. The elements of rescission or cancellation of an insurance contract are the same as any other type of contract. *Olinger Mut. Ben. Ass’n v. Christy*, 342 P.2d 1000 (Colo. 1959).

§ 8.6.3—Test for Proper Denial

In order for a title insurance company to deny coverage based upon an exception or exclusion, it must be able to point to clear and unequivocal language in the policy to support the denial. *Title Ins. Co. v. American Sav. & Loan Assn.*, 866 F.2d 1284 (10th Cir. 1989).

§ 8.6.4—Bad Faith

A title insurance company that fails to fulfill its policy obligations to its insured may be guilty of bad faith. The basic elements of bad faith breach of an insurance contract are that an insured has suffered damages or losses, the title insurance company acted unreasonably in fulfilling its policy obligations, the title insurance company knew its conduct was unreasonable or the title insurance company recklessly disregarded the fact that its conduct was unreasonable, and the insured was damaged by the insurer’s actions or inactions. CJI-Civ. 25:2 (CLE ed. 2017). Damages for bad faith breach of an insurance contract can include damages for emotional distress. *Goodson v. American Standard Ins. Co.*, 89 P.3d 409 (Colo. 2004). An insurer cannot be held liable for both negligence and bad faith. See Giometti, *Colorado Law of Insurance Bad Faith*, §10.1 (CLE in Colorado, Inc. 2015). See also C.R.S. § 10-3-1115 for the exclusion of title insurance companies from the statutory prohibition on the improper denial of claims. According to the annotation to this statute, “The exclusion of title insurers from this section and § 10-3-1116 is not construed to approve the ruling in *Hedgecock v. Stewart Title Guar. Co.*, 676 P.2d 1208 (Colo. App. 1983), that an insured was entitled to attorney fees as part of the damages for breach of a title insurance contract, but rather that the title insurance industry does not have a history of delaying or denying claims. *First Citizens Bank v. Stewart Title Guar.*, 2014 COA 1, 320 P.3d 406.”

§ 8.6.5—Economic Loss Rule

The economic loss rule maintains a distinction between contract and tort law. If the duty giving rise to liability arises in contract, then contractual damages apply, and tort liability will not be imposed unless there was an independent duty in tort. *A Good Time Rental, LLC v. First American Title Agency, Inc.*, 259 P.3d 534 (Colo. App. 2011). Thus, a title agent may be liable in contract for failure to fulfill the closing instructions, but will not be liable in tort. *Id.* However, if an insured suffers serious non-economic harm that is foreseeable to an insurer when the insurer fails to fulfill its policy obligations, the insurer may be held liable in tort despite the economic loss rule. *Giampapa v. American Family*

Mut. Ins. Co., 64 P.3d 230 (Colo. 2003). However, when an insured asserts a tort claim due to a title insurance company's failure to disclose a title defect, the duty to discover the defect was created by the contractual relationship, and the economic loss rule bars additional tort liability. *Chicago Title Ins. Co. v. Commonwealth Forest Invs., Inc.*, 494 F. Supp. 2d 1332 (M.D. Fla. 1007).

§ 8.7 • LITIGATION OF COVERED MATTERS

§ 8.7.1—Prosecution or Defense of Actions

If the title insurance company elects to prosecute or defend an action to try to establish or confirm the insured's title, then it will retain counsel of its choosing to represent the insured. The attorney retained by the title company represents the insured, and all ethical and professional obligations run to the insured, although the title insurance company maintains some control over expenses to be allowed in the case. *See* CBA Formal Ethics Opinion 91. *See also* Troy R. Rackham & Heather W. Whitman, "Ethical Duties of an Insurance Defense Lawyer," 46 *Colo. Law.* 40 (Oct. 2017).

Many title insurance claims relate to disputes concerning easements and boundary lines. These types of cases frequently have intertwined monetary claims between the parties relating to trespass, nuisance or tort claims. Pursuant to Section 5 of the Conditions, prosecution and defense of claims that are not covered by the title insurance policy will not be paid by the title insurance company. Counsel retained by the title insurance company will typically co-counsel with the insured's counsel on the claims, or will enter into a fee agreement with the insured to handle the entire matter.

§ 8.7.2—Additional Insurance

If a monetary claim is made against the insured by an opponent in the litigation, it is wise to review the homeowners' policy and umbrella policy to see if there might be coverage and to make a claim on those policies.

§ 8.7.3—Fees

Under Section 5 of the Conditions, the title insurance company will pay all fees and costs incurred by the counsel it appoints to prosecute or defend an action to establish the insured's title. The title insurance company will not pay fees or costs of attorneys it has not retained. The policy provides that if there are issues in the litigation that are not covered by the title insurance policy, then the insured must pay fees and costs associated with the non-covered matters.

§ 8.8 • SUBROGATION

Under Section 13 of the Conditions in the Owner's Policy and Section 12 of the Conditions in the Loan Policy, a title insurance company is subrogated to the position of its insured to seek to recover its losses from another party. The subrogation provisions provide the title insurance company with the option of taking an assignment of the insured's claims or prosecuting an action in the name of the insured. The insured's obligation to cooperate extends to subrogation cases.

§ 8.9 • NON-POLICY CLAIMS**§ 8.9.1—Ownership and Encumbrance Reports**

Ownership and encumbrance reports (O&Es) are reports prepared by title insurance companies and their agents that identify the owner of a tract of land and consensual liens on that land. For many years, title insurance companies provided O&Es for free to anyone who requested them. The Colorado Division of Insurance determined that providing free O&Es could constitute an unlawful inducement for a title insurance company to solicit future business. Section 5.D.9 of Regulation 8-1-3. As a result, title insurance companies are now required to charge a fee for O&Es. Because the reports are simple in scope, and usually computer generated, the fee is nominal.

O&Es are useful tools for people investigating title to a parcel of land, but they are not intended to be used as an abstract or full representation of the condition of title. The O&E expressly states the limited purpose of the search and either disclaims liability for incomplete or inaccurate information or limits liability to the amount paid for the O&E. Anyone ordering an O&E is advised of the limitations of the product when they place the order and again when they receive the O&E. Because of the limited scope of the O&E search and the limitations on liability, prudent parties do not rely upon them for real estate transactions. However, anecdotal evidence suggests that there are at least some investors who rely upon O&Es when deciding whether to bid or how to bid at foreclosure sales. There are no published Colorado cases regarding the liability of a title insurance company for erroneous or incomplete information contained in O&Es.

§ 8.9.2—Foreclosure Guarantees and Litigation Guarantees

Foreclosure guarantees and litigation guarantees are obtained by parties or their counsel to identify parties that are entitled to notice of the foreclosure proceeding or entitled to be named in an action affecting title to real property. A foreclosure guarantee lists and/or provides copies of documents of record that have been recorded between the time the deed of trust was recorded and the effective date of the foreclosure guarantee, so that parties with subordinate interests can be provided required notices of the foreclosure. *See* § 5.15.2. Litigation guarantees identify parties that have a record interest in real property and may be necessary parties to a Rule 105 action. Both types of guarantees limit liability to damages actually suffered by the assured (the party receiving the guarantee) up to the policy limit, and provide the title insurance company with the option to prosecute an action to establish or confirm matters as shown on the guarantee. *See* § 4.11.

If the foreclosure guarantee fails to identify a junior lienholder, then the title insurance company will try to obtain a waiver of the junior lienholder's redemption right, or will prosecute an omitted party action pursuant to C.R.S. § 38-38-506. Generally, if the omitted party redeems as part of the omitted party action, then the assured is paid from the redemption. As a result, the assured is not damaged and liability under the foreclosure guarantee is terminated. It is more difficult and costly to correct errors in identifying the necessary parties to a litigation guarantee. The title insurance company may be obligated to pay the cost of reopening the case and bringing in the missed party or prosecuting a new action.

Foreclosure guarantees provide the assurance that the title insurance company has searched for bankruptcies, recorded judgments, and tax liens. If the assured is exposed to liability or expenses as a result of the title insurance company failing to include a pending bankruptcy that prohibited foreclo-

sure, then liability for violating the automatic stay would likely fall to the title insurance company under the foreclosure guarantee. However, prudent foreclosure practitioners conduct their own bankruptcy searches, and their clients should receive actual notice of bankruptcies. As a result, recovery on a foreclosure guarantee for failure to provide notice of a bankruptcy would likely be contested by the title insurance company.

§ 8.10 • TERMINATION OF COVERAGE/PAYMENT OF CLAIMS

Section 7(a) of the Conditions provides that the title insurance company can terminate coverage by paying the amount of the insurance policy, together with any costs, attorney fees, and expenses incurred by the insured claimant that were authorized by the title insurance company up to the time of payment or tender of payment. In addition, Section 7(b) allows the title insurance company to terminate coverage by settling with the insured or with other parties (presumably, those making claims against the insured). If the title insurance company settles under Section 7(b) then the duty to prosecute or defend an action is terminated.

§ 8.11 • ADDITIONAL RESOURCES

For more in-depth analysis of title policies and title claims, consider the following resources:

ALTA website (www.ALTA.org/policy-forms) has current and older ALTA policy forms.

J. Bushnell Nielsen, *Title & Escrow Claims Guide*, 2nd Ed. (Woodridge Legal Publishers 2011).

Joyce D. Palomar, *Title Insurance Law*, 2017-2018 Ed. (West Publishing 2017).

Gregory R. Giometti, *Colorado Law of Insurance Bad Faith* (CLE in Colo., Inc. 2015).

APPENDICES

- Appendix 1. Colorado Premiums Written and Direct Losses Paid
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APPENDIX 1 • COLORADO PREMIUMS WRITTEN AND DIRECT LOSSES PAID**Market Share Jurisdiction — Colorado — By Individual Underwriter, 2017**

	DIRECT PREMIUMS WRITTEN						PERCENT OF JURISDICTION	PAID LOSSES	PERCENT OF JURISDICTION	LOSSES TO PREMIUMS	
	DIRECT	% of Total	NON-AFFILIATED	% of Total	AFFILIATED	% of Total					TOTAL
COLORADO											
1. FIRST AMERICAN TIC	\$36,563,931	54.47%	\$26,744,284	39.84%	\$3,813,225	5.68%	\$67,121,440	17.39%	\$2,295,763	29.86%	3.42%
2. STEWART TGC	\$3,983,247	8.36%	\$21,155,903	44.39%	\$22,521,833	47.25%	\$47,660,983	12.35%	\$473,180	6.15%	0.99%
3. OLD REPUBLIC NATIONAL	\$805,745	1.70%	\$46,662,644	98.30%	\$0	0.00%	\$47,468,389	12.30%	\$311,093	4.05%	0.66%
4. FIDELITY NATIONAL	\$8,862,842	20.52%	\$6,169,966	14.29%	\$28,149,941	65.19%	\$43,182,749	11.19%	\$321,192	4.18%	0.74%
5. WESTCOR	\$6,650	0.02%	\$39,024,792	99.37%	\$241,760	0.62%	\$39,273,202	10.18%	\$2,014,967	26.21%	5.13%
6. CHICAGO TIC	\$3,313,922	9.21%	\$20,614,670	57.32%	\$12,034,835	33.46%	\$35,963,427	9.32%	\$382,592	4.98%	1.06%
7. LAND CORP (CO)	\$0	0.00%	\$0	0.00%	\$35,626,160	100.00%	\$35,626,160	9.23%	\$239,363	3.11%	0.67%
8. COMMONWEALTH LAND	\$1,917,453	5.91%	\$2,117,103	6.52%	\$28,429,667	87.57%	\$32,464,223	8.41%	\$183,933	2.39%	0.57%
9. NORTH AMERICAN	\$0	0.00%	\$2,705,100	25.09%	\$8,075,516	74.91%	\$10,780,616	2.79%	\$646,094	8.40%	5.99%
10. ALLIANT	\$0	0.00%	\$7,077,281	100.00%	\$0	0.00%	\$7,077,281	1.83%	\$397,339	5.17%	5.61%
11. TITLE RESOURCES	\$0	0.00%	\$155,406	2.31%	\$6,567,145	97.69%	\$6,722,551	1.74%	\$27,796	0.36%	0.41%
12. ATTORNEYS TGF (CO)	\$16,078	0.30%	\$5,282,638	99.70%	\$0	0.00%	\$5,298,716	1.37%	\$142,226	1.85%	2.68%
13. NATIONAL OF NY	\$0	0.00%	\$0	0.00%	\$4,819,770	100.00%	\$4,819,770	1.25%	\$12,349	0.16%	0.26%
14. AMERICAN GUARANTY	\$442,755	17.82%	\$2,041,259	82.18%	\$0	0.00%	\$2,484,014	0.64%	\$0	--	--
15. DAKOTA HOMESTEAD	\$0	--	\$0	--	\$0	--	\$0	--	\$240,420	3.13%	--
COMPOSITE AVERAGE	\$55,912,623	14.49%	\$179,751,046	46.57%	\$150,279,852	38.94%	\$385,943,521	100.00%	\$7,688,307	100.00%	1.99%
	\$3,727,508		\$11,983,403		\$10,018,657		\$25,729,568		\$512,554		

Data provided by courtesy from the 2016 Edition of *Demotech Performance of Title Insurance Companies*. © 2017 Demotech, Inc.

APPENDIX 2 • SKLD PLANT INFORMATION

Name:	S-K-L-D Title Services, Inc., d/b/a SKLD Information Services www.skld.com	
Location:	9540 East Jewell Avenue, Suite A Denver, Colorado 80247 Telephone: (303) 695-3850 Fax: (303) 695-3851	
President:	David Floyd	
Sales Manager:	Kerry Johnson	
Founded in 1961 by:	<u>S</u> ecurity Title <u>K</u> ansas City Title <u>L</u> awyers Title <u>D</u> enver Abstract Co.	
Operation:	First jointly owned title plant in the United States operated on a non-profit basis, an all-automated database of over 40 million property records, growing at the rate of approximately 5,000 new records per day.	
Member/Owners:	Land Title Guarantee, North American Title, Stewart Title of Colorado, First American Title LSI/LPS, CB Title, ET Investments, Fidelity National Financial (includes Chicago Title, Lawyers Title, Fidelity National Title Company, Heritage Title, and Ticor Title), and Assured Title Agency.	
Plant:	<u>County</u>	<u>Starting Date</u>
	Adams	1948
	Arapahoe	1948
	Boulder	patent
	Clear Creek	1963
	Denver	patent
	Douglas	1962
	Eagle	1963
	Elbert	9/1/90
	El Paso	1977
	Jefferson	patent
	Larimer	11/1/77
	Pueblo	1982
	Weld	1977

APPENDIX 3 • COLORADO DIVISION OF INSURANCE REGULATIONS 8-1-1, 8-1-2, 8-1-3, 8-1-4, AND 8-1-5

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

CONCERNING TITLE INSURANCE

3 CCR 702-8

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Regulation 8-1-1 TITLE INSURANCE RATES & FEES

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules Regarding Rate and Fee Filing Requirements
Section 6	Rules Regarding Rates and Fees
Section 7	Severability
Section 8	Enforcement
Section 9	Effective Date
Section 10	History
Appendix A	Title Insurance Closing and Settlement Fee Justification Form
Appendix B	Title Insurance Closing and Settlement Fee Filing Agency Fee Sheet for Consumers

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109, 10-3-1110, 10-4-403, 10-4-404, 10-11-118 C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to ensure that title insurance rates and fees are not excessive, inadequate or unfairly discriminatory. This regulation contains filing requirements for both title insurance companies and title insurance agents. This regulation ensures that consumers receive the benefits of competition in the area of title insurance and ensures consumer protection.

Section 3 Applicability

This regulation governs title entities and does not extend the regulatory authority of the Colorado Division of Insurance ("Division") to any person other than title entities or persons transacting the business of title insurance.

Section 4 Definitions

- A. "Business of title insurance" shall have the same meaning as set forth in § 10-11-102(3), C.R.S.
- B. "Division" means, for the purposes of this regulation, the Colorado Division of Insurance.
- C. "Fee" means, for purposes of this regulation only, the amount other than the rate (see subsection F below) charged by a title entity for services performed pursuant to the business of title insurance as defined in § 10-11-102, C.R.S.

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- D. "Justification" means, for the purposes of this regulation, information that establishes the rate or fee is not excessive, inadequate, or unfairly discriminatory pursuant to §10-4-403, C.R.S. This information must qualify, quantify, and demonstrate the facts and figures to support, defend, and substantiate a proposed rate or fee.
- E. "Person" has the same meaning as found at §10-2-103(8), C.R.S.
- F. "Rate" means, for purposes of this regulation, expenses as defined in § 10-4-402(1.5), C.R.S., together with the pure premium rate as defined in § 10-4-402(2.4), C.R.S., and includes production expenses, profit, and commissions, in accordance with § 10-4-403, C.R.S.
- G. "Title insurance agent" shall have the same meaning as found at § 10-11-102(9), C.R.S.
- H. "Title insurance company" shall have the same meaning as found at § 10-11-102(10), C.R.S.
- I. "Title entity" means, for the purposes of this regulation, title insurance agents, title insurance agencies and title insurance companies, unless otherwise stated in the regulation.

Section 5 Rules Regarding Rate and Fee Filing Requirements

- A. Each title insurance entity must submit a complying filing electronically, in a format prescribed by the Commissioner, with an effective date that is at least (30) days after the date the Division receives the filing electronically.
1. A title insurance company's filing must include justification for any new or amended rate or fee being placed on file that a consumer may be charged.
 2. A title insurance agent's filing must include justification for any new or amended fee being placed on file that a consumer may be charged.
- B. Title insurance agents that use multiple title insurance companies as underwriters must place on file and justify their own fees and may not have the fees placed on file by the underwriter on their behalf.
- C. General Rate Filing Requirements
1. Each title insurance company must submit a rate filing electronically in the System for Electronic Rate and Form Filings (SERFF) database for any new or amended rate.
 2. Each filing must be received by the Division at least thirty (30) days prior to the effective date of the new or amended rates.
 3. Each filing must include justification for the new or amended rate being submitted. Justification must include data to support the rate. Justification includes, but is not limited to:
 - a. Expense provisions – data must clearly describe the amount of the fixed and/or variable expense provision and how this provision is to be accounted for in the final rate. This includes an itemization of actual or average expenses associated with each rate. Examples of some expenses include but are not limited to: amounts retained by or commissions paid to agents; claims; taxes; personnel; office space; office equipment; supplies; other overhead; and vendor services, etc.;
 - b. Expected losses and loss ratios;

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- c. Rate history listing the effective date and percentage amount of any rate changes made in the past three (3) years for the rate(s) being changed;
 - d. Methodologies and material assumptions in developing the rate;
 - e. The amount and description of all profit and contingencies built into the rate;
 - f. A description of the rate and any and all services provided with the rate or fee. For example, when submitting a "bundled rate", include a line item for each service included in the bundle;
 - g. If a comparative analysis is used as a portion of the rate justification, the insurer must include in the analysis the names of other insurers used in the analysis, and must demonstrate how the rates being compared are comparable in services and expenses; and
 - h. Any other determining factor used to develop the final rate.
4. Side-by-side comparison of the rating manual indicating the changes made in the current filing, the rate(s) prior to the change, and the new or amended rate(s).
- D. General Fee Filing Requirements
- 1. Each title insurance agent and each title insurance company, if the title company charges fees, must submit a fee filing electronically in the System for Electronic Rate and Form Filings (SERFF) database for any new or amended fee.
 - 2. Each filing must be received by the Division at least thirty (30) days prior to the effective date of the new or amended fee.
 - 3. Each filing must include justification for the new or amended fee being submitted. Justification must include data to support the fee. Justification includes, but is not limited to:
 - a. An itemization of any expenses associated to the new or amended fee. Expenses may include, but are not limited to: the actual or average expense of the fee, personnel, operations, leases/rent, equipment, business insurance, vendor services, office supplies, miscellaneous costs, and any pass-through expense;
 - b. The amount and description of all profit and contingencies built into the fee. If profit and contingency is zero for a particular fee, indicate zero;
 - c. General description of what is included in the services provided for the new or amended fee. For example, when submitting a "bundled fee", include of all the services and fees that are included in the bundle;
 - d. If a comparative analysis is used as a portion of the fee justification, the agent must include in the analysis the names of other agent(s) used in the analysis, and must demonstrate how the fees being compared are comparable in services and expenses; and
 - e. Any other determining factor used to develop the final fee.

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4. Side-by-side comparison of the fee schedule indicating the changes made in the current filing, the fee(s) prior to the change, and the new or amended fee(s).
5. A final copy of the fee sheet with the proposed new or amended fee.
6. "Title Insurance Closing and Settlement Fee Justification Form" which is found in Appendix A of this regulation, is required to be filed with the Division, and includes commonly used fees a consumer may be charged during a real estate transaction. Each title insurance agent and title insurance company, if the title insurance company charges fees, must place on file his or her fees and any justification used by the title insurance agent.

Section 6 Rules Regarding Rates and Fees

- A. Every title entity shall make readily available for review by the public its schedule of effective rates and fees for all issued title insurance policies and closing and settlement charges, including endorsements, guarantees and other forms of title insurance coverage. Either the schedule or a notice explaining the schedule's availability shall be displayed in a public place in the title entity's offices. Copies of such schedules shall be furnished to the public upon request. The title entity may impose a charge for copies of schedules, but such charges shall not exceed the actual cost per page of reproducing the schedules, and copies shall be provided within three (3) business days of receipt of a written request.
- B. All rate cards and schedules of effective rates and fees shall denote, in a clear and conspicuous manner, the title insurance company and/or agent that has filed the title insurance rates and fees shown and the effective date of these rates and fees.
- C. If justified, title entities may place on file different rates and fees for title insurance policies and/or closing and settlement services in different counties, and shall include the effective date of the rates and fees in the schedule.
- D. A title insurance company may not use different rates for different title insurance entities for the same risk in the same county.
- E. Rates and fees shall not apply to title commitments and/or policies or closing and settlement services ordered prior to the effective date of such rate or fee.
- F. No title entity shall quote any rate or fee to any person which is more or less than what is currently available to others for the same type of title insurance policy or service for the same amount of insurance, insuring title to property in the same county, same risk and involving the same factors, and as set forth in its current schedule of rates and fees.
- G. No title entity may charge a rate or fee unless it is on file with the Division and in effect at the time that the title insurance commitment and/or policy or closing and settlement service is ordered.
- H. Title entities may charge additional fees when unusual conditions are encountered, special or unusual risks are insured against, and for special services rendered in connection with the issuance of a title insurance policy and/or closing and settlement services. If additional fees are charged, the title entities shall, in their fee schedules, disclose the terms and conditions for imposing said additional fees.
- I. Any title insurance commitment charge must have a reasonable relation to the cost of production of the commitment and cannot be less than the minimum rate or fee for the type of policy to be issued, as set forth in the insurer's current schedule of rates and fees.

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- J. Any fee charged for a vesting deed, instrument of public record, an insured closing letter, closing protection letter, or for additional information related thereto, must be the same for all persons and not charged on an unfairly discriminatory basis and must be filed with the Division.
- K. Every title insurance agent and each title insurance company, if the title company charges fees, shall file with the Division with each fee filing a "Title Insurance Closing and Settlement Fee Filing Agency Fee Sheet for Consumers" form, which is found in Appendix B of this regulation. The sheet will be posted to the Division's website for consumer use.
- L. Prohibited Practices

The Division has determined that certain rating practices lead to excessive, inadequate or unfairly discriminatory rates and are unfair methods of competition and/or unfair or deceptive acts or practices in the business of insurance. Therefore, in accordance with § 10-3-1110(1), C.R.S., it is considered an unfairly discriminatory practice for a company to include, in any component of a rate, any amount intended to recover losses or expenses incurred in another state or jurisdiction due to any referendum, law or regulation which requires a general reduction in rates. This subsection shall not prohibit the use of national, regional or other industry data as a necessary and actuarially supportable supplement to Colorado data that is not fully credible.

Section 7 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 8 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 9 Effective Date

This regulation shall become effective on October 1, 2015.

Section 10 History

New regulation effective October 1, 2015.

APPENDIX A - Title Insurance Closing and Settlement Fee Justification Form

In accordance with § 10-11-118 (2), C.R.S. this form must be completed and submitted with any new, amended or withdrawn fee.

COMPANY/AGENT NAME		Title Insurance Closing and Settlement Fee Justification Form	
Effective Date: _____		NC=No Change (Include Current Amounts)	
New <input type="checkbox"/> Amend <input type="checkbox"/> Withdraw <input type="checkbox"/> NC <input type="checkbox"/>		New <input type="checkbox"/> Amend <input type="checkbox"/> Withdraw <input type="checkbox"/> NC <input type="checkbox"/>	
Fee Name: _____		Fee Name: _____	
Closing cost		Closing cost	
Personnel-Salaries & Benefits	\$ _____	Personnel-Salaries & Benefits	\$ _____
Office Space-Rents & Leases	\$ _____	Office Space-Rents & Leases	\$ _____
Office Equipment & Software	\$ _____	Office Equipment & Software	\$ _____
Office Supplies	\$ _____	Office Supplies	\$ _____
Vendor Services	\$ _____	Vendor Services	\$ _____
Business Insurance-Fidelity or		Business Insurance-Fidelity or	
Other similar coverages	\$ _____	Other similar coverages	\$ _____
Miscellaneous Cost	\$ _____	Miscellaneous Cost	\$ _____
Other	\$ _____	Other	\$ _____
Profit	\$ _____	Profit	\$ _____
Total Cost and Profit	\$ _____	Total Cost and Profit	\$ _____
New <input type="checkbox"/> Amend <input type="checkbox"/> Withdraw <input type="checkbox"/> NC <input type="checkbox"/>		New <input type="checkbox"/> Amend <input type="checkbox"/> Withdraw <input type="checkbox"/> NC <input type="checkbox"/>	
Fee Name: _____		Fee Name: _____	
Closing cost		Closing cost	

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Personnel-Salaries & Benefits	\$ _____	Personnel-Salaries & Benefits	\$ _____
Office Space-Rents & Leases	\$ _____	Office Space-Rents & Leases	\$ _____
Office Equipment & Software	\$ _____	Office Equipment & Software	\$ _____
Office Supplies	\$ _____	Office Supplies	\$ _____
Vendor Services	\$ _____	Vendor Services	\$ _____
Business Insurance-Fidelity or		Business Insurance-Fidelity or	
Other similar coverages	\$ _____	Other similar coverages	\$ _____
Miscellaneous Cost	\$ _____	Miscellaneous Cost	\$ _____
Other	\$ _____	Other	\$ _____
Profit	\$ _____	Profit	\$ _____
Total Cost and Profit	\$ _____	Total Cost and Profit	\$ _____

APPENDIX B - Title Insurance Closing and Settlement Fee Filing Agency Fee Sheet for Consumers

COMPANY NAME AND ADDRESS: _____ _____ _____ Effective Date: _____	Fees listed for closings in the following counties: _____ _____ _____																																																																																																																
<p>Sale/Purchase Closing Fee</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 45%;">Basic Fee</td> <td style="width: 5%; text-align: right;">\$</td> <td style="width: 45%;">Bundled Fee</td> <td style="width: 5%; text-align: right;">\$</td> </tr> <tr> <td>Additional Fees</td> <td></td> <td>Includes the following:</td> <td></td> </tr> <tr> <td>Courier/Express Mail</td> <td style="text-align: right;">\$</td> <td>Closing Fee</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Release/Release Tracking</td> <td style="text-align: right;">\$</td> <td>Courier/Express Mail</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Wire</td> <td style="text-align: right;">\$</td> <td>Release/Release Tracking</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Cashier's Check</td> <td style="text-align: right;">\$</td> <td>Wire</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Tax Certificate</td> <td style="text-align: right;">\$</td> <td>Cashier's Check</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Loan Document Retrieval (E-Doc)</td> <td style="text-align: right;">\$</td> <td>Tax Certificate</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>HOA Document Retrieval</td> <td style="text-align: right;">\$</td> <td>Loan Document Retrieval (E-Doc)</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>E-Recording (In addition to county recording charges)</td> <td style="text-align: right;">\$</td> <td>E-Recording</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Flat Rate Recording</td> <td style="text-align: right;">\$</td> <td>Other (specify): _____</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Other (specify): _____</td> <td style="text-align: right;">\$</td> <td>_____</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>_____</td> <td style="text-align: right;">\$</td> <td>_____</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>_____</td> <td style="text-align: right;">\$</td> <td></td> <td></td> </tr> </table>	Basic Fee	\$	Bundled Fee	\$	Additional Fees		Includes the following:		Courier/Express Mail	\$	Closing Fee	\$	Release/Release Tracking	\$	Courier/Express Mail	\$	Wire	\$	Release/Release Tracking	\$	Cashier's Check	\$	Wire	\$	Tax Certificate	\$	Cashier's Check	\$	Loan Document Retrieval (E-Doc)	\$	Tax Certificate	\$	HOA Document Retrieval	\$	Loan Document Retrieval (E-Doc)	\$	E-Recording (In addition to county recording charges)	\$	E-Recording	\$	Flat Rate Recording	\$	Other (specify): _____	\$	Other (specify): _____	\$	_____	\$	_____	\$	_____	\$	_____	\$			<p>Refinance Closing Fee</p> <table style="width: 100%; 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Regulation 8-1-2 TITLE INSURANCE CONSUMER PROTECTION

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules Regarding Consumer Protection
Section 6	Severability
Section 7	Enforcement
Section 8	Effective Date
Section 9	History
Appendix A	Good Funds Agreement

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109, 10-3-131, and 10-3-1110, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to ensure that consumers receive the benefits of competition in the area of title insurance and to ensure consumer protection.

Section 3 Applicability

This regulation governs title entities and does not extend the regulatory authority of the Colorado Division of Insurance ("Division") to any person other than title entities or persons transacting the business of title insurance. This regulation only applies to residential transactions.

Section 4 Definitions

- A. "Application for title insurance" means, for the purposes of this regulation, receipt by a licensed title entity of an order for a title insurance commitment or other title insurance products that contain information about all parties and details concerning a title insurance transaction.
- B. "Available for immediate withdrawal as a matter of right" has the same meaning as found at § 38-35-125(1)(a), C.R.S.
- C. "Business of title insurance" has the same meaning as found at § 10-11-102(3), C.R.S.
- D. "Closing agent" means, for the purposes of this regulation, any and all persons employed or contracted to perform closing and settlement services on behalf of a title entity.
- E. "Closing instructions" or "written instructions" mean, for the purposes of this regulation, a document, signed by one (1) or more parties to a title insurance transaction, which purports to direct a title entity in the completion of settlement services.
- F. "Commitment" or "title commitment" mean, for the purposes of this regulation, a report furnished in connection with an application for title insurance, which is a statement of the requirements, terms, and conditions upon which the title insurance company is willing to insure an interest in a subject property.
- G. "Division" means, for the purposes of this regulation, the Colorado Division of Insurance.

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- H. "Error rate" means, for the purposes of this regulation, the percentage of applicable files reviewed during a market conduct action that contained one (1) or more exceptions or violations of the applicable statute or regulation.
- I. "Financial institution" has the same meaning as found at § 38-35-125, C.R.S.
- J. "Generic exceptions" means, for the purposes of this regulation, broad exceptions on a commitment or policy of title insurance that do not refer to a specific document or recording information and are not standard or preprinted exceptions or a specific exception.
- K. "Person" has the same meaning as found at § 10-2-103(8), C.R.S.
- L. "Rate", for the purposes of this regulation, means expenses as defined in § 10-4-402(1.5), C.R.S., together with the pure premium rate as defined in § 10-4-402(2.4), C.R.S. and includes production expenses and commissions in accordance with § 10-4-403, C.R.S.
- M. "Settlement producer" has the same meaning as found at § 10-11-102(6.5), C.R.S., and does not include insurance producers as defined in § 10-2-103(6), C.R.S.
- N. "Settlement services" has the same meaning as found at § 10-11-102(6.7), C.R.S.
- O. "Specific exception" means, for the purposes of this regulation, exceptions that are known impairments for the subject property but the impairment does not appear in a reasonable examination of the property records for the property being insured.
- P. "Standard or preprinted exceptions" means, for the purposes of this regulation, those exceptions on title commitments and policies dealing with parties in possession, survey matters, mechanic's liens, unpatented mining claims, patented or unpatented mineral reservations, water rights, mineral rights, mineral leases, mineral grants, taxes, and rights or encumbrances.
- Q. "Systemic error" means, for the purposes of this regulation, an exception or violation that is not determined using an error rate because it is inherent in the system or process of the title entity.
- R. "TBD commitment" means, for the purposes of this regulation, a report, in the form of a commitment, furnished prior to receipt of an application for title insurance, in which the buyer, sales amount, and loan amount, among other possible details, are not yet known.
- S. "Title entity" means, for the purposes of this regulation, title insurance agents, title insurance agencies and title insurance companies, unless otherwise stated in the regulation.
- T. "Title insurance agency" means, for the purposes of this regulation, a corporation, partnership, association, or foreign or domestic entity as defined in § 7-90-102, C.R.S., or other legal entity that transacts the business of title insurance.
- U. "Title insurance agent" has the same meaning as found at § 10-11-102(9), C.R.S.
- V. "Title insurance company" has the same meaning as found at § 10-11-102(10), C.R.S.

Section 5 Rules Regarding Consumer Protections

- A. In order to comply with the requirements of § 10-11-106, C.R.S., no title entity shall issue a commitment for title insurance without first performing, or causing to be performed, a reasonable examination of the property records for the property to be insured. A examination shall be considered reasonable if it conforms to written standards and practices as determined by the title insurance company that is insuring the transaction. Nothing contained herein shall permit a title insurance company to create written standards and practices that do not comply with sound underwriting principles. Nothing contained herein shall prohibit title insurance companies from developing separate examination standards for different types of transactions or geographical areas.
- B. Every title entity shall ensure that the title commitment, as may be amended or modified, fully discloses to all recipients the terms upon which title to the property will be insured, the extent of coverage proposed, all proposed title exceptions, and, in a clear and conspicuous manner, shall show whether the title commitment does or does not commit to insure over or delete those exceptions to the title specified therein, consistent with § 10-11-106, C.R.S.
- C. Every title entity shall ensure that the title commitment, as may be amended or modified, fully discloses the record vested owner as shown by the applicable county real estate records as of the effective date shown on the commitment. If a circumstance exists which requires a person other than the vested owner to be shown, the title entity shall disclose, in a clear and conspicuous manner, the reason(s) for the deviation from the available county real estate records.
- D. Every title entity shall ensure that, except for standard, or preprinted exceptions, or as set forth in Subsection E below, all proposed title exceptions on a title commitment for the issuance of an owner's policy of title insurance make reference to the recording information of the document to be excepted from coverage.
- E. For owner's policies of title insurance, if a title entity has conducted a reasonable examination of title and was unable to find recorded information for a known impairment, the title entity may make use of a specific exception if the title entity uses other identifiable information, including, but not limited to marks on a document, names of parties, and case numbers, that clearly identify and makes readily available to the consumer the instrument or information referenced in the specific exception. Nothing in this subsection may be construed to allow a title entity to avoid the requirement of conducting a reasonable examination of title.
- F. Whenever a title entity provides the closing and settlement service that is in conjunction with the issuance of an owner's policy of title insurance, it shall update the title commitment from the date of issuance to be as reasonably close to the time of closing as permitted by the real estate records. Such update shall include all impairments of record at the time of closing or as close thereto as permitted by the real estate records. The title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title commitment, other than the effective date of the title commitment, for all undisclosed matters that appear of record prior to the time of closing.
- G. As soon as reasonably practical prior to closing, every title entity shall notify in writing every prospective insured under an owner's title commitment the circumstances under which the title insurance company is responsible for all matters which appear of record prior to the time of recording (commonly referred to as "Gap Coverage"). This notice shall be clear and conspicuous, reasonably understandable, and designed to call attention to its nature and significance.

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- H. Every title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title commitment, other than the effective date of the title commitment, for all matters which appear of record prior to the time of recording whenever the title insurance company, or its agent, conducts the closing and settlement service that is in conjunction with its issuance of an owner's policy of title insurance and is responsible for the recording and filing of legal documents resulting from the transaction which was closed.
- I. If a title entity undertakes to insure any person or entity against the possible adverse effect of any recorded lien, recorded encumbrance or other recorded interest, in accordance with § 10-11-106, C.R.S., and any other applicable law, it shall:
1. Delete such recorded lien, recorded encumbrance or other recorded interest from the schedule of exceptions in its title commitment and have on hand funds, securities, a bonded obligation, or letter of credit payable to the order of said title entity, adequate to discharge such lien, encumbrance or other interest in the event said lien, encumbrance or other interest is perfected to the detriment or possible detriment of the person or entity insured, or any successor in interest to such person or entity;
 2. Insure over and reflect such recorded lien, recorded encumbrance or other recorded interest in the schedule of exceptions in its title commitment, and receive an appropriate indemnity from the responsible party; or
 3. Insure over the defect in accordance with the title entity's sound underwriting practices and guidelines; and
 4. Not raise as a defense to any claim based on, or arising out of, the deletion or insurance over such defect or exception that the insured assumed, agreed to, or had knowledge of the said defect or exception.
- J. All title entities shall comply with the "good funds law" contained in § 38-35-125, C.R.S. In particular, no title entity that provides closing and settlement services for any real estate transaction shall disburse funds as a part of such services until the funds to be disbursed have been received and are either: available for immediate withdrawal as a matter of right from the financial institution in which the funds have been deposited; or available for immediate withdrawal as a consequence of the agreement of the financial institution in which the funds are to be deposited or the financial institution upon which the funds are drawn. Any such agreement shall be made with or for the benefit of the person or entity providing closing and settlement services for a real estate transaction.
1. Notwithstanding the provisions of this Section 5.J., the entity providing closing and settlement services may advance funds, not to exceed five hundred dollars, on behalf of interested parties for the transaction to pay incidental fees for such items as tax certificates and recording costs or to cover minor changes in the closing adjustments.
 2. A title entity may satisfy the requirements of this Section 5.J. by use of the Good Funds Agreement appended as Appendix A, without substantial amendment or modification. This is the only agreement approved by the Division for such purpose.
 3. Nothing in this Section 5.J. shall be deemed to prohibit the recording of documents before such funds are available provided all necessary parties to the transaction consent in writing thereto.

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4. The requirements of Section 5.J. above may be waived by the seller in the real estate transaction if:
 - a. It is specified as part of written closing instructions in advance of closing that the seller waives the requirements set forth in Section 5.J. above and that the person or entity conducting the closing, unless such person or entity is the seller, is not to handle the receipt and disbursement of funds as part of the closing; and
 - b. Any holder of a lien encumbering the property up to the time of closing agrees, in writing, to such waiver and further agrees, in writing, to release such lien immediately upon receipt of a check from the closing drawn in the amount of the outstanding indebtedness secured by such lien. Such an agreement shall obligate the lien holder to release such lien regardless of whether the payoff check received has been or will be honored.
 5. Any seller who so requests as part of written closing instructions in advance of closing, shall be entitled to receive the proceeds of closing in a cashier's check or in funds electronically transferred to an account specified by the seller.
- K. No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties. All amendments to existing written instructions must be in writing.
- L. Every title entity shall be responsible for properly conducting each closing or settlement service and recording such documents as it is directed in writing to record in conjunction therewith, for each transaction for which such title entity charges and collects a fee.
1. All documents must be submitted for recording within seven (7) calendar days of:
 - a. Receipt of the document to be recorded; or
 - b. The disbursement date of the transaction.
 2. In the event incorrect or incomplete documents are received, the title entity shall have seven (7) calendar days, from receipt of the corrected or complete documents, to submit the documents for recording.
 3. A title entity shall be deemed in compliance if they submit the recording to a third party electronic recording vendor or the county recorder's office.
- M. Every title entity shall notify in writing, at the time of delivery of the title commitment, every prospective insured in an owner's title commitment for a single family residence (including a condominium or townhouse unit) of that title entity's general requirements for the deletion of an exception or exclusion to coverage relating to unfiled mechanic's or materialman's liens, except when said coverage or insurance is extended to the insured under the terms of the policy. This notice shall be clear and conspicuous, reasonably understandable, and designed to call attention to its nature and significance. Notwithstanding the foregoing, nothing contained in this Section 5.M. shall be deemed to impose any requirement upon any title insurance company to provide mechanic's or materialman's lien coverage.
- N. Every title entity shall issue and deliver to the insured, the title insurance policy within ninety (90) calendar days of:
1. The effective date of the owner's title insurance policy if the title entity is providing closing and settlement services for the transaction; or

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2. The satisfaction of the terms, conditions and requirements of the title commitment if the title entity is not providing closing and settlement services for the transaction.
 3. The title entity is not responsible for compliance with this subsection if the title entity has not received payment for the title insurance premium.
- O. Every title entity is responsible for:
1. Ensuring that rates charged to insureds for the title entity's products by the following persons are the same as the rates that the title entity has filed with the Division:
 - a. The title entity's employees; and
 - b. Title insurance agents with whom the title entity has an employment relationship, a contract, or an agency agreement.
 2. Pursuant to § 10-3-131, C.R.S., when the following persons are acting on the title entity's behalf, any unfair business practice, when the title entity knew or should have known about the unfair business practice:
 - a. The title entity's employees; and
 - b. Title insurance agents with whom the title entity has an employment relationship, a contract, or an agency agreement.
 3. In all other areas, exercising reasonable efforts to ensure that the acts of its employees and other authorized agents, including closing agents and title insurance agencies, which are performed within the scope of the person's employment, contract, agency agreement, or closing protection letter, comply with all laws and regulations concerning the business of title insurance.
 - a. For the purposes of market conduct actions involving a title insurance company conducted pursuant to Part 2 of Article 1 of Title 10 C.R.S., with the exception of systemic errors, the Division will consider an error rate that exceeds 7% for claims and an error rate that exceeds 10% for other issues, by employees and agents of the title insurance company performed within the scope of the person's employment, contract, agency agreement, or closing protection letter, to be a reportable exception that the title insurance company failed to conduct reasonable efforts to ensure its employees and agents complied with the laws and/or regulations at issue in the market conduct action.
 - b. For the purposes of market conduct actions involving a title insurance agent or agencies conducted pursuant to Part 2 of Article 1 of Title 10, C.R.S., with the exception of systemic errors, the Division will consider an error rate that exceeds 7% for claims and an error rate that exceeds 10% for other issues to be a reportable exception.
- P. Every title entity shall maintain adequate documentation and records sufficient to show its compliance with this regulation and Title 10 of the Colorado Revised Statutes for a period of not less than seven (7) years, except as otherwise permitted by law.

Section 6 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

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Section 7 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 8 Effective Date

This regulation shall become effective on October 1, 2015.

Section 9 History

New regulation effective October 1, 2015.

Appendix A GOOD FUNDS AGREEMENT

THIS GOOD FUNDS AGREEMENT ("Agreement") is entered into as of this ____ day of _____, by and among _____ ("Mortgage Lender"), _____ ("Closing Agent"), _____ ("Bank") and _____ ("Warehouse Lender").

RECITALS

- A. Colorado Revised Statutes Section 38-35-125 (the "Statute") establishes certain requirements for the collection and availability of funds which must be satisfied to enable a provider of closing and settlement services for real estate transactions to disburse such funds;
- B. The Mortgage Lender is presently engaged in the making of one or more loans ("Loan or Loans") to individuals or entities ("Borrowers") or purchasing Loans made by other lenders. The Loans to which this Agreement pertains shall in every case be evidenced by a promissory note ("Note") executed by the pertinent Borrower and secured by a priority mortgage or deed of trust ("Mortgage") on real property improved by a 1-4 family residence.
- C. The Bank is a "financial institution", as defined in the Statute.
- D. The Bank/Warehouse Lender has extended a credit facility to the Mortgage Lender, pursuant to which the Bank/Warehouse Lender has agreed, upon certain terms and conditions, to advance funds (an "Advance") to the Mortgage Lender for the purpose of enabling the Mortgage Lender to make Loans. Each Advance by the Bank/Warehouse Lender shall be secured by the Note and Mortgage executed in connection with the Loan for which the Advance is made. The term "Bank/Warehouse Lender" shall mean (i) the Bank if no separate warehouse lender is a party or (ii) the Warehouse Lender if, the warehouse lender is not the Bank.
- E. In order to comply with the Statute, the parties wish to agree upon an arrangement whereby the Closing Agent may, immediately upon the closing of Loans, disburse funds delivered to it in connection with such closings.

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- F. The Bank may issue Reservation Numbers (as defined below) for Loans to be funded by the Mortgage Lender's check drawn upon the Bank or its affiliated bank, _____ account # _____ ("Good Funds Account") and the Bank is willing to agree with the Lender and the Closing Agent that it will fund checks drawn upon the Good Funds Account ("Good Funds Check") for the funding of Loans and the Closing Agent may disburse the funds immediately upon the closing of Loans, upon the terms set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated and made a part of this Agreement.
2. Responsibilities of Mortgage Lender. The Mortgage Lender shall, prior to the closing of a Loan, prepare and deliver to the Closing Agent all necessary Loan documents including, without limitation, a loan settlement statement. Alternatively, if the Closing Agent or any third party prepares the Loan documents, the Mortgage Lender shall review and approve the Loan documents.
3. Responsibilities of the Closing Agent. The Closing Agent shall be responsible to do the following, at or prior to the closing of each Loan:
 - (a) During the Bank's normal business hours, on or before the day of disbursement of funds, the Closing Agent shall obtain from the Bank or its designee by telephone as specified on the signature page, a reservation number which has been issued by the Bank for the Good Funds Check (the "Reservation Number").
 - (b) The Closing Agent shall verify that the amount of the check delivered to it by the Mortgage Lender and drawn on the Bank does not exceed the face amount of the Loan less all discount points charged in connection with the Loan, as set forth on the settlement statement.
 - (c) The Closing Agent shall make disbursements in accordance with the settlement statement and do all other things and obtain all other documents that it deems necessary in order to comply with the Mortgage Lender's closing instructions that are applicable to the Loan and issue a mortgagee's policy of title insurance in favor of the Mortgage Lender, insuring that the Mortgage is a _____ lien on real property improved by a 1-4 family residence as described therein. The duties of the Closing Agent hereunder shall not include the preparation of legal documents. The Closing Agent shall in each case forward the original Mortgage to the proper governmental authority for recording. The Note and all other Loan documents shall be delivered to the Mortgage Lender within two (2) business days after disbursement of funds, unless the Closing Agent is requested and agrees to forward the Loan package to the Bank/Warehouse Lender or its designee as specified on the signature page. For the purposes of perfecting the Bank's/Warehouse Lender's security interest therein pursuant to § 4-9-313(c), C.R.S., the Closing Agent shall be the bailee of the Bank/Warehouse Lender and agrees to hold possession of the Note and all other Loan documents for the benefit of the Bank/Warehouse Lender until the Closing Agent delivers the Loan documents to the Mortgage Lender or the Bank/Warehouse Lender.
 - (d) In the event Loan proceeds are not disbursed within two (2) business days after issuance of a Reservation Number, the Closing Agent shall so notify the Mortgage Lender and return the check to the Mortgage Lender.

4. Bank's Agreement to Honor Checks. The Bank shall have no obligation under this Agreement or otherwise to issue a Reservation Number for any check drawn on the Good Funds Account. However, if (1) the Bank does issue a Reservation Number, (2) the Bank has given a Reservation Number to the Closing Agent, and (3) the Closing Agent closes a Loan and disburses funds, then issuance of the Reservation Number shall constitute the warranty by, and unconditional agreement between the Bank and the Closing Agent that:
- (a) The Bank shall honor and pay the Good Funds Check upon presentment without reference to amounts on deposit in any account;
 - (b) Issuance of the Reservation Number constitutes an acceptance or certification of the Good Funds Check by the Bank, pursuant to § 4-3-409, C.R.S.;
 - (c) The Good Funds Check shall be deemed, with respect to the ability of the Bank to stop payment, to be the equivalent of a cashier's check issued by the Bank;
 - (d) Funds represented by the Good Funds Check are not subject to offset by the Bank; and
 - (e) The Bank shall not honor any stop-payment order or direction from the Mortgage Lender with respect to the Good Funds Check.

Mortgage Lender agrees to pay, and indemnify Closing Agent for, all losses sustained as a result of a dishonor of a Good Funds Check that the Bank is obligated to honor as set out in this paragraph 4. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to alter the normal check collection and clearance time periods for a Good Funds Check.

5. Insured Closing Letter. For the duration of this Agreement, the Closing Agent shall obtain and cause to remain in effect insured closing letters from the Title Insurance Company in form and content acceptable to the Bank/Warehouse Lender (the "Insured Closing Letters"). The Insured Closing Letters shall be addressed to the Bank/Warehouse Lender and to the Mortgage Lender and shall not be cancelable except with ten (10) days prior written notice to the Bank/Warehouse Lender and the Mortgage Lender. A copy of the Insured Closing Letter shall be delivered by the Mortgage Lender to the Bank/Warehouse Lender prior to any request for confirmation pursuant to paragraph 3 (a) hereof.
6. Termination. This Agreement shall apply to all Loans of the Mortgage Lender which are now or hereafter closed by the Closing Agent for which a Reservation Number is requested and given, prior to termination of this Agreement. This Agreement may be terminated by any party hereto, immediately upon the giving of written notice to all other parties. The rights and obligations of the parties with respect to all Good Funds Checks for which a Reservation Number has been issued by the Bank prior to termination of this Agreement shall survive any such termination.
7. Notices. All notices which are required or may be given in connection with this Agreement shall be effective upon the earlier of receipt or three (3) days after the same are sent by certified mail, return receipt requested, with postage prepaid, to the addresses contained on the signature page.
8. Miscellaneous:
- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

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- (b) Nothing in this Agreement shall be deemed to supersede or modify the rights and obligations of the Mortgage Lender and the Bank/Warehouse Lender vis-à-vis each other under any loan agreement or other documents that may currently be in place with respect to the Bank's/Warehouse Lender's credit facility with the Mortgage Lender ("Other Agreement or Documents"), and the Bank/Warehouse Lender shall be entitled to exercise all rights and remedies granted in any such Other Agreements or Documents, as specified therein except that the Bank's agreement to honor a Good Funds Check under paragraph 4 shall not be altered or impaired by such Other Agreement or Documents.
- (c) This Agreement may not be assigned by the Closing Agent or Mortgage Lender without the prior written consent of the Bank and the Warehouse Lender, if any. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Bank and the Warehouse Lender, if any, and upon any permitted successors and assigns of the Closing Agent or the Mortgage Lender.
- (d) This Agreement may be amended or modified only by a written instrument executed by the parties hereto and only as permitted by Division of Insurance Regulation 3-5-1.
- (e) No right or interest under this Agreement shall be waived except by written instrument executed by the party against whom such waiver is sought. Any waiver of any particular default or failure to perform hereunder or of any provision hereof shall not constitute a waiver of any other default or failure to perform hereunder or of the same default arising again in the future.
- (f) In the event of any litigation or arbitration hereunder, the prevailing party shall be entitled to recover its attorneys fees and costs in addition to the award granted by the court or arbitrator.
- (g) The rights and remedies of each party under this Agreement shall be cumulative, both as to other rights or remedies under this Agreement and as to rights and remedies otherwise provided or available under other agreements or at law, by statute or in equity. The exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.
- (h) No Closing Agent, Mortgage Lender, or Bank/Warehouse Lender shall be required to enter into this Agreement.

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IN WITNESS WHEREOF, the parties have entered into this Good Funds Agreement as of the date first above written.

Bank:	Closing Agent:
By	By
Name:	Name:
Title:	Title:
Address:	Address:
Telephone No.:	Telephone No.:
FAX No.:	FAX No.:
E-mail:	E-mail:
Attention:	Attention:

WAREHOUSE LENDER: _____ **MORTGAGE LENDER:** _____

Bank:	Closing Agent:
By	By
Name:	Name:
Title:	Title:
Address:	Address:
Telephone No.:	Telephone No.:
FAX No.:	FAX No.:
E-mail:	E-mail:
Attention:	Attention:

FOR RESERVATION NUMBERS pursuant to paragraph 3(a) contact:

Name: _____
 Address: _____
 Address: _____
 Telephone No.: _____
 E-mail: _____
 Bank Authorization: _____

Name & Title

FOR LOAN DOCUMENT DELIVERY pursuant to paragraph 3(c) deliver to:

Name: _____
 Address: _____
 Address: _____
 Telephone No.: _____
 E-mail: _____
 Bank Authorization: _____

Name & Title

Regulation 8-1-3 TITLE INSURANCE STANDARDS OF CONDUCT

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules Regarding Standards of Conduct for Title Insurance Entities
Section 6	Severability
Section 7	Enforcement
Section 8	Effective Date
Section 9	History
Appendix A	Title Closing Protection Letters

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109, 10-2-104, 10-3-1110, 10-11-116, 10-11-119, and 10-11-124(2) C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to ensure that consumers receive the benefits of competition in the area of title insurance and to ensure consumer protection. The regulation also proscribes unlawful inducements, deceptive trade practices, and discriminatory acts, all of which are detrimental to the consumer and, in the aggregate, may threaten the solvency of title insurance companies and title insurance agents.

Section 3 Applicability

This regulation governs title entities and does not extend the regulatory authority of the Colorado Division of Insurance ("Division") to any person other than title entities or persons transacting the business of title insurance. This regulation does not create any type of safe harbor from the enforcement of any federal statutes and regulations applicable to title entities.

Section 4 Definitions

- A. "Affiliate" means a person who directly, or indirectly through one or more intermediaries:
1. controls a title entity;
 2. is controlled by a title entity; or
 3. is under common control with a title entity.
- B. "Affiliated business arrangements" shall have the same meaning as set forth in § 10-11-102(1), C.R.S. Affiliated business arrangements are distinct from controlled business arrangements, which are defined by § 10-2-401(4), C.R.S.
- C. "Application for title insurance" shall mean receipt by a licensed title entity of an order for a title insurance commitment or other title insurance product that contains information about all parties and details concerning a title insurance transaction.
- D. "Business of title insurance" shall have the same meaning as set forth in § 10-11-102(3), C.R.S.

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- E. "Commitment" or "title commitment" shall mean a report furnished in connection with an application for title insurance, which is a statement of the requirements, terms, and conditions upon which the title insurance company is willing to insure an interest in a subject property.
- F. "Core title services" shall have the same meaning as set forth in the United States Department of Housing and Urban Development (HUD) RESPA Statement of Policy 1996-4.
- G. "Division" means the Colorado Division of Insurance.
- H. "Fair Market Value" means, for the purpose of this regulation, a price that represents the value of a product or service being provided, which must include cost and profit.
- I. "Fee" means, for purposes of this regulation only, the price other than the Rates (see subparagraph L below) assessed to a consumer by a title entity in rendering services pursuant to the business of title insurance as defined in § 10-11-102, C.R.S.
- J. "Ownership and encumbrance report" ("O&E") means information identifying the last recorded owner, legal description and recorded unreleased deeds of trust, or mortgages of a particular parcel of real property available from public records.
- K. "Person" has the same meaning as that in § 10-2-103(8), C.R.S.
- L. "Rate", for purposes of this regulation, means expenses as defined in § 10-4-402(1.5), C.R.S., together with the pure premium rate as defined in § 10 4 402(2.4), C.R.S., and includes production expenses and commissions, in accordance with § 10-4-403, C.R.S.
- M. "Remuneration" means, for the purposes of this regulation, any type of payment or compensation.
- N. "Services actually rendered" for the purposes of this regulation includes, but is not limited to, a reasonable examination of title, including instruments of record, and a determination of insurability of such title in accordance with sound underwriting practices. "Services actually rendered" does not include the mere referral of title insurance business.
- O. "Settlement producer" shall have the same meaning as set forth in § 10-11-102(6.5), C.R.S., and does not include insurance producers as defined in § 10-2-103(6), C.R.S.
- P. "Settlement services" shall have the same meaning as in § 10-11-102(6.7), C.R.S.
- Q. "TBD commitment" shall mean a report, in the form of a commitment, furnished prior to receipt of an application for title insurance, in which the buyer, sales amount, and loan amount, among other possible details, are not yet known.
- R. "Title insurance agency" means, for the purpose of this regulation, a corporation, partnership, association, or foreign or domestic entity as defined in § 7-90-102, C.R.S., or other legal entity that transacts the business of insurance.
- S. "Title insurance agent" shall have the same meaning as in § 10-11-102(9), C.R.S.
- T. "Title insurance company" shall have the same meaning as in § 10-11-102(10), C.R.S.
- U. "Title entity" shall mean title insurance agents, title insurance agencies and title insurance companies, unless otherwise stated in the regulation.

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V. "Trip", means, for the purposes of this regulation, a journey or getaway that includes any one or more of the following:

1. Air travel;
2. Travel outside the state of Colorado;
3. Any overnight lodging or accommodation.

Section 5 Rules Regarding Standards of Conduct for Title Insurance Entities

A. A title entity shall not give remuneration to any person, either directly or indirectly, pursuant to any agreement or understanding, oral or otherwise, for the referral of the business of title insurance, other than remuneration that is a part of a compliant and authorized affiliated business agreement or for services actually rendered.

B. An agreement or understanding for the referral of the business of title insurance need not be written or verbalized but may be established by a practice, pattern, or course of conduct. When any type of remuneration is given repeatedly and is connected in any way with the volume or value of the business referred, the giving of the remuneration is evidence that it is made pursuant to an agreement or understanding for the referral of the business of title insurance.

C. The following activities are permissible standards of conduct:

1. Providing discounts that are properly filed and justified in the title entity's rate or fee filing.
2. Furnishing a TBD commitment for a charge that bears a reasonable relation to the cost of production of the TBD commitment or crediting a charge paid for a TBD commitment to the final premiums or fees paid upon the consummation of the transaction contemplated by such TBD commitment, when such charge has been properly filed and justified.
3. Paying, furnishing, or providing a proportional share of the actual cost for a thing of value being provided. The title entity must comply with Section 5.C.12. if the title entity is providing promotional materials and Section 5.C.13. if the title entity is providing office space or accommodation.
4. Crediting a charge paid for an ownership and encumbrance report to the final premiums or fees paid upon the consummation of the transaction contemplated by such ownership and encumbrance report.
5. Accumulating, crediting or deferring the charge for a title policy or a closing or settlement service, to the extent that a properly filed and justified rate or fee is in place for the accumulated, credited, or deferred charge.
6. Paying for or furnishing a business form to a settlement producer which is a form regularly used in the conduct of the title entity's business and which form is furnished solely for the convenience of the title entity and does not constitute a monetary benefit to a settlement producer.
7. Advancing or paying into escrow, or offering to advance or pay into escrow, title entity funds as provided in Division Regulation 8-1-2 Section 5.J.1.

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8. Providing a single copy of the last recorded vesting deed for a parcel of real property to a settlement producer without charge if:
- a. The document is provided as presented by the public records and nothing of material value is added to the information contained in it; and
 - b. The document provided contains no advertising or promotional material on behalf of the settlement producer.

Nothing in this regulation prohibits title entities from imposing a reasonable fee for any of the above information, or for additional information, provided the fee is the same for all persons and assessed on a non-discriminatory basis.

9. Providing to a settlement producer a copy of an instrument of public record in connection with the issuance of a commitment or TBD commitment, including but not limited to a deed, deed of trust, mortgage, judgment, lien, contract, map, plat, declaration of covenants, conditions, and restrictions, or any other document purporting to affect a parcel of real property without charge if:
- a. The document is provided in concert with the issuance of a commitment for title insurance;
 - b. The document is provided as presented by the public records and nothing of material value is added to the information contained in it; and
 - c. The document provided contains no advertising or promotional material on behalf of the settlement producer.

Nothing in this regulation prohibits title entities from imposing a reasonable fee for any of the above information, or for additional information, provided the fee is the same for all persons and assessed on a non-discriminatory basis.

10. Providing a quote for title insurance premiums and settlement service fees for a specific real estate transaction. Such a quote need not comply with the reasonable search and examination standards required by § 10-11-106, C.R.S., or Regulation 8-1-2, provided said quote is not binding in the event a reasonable search and examination of the property records reveals a circumstance in which the quoted rate or fee must be amended.
11. Issuing a closing protection letter that satisfies the following standards:
- a. Any closing protection letter issued substantially conforms to an American Land Title Association ("ALTA") promulgated form, which may include amending such form to be applicable to a seller;
 - b. All fees that are charged for a closing protection letter are not in any way included in the rate charged for the title insurance product;
 - c. All fees that are charged for the closing protection letter are disclosed to the consumer paying the fee;
 - d. All fees that are charged for a closing protection letter have been properly filed and justified in accordance with Regulation 8-1-1 by the title insurance company providing title insurance for the subject transaction;

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- e. All fees that are charged for a closing protection letter are remitted to the title insurance company providing title insurance for the subject transaction; and
 - f. The title insurance company includes a notice to the consumer on the commitment disclosure statement of the availability of the issuance of a closing protection letter.
12. Normal promotional and educational activities that:
- a. Are not conditioned on the referral of the business of title insurance;
 - b. Do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto;
 - c. Comply with paragraphs 5.C.15 through 19.; and
 - d. Do not violate paragraph 5.D.20. of this regulation.
13. Utilizing office space or other accommodations within a settlement producer's office or business space, provided that rent is paid in accordance with Section 5.C.3., if:
- a. Written notice has been provided to the consumer disclosing that an office or accommodations sharing arrangement exists and that the consumer has the right to shop for and use another title entity and/or settlement producer;
 - b. The title entity's space is clearly and conspicuously identified separately from the settlement producer's space;
 - c. The title entity's space can be readily locked and secured independently from the settlement producer's space;
 - d. The title entity's space is directly and easily accessible to the public without entering the settlement producer's primary workspace, such as where the title entity's entrance leads to or from a common area or the exterior of the premises; and
 - e. The title entity does not directly or indirectly pay for or subsidize the settlement producer's expenses as proscribed by § 10-11-108, C.R.S.
14. Charitable donations that meet the following requirements:
- a. The donation must be made directly to the charitable organization; and
 - b. The donation must not be made on behalf of a settlement producer.
15. Expenditures for business meals as a method to promote a title entities business, only when at least one title insurance producer attends the business meal for every four settlement producers that attend the business meal.
16. A title entity may provide or sponsor educational courses under the following conditions:
- a. The topic of the education course is title insurance, escrow, closing and settlement services, other courses related to such topics, or real estate and mortgage classes;

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- b. The education course be at least one hour in duration; and
 - c. If the topic of the education course is residential real estate or mortgage classes, escrow, closing and settlement services, the title entity conducting or sponsoring the course must provide Appendix A of this regulation, titled "Title Insurance Closing Protection Letters (CPLs)," to all individuals taking the course.
- 17. Attending or participating in local sporting events as a method to promote any title entities' business, only when at least one title insurance producer attends, or participates in, the sporting event for every four settlement producers that attend, or participate in, the sporting event.
- 18. A title entity may attend and participate in trade association activities and events under the following conditions:
 - a. Any marketing and promotional items and gifts promoting a title entity must be available to the public;
 - b. Any advertising purchased by the title entity in a trade association publication is purchased at fair market value; and
 - c. The title entities attendance or participation in the trade association activities and events must not violate paragraph 5.D.20. of this regulation.
- 19. Expenditures for coffee, donuts, bagels, or other similar refreshments, for a settlement producer, as a method to promote the title entities' business, only when at least one title insurance producer is present to promote the title entities' business.
- D. The following is a partial, but not all-inclusive, list of acts and practices which the Division considers per se unlawful inducements proscribed by § 10-11-108, C.R.S.:
 - 1. Except as otherwise permitted in Regulation 8-1-2 Section 5.J.1., the disbursement of closing and settlement services funds before all necessary conditions of the transaction have been met.
 - 2. Furnishing a title commitment without charge or at a reduced charge, in the absence of a bona fide sale, purchase or loan transaction. The charge for a commitment must have a reasonable relation to the cost of production of the commitment.
 - 3. Furnishing a TBD commitment without a charge that bears a reasonable relation to the cost of production of the TBD commitment. Any such charge must be properly filed and justified in accordance with Regulation 8-1-1. While such charge for the production of a TBD commitment must be made at the time the TBD commitment is provided, nothing in this provision shall prohibit a company from crediting a charge paid for a TBD commitment to the final premiums or fees paid upon the consummation of the transaction contemplated by such TBD commitment.
 - 4. Paying for, furnishing, providing, subsidizing, waiving or offering to pay, furnish, provide, subsidize or waive, to or for any settlement producer or associate, all or any portion of the following:
 - a. The cancellation fee for a title commitment or other fee before or after a settlement producer cancels an order with another title entity; and

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- b. Salary, compensation or services, except for services actually rendered, including but not limited to:
- (1) All or any part of the time or productive effort of any employee or affiliate of the title entity (e.g., office manager, escrow officer, secretary, clerk, messenger) to any settlement producer at less than the fair market value of the services;
 - (2) Compensation of a settlement producer or associate of a settlement producer;
 - (3) The salary or any part of the salary of a relative of any settlement producer which payment is in excess of the reasonable value of the work actually performed by such relative on behalf of the title entity; and
 - (4) Services by any settlement producer, which services are required to be performed by such settlement producer in his or her professional capacity, and for which the settlement producer would not normally charge the title entity.
5. Except for services actually rendered, paying a settlement producer or associate to make an inspection or appraisal of property.
6. Any transaction in which any person receives, or is to receive, securities of the title entity or its affiliates at prices below the normal market price, or bonds or debentures which guarantee a higher than normal interest rate, when such transaction is directly or indirectly related to the number of closing and settlement services or title orders coming to the title entity through the efforts of such person.
7. Charging less than the scheduled rate or fee for a specified title or closing and settlement service, or for a policy of title insurance.
8. Waiving, or offering to waive, all or any part of the title entity's established rate or fee for services which are not the subject of rates or fees filed with the Commissioner or are required to be maintained on the entity's schedules of rates and fees.
9. Furnishing information, including but not limited to, farm packages and ownership and encumbrance reports, or similar packages containing information about one or more parcels of real property, without both making a charge that is commensurate with the fair market value of the work performed and the material furnished, and making a good faith effort to collect payment in the amount of such charge. While such charge for the production of an ownership and encumbrance report must be made at the time the report is provided, nothing in this provision prohibits a company from crediting a charge paid for an ownership and encumbrance report to the final premiums or fees paid upon the consummation of the transaction contemplated by such ownership and encumbrance report.
10. Subsidizing the production of ownership and encumbrance reports, farm packages, information kits, or similar packages containing information about one or more parcels of real property, whether through sponsorship, advertising, or any other direct or indirect method of payment to a company or organization that is able to produce such materials but is not subject to the rules and regulations of the division.

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11. Designing, producing, printing, distributing or causing to be designed, produced, printed, or distributed, on behalf of any settlement producer, postcards, flyers, home information books, business cards, or any other product used to market to prospective clients without both making a charge that is commensurate with the fair market value of the work performed and the material furnished, and making a good faith effort to collect payment in the amount of such charge.
12. Accumulating, crediting or deferring the charge for a title policy or closing and settlement services in order to qualify the charge for said policy and a later transaction for a lower rate or fee, except to the extent that a properly filed and justified rate or fee is in place for a deferred rate.
13. Making or guaranteeing or offering to make or guarantee, directly or indirectly, any loan to any settlement producer, regardless of the terms of the note or guarantee.
14. Guaranteeing, or offering to guarantee, the performance or services of any settlement producer.
15. Providing, or offering to provide, either directly or indirectly, a "compensating balance" or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any settlement producer, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution.
16. Paying for, or offering to pay for, the fees or charges of an outside professional (e.g., an attorney, engineer, appraiser, or surveyor) whose services are required by any settlement producer or consumer to structure or complete a particular transaction.
17. In addition to those services in Section 5.D.11., providing, or offering to provide, non-title insurance services (e.g. computerized bookkeeping, forms management, computer programming, REO or foreclosure services, or any similar non-title insurance benefit) to any settlement producer at less than the fair market value of the services.
18. Advancing or paying into escrow, or offering to advance or pay into escrow, any of the title entity funds or "closing short", except as provided in Regulation 8-1-2.
19. Charging less than the actual cost of the closing and settlement service of the title entity.
20. Contributing fees, prizes, gifts, or other things of value to a settlement producer including, but not limited to:
 - a. Co-sponsoring, subsidizing, or paying for meetings, except for meetings on the title company's premises and educational courses as allowed by section 5.C.16. of this regulation;
 - b. Co-sponsoring, subsidizing, or paying for any type of incentive, retreat, transportation, or vacation;
 - c. Co-sponsoring, subsidizing, or paying for the attendance of a settlement producer at a trade association event or meeting;
 - d. Co-sponsoring, subsidizing, or paying for open house celebrations, or open houses at homes or properties for sale;

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- e. Co-sponsoring, subsidizing, or paying for settlement producers' recreational activities including, but not limited to:
 - (1) All types of trips; and
 - (2) All types of parties including cocktail parties, barbeques and holiday parties;
 - f. Co-sponsoring, subsidizing, paying, or contributing fees, prizes, gifts or other things of value to or for a settlement producer in a manner designed to evade the provisions of this paragraph 5.D.20.
21. A marketing arrangement commonly referred to as Marketing Services Agreement (MSA), between a title entity and settlement producer.
- E. Affiliated Business Arrangements:
- 1. Section 10-11-124 (1)(a), C.R.S. permits an affiliated business arrangement where the person referring the business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of § 10-11-108 (1), C.R.S. Affiliated business arrangements which are tied to the referral of title insurance business are a per se unlawful inducement proscribed by § 10-11-108(1), C.R.S., and constitute a violation of § 10-11-124 (1) (a), C.R.S. The Division will make determinations as to compliance with these sections on a case-by-case basis. Prohibited arrangements include, but are not limited to the following:
 - a. Arrangements in which the amount of the return on the ownership interest is directly or indirectly conditioned on the number of or premium volume of referrals made, such as where owners or stockholders receive dividends or bonuses based on the number of referrals generated or achievement of certain referral plans or goals;
 - b. Arrangements in which the ownership interests themselves are conditioned on the referrals, such as where the stock certificates are distributed based on the number of or premium volume of the referrals made in the past or to be made in the future;
 - c. Arrangements in which owners or stockholders receive anything of value that is directly tied to the referral of business;
 - d. Arrangements in which employees, agents, or associates of the owners or stockholders receive incentives, inducements, or other things of value directly tied to the referral of business;
 - e. Arrangements in which the cost of the ownership opportunity is not equivalent for all investors;
 - f. Arrangements in which no formal business plan is developed and/or the formation of such arrangement is designed to obscure kickbacks in the form of dividends or other considerations and not for a bona fide business reason.

2. "Sham" affiliated business arrangements are prohibited.
- a. In considering whether or not a title entity is a legitimate affiliated business arrangement or a "sham" affiliated business arrangement the factors the Division will consider include but are not limited to the following:
- (1) Whether the title entity is structured and operated in a manner that evidences a good faith effort to conform to applicable title insurance laws.
 - (2) Whether the title entity maintains a separate and distinct, verifiable physical location. In the event the title entity shares office space with a settlement producer, the Division shall consider the factors set forth in Paragraph C.13.a. through e. of this Section, inclusive, in determining compliance with this provision. In the event the title entity shares office space with another title entity the Division shall consider the following factors:
 - (a) Whether the title entity's space is clearly and conspicuously identified separately from another title entity's space;
 - (b) Whether the title entity's space can be readily locked and secured independently from another title entity's space; and
 - (c) Whether the title entity's space is directly and easily accessible to the public without entering another title entity's primary workspace, such as where the title entity's entrance leads to or from a common area or the exterior of the premises.
 - (3) Whether the title entity was established with at least the minimum capitalization required pursuant to § 10-11-116 (2), C.R.S. and maintains such minimum capitalization at all times.
 - (4) Whether the title entity shares employees with another title entity, settlement producer or other affiliated entity. In determining whether or not an individual is an employee of the title entity, the Division may consider the following factors:
 - (a) Whether the title entity issues, or causes to be issued, an annual Internal Revenue Service Form W-2 to the employee;
 - (b) Whether the employee is subject to the title entity's supervision and control;
 - (c) Whether the employee devotes fixed periods of time exclusively to the business of the title entity or whether the employee is compensated on a fluctuating per-hour basis or per-transaction basis;
 - (d) Whether the employee is physically located in the office of the title entity.

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- (5) Whether the title entity performs core title services, by and through its employee(s). In accordance with the HUD Statement of Policy 1996-4 the title entity shall not collect premiums for services not actually performed.
- (6) What, if any, title or settlement services the title entity has contracted to other sources.

In addition to the above factors the Division will consider the guidelines set forth in the HUD Statement of Policy 1996-2, Sham Controlled Business Arrangements (commonly referred to as the "HUD 10-Step Sham Test"), which Statement is incorporated herein by reference. The Division may also consider any other relevant facts and circumstances relating to the above factors and to those elements set forth in the 10-Step Sham Test.

- 3. An affiliated business arrangement shall comply with the disclosure requirements set forth in § 10-11-124 (1) (b), C.R.S. Such disclosure shall be in accordance with the "Real Estate Settlement Procedures Act", 12 U.S.C. sec 2601, et seq. The title entity shall maintain documentation of such disclosure in its title and/or escrow file for no less than a period of seven (7) years.

Section 6 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 7 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 8 Effective Date

With the exception of Section 5.C.11., this regulation shall become effective on August 15, 2016. Section 5.C.11. shall become effective on January 1, 2017.

Section 9 History

New regulation effective August 15, 2016.

Appendix A TITLE INSURANCE CLOSING PROTECTION LETTERS (CPLs)

The purpose of this appendix is to provide information regarding the issuance and protections of Closing Protection Letters ("CPLs").

Colorado Insurance Regulation 8-1-3 states, in part, that title insurance companies may issue CPLs and, in addition, that title entities may conduct or sponsor certain types of educational courses, if the standards of Regulation 8-1-3 are met. In the event a title entity is sponsoring or conducting a course related to real estate or mortgage issues, the title entity must provide this appendix to the individuals taking the course.

CPLs contractually obligate a title insurer to indemnify certain parties to a real estate transaction for certain improper actions related to the business of title insurance. CPLs can be issued to lenders, buyers and sellers. Key protections may include:

- Loss due to fraud, theft, dishonesty, misappropriation of funds, or the mishandling of documents, and
- Loss due to failure to comply with the closing instructions of the lender as provided for by the terms of the CPL.

For more information regarding CPLs, please contact your local title agent or title insurance company.

Regulation 8-1-4 TITLE INSURANCE – FIDUCIARY DUTIES

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules Regarding Fiduciary Duties
Section 6	Reporting Requirements for the Prevention of Defalcations
Section 7	Safe Harbor
Section 8	Unfair or Deceptive Act or Practice
Section 9	Severability
Section 10	Enforcement
Section 11	Effective Date
Section 12	History

Section 1 Authority

This regulation is promulgated, and adopted by the Commissioner, pursuant to the authority of §§ 10-1-108(7), 10-1-109, 10-2-104, 10-2-704, 10-2-801, 10-3-131, and 10-3-1110, C.R.S.

Section 2 Scope and Purpose

The purposes of this regulation are to set forth the fiduciary duties of title entities and to create reporting requirements to assist the Division of Insurance (Division) with identifying and mitigating certain risk factors which may have an immediate and direct impact on the solvency of title insurance entities.

Numerous defalcations have occurred in Colorado resulting in losses to Colorado consumers and insurers. As a result, the Commissioner finds that the provisions of this regulation are necessary in order to protect the title insurance industry, its policyholders and members of the general public that may not directly be title insurance policyholders.

Section 3 Applicability

This regulation governs title entities and any other persons transacting the business of title insurance.

Section 4 Definitions

- A. "Affiliate" means a person who directly, or indirectly through one or more intermediaries:
1. controls a title entity;
 2. is controlled by a title entity; or
 3. is under common control with a title entity.
- C. "Person" has the same meaning as that in § 10-2-103(8), C.R.S.
- D. "Reconcile" means, for the purpose of this regulation, the accounting process of comparing transactions and activity in order to balance accounts and resolve any discrepancies in an amount that exceeds five hundred dollars (\$500.00).
- E. "Sweep account" means, for the purposes of this regulation, a banking arrangement in which a bank account balance is automatically transferred to and from another account.

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- F. "Title insurance agency" shall mean a corporation, partnership, association, or foreign or domestic entity as defined in § 7-90-102, C.R.S., or other legal entity that transacts the business of title insurance.
- G. "Title insurance agent" shall have the same meaning as in § 10-11-102(9), C.R.S.
- H. "Title insurance company" shall have the same meaning as in § 10-11-102(10), C.R.S.
- I. "Title entity" shall mean title insurance agents, title insurance agencies and title insurance companies, unless otherwise stated in the regulation.

Section 5 Rules Regarding Fiduciary Duties

- A. All title entities, their authorized agents, and affiliates in possession of funds received and belonging to others shall maintain the funds in a fiduciary capacity in a separate fiduciary fund account or accounts supported by books and records sufficient to identify such funds. Any such fiduciary fund account shall be identified as "fiduciary fund account", "trust account" or "escrow account", or identified similarly.
- B. Funds that must be maintained as fiduciary funds include, but are not limited to, underwriter portions of title insurance premiums, earnest money deposits, loan proceeds, seller proceeds, homeowner association dues, and any other funds received as part of a title entity conducting closing and settlement services.
- C. All fiduciary funds shall be maintained in an account separate from other monies and assets of the title entity. Commingling of other monies and assets of the title entity with fiduciary funds is prohibited. Notwithstanding the foregoing, nothing herein shall prohibit the advancement of funds authorized pursuant to § 38-35-125(2), C.R.S.
- D. All fiduciary funds shall be deposited within three business days of receipt with a state or federal bank, or a savings and loan association whose depositors are insured by an instrumentality of the United States Government, unless otherwise directed in writing by all necessary parties to the transaction.
- E. Except as otherwise consented to in writing by the parties to a transaction establishing the need for fiduciary funds, a title entity or its authorized agent shall not use such fiduciary funds for any purpose other than the purpose or purposes set forth in the written agreement for which the fiduciary funds were deposited with the title entity.
- F. Unless otherwise consented to in writing by all necessary parties, fiduciary funds, other than earnest money, held by a title entity shall either be disbursed for the purpose that the funds were collected or returned to the party that deposited the funds with the title entity within 120 days of the closing of the transaction.
- G. Unless prior written authorization has been received by all necessary parties, fiduciary funds shall not be deposited by a title entity into a treasury management account or any other type of investment account.
- H. Fiduciary funds may only be deposited into a sweep account by a title entity if the funds are segregated and held in a fiduciary capacity in the account the funds are swept into.

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- I. A title entity shall not earn interest on fiduciary funds unless disclosure is made to any parties to a transaction, for who said funds are being held, that interest is or has been earned. Said disclosure must offer the opportunity to receive payment of any interest earned on such funds beyond any administrative fees as may be on file with the Division. Said disclosure must be clear and conspicuous, and may be made at any time up to and including closing.
- J. Until a title entity receives written instructions pertaining to the holding of fiduciary funds, in a form agreeable to the title entity, it shall comply with the following:
1. The title entity shall deposit funds into an escrow, trust, or other fiduciary account and hold them in a fiduciary capacity.
 2. The title entity shall use any funds designated as "earnest money" for the consummation of the transaction as evidenced by the contract to buy and sell real estate applicable to said transaction. Except, if the transaction does not close, the title entity shall:
 - a. Release the earnest money funds as directed by written instructions signed by both the buyer and seller; or
 - b. If acceptable written instructions are not received, uncontested funds shall be held by the title entity for 120 days from the scheduled date of closing, after which the title entity shall return said funds to the depositing party.
 3. In the event of any controversy regarding the funds held by the title entity (not withstanding any termination of the contract), the title entity shall not be required to take any action unless and until such controversy is resolved. At its option and discretion, the title entity may:
 - a. Await any proceeding; or
 - b. Interplead all parties and deposit such funds into a court of competent jurisdiction, and recover court costs and reasonable attorney and legal fees; or
 - c. Deliver written notice to the buyer and seller that unless the title entity receives a copy of a summons and complaint or claim (between buyer and seller), containing the case number of the lawsuit or lawsuits, within 120 days of the title entity's written notice delivered to the parties, title entity shall return the funds to the depositing party.
 4. Nothing herein shall be read as relieving the responsibilities, if any, of any title entity in complying with the Colorado unclaimed property act, § 38-13-101, et seq., C.R.S.
 5. Every title insurance agent or title insurance agency shall reconcile all fiduciary accounts, or similarly identified accounts, at least every forty-five (45) days.

Section 6 Reporting Requirements for the Prevention of Defalcations

- A. A title insurance company shall notify the Division within thirty (30) days if:
1. At any point a title insurance company becomes aware that a title insurance agent or title insurance agency fails to remit premium to the insurer, on the later of, forty-five (45) days after the contractual due date, or if there is no contractual due date, ninety (90) days after receipt;

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2. At any point a title insurance company becomes aware that a title insurance agent or title insurance agency fails to reconcile the title insurance agent's or title insurance agency's fiduciary bank accounts, or similarly identified accounts, at least every forty-five (45) days;
 3. At any point a title insurance company becomes aware that a title insurance agent or title insurance agency has an account shortage or file shortage of more than \$10,000 in a title insurance agent's or title insurance agency's fiduciary account;
 4. The title insurance company enters into any repayment agreement with a title insurance agent or a title insurance agency; or
 5. The title insurance company becomes aware of any commingling of other monies or assets with fiduciary funds held by the title insurance agent or title insurance agency.
- B. A title insurance company shall provide the Division with a comprehensive list of all title insurance agencies that are authorized in the state of Colorado to issue title insurance products of the title insurance company within thirty (30) days of the effective date of this regulation.
- C. A title insurance company shall notify the Division in writing within thirty (30) days if the title insurance company:
1. Authorizes a new title insurance agent or title insurance agency to issue its title insurance products;
 2. Suspends the authority of a title insurance agent or title insurance agency to issue its title insurance products; or
 3. Cancels the authority of a title insurance agent or title insurance agency to issue its title insurance products.

Section 7 Safe Harbor

If a title insurance company properly complies with the requirements of Section 6 of this regulation, the Division shall not take any regulatory action against the title insurance company for a shortage in a title insurance agent's or title insurance agency's fiduciary account, with the exception of any necessary regulatory actions to order that restitution be paid by the title insurance company.

Section 8 Unfair or Deceptive Act or Practice

Knowingly violating Section 6 of this regulation shall be an unfair or deceptive act or practice prohibited by § 10-3-1104, C.R.S.

Section 9 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 10 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

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Section 11 Effective Date

This regulation is effective March 15, 2017.

Section 12 History

Regulation promulgated on March 15, 2017.

Regulation 8-1-5 TITLE INSURANCE AGENT LICENSING

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules Regarding Agent Licensing
Section 6	Severability
Section 7	Enforcement
Section 8	Effective Date
Section 9	History

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109, 10-2-104, 10-2-406, 10-11-116, and 10-11-119, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to set forth the title insurance agent licensing requirements.

Section 3 Applicability

This regulation governs title entities and does not extend the regulatory authority of the Colorado Division of Insurance ("Division") to any person other than title entities or persons transacting the business of title insurance.

Section 4 Definitions

- A. "Affiliated business arrangements" shall have the same meaning as found at § 10-11-102 (1), C.R.S. Affiliated business arrangements are distinct from controlled business arrangements, which are defined by § 10-2-401(4), C.R.S.
- B. "Title insurance agent" shall have the same meaning as found at § 10-11-102(9), C.R.S.

Section 5 Rules Regarding Agent Licensing

- A. To demonstrate compliance with § 10-11-116(2), C.R.S., the title agent or agency seeking licensure shall submit a notarized letter from an certified public accountant verifying that upon a limited review of the title entity's books and records performed for this purpose, the accountant reasonably believes the title agent or agency has a net worth at least equal to the minimum amount set forth in § 10-11-116(2), C.R.S., or the title agent or agency possesses actual paid-in cash capital of at least the amount set forth in § 10-11-116 (2), C.R.S.
- B. Every title agent and agency shall disclose every affiliated business arrangement in a form acceptable to the Commissioner. Such disclosure shall be completed with every new or renewal license application and within thirty (30) days of any changes of the disclosed information.

Section 6 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

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3 CCR 702-8**Section 7 Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 8 Effective Date

This regulation is effective March 15, 2017.

Section 9 History

New regulation effective March 15, 2017.

Editor's Notes**History**

Entire rule eff. 10/01/2015.

Regulation 8-1-3 eff. 08/15/2016.

Regulations 8-1-4, 8-1-5 eff. 03/15/2017.

APPENDIX 4 • ALTA FACULTATIVE REINSURANCE AGREEMENT

American Land Title Association

Facultative Reinsurance Agreement
Revised 6-17-06

FACULTATIVE REINSURANCE AGREEMENT

Issued By

BLANK TITLE INSURANCE COMPANY

These facultative reinsurance provisions, including Schedule I, constitute the Facultative Reinsurance Agreement entered into by and between Ceder and Reinsurer shown in Schedule I.

PROVISIONS

WHEREAS, Ceder has assumed or is about to assume a title insurance risk pursuant to its policy or policies shown in Schedule I, herein called the Policy; and

WHEREAS, Ceder desires to retain, unceded, a Primary Loss Risk under the Policy and to cede and reinsure all or part of the excess Loss Risk in the amounts and proportionate shares shown in Schedule I; and

WHEREAS, Ceder and Reinsurer desire to arrange for the allocation of protection to the party entitled to the protection of the Policy, herein called the Insured; and

WHEREAS, Reinsurer desires to assume its share of Secondary Loss Risk shown in Schedule I.

NOW, THEREFORE, it is mutually agreed between Ceder and each Reinsurer as follows.

1. CEDER'S CESSION AND WARRANTY

Ceder, to induce Reinsurer to accept the offer of reinsurance, represents and warrants that Ceder has made disclosure of (a) the Policy being reinsured, and (b) any extrahazardous risk of which Ceder has actual knowledge. Ceder shall immediately upon issuance of the Policy forward a conformed copy to Reinsurer and pay its premium for reinsurance.

Ceder cedes to Reinsurer the Reinsurer's coordinate and proportionate share of the Secondary Loss Risk shown in Schedule I and Ceder shall retain without reinsurance hereunder the entire amount of Primary Loss Risk shown in Schedule I, and the unceded portion, if any, of the Secondary Loss Risk.

2. REINSURER'S ASSUMPTION

Reinsurer assumes its coordinate and proportionate share of Secondary Loss Risk shown in Schedule I and not the coordinate and proportionate share, if any, of Ceder or of any other Reinsurer.

The liability of Reinsurer shall begin simultaneously with that of Ceder under the Policy, without notice of the issuance of its Policy or payment of the reinsurance premium.

The liability of Reinsurer and any loss payable by Reinsurer under this Agreement shall be limited to expressed contractual liability of Ceder under the Policy, not including punitive or exemplary damages, and does not include any other contractual or any noncontractual liability of Ceder.

3. DIRECT ACCESS

Provided Insured shall give to Reinsurer notice of any claim under the Policy within a reasonable time after notice of the claim is given to or received by Ceder and is pursuing its remedies under the Policy against Ceder, unless prevented by law or regulation, then in the event that under the terms of the Policy Insured has sustained a loss or losses which, in the aggregate, exceeds Ceder's Primary Loss Risk, the liability of Reinsurer under this Agreement shall be extended to and in favor of Insured. Failure

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LAND TITLE
ASSOCIATION



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American Land Title Association**Facultative Reinsurance Agreement
Revised 6-17-06**

to so notify as provided in this paragraph shall not defeat the rights of the Insured hereunder unless Reinsurer shall establish that it was actually prejudiced by the failure, and then only to the extent of the prejudice. Thereafter, if Insured requests payment of Reinsurer's liability under this Agreement directly to Insured, then this Agreement may be enforced by Insured directly against Reinsurer to the extent of Reinsurer's liability to Ceder hereunder, without diminution, defense, setoff or counterclaim which Reinsurer may have against Ceder. Any defense to liability which Ceder has against Insured shall inure to Reinsurer.

Reinsurer agrees that Insured shall have the right to commence a legal action to enforce this Agreement against it in the state in which the land is located or in any state where Reinsurer is qualified to do business, provided that when any service of process is made in any action, a copy is sent by Registered or Certified Mail to Reinsurer at its address set forth in Schedule I.

4. NOTICES, INVESTIGATION AND SETTLEMENT OF CLAIMS

Ceder shall have full charge of the investigation, negotiation, litigation and settlement of all claims under the Policy. Upon receipt of notice from Insured of a claim under the Policy or upon learning of a potential claim thereunder, Ceder shall notify Reinsurer of the claim or potential claim. Ceder shall notify Reinsurer of any proposed substantial payments or settlement of such claim and shall give Reinsurer reasonable opportunity to investigate the claim at its own expense. Failure to so notify as provided in this paragraph shall not defeat the rights of Ceder hereunder unless Reinsurer shall be actually prejudiced by the failure, and then only to the extent of the prejudice.

Reinsurer shall have the right, but shall not be obligated, to join in any action brought by or against Ceder under the Policy. Reinsurer shall have the right, through such representatives as it may designate, to inspect and copy, at any reasonable time at the office of Ceder, any and all searches, abstracts, certificates, correspondence, attorney's opinions, and intra-company communications and other documents and records relating to the Policy. This right is and shall continue to be a right in rem and shall follow and attach to said documents and records regardless of changes in ownership or possession.

Unless Insured has given Reinsurer notice that Insured intends to enforce this Agreement directly against Reinsurer and requests payment of Reinsurer's liability under this Agreement directly to Insured, as provided in Section 3 of this Agreement, Reinsurer shall pay the amount of its liability determined hereunder to Ceder within fifteen days after notice and demand by Ceder. Each payment by Reinsurer to Ceder shall satisfy pro tanto the amount of Reinsurer's liability hereunder to Insured and Ceder. The payment shall be received by Ceder, if not by way of reimbursement, in trust to be paid to or for the account of Insured, together with all other amounts similarly applicable, in satisfaction of Ceder's liability under the Policy.

If Insured shall give notice to Reinsurer that Insured intends to enforce this Agreement directly against Reinsurer and requests payment of Reinsurer's liability under this Agreement directly to Insured, as provided in Section 3 of this Agreement, no payment to Ceder of any part of Reinsurer's liability to Insured shall be made without the written consent of Insured. Any payment by Reinsurer of its liability to Insured shall discharge Ceder's and Reinsurer's liability to Insured pro tanto. If Reinsurer makes payments directly to Insured as required by this Agreement, Reinsurer's liability to Ceder shall be reduced pro tanto.

5. PAYMENT OF LOSSES

Any loss or aggregate of losses sustained and payable by Ceder under its policy including costs, attorney's fees and expenses, which do not exceed the amount of Primary Loss Risk retained by Ceder shall be sustained and paid by Ceder without recourse to the Reinsurer. Reinsurer's liability and any loss or aggregate of losses payable by Reinsurer under Section 2 of this agreement, including costs, attorney's fees and expenses, shall be the amount of Reinsurer's proportionate share of the Secondary Loss Risk as shown in Schedule I that exceeds the Primary Loss Risk retained by Ceder.

If the loss or aggregate of all losses under the Policy exceeds the amount thereof, the Ceder shall pay that portion of the excess as the proportion of its retained Loss Risk, both Primary and Secondary, bears to the amount of the Policy, and the balance of the excess shall be divided among the Reinsurers in the proportions that the amount assumed by each bears to the amount of the Policy.

Notwithstanding anything stated in this Section, Ceder's retained Loss Risk, whether Primary, Secondary, or according to the preceding paragraph, shall not be reduced and Reinsurer's liability shall not be increased by the payment of any loss not assumed by Reinsurer



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American Land Title Association**Facultative Reinsurance Agreement
Revised 6-17-06**

under Section 2.

6. INSOLVENCY OF CEDER

The reinsurance under this Agreement shall be payable by Reinsurer on the basis of the liability of Reinsurer under this Agreement without diminution because of the insolvency of Ceder.

In the event of insolvency of Ceder, the liquidator, receiver or statutory successor of Ceder shall give written notice to Reinsurer of the pendency of a claim against Ceder on the Policy within a reasonable time after the claim is filed in the insolvency proceeding. During the pendency of the claim, Reinsurer may investigate the claim and interpose, at its own expense, in the proceeding where the claim is to be adjudicated, any defense or defenses which it may deem available to Ceder or its liquidator, receiver or statutory successor. The expense so incurred by Reinsurer shall be charged against the insolvent company as part of the expense of liquidation.

In the event that two or more Reinsurers are involved in the same claim and a majority in interest elects to interpose a defense to the claim, the expense shall be apportioned in accordance with the terms of this Agreement as though the expense had been incurred by Ceder.

In the event of the insolvency of Ceder, the reinsurance under this Agreement shall be payable by Reinsurer directly to Ceder, pursuant to Section 4 or to its liquidator, receiver or statutory successor, except when the direct access provisions of Section 3 and the notice provisions of Section 4 have been implemented, in which case, it shall be paid directly to Insured.

7. RECOUPMENT AND SUBROGATION

After payment of any loss or losses hereunder by Reinsurer, it shall be the duty of Ceder, by its right of subrogation or otherwise, to proceed diligently to recoup the losses paid. The net amount after expenses of collection of any recoupment or salvage, shall be distributed and paid to Reinsurer in the fractional proportions set forth on Schedule I. Any surplus, after full recoupment of losses sustained on the Secondary Loss Risk, shall be retained by Ceder in reduction of loss or losses paid on its Primary Loss Risk.

In addition to the right of subrogation, which is secured to Ceder by the conditions of the Policy, Ceder will retain all the rights secured to it thereby unaffected by this agreement. In the event, however, of the temporary or permanent discontinuance of business by Ceder, or if Ceder becomes insolvent, or if Ceder fails to proceed to recoup any loss or losses paid as aforesaid, Reinsurer shall be and is hereby subrogated to all right of Ceder to recoup any losses paid by it hereunder.

8. RIGHTS OF INSURED NOT PREJUDICED

Ceder is authorized to furnish Insured with a duplicate original or conformed copy of this Agreement.

Neither this Agreement nor any modification thereof shall prejudice the rights of Insured under the Policy or conferred upon Insured under this Agreement.

9. LAWS APPLICABLE

The provisions of this Agreement shall be governed by the laws of the situs of the real property described in the Policy.

10. ACTIONS BY OR ON BEHALF OF CEDER

In the event Reinsurer is not licensed or accredited in the state of domicile of the Ceder, Reinsurer agrees: (1) that, in the event of the failure of Reinsurer to perform its obligations under the terms of this Agreement, Reinsurer, at the request of Ceder, shall submit to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such panel or court jurisdiction, and will abide by the final decision of such panel or court or of any appellate court in the event of an appeal; and (2) to designate the appropriate insurance regulatory authority or an attorney in fact as its true and lawful agent for the purpose of service of any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding



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American Land Title Association**Facultative Reinsurance Agreement
Revised 6-17-06**

company.

11. SEVERABILITY

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

12. NOTICES - WHERE SENT

Any notice given hereunder shall be addressed to the party to receive the notice at its mailing address set forth in Schedule I.

13. EFFECTIVE DATE

This Agreement shall be in effect between Ceder and Reinsurer from the time a counterpart of Schedule I is executed by Reinsurer notwithstanding that other counterparts are not executed by other Reinsurers.



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Facultative Reinsurance Agreement
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SCHEDULE I

- 1. The parties hereto are:
 - (a) Blank Title Insurance Company, a Blank corporation having its principal office in _____ as Ceder, and
 - (b) Each Reinsurer named in 3(b) herein.

- 2. Ceder's Policy, identified and reinsured hereby, assumes a title insurance risk in the aggregate amount of: \$ _____
 The Policy is issued in _____

POLICY NO: _____
INSURED: _____
TYPE OF POLICY: _____
POLICY AMOUNT: \$ _____

- 3. The distribution of the title insurance risk is:

PRIMARY LOSS RISK

Amount

SECONDARY LOSS RISK

Amount

Share

(a) RETAINED BY CEDER: _____ and _____

(b) CEDED TO, REINSURED WITH, AND ASSUMED BY THE REINSURER:

SECONDARY LOSS RISK

Reinsurer

State of Incorporation

Amount

Share

- 4. This Schedule is part of and incorporates by reference the provisions of _____



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**Facultative Reinsurance Agreement
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IN WITNESS WHEREOF, the undersigned each has caused this Agreement to be executed as of the date set forth below:

CEDER

REINSURER

[company]
[address]
City, ST Zip Code

[company]
[address]
City, ST Zip Code

By: _____

By: _____

[Title]

[Title]

Date of Execution:

Date of Execution:

Reinsurance file number:

Reinsurance file number:



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APPENDIX 5 • DIRECT ACCESS AGREEMENT

DIRECT ACCESS AGREEMENT

THIS AGREEMENT is made by **Blank Title Company, Inc.**, a Delaware corporation, whose address is _____ (hereinafter called "Reinsurer"), with _____, whose address is _____ (hereinafter called "Owner").

WITNESSETH:

WHEREAS, Blank Title Insurance Company, a Colorado corporation (hereinafter called "Ceding Company"), whose address is _____, has issued its Owner's Title Insurance Policy No. _____, insuring Owner in the amount of Twenty Million and no/100ths Dollars (\$20,000,000) as the owner of the fee simple estate described in Schedule A thereof against the risks therein set forth, on which policy Ceding Company is liable by virtue of and to the extent stated in the certificate of Ceding Company on the face of said policy and as stated in a letter from Ceding Company dated _____, 20____, and attached hereto as Exhibit A and made a part hereof; and

WHEREAS, Reinsurer has executed a Reinsurance Agreement dated _____, 20____, reinsuring Ceding Company against loss to the extent of \$13,500,000 of the risk in excess of the first \$6,500,000 of loss which Ceding Company may sustain by reason of the issuance of said Owner's Policy; and

WHEREAS, Owner desires that its claim under such policy shall be fully and promptly paid;

NOW, THEREFORE, in consideration of Owner's acceptance of the Owner's Title Insurance Policy of Ceding Company, and other good and valuable considerations, it is hereby agreed by Reinsurer as follows:

1. The above described Reinsurance Agreement is incorporated in and made a part of this Agreement.
2. The liability of the Reinsurer under said Reinsurance Agreement is hereby extended directly to and in favor of Owner.
3. Provided Owner shall give Reinsurer notice of any claim of which notice is given to Ceding Company, then in the event it is determined that Owner has sustained a loss or losses in excess of Six Million Five Hundred Thousand Dollars (\$6,500,000) under the terms of said Owner's Title Insurance Policy, this Agreement may be enforced directly against Reinsurer to the extent of its liability for its proportionate part of such excess without first exhausting any or all remedies available against Ceding Company and regardless of any defense, counterclaim or offset which may exist between Ceding Company and Reinsurer and regardless of any payment which may have been made by the Reinsurer to Ceding Company otherwise than with the prior written consent of Owner. The Reinsurer agrees that Owner shall have the right to maintain any legal action against Reinsurer in the State of Colorado and agrees to consent to service of any process involving said action in the State of Colorado and names the State Insurance Commissioner of Colorado as attorney for the receipt of service, provided a copy is delivered or sent by registered or certified mail to Reinsurer in care of its President at its address set forth hereinbefore.

4. The amount of the obligation of Reinsurer under this Agreement shall not exceed the amount of its obligation under said Reinsurance Agreement and shall accrue upon the happening of the same events.

5. This contract shall be construed in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, Reinsurer and Owner have caused this Agreement to be subscribed in their corporate names by their proper officers and their corporate seals to be hereunto affixed and attested by their Secretaries or Assistant Secretaries, as of the ____ day of _____, 20__.

ATTEST:

BLANK TITLE COMPANY, INC., a Delaware corporation

Secretary

By: _____

President

ATTEST:

Secretary

By: _____

President

Ceding Company hereby consents and agrees to the within modification of the said Reinsurance Agreement and hereby agrees that any payment made by Reinsurer directly to Owner shall reduce *pro tanto* the liability of Reinsurer to Ceding Company under said Reinsurance Agreement.

ATTEST:

BLANK TITLE INSURANCE COMPANY, a Colorado corporation

Secretary

By: _____

President



**APPENDIX 6 • SAMPLE LETTER TO TITLE COMPANY
DISCLOSING ACTUAL KNOWLEDGE OF THE PROPOSED INSURED OF
SOME DEFECT, LIEN, ENCUMBRANCE, ADVERSE CLAIM, OR
OTHER MATTER NOT SHOWN ON SCHEDULE B OF THE COMMITMENT**

HARRY B. SMITH

100 Claremont Court
Denver, Colorado 80224
September 12, 20XX

CERTIFIED MAIL NO. P243 119 432
RETURN RECEIPT REQUESTED

Ace Title Insurance Company
1616 - 16th Street Mall, Suite 16
Denver, Colorado 80216

Re: Your Title Insurance Commitment No. TC 00-112342 (the
“Commitment”)

Dear Sir or Madam:

We are the proposed insured in the Commitment, issued by you on July 15, 20XX, and received by us on July 27, 20XX. The Commitment evidences that the owners are Harley Jones and Thelma Jones.

We are aware of litigation commenced in the District Court of the City and County of Denver, State of Colorado, Case No. XXCV9324758, entitled “In re the Marriage of Harley Jones, petitioner, and Thelma Jones, Respondent” wherein the Respondent, in her response, seeks to impose a constructive trust upon a portion of the real property described in the Commitment. Schedule B of the Commitment neither discloses the filing of a lis pendens in this action nor makes any requirement with respect thereto.

This notice is given to you in writing pursuant to the provisions of Paragraph __ of the Conditions of the Commitment.

You are further advised that we first became aware of this litigation on August 17, 20XX, 21 days after receipt of your Commitment. During that 21-day period of time we expended approximately \$2,500.00, in good faith reliance upon your Commitment, attempting to (i) comply with the requirements shown in Schedule B – Section 1; (ii) eliminate exceptions shown in Schedule B – Section 2; and (iii) acquire and create the estate covered by the Commitment together with a mortgage thereon.

In accordance with the cited Commitment provisions, we shall expect you to hold us harmless and reimburse us for these expenses in the event that the owners of the property covered by your Commitment are unable to convey marketable title to us on the date of closing.

Very truly yours,

Harry Smith
Alice Smith

cc: Mr. Harley Jones
Ms Thelma Jones
Patrick Bollen, Esq.
Linda Evans, Esq.

APPENDIX 7 • SURVEY MATTERS

1. Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys

American Land Title Association® (ALTA®)
National Society of Professional Surveyors (NSPS)

Minimum Standard Detail Requirements
For ALTA/NSPS Land Title Surveys

MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS

(Effective February 23, 2016)

NOTE - Attention is directed to the fact that the National Society of Professional Surveyors, Inc. (NSPS) is the legal successor organization to the American Congress on Surveying and Mapping (ACSM) and that these 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys are the next version of the former Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys.

1. **Purpose** - Members of the American Land Title Association® (ALTA®) have specific needs, unique to title insurance matters, when asked to insure title to land without exception as to the many matters which might be discoverable from survey and inspection, and which are not evidenced by the public records.

For a survey of real property, and the plat, map or record of such survey, to be acceptable to a title insurance company for the purpose of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), certain specific and pertinent information must be presented for the distinct and clear understanding between the insured, the client (if different from the insured), the title insurance company (insurer), the lender, and the surveyor professionally responsible for the survey.

In order to meet such needs, clients, insurers, insureds, and lenders are entitled to rely on surveyors to conduct surveys and prepare associated plats or maps that are of a professional quality and appropriately uniform, complete, and accurate. To that end, and in the interests of the general public, the surveying profession, title insurers, and abstractors, the ALTA and the NSPS jointly promulgate the within details and criteria setting forth a minimum standard of performance for ALTA/NSPS Land Title Surveys. A complete 2016 ALTA/NSPS Land Title Survey includes:

- (i) the on-site fieldwork required pursuant to Section 5,
- (ii) the preparation of a plat or map pursuant to Section 6 showing the results of the fieldwork and its relationship to documents provided to or obtained by the surveyor pursuant to Section 4,
- (iii) any information from Table A items requested by the client, and
- (iv) the certification outlined in Section 7.

2. **Request for Survey** - The client shall request the survey, or arrange for the survey to be requested, and shall provide a written authorization to proceed from the person or entity responsible for paying for the survey. Unless specifically authorized in writing by the insurer, the insurer shall not be responsible for any costs associated with the preparation of the survey. The request shall specify that an "ALTA/NSPS LAND TITLE SURVEY" is required and which of the optional items listed in Table A, if any, are to be incorporated. Certain properties or interests in real properties may present issues outside those normally encountered on an ALTA/NSPS Land Title Survey (e.g., marinas, campgrounds, trailer parks; easements, leases, other non-fee simple interests). The scope of work related to surveys of such properties or interests in real properties should be discussed with the client, lender, and insurer; and agreed upon in writing prior to commencing work on the survey. The client may need to secure permission for the surveyor to enter upon the property to be surveyed, adjoining properties, or offsite easements.

3. **Surveying Standards and Standards of Care**

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American Land Title Association and
National Society of Professional Surveyors

American Land Title Association® (ALTA®)
National Society of Professional Surveyors (NSPS)

Minimum Standard Detail Requirements
For ALTA/NSPS Land Title Surveys

- A. Effective Date** - The 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys are effective February 23, 2016. As of that date, all previous versions of the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys are superseded by these standards.
- B. Other Requirements and Standards of Practice** - Many states and some local jurisdictions have adopted statutes, administrative rules, and/or ordinances that set out standards regulating the practice of surveying within their jurisdictions. In addition to the standards set forth herein, surveyors shall also conduct their surveys in accordance with applicable jurisdictional survey requirements and standards of practice. Where conflicts between the standards set forth herein and any such jurisdictional requirements and standards of practice occur, the more stringent shall apply.
- C. The Normal Standard of Care** - Surveyors should recognize that there may be unwritten local, state, and/or regional standards of care defined by the practice of the “prudent surveyor” in those locales.
- D. Boundary Resolution** - The boundary lines and corners of any property being surveyed as part of an ALTA/NSPS Land Title Survey shall be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and fieldwork.
- E. Measurement Standards** - The following measurement standards address Relative Positional Precision for the monuments or witnesses marking the corners of the surveyed property.
- i. “Relative Positional Precision” means the length of the semi-major axis, expressed in feet or meters, of the error ellipse representing the uncertainty due to random errors in measurements in the location of the monument, or witness, marking any corner of the surveyed property relative to the monument, or witness, marking any other corner of the surveyed property at the 95 percent confidence level. Relative Positional Precision is estimated by the results of a correctly weighted least squares adjustment of the survey.
 - ii. Any boundary lines and corners established or retraced may have uncertainties in location resulting from (1) the availability, condition, history and integrity of reference or controlling monuments, (2) ambiguities in the record descriptions or plats of the surveyed property or its adjoiners, (3) occupation or possession lines as they may differ from the written title lines, or (4) Relative Positional Precision. Of these four sources of uncertainty, only Relative Positional Precision is controllable, although, due to the inherent errors in any measurement, it cannot be eliminated. The magnitude of the first three uncertainties can be projected based on evidence; Relative Positional Precision is estimated using statistical means (see Section 3.E.i. above and Section 3.E.v. below).
 - iii. The first three of these sources of uncertainty must be weighed as part of the evidence in the determination of where, in the surveyor’s opinion, the boundary lines and corners of the surveyed property should be located (see Section 3.D. above). Relative Positional Precision is a measure of how precisely the surveyor is able to monument and report those positions; it is not a substitute for the application of proper boundary law principles. A boundary corner or line may have a small Relative Positional Precision because the survey measurements were precise, yet still be in the wrong position (*i.e.*, inaccurate) if it was established or retraced using faulty or improper application of boundary law principles.
 - iv. For any measurement technology or procedure used on an ALTA/NSPS Land Title Survey, the surveyor shall (1) use appropriately trained personnel, (2) compensate for systematic errors, including those associated with instrument calibration, and (3) use appropriate error propagation and measurement design theory (selecting the proper instruments, geometric layouts, and field and computational procedures) to control random errors such that the maximum allowable Relative Positional Precision outlined in Section



3.E.v. below is not exceeded.

- v. The maximum allowable Relative Positional Precision for an ALTA/NSPS Land Title Survey is 2 cm (0.07 feet) plus 50 parts per million (based on the direct distance between the two corners being tested). It is recognized that in certain circumstances, the size or configuration of the surveyed property, or the relief, vegetation, or improvements on the surveyed property, will result in survey measurements for which the maximum allowable Relative Positional Precision may be exceeded. If the maximum allowable Relative Positional Precision is exceeded, the surveyor shall note the reason as explained in Section 6.B.x. below.

4. Records Research - It is recognized that for the performance of an ALTA/NSPS Land Title Survey, the surveyor will be provided with appropriate and, when possible, legible data which can be relied upon in the preparation of the survey. The request for an ALTA/NSPS Land Title Survey shall set forth the current record description of the property to be surveyed or, in the case of an original survey prepared for purposes of locating and describing real property that has not been previously separately described in documents conveying an interest in the real property, the current record description of the parent parcel that contains the property to be surveyed.

In order to complete an ALTA/NSPS Land Title Survey, the surveyor must be provided with complete copies of the most recent title commitment or, if a title commitment is not available, other title evidence satisfactory to the title insurer. In addition, the surveyor must be provided with the following:

- (i) The following records established under state statutes for the purpose of imparting constructive notice of matters relating to real property (public records):
 - (a) The current record descriptions of any adjoiners to the property to be surveyed, except where such adjoiners are lots in platted, recorded subdivisions;
 - (b) Any recorded easements benefitting the property;
 - (c) Any recorded easements, servitudes, or covenants burdening the property;
- (ii) Any unrecorded documents affecting the property being surveyed and containing information to which the survey shall make reference, if desired by the client.

Except, however, if the documents outlined above in (i) and (ii) of this section are not provided to the surveyor or if non-public or quasi-public documents are required to complete the survey, the surveyor shall be required to conduct only that research which is required pursuant to the statutory or administrative requirements of the jurisdiction where the property being surveyed is located and that research (if any) which is negotiated and outlined in the terms of the contract between the surveyor and the client.

5. Fieldwork - The survey shall be performed on the ground (except as otherwise negotiated pursuant to Table A, Item 15 below, if selected by the client). The fieldwork shall include the following, located to what is, in the surveyor's professional opinion, the appropriate degree of precision based on (a) the planned use of the property, if reported in writing to the surveyor by the client, lender, or insurer, or (b) the existing use, if the planned use is not so reported:

A. Monuments

- i. The location, size, character, and type of any monuments found during the fieldwork.
- ii. The location, size, character, and type of any monuments set during the fieldwork, if item 1 of Table A was selected or if otherwise required by applicable jurisdictional requirements and/or standards of practice.
- iii. The location, description, and character of any lines that control the boundaries of the surveyed property.

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Minimum Standard Detail Requirements
For ALTA/NSPS Land Title Surveys

B. Rights of Way and Access

- i. The distance from the appropriate corner or corners of the surveyed property to the nearest right of way line, if the surveyed property does not abut a right of way.
- ii. The name of any street, highway, or other public or private way abutting the surveyed property, together with the width of the travelled way and the location of each edge of the travelled way including on divided streets and highways. If the documents provided to or obtained by the surveyor pursuant to Section 4 indicate no access from the surveyed property to the abutting street or highway, the width and location of the travelled way need not be located.
- iii. Visible evidence of physical access (e.g., curb cuts, driveways) to any abutting streets, highways, or other public or private ways.
- iv. The location and character of vehicular, pedestrian, or other forms of access by other than the apparent occupants of the surveyed property to or across the surveyed property observed in the process of conducting the fieldwork (e.g., driveways, alleys, private roads, railroads, railroad sidings and spurs, sidewalks, footpaths).
- v. Without expressing a legal opinion as to ownership or nature, the location and extent of any potentially encroaching driveways, alleys, and other ways of access from adjoining properties onto the surveyed property observed in the process of conducting the fieldwork.
- vi. Where documentation of the location of any street, road, or highway right of way abutting, on, or crossing the surveyed property was not disclosed in documents provided to or obtained by the surveyor, or was not otherwise available from the controlling jurisdiction (see Section 6.C.iv. below), the evidence and location of parcel corners on the same side of the street as the surveyed property recovered in the process of conducting the fieldwork which may indicate the location of such right of way lines (e.g., lines of occupation, survey monuments).
- vii. Evidence of access to and from waters adjoining the surveyed property observed in the process of conducting the fieldwork (e.g., paths, boat slips, launches, piers, docks).

C. Lines of Possession and Improvements along the Boundaries

- i. The character and location of evidence of possession or occupation along the perimeter of the surveyed property, both by the occupants of the surveyed property and by adjoining, observed in the process of conducting the fieldwork.
- ii. Unless physical access is restricted, the character and location of all walls, buildings, fences, and other improvements within five feet of each side of the boundary lines, observed in the process of conducting the fieldwork. Trees, bushes, shrubs, and other natural vegetation need not be located other than as specified in the contract, unless they are deemed by the surveyor to be evidence of possession pursuant to Section 5.C.i.
- iii. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the evidence, location and extent of potentially encroaching structural appurtenances and projections observed in the process of conducting the fieldwork (e.g., fire escapes, bay windows, windows and doors that open out, flue pipes, stoops, eaves, cornices, areaways, steps, trim) by or onto adjoining property, or onto rights of way, easements, or setback lines disclosed in documents provided to or obtained by the surveyor.

D. Buildings

The location of buildings on the surveyed property observed in the process of conducting the fieldwork.

E. Easements and Servitudes

- i. Evidence of any easements or servitudes burdening the surveyed property as disclosed in the documents provided to or obtained by the surveyor pursuant to Section 4 and observed in the process of conducting the fieldwork.
- ii. Evidence of easements, servitudes, or other uses by other than the apparent

occupants of the surveyed property not disclosed in the documents provided to or obtained by the surveyor pursuant to Section 4, but observed in the process of conducting the fieldwork if they appear to affect the surveyed property (e.g., roads; drives, sidewalks, paths and other ways of access; utility service lines; water courses; ditches; drains; telephone, fiber optic lines, or electric lines; or water, sewer, oil or gas pipelines on or across the surveyed property and on adjoining properties).

- iii. Surface indications of underground easements or servitudes on or across the surveyed property observed in the process of conducting the fieldwork (e.g., utility cuts, vent pipes, filler pipes).
- iv. Evidence on or above the surface of the surveyed property observed in the process of conducting the fieldwork, which evidence may indicate utilities located on, over or beneath the surveyed property. Examples of such evidence include pipeline markers, manholes, valves, meters, transformers, pedestals, clean-outs, utility poles, overhead lines and guy wires.

F. Cemeteries

As accurately as the evidence permits, the perimeter of cemeteries and burial grounds, and the location of isolated gravesites not within a cemetery or burial ground, (i) disclosed in the documents provided to or obtained by the surveyor, or (ii) observed in the process of conducting the fieldwork.

G. Water Features

- i. The location of springs, ponds, lakes, streams, rivers, canals, ditches, marshes, and swamps on, running through, or outside, but within five feet of the perimeter boundary of, the surveyed property, observed during the process of conducting the fieldwork.
- ii. The location of any water feature forming a boundary of the surveyed property. The attribute(s) of the water feature located (e.g., top of bank, edge of water, high water mark) should be congruent with the boundary as described in the record description or, in the case of an original survey, in the new description (see Section 6.B.vi. below).

6. Plat or Map - A plat or map of an ALTA/NSPS Land Title Survey shall show the following information. Where dimensioning is appropriate, dimensions shall be annotated to what is, in the surveyor's professional opinion, the appropriate degree of precision based on (a) the planned use of the property, if reported in writing to the surveyor by the client, lender, or insurer, or (b) existing use, if the planned use is not so reported.

A. The evidence and locations gathered, and the monuments and lines located during the fieldwork pursuant to Section 5 above, with accompanying notes if deemed necessary by the surveyor or as otherwise required as specified below.

B. Boundary, Descriptions, Dimensions, and Closures

- i. (a) The current record description of the surveyed property, or
(b) In the case of an original survey, the current record description of the parent tract that contains the surveyed property.
- ii. Any new description of the surveyed property that was prepared in conjunction with the survey, including a statement explaining why the new description was prepared. Except in the case of an original survey, preparation of a new description should be avoided unless deemed necessary or appropriate by the surveyor and insurer. Preparation of a new description should also generally be avoided when the record description is a lot or block in a platted, recorded subdivision. Except in the case of an original survey, if a new description is prepared, a note shall be provided stating (a) that the new description describes the same real estate as the record description or, if it does not, (b) how the new description differs from the record description.



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For ALTA/NSPS Land Title Surveys

- iii. The point of beginning, the remote point of beginning or point of commencement (if applicable) and all distances and directions identified in the record description of the surveyed property (and in the new description, if one was prepared). Where a measured or calculated dimension differs from the record by an amount deemed significant by the surveyor, such dimension shall be shown in addition to, and differentiated from, the corresponding record dimension. All dimensions shown on the survey and contained in any new description shall be ground dimensions unless otherwise noted.
 - iv. The directional, distance and curve data necessary to compute a mathematical closure of the surveyed boundary. A note if the record description does not mathematically close. The basis of bearings and, where it differs from the record basis, the difference.
 - v. The remainder of any recorded lot or existing parcel, when the surveyed property is composed of only a portion of such lot or parcel, shall be graphically depicted. Such remainder need not be included as part of the actual survey, except to the extent necessary to locate the lines and corners of the surveyed property, and it need not be fully dimensioned or drawn at the same scale as the surveyed property.
 - vi. When the surveyed property includes a title line defined by a water boundary, a note on the face of the plat or map noting the date the boundary was measured, which attribute(s) of the water feature was/were located, and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title. When the surveyor is aware of natural or artificial realignments or changes in such boundaries, the extent of those changes and facts shall be shown or explained.
 - vii. The relationship of the boundaries of the surveyed property with its adjoining (e.g., contiguity, gaps, overlaps), where ascertainable from documents provided to or obtained by the surveyor pursuant to Section 4 and/or from field evidence gathered during the process of conducting the fieldwork. If the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels shall be identified. Where gaps or overlaps are identified, the surveyor shall, prior to or upon delivery of the final plat or map, disclose this to the insurer and client.
 - viii. When, in the opinion of the surveyor, the results of the survey differ significantly from the record, or if a fundamental decision related to the boundary resolution is not clearly reflected on the plat or map, the surveyor shall explain this information with notes on the face of the plat or map.
 - ix. The location of all buildings on the surveyed property, located pursuant to Section 5.D., dimensioned perpendicular to those perimeter boundary lines that the surveyor deems appropriate (*i.e.*, where potentially impacted by a setback line) and/or as requested by the client, lender or insurer.
 - x. A note on the face of the plat or map explaining the site conditions that resulted in a Relative Positional Precision that exceeds the maximum allowed pursuant to Section 3.E.v.
 - xi. A note on the face of the plat or map identifying areas, if any, on the boundaries of the surveyed property, to which physical access within five feet was restricted (see Section 5.C.ii.).
 - xii. A note on the face of the plat or map identifying the source of the title commitment or other title evidence provided pursuant to Section 4, and the effective date and the name of the insurer of same.
- C. Easements, Servitudes, Rights of Way, Access, and Documents**
- i. The location, width, and recording information of all plottable rights of way, easements, and servitudes burdening and benefitting the property surveyed, as evidenced by documents provided to or obtained by the surveyor pursuant to Section 4.
 - ii. A summary of all rights of way, easements and servitudes burdening the



property surveyed and identified in the title evidence provided to or obtained by the surveyor pursuant to Section 4. Such summary shall include the record information of each such right of way, easement or servitude, a statement indicating whether or not it is shown on the plat or map, and a related note if:

- (a) the location cannot be determined from the record document;
- (b) there was no observed evidence at the time of the fieldwork;
- (c) it is a blanket easement;
- (d) it is not on, or does not touch, the surveyed property;
- (e) it limits access to an otherwise abutting right of way;
- (f) the documents are illegible; or
- (g) the surveyor has information indicating that it may have been released or otherwise terminated.

In cases where the surveyed property is composed of multiple parcels, indicate which of such parcels the various rights of way, easements, and servitudes cross or touch.

- iii. A note if no physical access to a public way was observed in the process of conducting the fieldwork.
- iv. The locations and widths of rights of way abutting or crossing the surveyed property, and the source of such information, (a) where available from the controlling jurisdiction, or (b) where disclosed in documents provided to or obtained by the surveyor pursuant to Section 4.
- v. The identifying titles of all recorded plats, filed maps, right of way maps, or similar documents which the survey represents, wholly or in part, with their recording or filing data.
- vi. For non-platted adjoining land, recording data identifying adjoining tracts according to current public records. For platted adjoining land, the recording data of the subdivision plat.
- vii. Platted setback or building restriction lines which appear on recorded subdivision plats or which were disclosed in documents provided or obtained by the surveyor.

D. Presentation

- i. The plat or map shall be drawn on a sheet of not less than 8 ½ by 11 inches in size at a legible, standard engineering scale, with that scale clearly indicated in words or numbers and with a graphic scale.
- ii. The plat or map shall include:
 - (a) The boundary of the surveyed property drawn in a manner that distinguishes it from other lines on the plat or map.
 - (b) If no buildings were observed on the surveyed property in the process of conducting the fieldwork, a note stating "*No buildings observed.*"
 - (c) A north arrow (with north to the top of the drawing when practicable).
 - (d) A legend of symbols and abbreviations.
 - (e) A vicinity map showing the property in reference to nearby highway(s) or major street intersection(s).
 - (f) Supplementary or detail diagrams when necessary.
 - (g) Notes explaining any modifications to Table A items and the nature of any additional Table A items (e.g., 21(a), 21(b), 21(c)) that were negotiated between the surveyor and client.
 - (h) The surveyor's project number (if any), and the name, registration or license number, signature, seal, street address, telephone number, company website, and email address (if any) of the surveyor who performed the survey.
 - (i) The date(s) of any revisions made by the surveyor who performed the survey.
 - (j) Sheet numbers where the plat or map is composed of more than one sheet.
 - (k) The caption "ALTA/NSPS Land Title Survey."
- iii. When recordation or filing of a plat or map is required by law, such plat or map



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shall be produced in recordable form.

7. **Certification** - The plat or map of an ALTA/NSPS Land Title Survey shall bear only the following certification, unaltered, except as may be required pursuant to Section 3.B. above:

To (name of insured, if known), (name of lender, if known), (name of insurer, if known), (names of others as negotiated with the client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items _____ of Table A thereof. The fieldwork was completed on _____ [date].

Date of Plat or Map: _____ (Surveyor's signature, printed name and seal with Registration/License Number)

8. **Deliverables** - The surveyor shall furnish copies of the plat or map of survey to the insurer and client and as otherwise negotiated with the client. Hard copies shall be on durable and dimensionally stable material of a quality standard acceptable to the insurer. A digital image of the plat or map may be provided in addition to, or in lieu of, hard copies pursuant to the terms of the contract. When required by law or requested by the client, the plat or map shall be produced in recordable form and recorded or filed in the appropriate office or with the appropriate agency.

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TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: The twenty (20) items of Table A may be negotiated between the surveyor and client. Any additional items negotiated between the surveyor and client shall be identified as 21(a), 21(b), etc. and explained pursuant to Section 6.D.ii.(g). Notwithstanding Table A Items 5 and 11, if an engineering design survey is desired as part of an ALTA/NSPS Land Title Survey, such services should be negotiated under Table A, Item 21.

If checked, the following optional items are to be included in the ALTA/NSPS LAND TITLE SURVEY, except as otherwise qualified (see note above):

1. Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by existing monuments or witnesses in close proximity to the corner.
2. Address(es) of the surveyed property if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork.
3. Flood zone classification (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent) depicted by scaled map location and graphic plotting only.
4. Gross land area (and other areas if specified by the client).
5. Vertical relief with the source of information (e.g., ground survey, aerial map), contour interval, datum, and originating benchmark identified.
6. (a) If set forth in a zoning report or letter provided to the surveyor by the client, list the current zoning classification, setback requirements, the height and floor space area restrictions, and parking requirements. Identify the date and source of the report or letter.

 (b) If the zoning setback requirements are set forth in a zoning report or letter provided to the surveyor by the client, and if those requirements do not require an interpretation by the surveyor, graphically depict the building setback requirements. Identify the date and source of the report or letter.
7. (a) Exterior dimensions of all buildings at ground level.

 (b) Square footage of:

 (1) exterior footprint of all buildings at ground level.

 (2) other areas as specified by the client.

 (c) Measured height of all buildings above grade at a location specified by the client. If no location is specified, the point of measurement shall be

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identified.

8. _____ Substantial features observed in the process of conducting the fieldwork (in addition to the improvements and features required pursuant to Section 5 above) (e.g., parking lots, billboards, signs, swimming pools, landscaped areas, substantial areas of refuse).
9. _____ Number and type (e.g., disabled, motorcycle, regular and other marked specialized types) of clearly identifiable parking spaces on surface parking areas, lots and in parking structures. Striping of clearly identifiable parking spaces on surface parking areas and lots.
10. _____ (a) As designated by the client, a determination of the relationship and location of certain division or party walls with respect to adjoining properties (client to obtain necessary permissions).
- _____ (b) As designated by the client, a determination of whether certain walls are plumb (client to obtain necessary permissions).
11. _____ Location of utilities existing on or serving the surveyed property as determined by:
- observed evidence collected pursuant to Section 5.E.iv.
 - evidence from plans requested by the surveyor and obtained from utility companies, or provided by client (with reference as to the sources of information), and
 - markings requested by the surveyor pursuant to an 811 utility locate or similar request

Representative examples of such utilities include, but are not limited to:

- Manholes, catch basins, valve vaults and other surface indications of subterranean uses;
- Wires and cables (including their function, if readily identifiable) crossing the surveyed property, and all poles on or within ten feet of the surveyed property. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the dimensions of all encroaching utility pole crossmembers or overhangs; and
- Utility company installations on the surveyed property.

Note to the client, insurer, and lender - With regard to Table A, item 11, source information from plans and markings will be combined with observed evidence of utilities pursuant to Section 5.E.iv. to develop a view of the underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely, and reliably depicted. In addition, in some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response, in which case the surveyor shall note on the plat or map how this affected the surveyor's assessment of the location of the utilities. Where additional or more detailed information is required, the client is advised that excavation and/or a private utility locate request may be necessary.

12. _____ As specified by the client, Governmental Agency survey-related requirements (e.g., HUD surveys, surveys for leases on Bureau of Land Management managed lands).

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13. _____ *Names of adjoining owners according to current tax records. If more than one owner, identify the first owner's name listed in the tax records followed by "et al."*
14. _____ *As specified by the client, distance to the nearest intersecting street.*
15. _____ *Rectified orthophotography, photogrammetric mapping, remote sensing, airborne/mobile laser scanning and other similar products, tools or technologies as the basis for the showing the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor shall (a) discuss the ramifications of such methodologies (e.g., the potential precision and completeness of the data gathered thereby) with the insurer, lender, and client prior to the performance of the survey, and (b) place a note on the face of the survey explaining the source, date, precision, and other relevant qualifications of any such data.*
16. _____ *Evidence of recent earth moving work, building construction, or building additions observed in the process of conducting the fieldwork.*
17. _____ *Proposed changes in street right of way lines, if such information is made available to the surveyor by the controlling jurisdiction. Evidence of recent street or sidewalk construction or repairs observed in the process of conducting the fieldwork.*
18. _____ *If there has been a field delineation of wetlands conducted by a qualified specialist hired by the client, the surveyor shall locate any delineation markers observed in the process of conducting the fieldwork and show them on the face of the plat or map. If no markers were observed, the surveyor shall so state.*
19. _____ *Include any plottable offsite (i.e., appurtenant) easements or servitudes disclosed in documents provided to or obtained by the surveyor as a part of the survey pursuant to Sections 5 and 6 (and applicable selected Table A items) (client to obtain necessary permissions).*
20. _____ *Professional Liability Insurance policy obtained by the surveyor in the minimum amount of \$_____ to be in effect throughout the contract term. Certificate of Insurance to be furnished upon request, but this item shall not be addressed on the face of the plat or map.*
21. _____ _____

*Adopted by the Board of Governors, American Land Title Association, on October 8, 2015.
American Land Title Association, 1800 M St., N.W., Suite 300S, Washington, D.C. 20036-5828.
www.alta.org*

*Adopted by the Board of Directors, National Society of Professional Surveyors, on October 9, 2015.
National Society of Professional Surveyors, Inc., 5119 Pegasus Court, Suite Q, Frederick,
MD 21704.*

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<http://www.nspis.us.com/>





2. Sample Certificates of Survey

CERTIFICATE OF SURVEY

[typically used in residential and commercial transactions]

The undersigned hereby certifies to [owner], [lender], and [title company] that the undersigned has surveyed the property described on this plat; that said plat is a correct representation of said survey; that said plat correctly shows all improvements situated on the described premises; that, except as shown, there are no visible easements or rights-of-way across said premises, no party walls, no encroachments on adjoining premises, streets or alleys by any of said improvements, and no encroachments on said premises by any improvements situated on adjoining premises.

[SEAL]

_____, L.S. No. _____

CERTIFICATE OF SURVEY (ALTA/NSPS)

[as required in a large commercial transaction involving extensive improvements]

The undersigned hereby certifies to [owner], [lender], and [title company] that the undersigned has surveyed the property described on this plat; that said plat is a correct representation of said survey; that this plat and the survey on which it was based were made in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys," jointly established and adopted by the American Land Title Association and the National Society of Professional Surveyors in 2016; that said plat correctly shows all improvements situated on the described premises; that, except as shown, there are no visible easements or rights-of-way across said premises, no party walls, no encroachments on adjoining premises, streets or alleys by any of said improvements, and no encroachments on said premises by any improvements situated on adjoining premises. The notes shown hereon are included and hereby made a part of this certificate.

[SEAL]

_____, L.S. No. _____

CERTIFICATE OF SURVEY

[used in a purchase of rural land where the price is determined by the acreage surveyed]

The undersigned hereby certifies to [owner], [lender], and [title company] that the undersigned has surveyed the property described on this plat; that said plat is a correct representation of said survey; that said plat correctly shows all boundary fences situated on the described property; that, except as shown, there are no visible easements or rights of way across said property, no encroachments on adjoining property, roads or highways by any of said fences, except as shown, and no encroachments on said property by any improvements or fences situated on adjoining property; that the undersigned found or set all boundary corners; and that the attached legal description, drawing and acreage calculations are correct.

[SEAL]

_____, L.S. No. _____



3. Survey Definitions in Colorado Statutes

An **improvement location certificate** (C.R.S. §§ 38-51-102(8) and 38-51-108) is utilized in most residential transactions because it is inexpensive and it will indicate to the lender whether the improvements are located within the lot lines. Do not confuse an improvement location certificate with a survey. Its limited character and usefulness are best indicated by the statutory form of certification found in C.R.S. § 38-51-108(2)(a)(II):

IMPROVEMENT LOCATION CERTIFICATE

I hereby certify that this improvement location certificate was prepared for _____ (individual or firm), that it is not a land survey plat or improvement survey plat, and that it is not to be relied upon for the establishment of fence, building, or other future improvement lines. This certificate is valid only for use by _____ (individual or firm) and describes the parcel's appearance on _____ (date).

I further certify that the improvements on the above described parcel on this date, _____ (insert date), except utility connections, are entirely within the boundaries of the parcel, except as shown, that there are no encroachments upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.

Stamp By _____ (Signed) or Seal
Date _____

A **monumented land survey** is defined in C.R.S. § 38-51-102(13), which refers to the standards contained in C.R.S. §§ 38-51-103 through -105 for monumenting a survey, including required monumentation for platted subdivisions and for lots within a subdivision prior to sale.

A plat of survey that satisfies all of the requirements of a monumented land survey is a **land survey plat** by statutory definition (C.R.S. §§ 38-51-102(12) and 38-51-106). Such a plat would not show the improvements on the ground and would normally be used to describe vacant land. C.R.S. § 38-51-106(1) requires a land survey plat to show at least the following items:

- (a) A scale drawing of the boundaries of the land parcel;
- (b) (I) All recorded and apparent rights-of-way and easements, and, if research for recorded rights-of-way and easements is done by someone other than the professional land surveyor who prepares the plat, the source from which such recorded rights-of-way and easements were obtained; or
 - (II) If the client wishes not to show rights-of-way and easements on the land survey plat, a statement that such client did not want rights-of-way and easements shown;
- (c) All field-measured dimensions necessary to establish the boundaries on the ground and all dimensions for newly created parcels necessary to establish the boundaries on the ground;
- (d) A statement by the professional land surveyor that the survey was performed by such surveyor or under such surveyor's responsible charge;
- (e) A statement by the professional land surveyor explaining how bearings, if used, were determined;
- (f) A description of all monuments, both found and set, that mark the boundaries of the property and of all control monuments used in conducting the survey. If any such boundary monument or control monument marks the location of a lost or obliterated public land survey monument that was restored as a part of the survey on which the plat is based, the professional land surveyor shall briefly describe the evidence and the

procedure used for such restoration. If any such boundary monument or control monument marks the location of a quarter section corner or sixteenth section corner that was established as a part of the survey, the professional land surveyor shall briefly describe the evidence and procedure used for such establishment, unless the corner location was established by the mathematical procedure as outlined in section 38-51-103.

(g) A statement of the scale or representative fraction of the drawing, and a bar-type or graphical scale;

(h) A north arrow;

(i) A written property description, which shall include but shall not be limited to a reference to the county and state together with the section, township, range, and principal meridian or established subdivision, block and lot number, or any other method of describing the land as established by the general land office or bureau of land management;

(j) The signature and seal of the professional land surveyor;

(k) Any conflicting boundary evidence; and

(l) A statement defining the lineal units used including but not limited to meters, chains, feet, and U.S. survey feet. If it is necessary to define conversion factors, the factors shall be a function of the meter as defined by the United States department of commerce, national institute of standards and technology.

An improvement survey plat (C.R.S. § 38-51-102(9)) is the same as a land survey plat, except that it will show the existing improvements and encroachments of structures onto the subject parcel and will also indicate whether any structure on the parcel encroaches upon adjoining lands. In addition to the items required to be shown on a land survey plat, the improvement survey plat must also show the location of:

- a) All structures, visible utilities, fences, hedges, or walls on or within five feet of all boundaries of the parcel (*i.e.*, both sides of the boundary); and
- b) All easements, underground utilities, and tunnels for which properly recorded evidence is available from the county clerk and recorder, a title company or any other source noted.

A professional land surveyor of record (C.R.S. § 38-51-102(16.1)) means “means the professional land surveyor whose signature and seal appear on an original subdivision plat, land survey plat, or parcel description currently recorded in the office of the clerk and recorder in which the subdivision plat, land survey plat, or parcel description is situated.” That definition is necessary because a professional land surveyor of record may prepare, execute, and record in the clerk and recorder’s office of the county in which the property lies, a surveyor’s affidavit of correction:

38-51-111. Surveyor's affidavit of correction. (1) If an error described in subsection (2) of this section is discovered on any subdivision plat, land survey plat, or any other survey plat or parcel description duly recorded in the clerk and recorder’s office of the county in which the subdivision, land, or parcel is situated, the professional land surveyor of record may prepare and record in that clerk and recorder’s office a surveyor’s affidavit of correction to correct the error.

(2) The following errors may be corrected by a surveyor’s affidavit of correction:

(a) Any bearing, distance, or elevation that has been omitted or labeled incorrectly;

(b) Any text that has been misspelled or mislabeled;

(c) Any error or omission, if the error or omission is ascertainable from the data shown on the recorded plat or parcel description; or

(d) An error within a parcel description shown on a recorded plat.

(3) The surveyor’s affidavit of correction shall contain a reference to the recording information of the document being corrected and the signature and seal of the professional land surveyor of record, and shall not be subject to review before being recorded pursuant to subsection (4) of this section. The professional land surveyor of record shall submit a copy of the surveyor’s affidavit of correction to the appropriate

reviewing authority, citing the specific provision under subsection (2) of this section that applies to the error being corrected.

(4) The clerk and recorder of the county in which a surveyor's affidavit of correction is submitted for recording shall record the affidavit in the clerk and recorder's office of the county in which the property lies and provide at least one of the following:

(a) A clerk's note referring to the surveyor's affidavit of correction upon the recorded plat or parcel description; or

(b) An electronic reference to the surveyor's affidavit of correction for the recorded plat or parcel description.

(5) Nothing in this section shall be construed to permit changes in courses, distances, or elevations for the purpose of redesigning any lot, tract, or parcel configurations.

(6) A surveyor's affidavit of correction shall not be recorded for a correction not listed in subsection (2) of this section.



APPENDIX 8 • MECHANICS' LIEN AFFIDAVITS

FINAL AFFIDAVIT AND AGREEMENT

NOTE: This is a typical mechanics' lien affidavit to be signed by the purchaser and seller and/or general contractor where construction has been completed within four months of closing

STATE OF COLORADO)
) ss.
COUNTY OF _____)

RE: Real property and improvements located at _____
in the _____ County of _____, State of Colorado, and more particularly
described as follows (the "Property"), to wit:

Whereas, Blank Title Insurance Company (the "Company"), has issued its Commitment No. _____
covering the Property; now, therefore,

Contractor, Owner-Seller Affidavit:

_____, as the General Contractor and/or as the Owner-Seller of the Real Estate and Improvements located on the Property, being first duly sworn on oath, for the purpose of inducing the Company to issue its ALTA 2006 OWNER'S/LOAN Policy of Title Insurance, in connection with the Property, without exception as to mechanics' or other statutory liens, or any rights thereto, where no notice of such liens or rights appear of record, do hereby make the following representations to the Company, with full knowledge and intent that said company shall rely thereon:

1. That those certain persons, firms, and corporations, including the General Contractors, and all subcontractors hired by or under contract with the undersigned who have furnished services, labor, or materials, according to plans and specifications or otherwise used in connection with the construction of improvements on the real estate herein described, have been paid in full.
2. That no claims have been made to either of the undersigned, nor is any suit now pending on behalf of any contractor, subcontractor, laborer, or materialman, and that no chattel mortgages, conditional bills of sale, security agreements, or financing statements have been made, or are now outstanding as to any materials, appliances, fixtures, or furnishings placed upon or installed in said premises.
3. That all of the improvements constructed on the real estate herein described were completed on or before _____, 20____.

In the light of the foregoing facts, the undersigned, in consideration of the issuance by the Company of a policy or policies of Title Insurance covering the Property in the manner desired by the undersigned as set out above, hereby promise, covenant, and agree to hold harmless, protect, and indemnify the Company and its successors in interest from and against those liabilities, losses, damages, expenses, and charges, including but not limited to attorney fees and expenses of litigation, by reason of any mechanics' or other statutory liens, claims, and/or liens for services, labor, or materials used in connection with the construction of improvements located on the Property insofar as they pertain to Paragraphs 1 to 3 above.

The foregoing was subscribed and sworn to before me in the _____ County of _____, State of Colorado, this _____ day of _____, 20____.

Witness my hand and official seal.

Notary Public

Purchaser's Affidavit:

The undersigned, Purchaser(s) of the Property, to induce the Company to issue its ALTA OWNER'S/LOAN Policy of Title Insurance, without including an exception as to mechanics' liens or other statutory liens, and in connection with the Property, or any rights thereto where no notice of such liens or rights appear of record, do hereby make the following representations to the Company with full knowledge and intent that said company shall rely thereon:

- 1. That the improvements on the real estate herein described have been fully completed and have been accepted by the undersigned as completed.
- 2. That the full purchase price has been or will be paid by said purchaser(s) to the seller.
- 3. That said premises (were) (will be) occupied by said purchaser(s) on or about _____.
- 4. That the undersigned are not aware of any bills for services, labor, or materials used in connection with the construction of the improvements located on the Property which have not been paid.
- 5. That the undersigned have not caused any materials to be furnished or work to be done on the improvements located on the Property or the Property itself, which could give rise to any mechanics' or other statutory liens, claims, and/or liens for such materials or work, and have not executed any security agreements or financing statements for materials, appliances, fixtures, or furnishings, placed upon the Property or installed in the improvements located on the Property.
- 6. In the light of the foregoing facts, the undersigned, in consideration of the issuance by the Company of a policy or policies of Title Insurance covering the Property in the manner desired by the undersigned as set out above, hereby promise, covenant, and agree to hold harmless, protect, and indemnify the Company and its successors in interest from and against those liabilities, losses, damages, expenses, and charges, including but not limited to attorney fees and expenses of litigation by reason of any mechanics' or other statutory liens claims and/or liens for services, labor, or materials used in connection with the construction of improvements located on the Property insofar as they pertain to Paragraphs 1 to 5 above.

The foregoing was subscribed and sworn to before me in the _____ County of _____, State of Colorado, this _____ day of _____, 20____.

Witness my hand and official seal.

Notary Public

AFFIDAVIT AND AGREEMENT

NOTE: This is not only an affidavit for deletion of printed exception No. 4 (mechanics' liens) but it also contains representations for deletion of printed exceptions Nos. 1, 2, and 3.

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The undersigned, (hereinafter referred to as "Affiant," whether one or more) being the present owner of the real property described in paragraph 9 hereof (the "Property"), and being first duly sworn upon oath, deposed and says:

1. The representations, covenants, and agreements contained herein are made by Affiant to induce Blank Title Insurance Company (the "Company") to authorize its title insurance policies to be issued covering the Property, with full knowledge and intent that such representations, covenants, and agreements will be relied upon.

2. No construction or repair of improvements on or in the Property has been commenced or contracted for by the Affiant which has not been fully completed and fully paid for more than four (4) full months prior to the execution hereof, except as described in Paragraph 8 hereof.

3. No claims have been made to Affiant or to any other person within the knowledge of Affiant on account of work done or materials furnished to the Property, except as described in Paragraph 8 hereof.

4. Affiant has no knowledge of any (a) violations of any restrictive or protective covenants or governmental restrictions relating to the Property; (b) encroachment of improvements onto any adjoining real property; or (c) encroachment of improvements from any adjoining real property onto the Property, except as described in Paragraph 8 hereof.

5. Affiant knows of no parties in possession of or claiming possessory rights pertaining to the Property, other than Affiant, except as described in Paragraph 8 hereof.

6. Affiant knows of no outstanding conditional sale contracts, security agreements, financing statements, retention of title agreements, or personal property leases pertaining to any materials, fixtures, appliances, furnishing, or equipment located on the Property, except as described in Paragraph 8 hereof.

7. Affiant covenants and agrees to indemnify and hold the Company harmless from any loss or damage which would not have occurred if the representations contained herein had been true.

8. All exceptions relating to Paragraphs 2, 3, 4, 5 and 6 hereof are as follows: _____
[NOTE: Do not leave this space blank. If there are no exceptions, write "no exceptions" in this space.]

9. The Property is located in the _____ County of _____, State of Colorado, and is described as follows: _____.

AFFIANT:

Subscribed and sworn to before me in the City and County of Denver, State of Colorado, this ____ day of _____, 20__.

Witness my hand and official seal.

Notary Public

AFFIDAVIT AND AGREEMENT

NOTE: This is an expanded affidavit for deletion of printed exception No. 4 during the statutory lien period following construction of improvements. This affidavit also contains representations for deletion of printed exceptions Nos. 1, 2, and 3.

STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)

On this ____ day of _____, 20____, personally appeared _____ (“Owner,” whether one or more), and _____ (“General Contractor”), who, being first duly sworn upon oath, deposed and said:

1. The representations, covenants, and agreements contained herein are made to induce Blank Title Insurance Company (the “Company”) to authorize its title insurance policies to be issued covering the real property and improvements described in Paragraph 9 hereof (the “Property”), with full knowledge and intent that such representations, covenants, and agreements will be relied upon.

2. All persons, firms, and corporations, including General Contractor and all subcontractors, who have furnished services, labor, or materials, according to plans and specifications, or extra items used in the construction or repair of building and improvements on the Property, have been paid in full and such work was fully completed on or before _____, and accepted by Owner, free and clear of any mechanics’ lien whatever, all such liens or claims for lien hereby expressly waived, except as described in Paragraph 8 hereof.

3. No unsatisfied claim for lien or payment has been made to Owner or General Contractor by, nor is any suit now pending on behalf of, any contractor, subcontractor, laborer, or materialman, and further that no conditional sale contract, security agreement, financing statement, retention of title agreement, or personal property lease has been given or is now outstanding as to any materials, fixtures, appliances, furnishings, or equipment placed upon or installed in or upon the Property; and all plumbing, heating, lighting, refrigerating, and other equipment is fully paid for, including but not limited to all bills for the repair thereof, except as described in Paragraph 8 hereof.

4. General Contractor represents that the attached list, bearing the signature of the General Contractor, is a true and complete list of all persons, firms, or corporations that have furnished labor or materials of an aggregate value for each in excess of \$100.00, incorporated into improvements in or upon the Property in connection with any such improvements that have not been completed at least four full months prior to the execution hereof, and further represents that all persons, firms, or corporations listed have been fully paid and the General Contractor knows of no claim or assertion of claim by any person, firm or corporation on account of having furnished labor or materials incorporated in such improvements, except as described in Paragraph 8 hereof.

5. Owner knows of no (a) violation of any restrictive or protective covenants or governmental restrictions relating to the Property; (b) encroachment of improvements onto any adjoining real property; or (c) encroachment of improvements from any adjoining real property onto the Property, except as described in Paragraph 8 hereof.

6. Owner knows of no parties in possession of or claiming possessory rights pertaining to the Property, other than the Owner, except as described in Paragraph 8 hereof.

7. Affiants jointly and severally covenant and agree to indemnify and do hereby hold the Company harmless from any loss or damage which would not have occurred if the representations contained herein had been true.

8. All exceptions relating to Paragraphs 2, 3, 4, 5 and 6 hereof are as follows:
 [NOTE: Do not leave this space blank. If there are no exceptions, write “no exceptions” in this space.]

9. The Property is located in the _____ County of _____, State of Colorado, and is described as follows:

OWNER:

GENERAL CONTRACTOR:

Subscribed and sworn to before me in the City and County of Denver, State of Colorado, this ____ day of _____, 20__, by _____, as Owner, and _____, as General Contractor.

Witness my hand and official seal.

Notary Public

GENERAL CONTRACTOR'S LIST

The undersigned as General Contractor represents that the following is a true and complete list of all persons, firms, and corporations that have furnished labor or materials of an aggregate value for each in excess of \$100.00, incorporated into improvements in or upon the Property described in the foregoing Affidavit and Agreement, in connection with any such improvements that have not been completed at least four full months prior to the execution of the foregoing Affidavit and Agreement, and further represents that all persons, firms, and corporations listed have been fully paid.

GENERAL CONTRACTOR:

CHECKLIST

The following list contains items frequently found to be the basis for mechanics' liens. In preparing the foregoing General Contractor's List, for which the above space may be used if appropriate, the numbering system of the items below may be used to designate the type of labor or materials furnished by the persons, firms, or corporations named on the General Contractor's List. Items not found in the list below should be identified by naming them.

- | | | |
|-------------------------------------|------------------------------------|--|
| 1. Air Conditioning Equipment | 22. Electric Wiring | 46. Paint |
| 2. Air Conditioning Installation | 23. Engineer and/or Surveyor | 47. Painting |
| 3. Appliances | 24. Excavation and/or Demolition | 48. Plaster Materials |
| 4. Architect or Designer | 25. Fencing | 49. Plastering |
| 5. Brick | 26. Flooring | 50. Plumbing |
| 6. Bricklaying | 27. Floor Scraping | 51. Plumbing Fixtures |
| 7. Cabinet Work | 28. Garage Door | 52. Private Sewerage Equipment |
| 8. Caissons | 29. Glass | 53. Private Sewerage Installation |
| 9. Carpentry | 30. Glass Work | 54. Refrigeration |
| 10. Carpeting | 31. Grading | 55. Roofing Materials |
| 11. Concrete Flatwork or Specialty | 32. Gutters and Downspouts | 56. Roofing Work |
| 12. Concrete Forming | 33. Hardware | 57. Sand and Gravel |
| 13. Concrete Foundation Work | 34. Heating Equipment | 58. Sheet Metal Work |
| 14. Concrete Supplier | 35. Heating Equipment Installation | 59. Soil Test or Engineering |
| 15. Construction Clean-up | 36. Insulation Installation | 60. Stairway |
| 16. Dampproofing (or Waterproofing) | 37. Insulation Material | 61. Stone |
| 17. Drainlayer | 38. Interior Decorating | 62. Stone Work |
| 18. Draperies | 39. Iron and Steel | 63. Tile, Marble, and Terrazzo |
| 19. Drywall | 40. Iron and Steel Work | 64. Tile, Marble, and Terrazzo Setting |
| 20. Drywall Installation and Taping | 41. Landscaping | 65. Wall Paper |
| 21. Electric Fixtures | 42. Lathing | 66. Wall Papering |
| | 43. Linoleum or Vinyl | 67. Well Drilling |
| | 44. Lumber | 68. Weather Strips |
| | 45. Millwork | |

AGREEMENT OF INDEMNIFICATION

NOTE: This agreement does not contain the representations of the affiant as in the preceding affidavits. It is rather an expanded version of the indemnity contained in the affidavits. It is not limited to mechanics' liens incurred by Indemnitor unless modified prior to signature.

This Agreement of Indemnification is made by _____ (hereinafter referred to as "Indemnitor(s)") for the benefit and protection of Blank Title Insurance Company (hereinafter referred to as "The Company");

WHEREAS, The Company is being requested to issues its policy(ies) of title insurance insuring an interest in or title to the real property in the County of _____, State of Colorado, described in Commitment No. _____ issued by The Company on the ____ day of _____, 20__, or which is described as:

and

WHEREAS, The Company is unwilling to issue said policy(ies) without an exception(s) as to the following items, among others, which affect or may affect the title hereto (hereafter called "Items"):

Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

and

WHEREAS, the Indemnitor recognizes that The Company, in the normal course of its business, would not issue its policy(ies) free and clear of said Items unless the Indemnitor indemnifies The Company as hereafter agreed;

NOW, THEREFORE, THE INDEMNITOR AGREES that in consideration of the issuance of a policy(ies) of title insurance without showing therein said Items as they may affect the title to real property or as exceptions from the insurance given thereby or which gives affirmative coverage against the effectiveness, enforcement, or consequences of said Items, the Indemnitor will hold harmless, protect, and indemnify The Company from and against any and all liabilities, losses, damages, expenses, and charges, including but not limited to attorney fees and expenses of litigation which may be sustained or incurred by The Company under, or arising directly or indirectly out of the issuance of, any policy(ies) covering said land issued in manner so desired by Indemnitor; or under, or arising directly or indirectly out of the issuance of, any policy(ies) of title insurance covering said land or any portion thereof, which The Company or its agents may at any time thereafter issue, and resulting directly or indirectly from any of the Items indemnified against, or from any claim, action, proceeding, judgment, order or process arising from or based upon or growing out of any of said Items or the omission to show any of the same in any policy(ies) of title insurance or title report.

AND THE INDEMNITOR FURTHER AGREES that Indemnitor will diligently provide for the defense of any action based upon any of the Items, counsel to be selected and/or approved by The Company at its sole discretion, and will promptly do all things necessary or appropriate to cause the title to said land to be cleared of the effect of all of the Items and any other items based thereon or arising directly or indirectly therefrom, and of any cloud on title created by or growing out of any of the foregoing; all of which shall be done at the sole expense of Indemnitor. If Indemnitor shall fail so to do then The Company may do the same, and may pay, compromise, or settle any such Items or any claim or demand based thereon if The Company deems such actions necessary for the protection of any of its insureds under any policy or of itself; and Indemnitor shall promptly reimburse The Company for any payment, expense, or expenditure made or incurred in so doing. If The Company holds any funds or security for the obligations of Indemnitor hereunder, it shall not be obligated to resort to such funds or security before enforcing the obligations of Indemnitor, but may enforce such obligations by any lawful means in the same manner and to the same extent as if no such funds or security were held.

AND THE INDEMNITOR FURTHER AGREES that for the purpose of carrying out the provisions of the last-mentioned paragraph, Indemnitor does hereby name, constitute, and appoint The Company its attorney-in-fact to do all things necessary and convenient.

AND THE INDEMNITOR FURTHER AGREES that in the event that any judgment shall be or shall have been rendered or any process shall be or shall have been issued, based upon any of the Items or any other items growing out of any of the same, under which a sale could be held affecting or purporting to affect said land or any portion thereof, Indemnitor promises and agrees that it will satisfy the same and cause the same to be satisfied and discharged of record prior to the occurrence of any such sale.

AND THE INDEMNITOR FURTHER AGREES that nothing herein shall be construed as an obligation on the part of The Company to issue any policy(ies) of title insurance nor any obligation on the part of The Company to obtain the issuance thereof, but in the event The Company does issue any policy(ies) in the manner contemplated, the undersigned Indemnitor gives the assurance and makes the agreements herein set forth, for the benefit of The Company.

AND THE INDEMNITOR FURTHER AGREES that for the purposes of carrying out the provisions of this Agreement, the Indemnitor hereby pays The Company the sum of _____ dollars (\$_____) and The Company, in its sole discretion, may use any portion or portions or all of said funds for such purposes. At such time as all obligations of Indemnitor hereunder have been fully performed and the title to said real property is free of the effect of the Items and/or free of the effect of any item growing out of or based upon those Items and The Company has no present or contingent liability arising out of Items, The Company will repay to Indemnitor all funds remaining unused by The Company.

AND THE INDEMNITOR FURTHER AGREES that wherever the term policy(ies) is used in this Agreement, it also shall include any document issued to its customer such as binders, commitments, title reports, guarantees, letter reports.

AND THE INDEMNITOR FURTHER AGREES that, if suit shall be brought to enforce this Agreement, Indemnitor will pay the attorneys' fees of The Company.

AND THE INDEMNITOR FURTHER AGREES that all of the obligations of Indemnitor hereunder shall be several as well as joint. All of the provisions of this Agreement shall inure to the benefit of and bind the parties hereto and their legal representatives and successors in interest.

IN WITNESS WHEREOF, the Indemnitors have executed this Agreement of Indemnification this _____ day of _____, 20__.

(Indemnitor)

(Indemnitor)

**APPENDIX 9 • ALTA CLOSING PROTECTION LETTERS, AUTHORIZED
FOR USE IN COLORADO BY DIVISION OF INSURANCE BULLETIN B-5.31**

American Land Title Association

Closing Protection Letter –
Single Transaction
Revised 12-01-2015

**CLOSING PROTECTION LETTER
SINGLE TRANSACTION
BLANK TITLE INSURANCE COMPANY**

"Addressee":

"Date":

"Issuing Agent" or "Approved Attorney," as the case may require:

"Real Estate Transaction":

[Seller:]
[Buyer:]
[Street Address:]
[Loan No.:]

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, Blank Title Insurance Company (the "Company"), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent or Approved Attorney on or after the Date of this letter, subject to the Requirements and Conditions and Exclusions set forth below:

REQUIREMENTS

1. The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the Real Estate Transaction;
2. You are to be:
 - (a) a lender secured by the Insured Mortgage on the Title to the Land or
 - (b) a purchaser or lessee of the Title to the Land;
3. The aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$ _____; and
4. Your loss is solely caused by:
 - (a) any failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:
 - (i) (A) the disbursement of Funds necessary to establish the status of the Title to the Land; or
 - (B) the validity, enforceability, or priority of the lien of the Insured Mortgage; or
 - (ii) obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document 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; or
 - (b) fraud, theft, dishonesty, or misappropriation of 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 to the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

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American Land Title Association

Closing Protection Letter –
Single Transaction
Revised 12-01-2015**CONDITIONS AND EXCLUSIONS**

1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney for the Real Estate Transaction constitutes Your acceptance of this letter.
2. For purposes of this letter:
 - (a) "Commitment" means the Company's written contractual agreement to issue the Policy.
 - (b) "Funds" means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.
 - (c) "Policy" means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.
 - (d) "You" or "Your" means:
 - (i) the Addressee of this letter;
 - (ii) the borrower, if the Land is improved solely by a one-to-four family residence; and
 - (iii) subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,
 - (A) the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the assignment, without Knowledge of facts that reveal a claim under this letter; and
 - (B) the warehouse lender in connection with the Insured Mortgage.
 - (e) "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the same meaning given them in the American Land Title Association Loan Policy (06-17-06).
3. The Company shall have no liability under this letter for any loss arising from any:
 - (a) failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment shall not be deemed to require inconsistent title insurance protection;
 - (b) loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;
 - (c) constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. This Section 3.(c) does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy;
 - (d) defect, lien, encumbrance, or other matter in connection with the Real Estate Transaction. This Section 3.(d) does not affect the coverage afforded in the Policy;
 - (e) fraud, theft, misappropriation, dishonesty, or negligence by You or by Your employee, agent, attorney, or broker;
 - (f) settlement or release of any claim by You without the Company's written consent;
 - (g) matters created, suffered, assumed, agreed to, or Known by You;
 - (h) failure of the Issuing Agent or Approved Attorney to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. This Section 3.(h) does not affect the coverage afforded in the Policy;

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Closing Protection Letter –
Single Transaction
Revised 12-01-2015

-
- (i) Federal consumer financial law, as defined in 12 U.S.C. § 5481(14), actions under 12 U.S.C. § 5531, or other federal or state laws relating to truth-in-lending, a borrower's ability to repay a loan, qualified mortgages, consumer protection, or predatory lending, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;
- (j) federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;
- (k) periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land; or
- (l) Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code.
4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.
5. When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company's liability for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.
6. The Company's liability for loss under this letter shall not exceed the least of:
- (a) the amount of Your Funds;
- (b) the Company's liability under the Policy at the time written notice of a claim is made under this letter;
- (c) the value of the lien of the Insured Mortgage;
- (d) the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or
- (e) the amount stated in Section 3 of the Requirements.
7. The Company will be liable only to the holder of the Indebtedness at the time that payment is made. This Section 7 does not apply to a purchaser, borrower, or lessee.
8. Payment to You or to the owner of the Indebtedness under either the Policy or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to the Conditions of the Policy.
9. The Issuing Agent is the Company's agent only for the limited purpose of issuing policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. Other than as expressly provided in this letter, the Company shall have no liability for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.
10. In no event shall the Company be liable for a loss if the written notice of a claim is not received by the Company within one year from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under this Section 10 shall not be excused by lack of prejudice to the Company.
11. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____. If the Company is prejudiced by Your failure to provide prompt notice, the Company's liability to You under this letter shall be reduced to the extent of the prejudice.

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Closing Protection Letter –
Single Transaction
Revised 12-01-2015

12. Whenever requested by the Company, You, at the Company's expense, shall:
- (a) give the Company all reasonable aid in
 - (i) securing evidence, obtaining witnesses, prosecuting or defending any action or proceeding, or effecting any settlement, and
 - (ii) any other lawful act that in the opinion of the Company may be necessary to enable the Company's investigation and determination of its liability under this letter;
 - (b) deliver to the Company any records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and
 - (c) submit to an examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.
13. The Company shall have no liability under this letter if:
- (a) the Real Estate Transaction has not closed within one year from the date of this letter; or
 - (b) at any time after the date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.
14. The protection of this letter extends only to real estate in [State], and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.
- [15. Either the Company or You may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. There shall be no right for any claim under this letter to be arbitrated or litigated on a class action basis. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and You. If the Real Estate Transaction solely involves a one-to-four family residence and You are the purchaser or borrower, the Company will pay the costs of arbitration.]

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

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Closing Protection Letter –
Multiple Transactions
Revised 12-01-2015

**CLOSING PROTECTION LETTER
MULTIPLE TRANSACTIONS
BLANK TITLE INSURANCE COMPANY**

“Addressee”:

“Date”:

“Issuing Agent” or “Approved Attorney,” as the case may require:

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, Blank Title Insurance Company (the “Company”), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of any real estate transaction (the “Real Estate Transaction”) conducted by the Issuing Agent or Approved Attorney on or after the Date of this letter, subject to the Requirements and Conditions and Exclusions set forth below:

REQUIREMENTS

1. The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the Real Estate Transaction;
2. You are to be a lender secured by the Insured Mortgage on the Title to the Land;
3. The aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$_____ ; and
4. Your loss is solely caused by:
 - (a) any failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:
 - (i) (A) the disbursement of Funds necessary to establish the status of the Title to the Land; or
 - (B) the validity, enforceability, or priority of the lien of the Insured Mortgage; or
 - (ii) obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document 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; or
 - (b) fraud, theft, dishonesty, or misappropriation of 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 to the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

CONDITIONS AND EXCLUSIONS

1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney for the Real Estate Transaction constitutes Your acceptance of this letter.
2. For purposes of this letter:
 - (a) “Commitment” means the Company’s written contractual agreement to issue the Policy.
 - (b) “Funds” means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.
 - (c) “Policy” means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.

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Closing Protection Letter –
Multiple Transactions
Revised 12-01-2015

- (d) “You” or “Your” means:
- (i) the Addressee of this letter;
 - (ii) the borrower, if the Land is improved solely by a one-to-four family residence; and
 - (iii) subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,
 - (A) the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the assignment, without Knowledge of facts that reveal a claim under this letter; and
 - (B) the warehouse lender in connection with the Insured Mortgage.
- (e) “Indebtedness,” “Insured Mortgage,” “Knowledge” or “Known,” “Land,” and “Title” have the same meaning given them in the American Land Title Association Loan Policy (06-17-06).
3. The Company shall have no liability under this letter for any loss arising from any:
- (a) failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment shall not be deemed to require inconsistent title insurance protection;
 - (b) loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;
 - (c) constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. This Section 3.(c) does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy;
 - (d) defect, lien, encumbrance, or other matter in connection with the Real Estate Transaction. This Section 3.(d) does not affect the coverage afforded in the Policy;
 - (e) fraud, theft, misappropriation, dishonesty, or negligence by You or by Your employee, agent, attorney, or broker;
 - (f) settlement or release of any claim by You without the Company’s written consent;
 - (g) matters created, suffered, assumed, agreed to, or Known by You;
 - (h) failure of the Issuing Agent or Approved Attorney to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. This Section 3.(h) does not affect the coverage afforded in the Policy;
 - (i) Federal consumer financial law, as defined in 12 U.S.C. § 5481(14), actions under 12 U.S.C. § 5531, or other federal or state laws relating to truth-in-lending, a borrower’s ability to repay a loan, qualified mortgages, consumer protection, or predatory lending, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;
 - (j) federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;
 - (k) periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land; or
 - (l) Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code.

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Closing Protection Letter –
Multiple Transactions
Revised 12-01-2015

4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.
5. When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company's liability for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.
6. The Company's liability for loss under this letter shall not exceed the least of:
 - (a) the amount of Your Funds;
 - (b) the Company's liability under the Policy at the time written notice of a claim is made under this letter;
 - (c) the value of the lien of the Insured Mortgage;
 - (d) the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or
 - (e) the amount stated in Section 3 of the Requirements.
7. The Company will be liable only to the holder of the Indebtedness at the time that payment is made. This Section 7 does not apply to a purchaser, borrower, or lessee.
8. Payment to You or to the owner of the Indebtedness under either the Policy or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to the Conditions of the Policy.
9. The Issuing Agent is the Company's agent only for the limited purpose of issuing policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. Other than as expressly provided in this letter, the Company shall have no liability for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.
10. In no event shall the Company be liable for a loss if the written notice of a claim is not received by the Company within one year from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under this Section 10 shall not be excused by lack of prejudice to the Company.
11. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____. If the Company is prejudiced by Your failure to provide prompt notice, the Company's liability to You under this letter shall be reduced to the extent of the prejudice.
12. Whenever requested by the Company, You, at the Company's expense, shall:
 - (a) give the Company all reasonable aid in
 - (i) securing evidence, obtaining witnesses, prosecuting or defending any action or proceeding, or effecting any settlement, and
 - (ii) any other lawful act that in the opinion of the Company may be necessary to enable the Company's investigation and determination of its liability under this letter;
 - (b) deliver to the Company any records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and
 - (c) submit to an examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.

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American Land Title Association

Closing Protection Letter –
Multiple Transactions
Revised 12-01-2015

13. The Company shall have no liability under this letter if:
- (a) the Real Estate Transaction has not closed within one year from the date of this letter; or
 - (b) at any time after the date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.
14. The protection of this letter extends only to real estate in [State], and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.
- [15. Either the Company or You may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. There shall be no right for any claim under this letter to be arbitrated or litigated on a class action basis. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and You. If the Real Estate Transaction solely involves a one-to-four family residence and You are the purchaser or borrower, the Company will pay the costs of arbitration.]

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

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**Bulletin No. B-5.31****Title Insurance Closing Protection Letters “CPLs”****I. Background and Purpose**

The purpose of this bulletin is to provide information regarding the issuance of Closing Protection Letters “CPLs”.

Colorado Insurance Regulation 8-1-3 permits title insurance companies to issue CPLs provided the standards of 8-1-3 are met. CPLs contractually obligate a title insurance company to indemnify certain parties to a real estate transaction for certain improper actions of the agent of the title insurance company.

Bulletins are the Division of Insurance’s (Division’s) interpretations of existing insurance law or general statements of Division policy. Bulletins themselves neither establish binding norms nor finally determine issues or rights.

II. Applicability and Scope

This bulletin is intended for all title insurance companies licensed to transact the business of title insurance in the State of Colorado.

III. Division Position

The issuance of a CPL by a title insurance company does not violate the monoline requirement of § 10-11-108(1)(b), C.R.S., provided that the CPL is issued by the same title insurance company that is providing title insurance for the subject transaction. This includes the issuance of a CPL to the lender, purchaser or seller.

IV. Additional Division Resources**A. For More Information**

Colorado Division of Insurance
Compliance and Investigations
1560 Broadway, Suite 850
Denver, CO 80202
Tel. 303-894-7499
Internet: <http://www.dora.state.co.us/insurance>

B. Related Division Regulations

8-1-3 (Effective August 15, 2016)



V. History

- Issued February 6, 2013
- Reissued November 30, 2016

SLB 241-4
09/2005

STATE OF COLORADO
STATE BOARD OF LAND COMMISSIONERS
1127 Sherman Street, Suite #300, Denver, CO 80203

LONG-TERM AGREEMENT TO RESTRICT MINERAL DEVELOPMENT

NO. LT _____

THIS AGREEMENT, dated this _____ day of _____, _____, made and entered into by and between the STATE OF COLORADO, acting by and through the STATE BOARD OF LAND COMMISSIONERS, hereinafter called the _____ State, and _____ hereinafter called the surface owner:

WITNESSETH

WHEREAS, the surface owner has applied for a mineral development restriction covering all minerals* underlying the land described below and has paid a filing fee in the amount of \$ _____; and

WHEREAS, said application has been approved by the State and is hereby made a part hereof; and

WHEREAS, the surface owner is the record owner of the surface interest of the land covered hereby, or is the designated agent or trustee for the record owner or owners (proof of said ownership to be furnished at the State's request); and

WHEREAS, to protect the surface owner, the surface owner desires to acquire from the State an agreement to restrict the development of the mineral estate owned by the State; and

THEREFORE, for and in consideration of the premises and subject to any existing mineral leases in effect at the time this agreement is executed, the State covenants and agrees that it will not lease, or cause to be developed, any and all minerals owned by the State except as described herein in the following land, situated in the County of _____, State of Colorado, more particularly described as follows:

ACRES SUBDIVISION SEC.TWP.RGE. PATENTS

containing _____ acres, more or less

FUND

(NOTE: The State assumes no responsibility for the accuracy of descriptions furnished by the surface owner nor does it admit any liability for loss or damage due to inaccuracy on the surface owner's part in describing the land involved.)

*See Item 8, Protection from Offset Drainage.

Subject to the following existing mineral leases:

1. TERM -- The term of this agreement shall be _____ (_____) years from the hour of twelve o'clock noon on the date hereof, to the hour of twelve o'clock noon on _____, _____.
2. RENTS -- The surface owner shall pay to the State advance rental of _____ dollars, (\$ _____) computed at the rate of \$ 3.00 per acre, or fraction thereof, per year for the term of _____ years of the lands covered hereby. At the option of the State, rentals may be paid annually, in advance, on each anniversary date of this agreement in the amount of \$ _____.
3. NON-DEVELOPMENT BONUS -- The surface owner shall pay to the State on the date of execution of this agreement a non-development bonus of _____ dollars (\$ _____), in addition to the rentals provided for in this agreement. This bonus, based on the value of the minerals as set by the State, is a one-time payment.

4. PENALTIES -- A penalty shall be imposed for, but not limited to, late payments, improper payments, violation of any covenant of this lease, or false statements made to the State. Penalties shall be determined by the State and may be in the form of, but not limited to, interest, fees, and fines.
5. SURRENDER -- The surface owner may at any time with the written consent of the State, surrender and cancel this agreement insofar as the same covers all or any portion of the land herein, provided that this surrender clause shall become inoperative immediately and concurrently with the institution of any suit in any court of law by the surface owner, the State, or any assignee of either to enforce this agreement or any of its terms, express or implied. If this agreement is terminated for any reason, no rental or bonus refund shall be made, nor will rental or bonus be transferred or credited in any way to another account. All paid up rental and bonus shall be forfeited unless otherwise agreed to by the State.
6. RECEIPT FOR PAYMENTS -- This agreement shall not be in effect until the State has received cash or the cash proceeds of any check tendered in payment for fees, bonus, or rental. All payments shall be made on or before the date due and any default may subject this agreement to cancellation as set out in Paragraph 15.
7. TRANSFER AND ASSIGNMENT -- The parties expressly agree that the mineral development restrictions set forth in this agreement run with the land, and shall be binding upon all subsequent owners of all or any portion of the land covered hereby.

If a portion of the subject surface estate is sold or transferred and an assignment of the mineral development restriction for that parcel is approved, a new agreement shall be issued to the assignee covering the assigned land, containing the same terms and conditions as this agreement and limited as to terms as this agreement is limited, and the assignor shall be released and discharged from all further obligations and liabilities as to that portion so assigned. An assignment shall not extend the term of this agreement.

8. PROTECTION FROM OFFSET DRAINAGE -- In case of offset drainage the surface owner will be offered an oil and gas lease and will be required to develop any and all oil or gas underlying this surface or, in lieu of drilling, pay a in-lieu royalty based on technical information and set by the Board.
9. NO RIGHT TO DEVELOP MINERALS -- Except as expressly set forth herein, this agreement does not give the surface owner any authority to explore for, prospect, develop, extract or use any minerals associated with the mineral estate of the State.
10. INDEMNIFICATION OF THE STATE -- The surface owner agrees to hold the State harmless for, and to indemnify the State against any and all manner of claims arising or to arise from this agreement or the State's mineral estate whether from soil or surface subsidence or from any other cause.
11. UNIT AGREEMENTS -- In the event the State permits the lands herein to be unitized or pooled with other lands, the terms of this agreement shall be modified to conform to such unit agreement.
12. GOVERNMENT CONTROL -- Any matter over which the United States Government assumes exclusive control is exempted from any of the provisions of this agreement.
13. EXTENSION -- Any request for an extension of the term of this agreement will not be considered prior to the last year of the term. All requests must be in writing. The granting of an extension will be at the option of the State.
14. COMPLIANCE WITH LAW -- Nothing in this agreement shall be construed as a waiver by the State of any right or remedy given to it by law for the administration of State-owned minerals.
15. FORFEITURE -- Upon failure or default of the surface owner or its assignee to comply with any of the provisions or covenants hereof, the State is hereby authorized to cancel this agreement, and such cancellation shall extend to, and include, all rights hereunder as to the whole of the tract so claimed or possessed by the surface owner or its assignee so defaulting, but shall not extend to nor affect the rights of any surface owner or approved assignee claiming land separated from this agreement by assignment; provided, that in the event of any such default or failure to comply with any of the terms and conditions hereof, the State shall, before any such cancellation may be made, send by certified mail to the surface owner or assignee so defaulting, to the post office address of the surface owner or assignee, as shown by the records of the State, a notice of intention to cancel for such default, specifying the same, and if within thirty (30) days from the date of mailing said notice, the surface owner or assignee shall have paid all rents or bonuses in default, and shall have begun in good faith to correct such other default as may have been specified, and shall thereafter diligently prosecute the correction of such default, there shall not be a cancellation therefor. If such default is not corrected, or correction thereof is not begun in good faith as hereinabove required, within thirty (30) days after the mailing of such notice, this agreement will terminate and be cancelled by operation of this paragraph without further action by the State, or further notice to the surface owner.

- 16. FALSE STATEMENTS -- Misrepresentation or false statements on the part of the applicant or surface owner, or failure to comply with any of the conditions set out in this agreement or in the application which is a part hereof, may subject this agreement to cancellation by the State.
- 17. CONDEMNATION -- If the State's mineral estate shall be taken in any condemnation proceeding, this agreement shall automatically terminate as of the date of taking. The award for such condemnation shall be paid to the State. If only a portion of the mineral estate is taken by condemnation, the State may, at its option, terminate this agreement or terminate only that portion of the agreement covering the mineral estate so taken.
- 18. SUCCESSORS CLAUSE -- The benefits and obligations of this agreement shall inure to and be binding upon the heirs, legal representatives, successors or assigns of the surface owner.

IN WITNESS WHEREOF, The parties hereto have executed the foregoing, the same to be effective as of the day and year first above written.

STATE BOARD OF LAND COMMISSIONERS

Recommended:

Mark W. Davis, Minerals Director

Brownell M. Bailey, Director

SURFACE OWNER

Seal or Authority

ATTEST

State of

County of

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____ as being authorized to execute same.

(SEAL)

Notary Public _____

My Commission Expires _____

APPENDIX 11 • ALTA TITLE INSURANCE ARBITRATION RULES

American Land Title Association

Title Insurance Arbitration Rules

Adopted 06-01-1987

Revised 01-01-2000, 01-01-2006, 08-01-2017

TITLE INSURANCE ARBITRATION RULES OF THE AMERICAN LAND TITLE ASSOCIATION

1. Definition of Terms

The following terms when used in these ALTA® Rules mean:

- a. "AAA": The American Arbitration Association®.
- b. "AAA Rules": The Consumer Arbitration Rules and Commercial Arbitration Rules of the AAA.
- c. "ALTA": The American Land Title Association®.
- d. "ALTA Rules": These Title Insurance Arbitration Rules of the American Land Title Association.
- e. "FAA": The Federal Arbitration Act (9 U.S.C. §§ 1, et seq.).
- f. "Title Insurance Contract": The title insurance commitment, title insurance policy, or closing protection letter.

2. Maintenance of these ALTA Rules

The ALTA is responsible for maintenance and publication of these ALTA Rules. The ALTA Rules are available at www.alta.org/arbitration.

3. Incorporation of the AAA Rules

These ALTA Rules incorporate by reference the applicable AAA Rules. Specifically, the Consumer Arbitration Rules apply in all instances except when neither party is a consumer, in which case the Commercial Arbitration Rules apply. The AAA Rules are available at www.adr.org.

4. Applicability

These ALTA Rules apply to any arbitration arising out of or relating to any Title Insurance Contract.

5. Administration

The AAA will administer disputes pursuant to these ALTA Rules, unless the parties agree to select an alternative administrator. If the administrator is or becomes unavailable, the unavailability shall be deemed a "lapse in the naming of an arbitrator" under Section 5 of the FAA, and an appropriate court may designate an arbitrator as provided for under the FAA.

6. Fixing of Locale

The parties may agree on the locale where the arbitration is to be held. Absent such agreement, the arbitrator will determine the locale within the United States based on the convenience of the parties and, if applicable, the relevant AAA Rules.

7. Prohibition of Class or Representative Arbitration and Consolidation of Arbitrations

Notwithstanding any provision of the AAA Rules, class or representative arbitration is not permitted. Arbitrations shall not be joined or consolidated, unless all of the parties to each arbitration expressly consent to do so after the arbitration has been initiated.

8. Attorney Work Product Doctrine and Attorney-Client Privilege

The arbitrator must apply the attorney work product doctrine and attorney-client privilege under the same principles that a court would apply in the jurisdiction where the arbitration is held, whether the attorney work product doctrine or attorney-client privilege is considered a legal privilege or a procedural discovery rule under the law of the jurisdiction where the land is located.

9. Fee Schedule for Arbitration

The provisions of the relevant AAA Rules, as modified by the Title Insurance Contract, regarding payment of the fees for arbitration (including compensation of the arbitrator) shall apply.

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**APPENDIX 12 • COLORADO REAL ESTATE COMMISSION
CLOSING INSTRUCTIONS**

1 The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
2 (CL8-9-12) (Mandatory 1-13)

3
4 **THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR**
5 **OTHER COUNSEL BEFORE SIGNING.**
6

7 **CLOSING INSTRUCTIONS**

8
9 Date: _____

10
11 **1. PARTIES, PROPERTY.** _____, Seller, and
12 _____, Buyer,
13 engage _____, Closing Company, who agrees to provide
14 closing and settlement services in connection with the Closing of the transaction for the sale and purchase of the Property
15 known as No. _____

16 Street Address City State Zip

17 and more fully described in the Contract to Buy and Sell Real Estate, dated _____, including any
18 counterproposals and amendments (Contract). All terms of the Contract are incorporated herein by reference. In the event of any
19 conflict between this Agreement and the Contract, this Agreement shall control, subject to subsequent amendments to the Contract
20 or this Agreement.

21 **2. TITLE COMMITMENT, EXCEPTIONS AND POLICY.** Closing Company **Agrees** **Does Not** agree that:
22 upon completion of a satisfactory title search and examination, it will furnish a Title Insurance Commitment; and it will issue a
23 Title Insurance Policy provided that all requirements have been fulfilled. Closing Company **Agrees** **Does Not** agree to
24 furnish copies of Exceptions.

25 **3. INFORMATION, PREPARATION. CLOSING, RECORDING.** Closing Company is authorized to obtain any
26 information necessary for the Closing. Closing Company agrees to prepare (excluding legal documents), deliver and record all
27 documents required or customarily recorded, and disburse all funds pursuant to the Contract that are necessary to carry out the
28 terms and conditions of the Contract.

29 **4. CLOSING FEE.** Closing Company will receive a fee of \$ _____ for providing closing and
30 settlement services (Closing Fee).

31 **5. RELEASE, DISBURSEMENT.** Closing Company is not authorized to release any signed documents or things of value
32 prior to receipt and disbursement of Good Funds, except as provided in §§ 9, 10 and 11.

33 **6. DISBURSER.** Closing Company shall disburse all funds, including real estate commissions, except those funds as may be
34 separately disclosed in writing to Buyer and Seller by Closing Company or Buyer's lender on or before Closing. All parties agree
35 that no one other than the disbursing party can assure that payoff of loans and other disbursements will actually be made.

36 **7. SELLER'S NET PROCEEDS.** Seller will receive the net proceeds of Closing as indicated: **Cashier's Check**, at
37 Seller's expense **Funds Electronically Transferred** (wire transfer) to an account specified by Seller, at Seller's expense
38 **Closing Company's** trust account check.

39 **8. CLOSING STATEMENT.** Closing Company will prepare and deliver an accurate, complete and detailed closing
40 statement to Buyer and Seller at time of Closing.

41 **9. FAILURE OF CLOSING.** If Closing or disbursement does not occur on or before Closing Date set forth in the Contract,
42 Closing Company, except as provided herein, is authorized and agrees to return all documents, monies, and things of value to the
43 depositing party, upon which Closing Company will be relieved from any further duty, responsibility or liability in connection
44 with these Closing Instructions. In addition, any promissory note, deed of trust or other evidence of indebtedness signed by Buyer
45 will be voided by Closing Company, with the originals returned to Buyer and a copy to Buyer's lender.

46 **10. RETURN OF EARNEST MONEY.** Except as otherwise provided in § 11, Earnest Money Dispute, if the Earnest Money
47 has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money
48 Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money shall be
49 made within five days of Earnest Money Holder's receipt of the written mutual instructions signed by both Buyer and Seller,
50 provided the Earnest Money check has cleared.

51 **11. EARNEST MONEY DISPUTE.** In the event of any controversy regarding the Earnest Money (notwithstanding any
52 termination of the Contract), Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option

53 and sole subjective discretion, has several options: (1) await any proceeding, (2) interplead all parties and deposit Earnest Money
 54 into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice to
 55 Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and
 56 Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to
 57 the parties, Earnest Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder
 58 does receive a copy of the Lawsuit, and has not interpled the monies at the time of any Order, Earnest Money Holder shall disburse
 59 the Earnest Money pursuant to the Order of the Court.

60 **12. SUBSEQUENT AMENDMENTS.** Any amendments to, or termination of, these Closing Instructions must be in writing
 61 and signed by Buyer, Seller and Closing Company.

62 **13. CHANGE IN OWNERSHIP OF WATER WELL.** Within sixty days after Closing, Closing Company shall submit any
 63 required Change in Ownership form or registration of existing well form to the Division of Water Resources in the Department of
 64 Natural Resources (Division), with as much information as is available and the Division shall be responsible for obtaining the
 65 necessary well registration information directly from Buyer. Closing Company shall not be liable for delaying Closing to ensure
 66 Buyer completes any required form.

67 **14. WITHHOLDING.** The Internal Revenue Service and the Colorado Department of Revenue may require Closing Company
 68 to withhold a substantial portion of the proceeds of this sale when Seller is either of the following: (a) a foreign person, or (b) will
 69 not be a Colorado resident after Closing. Seller should inquire of Seller's tax advisor to determine if withholding applies or if an
 70 exemption exists.

71 **15. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate
 72 Commission.)
 73
 74
 75

76 **16. COUNTERPARTS.** This document may be executed by each party, separately, and when each party has executed a copy,
 77 such copies taken together shall be deemed to be a full and complete contract between the parties.

78 **17. BROKER'S COPIES.** Closing Company shall provide, to each broker in this transaction, copies of all signed documents
 79 that such brokers are required to maintain pursuant to the rules of the Colorado Real Estate Commission.

80 **18. NOTICE, DELIVERY, CHOICE OF LAW.**

81 **18.1. Physical Delivery.** Except as provided in § 18.2, all notices must be in writing. Any notice or document to Buyer
 82 is effective when physically received by Buyer, any individual buyer, any representative of Buyer, or Brokerage Firm of Broker
 83 working with Buyer. Any notice or document to Seller shall be effective when physically received by Seller, any individual seller,
 84 any representative of Seller, or Brokerage Firm of Broker working with Seller. Any notice or document to Closing Company shall
 85 be effective when physically received by Closing Company, any individual of Closing Company, or any representative of Closing
 86 Company.

87 **18.2. Electronic Delivery.** As an alternative to physical delivery, any signed documents and written notice may be
 88 delivered in electronic form by the following indicated methods only: Facsimile Email Internet No Electronic
 89 Delivery. Documents with original signatures shall be provided upon request of any party.

90 **18.3. Choice of Law.** This Contract and all disputes arising hereunder shall be governed by and construed in accordance
 91 with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property
 92 located in Colorado.

Buyer's Name: _____ Buyer's Name: _____

 Buyer's Signature Date Buyer's Signature Date

Address: _____ Address: _____

Phone No.: _____ Phone No.: _____

Fax No.: _____ Fax No.: _____

Electronic Address: _____ Electronic Address: _____

Seller's Name: _____ Seller's Name: _____

Seller's Signature _____ Date _____ Seller's Signature _____ Date _____

Address: _____ Address: _____

Phone No.: _____ Phone No.: _____

Fax No.: _____ Fax No.: _____

Electronic Address: _____ Electronic Address: _____

93
94

Closing Company's Name: _____

Authorized Signature _____ Title _____ Date _____

Address: _____

Phone No.: _____

Fax No.: _____

Electronic Address: _____

95

(TO BE COMPLETED ONLY BY BROKER AND CLOSING COMPANY)

96
97
98
99

_____. (Broker) Working with Seller Working with Buyer
engages Closing Company as Broker's scrivener to complete, for a fee not to exceed \$_____ at the sole expense of
Broker, the following legal documents: Deed Bill of Sale Colorado Real Estate Commission approved Promissory
Note Colorado Real Estate Commission approved Deed of Trust. Closing Company agrees to prepare, on behalf of Broker,
the indicated legal documents pursuant to the terms and conditions of the Contract.

104

The documents stated above shall be subject to Broker's review and approval and Broker acknowledges that Broker is responsible
for the accuracy of the above documents.

105
106
107
108

Brokerage Firm's Name: _____

Broker's Name: _____

Broker's Signature _____ Date _____

Closing Company's Name: _____

Authorized Signature _____ Title _____ Date _____

109

APPENDIX 13 • BIBLIOGRAPHY

Books and Treatises

15 *Am. Jur. Trials*, 467, “Handling Title Insurance Claims.”

9 Appleman, *Insurance Law and Practice*, §§ 5201, *et seq.* (Lexis Law Publishing [previously West Publishing Co.] 1981) (cumulative supplements). This volume is an excellent source of title insurance law.

Burke, *Law of Title Insurance* (3rd Ed. Aspen Publishers, 2002) (cumulative supplements). A good research aid with many citations, this book will be of assistance in pursuing or defending claims.

Gosdin, *Fundamentals of Title Insurance* (ABA Section of Real Property, Probate and Trust Law 2014).

A sourcebook of information and analysis of title insurance forms and coverages.

Notarianni, “Title Insurance (and some Comments on the Torrens System),” Krendl, *Colorado Methods of Practice*, Ch. 63 (6th Ed. Thomson/West, 2012) (annual pocket parts). The chapter is an excellent, if basic, review for Colorado lawyers.

Nielsen, *Title & Escrow Claims Guide* (2nd Ed. Woodridge Legal Publishers, 2007) (cumulative supplements). A most-comprehensive treatise and source book.

Palomar, *Title Insurance Law*, 2 vol. (Thomson/Reuters 2015) (periodic supplements). Probably the most extensive treatise on title insurance law now available.

Publications by Continuing Legal Education in Colorado, Inc.

Brown, “Title Insurance Reform,” *Real Estate Symposium*, CLE in Colorado, Inc. (2010).

Carpenter, “A Title Insurance Refresher,” *Real Estate Symposium*, CLE in Colorado, Inc. (2005).

Carpenter, “Title Insurance: Top Ten Traps, Tips, and Tricks,” *Real Estate Symposium*, CLE in Colorado, Inc. (2000).

Edwards, “The Pitfalls and Pratfalls of Title Insurance Coverage,” *Real Estate Symposium*, CLE in Colorado, Inc. (2002).

Hamman, “New ALTA Forms/Endorsements,” *Real Estate Symposium*, CLE in Colorado, Inc. (2006).

Palomar, “New ALTA Title Insurance Policies and Issues, Resolved and Unresolved,” *Real Estate Symposium*, CLE in Colorado, Inc. (2007)

Articles

- Beasley, "Highlights of Commercial Coverage for Lenders," *Handbook No. N-448*, Pract. Law Institute (1999).
- Bozarth, "Commercial Mortgage Finance: Title Insurance Issues and Endorsements," *Handbook No. N-509*, Pract. Law Institute (2004).
- Bozarth, "Synthetic Leases and Title Insurance," *Handbook No. N-484*, Pract. Law Institute (2002).
- Bozarth, "Organizing Title Insurance for a Multisite Transaction," *Probate & Property*, ABA Section of Real Property, Probate & Trust Law (May/June 2001).
- Carpi, "Endorsements: A Summary of the Various Forms Available Throughout the United States," *Handbook No. N-509*, Pract. Law Institute (2004).
- Compton, "Underwater Underwriting," *N.Y. Law Journal* (Sept. 15, 2010).
- LaBelle, "Enhanced Protections for Residential Homeowners," *Handbook No. N-462*, Pract. Law Institute (2000).
- McDonald, "2001 ALTA Leasehold Endorsements Broaden Coverage," *Handbook No. N-484*, Pract. Law Institute (2002).
- Murray and Scott, "Title Insurance for Mezzanine Financing Transactions," *43 Real Property, Trust & Estate Law Journal* 83 (Spring 2008).
- Murray, "Title and Survey Issues in Commercial Real Estate Transactions," *Handbook No. N-497*, Pract. Law Institute (2003).
- Murray, "Title Insurance Issues in LLC Transactions," *Probate & Property*, ABA Section of Real Property, Probate & Trust Law (May/June 2001).
- Quail and Allen, "Title Insurance Treatment of Zoning-Related Regulations and the ALTA Zoning Endorsement," *30 Colo. Law.* 89 (June 2001).
- Riback, "Title Insurance: Claims and Claims Litigation," *Handbook No. N-509*, Pract. Law Institute (2004).
- Temkin, "The Value in Protecting the Tenant's Interest: Leasehold Title Insurance," *Probate & Property*, ABA Section of Real Property, Probate & Trust Law (May/June 2002).
- Wilson, "The Ethical Title Insurance Lawyer," *Handbook No. N-509*, Pract. Law Institute (2004).

**APPENDIX 14 • SAMPLE RESERVATION OF RIGHTS LETTER**

(Acceptance of Defense, Denial of Previous Legal Fees)

BLANK TITLE INSURANCE COMPANY

_____, 20__

Insured's Attorney
Address
City State Zip

Re: Blank Title Insurance Company
Policy No. _____
Order No. _____
Insured: _____

Dear Ms. or Mr. Attorney:

Blank Title Insurance Company (the "Company"), in response to your letter concerning a Summons and Complaint received by the Insured, agrees to provide a defense to the Insured against the Complaint filed in Case No. _____ in the _____ District Court, entitled _____ v. _____. We have designated Mr. S. of the law firm of S & S to defend the Insured. Mr. S. will be in contact with you regarding all pleadings you have previously filed on behalf of the Insured.

The Company does not waive any rights for reimbursement of costs and expenditures from the Insured, should it be determined in the future that the defense provided herein was in whole or in part extended without the necessity therefor. Your attention is called to the Complaint wherein the Plaintiff alleges that the conveyance of the insured property to the Insured was in fraud of creditors as it was for less than adequate value. In this regard, the Company must reserve its rights under the policy to contest liability in the event of a determination by the Court that the Insured was not a purchaser in good faith for value. Under the Exclusions from Coverage in the Policy, the Company is not responsible for loss because of:

3. Defects, lien, encumbrances, adverse claims, or other matters . . . (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid values or the estate or interest insured by the policy.

While the Company makes no present judgment with respect to the truth of the allegations presented, the Company believes that it is necessary to inform the Insured of the Insured's rights under the Policy.

Furthermore, this defense is being provided in consideration for the relationship of the Insured with the Company and the Company's subsidiaries, since it is clear that notice of the pending claim was not received in a timely fashion by the Company. Under the Conditions and Stipulations of the Policy, the Company may terminate all liability in regard to any claim in which such prompt notice has not been received. Nevertheless, the Company agrees to defend the Insured in the above-referenced civil action. Please be advised, however, that all attorney fees and costs which have been incurred by the Insured prior

to notification of the claim will not be covered under the terms of the Policy. Any future costs or expenses by any firm other than the firm of S & S will also not be reimbursed unless prior written authorization has been received from the Company.

Mr. S. will be in contact with you regarding the defense for the Insured.

Sincerely,

Claims Attorney

cc: Mr. S.

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