



# FIRST AMERICAN TITLE INSURANCE COMPANY

## 1. COVERAGE STATEMENT

Subject to the terms and conditions of this policy and Schedule A (which forms part of this policy), we will insure you against actual monetary loss, not exceeding 125% of the Insurance Amount, sustained or incurred by you as a result of any of the Covered Risks specified in clauses 2(a) to 2(i) if they exist or occur on or before the Policy Date and as a result of Covered Risks 2(j) and 2(k) if they occur after the Policy Date and where there are Covered Risks and the circumstances require:

- (a) Defend either or both the title to the Property and the validity, enforceability and priority of the Insured Mortgage (as the case may be) and pay the Approved Costs we incur in that defence.
- (b) Pursuant to clause 10 of this policy, pay you the instalments of principal and/or interest (as the case may be) secured under the Insured Mortgage that you have not received.

## 2. COVERED RISKS

- (a) The owner of the estate or interest in the Property is different to that described in paragraph 2 of schedule A.
- (b) There is any defect in the title to the Property which is discoverable from the Public Records including (without limitation) as a result of:
  - (i) any alteration of the Property which has not been approved by the Building Authority;
  - (ii) the number of units on the floor or floors of the building of which the Property forms a part contravenes the relevant occupation permit or subsequent plans approved by the Building Authority;
  - (iii) the Property cannot be used for the purposes set out in the occupation permit as stated in paragraph 5 of schedule A because that use contravenes any user covenant in any lease, grant or deed;
  - (iv) any parking space described as being part of the Property cannot be used for car parking purposes incidental to the use of the Property because that use contravenes (a) an occupation permit or (b) any user covenant in any lease, grant or deed; and
  - (v) a document not being properly signed or executed.
- (c) There is any defect in the title to the Property as a result of forgery, fraud, undue influence, duress, incompetency or incapacity or the Insured Mortgage is invalid or unenforceable for any reason including (without limitation) as a result of forgery, fraud, undue influence, duress, incompetency or incapacity.
- (d) There is a mortgage, charge, lien or other security interest over the Property that has priority to the Insured Mortgage.

- (e) There is a deed, assignment, mortgage, charge, lien or other security interest over the Property executed prior to the date of execution of the Insured Mortgage and registered within 30 days of its execution.
- (f) Someone else, other than the owner described in paragraph 2 of Schedule A, has rights to the Property arising out of a lease, tenancy agreement, contract or option discoverable in the Public Records.
- (g) Someone else, other than the owner described in paragraph 2 of Schedule A, has rights to the Property arising solely as a result of possession or contribution to the purchase price, mortgage repayments or payments towards improvements to the Property.
- (h) Someone else, other than the owner described in paragraph 2 of Schedule A, has a covenant, easement or right that affects the title to the Property discoverable in the Public Records.
- (i) There are due and unpaid management fees pursuant to any deed of mutual covenant or similar instrument relating to the Property, government rents or government rates as of the Policy Date.
- (j) There is an estate duty charge registered after the Policy Date which has priority over the Insured Mortgage based solely on the existence of a deed of gift discoverable in the Public Records prior to the Policy Date.
- (k) The Insured Mortgage becomes invalid or unenforceable or loses its priority to another mortgage, charge, lien or other security interest because you make advances or readvance after the Policy Date which are secured by the Insured Mortgage pursuant to its terms at the Policy Date.

### **3. EXCLUSIONS**

Notwithstanding Clause 2, you are not insured against actual loss, we have no duty to defend and we are not obliged to pay costs, legal fees and expenses resulting from any of the following risks:

#### **3.1 Laws, Contamination, Claims and Interests**

- (a) The actual use of the Property. This does not however limit the cover described in clauses 2(b)(iii) and 2(b)(iv).
- (b) The existence of Laws restricting, regulating, prohibiting or relating to the construction, use or enjoyment of the Property or the violation or breach of those Laws. This does not however limit the cover described in clauses 2(b)(i), 2(b)(ii), 2(b)(iii) and 2(b)(iv).
- (c) Environmental contaminants or hazardous waste on or under the Property.
- (d) Rights and interests reserved under any Laws (but not under any government grant or lease) unless notice of the exercise of such rights and interests appears in Public Records at the Policy Date. This does not however limit the cover described in clauses 2(b)(ii), 2(b)(iii), 2(b)(iv), 2(j) or 2(k).

#### **3.2 Insolvency**

Any claim that the Insured Mortgage is invalid or unenforceable due to any Laws relating to insolvency or creditors' rights unless such insolvency was discoverable from Public Records at the Policy Date.

#### **3.3 Certain Other Risks**

Risks which:

- (a) you create, allow or agree to at any time;

- (b) are known to you but not to us on or prior to the Policy Date;
- (c) are known by your predecessor in title to the Insured Mortgage but not us (unless you acquired your interest for value without actual notice);
- (d) cause you no loss; or
- (e) occur or come into existence after the Policy Date, but this does not limit the cover described in clauses 2(e), 2(j) and 2(k).

### 3.4 Lending Laws

Any claim that the Insured Mortgage is invalid or unenforceable because the insured lender failed to comply with any Laws relating to the conduct of its lending business or the terms upon which loans are made or consumer protection.

### 3.5 Additional Exclusions

Any additional exclusions listed in paragraph 6 of Schedule A.

## 4. DEFINITIONS

In this policy, unless the context otherwise requires:

<b>“Approved Costs”</b>	means any costs, legal fees and expenses that we have approved.
<b>“Covered Risks”</b>	means the title risks specified in clause 2.
<b>“Hong Kong”</b>	means the Hong Kong Special Administrative Region of the People’s Republic of China.
<b>“Insurance Amount”</b>	means the amount of insurance specified in Schedule A.
<b>“Insured Mortgage”</b>	the mortgage or charge created by the documents described in paragraph 3 of Schedule A.
<b>“know”</b>	means having actual knowledge and not constructive knowledge or notice which may be imputed by matters appearing in Public Records or any other records which impart notice of matters affecting the Property and <b>“known”</b> and <b>“knowing”</b> will be construed accordingly.
<b>“Laws”</b>	means, without limitation, all laws (statutory or otherwise), orders and regulations which have force and effect in the Hong Kong and <b>“Law”</b> will be construed accordingly.
<b>“Policy Date”</b>	means the Date of Commitment specified in Schedule A.
<b>“Property”</b>	means the Property described in paragraph 4 of Schedule A.
<b>“Public Records”</b>	means (1) records and documents maintained under the Bankruptcy Ordinance, the Companies Ordinance and the Land Registration Ordinance at the Policy Date and which impart constructive notice of matters relating to property to those acquiring an interest in it for value and (2) the title deeds and documents relating to the Property (and title deeds and documents referred to in such title

deeds and documents) in existence as at the Policy Date which come into our possession (or our solicitor's possession) prior to or after the Policy Date and to which you would be entitled.

**“we/our/us”**

means First American Title Insurance Company, a company registered in Hong Kong under Part XI of the Companies Ordinance.

**“you/your”**

means the insured lender named in paragraph 1 of Schedule A and includes any subsequent owner of an interest in the Insured Mortgage but excluding any subsequent owner whose interest was acquired as a result of payment under any indemnity or guarantee given for amounts due under the Insured Mortgage, reserving however all rights and defences as to a subsequent owner that we would have against any previous owner.

## **5. CONTINUATION OF INSURANCE**

This policy protects you as long as you:

- (a) own an interest in the Insured Mortgage;
- (b) own the interest in any purchase money mortgage granted to you by anyone who buys the Property from you; or
- (c) are liable for any covenants concerning title given by you for the benefit of a purchaser and/or subsequent purchasers of the Property.

This policy does not protect anyone who purchases the Property from you and cannot be assigned to such persons.

## **6. NOTICE OF YOUR CLAIM**

You must advise us in writing as soon as possible after you become aware of:

- (a) litigation threatened or commenced in relation to the Insured Mortgage or the title to the Property;
- (b) any claim which is or may be adverse to the Insured Mortgage or the title to the Property;
- (c) any circumstance which might otherwise entitle you to make a claim under this policy.

## **7. PROOF OF LOSS AND PAYMENT OF LOSS**

In addition to the information required under clause 6, you must give us a written statement to prove your claim. This statement must be given to us no later than 90 days after you know the facts that will let you establish the amount of your loss. The statement must contain at least the following:

- (a) the Covered Risks which resulted in your loss and details of the facts concerning the claim;
- (b) the amount of your loss; and
- (c) the method you used to compute the amount of your loss.

We are not obliged to make any payment under this policy unless this policy is produced to us for endorsement. If the policy has been lost or destroyed you must give us proof of loss or destruction to our reasonable satisfaction. When the extent of your loss and our liability under this policy has been finally determined, we will pay that amount to you within 30 days of that determination.

#### **8. FURTHER INFORMATION AND CO-OPERATION**

We may require you to show us your records, files and other documents whether created before or after the Policy Date that relate to your claim of loss. We may make copies of these documents. We may also require you to answer questions under oath. All information that you give us is confidential and will not be disclosed by us to persons other than our advisers unless it becomes necessary during any court proceedings or is required to be disclosed by Law.

#### **9. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM**

After we receive your claim or in any other way learn of a matter for which we are liable, we shall, if the claim is covered under the policy, do one or more of the following:

- (a) pay you the amount required by this policy;
- (b) cancel this policy by paying the Insurance Amount then in force together with Approved Costs incurred up to that time;
- (c) settle with other parties any claim against the title to the Property or the Insured Mortgage and pay any Approved Costs incurred in so doing;
- (d) buy the indebtedness secured by the Insured Mortgage for the amount of that indebtedness and take a transfer or assignment of the Insured Mortgage;
- (e) prosecute or defend a court case or other proceeding related to the claim including appealing decisions to the highest court and pay any Approved Costs incurred in so doing;
- (f) if your claim arises as a result of a rescission by a purchaser of an agreement for sale and purchase relating to the Property, sell the Property by whatever method and upon such terms as we decide but in doing so, we owe the same fiduciary duty as if we were selling the Property as mortgagee exercising a power of sale; in this connection you irrevocably appoint us to be your agent to do so and you agree to ratify and confirm any document signed or anything done from time to time by us as your agent; and
- (g) take other action that will protect you.

We may take appropriate action under the terms of this policy whether or not we are liable under it and, by doing so, we will not be taken to have conceded any liability or waived any provision of this policy. If we exercise our rights under clauses 9(e) and 9(f) we must do so diligently.

#### **10. TIMELY PAYMENT**

The following provisions are subject to our rights under clause 9:

- (a) If you make a claim under this policy for which we are liable and within 180 days we have not, as the circumstances require:
  - (i) established the validity and enforceability of the Insured Mortgage;
  - (ii) removed or cured the alleged defect, mortgage, charge or lien: or
  - (iii) removed or cured any other matter or thing giving rise to the claim,

we will pay you all arrears of principal and/or interest (as the case may be) secured and payable under the Insured Mortgage and continue to make those payments as and when due as if no default had occurred.

Our obligations under clause 10(a) are subject to the following conditions:

- (i) a default must have occurred and continue under the terms of the Insured Mortgage;
- (iii) any insurer that has issued a policy of mortgage insurance in respect of the Insured Mortgage must have fully or partially denied liability under its policy and, as a result, ceased making or reduced payments to you;
- (iv) we are not obliged to make any payment based on an accelerated payment provision in the Insured Mortgage;
- (v) we are not obliged to make interest payments at default or higher rates specified in the Insured Mortgage; and
- (vi) we are not obliged to make any other payments related to the default such as late payment fees, charges, penalties and your legal expenses.

## **11. HANDLING A CLAIM**

- (a) You must co-operate with us in handling any claim, court case or other proceeding and give us all relevant information. We are permitted to use your name for this purpose if required to enforce these rights. When litigation is involved, we have the right but not the obligation to pursue it until the litigation and any appeals has been finally determined by a court of competent jurisdiction. If requested by us you must, at our expense, give us all reasonable assistance to secure evidence, obtain witnesses, prosecute or defend the action or proceeding or effect a settlement and do any other lawful act which, in our opinion, is necessary or desirable.
- (b) We are required to pay you only Approved Costs. When we defend a claim made against the title to the Property, we have the right to choose the lawyer. We will not be liable for the fees of any other lawyer.

## **12. LIMITATION OF OUR LIABILITY**

### **12.1 Calculation of Payment**

Subject to clauses 12.2 and 12.3, we will pay you the lesser of:

- (a) your actual monetary loss; and
- (b) 125% of the Insurance Amount.

We are not liable for any indebtedness created after the Policy Date other than advances covered under Covered Risk 2(k) and advances to protect the security but our liability is always limited to 125% of the Insurance Amount subject to clause 12.2.

### **12.2 Reduction of Liability**

- (a) The Insurance Amount will be reduced by all payments under this policy except for Approved Costs and except for any portion of the payment attributable to interest

pursuant to clause 10. 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, including without limitation your failure to notify us promptly of a claim or your failure to supply reasonably requested information to support your proof of loss.

- (b) The Insurance Amount will be reduced by the repayment by any person of the any portion of the principal sum secured by the Insured Mortgage but may be increased up to the Insurance Amount by advances made by you which are secured by the Insured Mortgage pursuant to its terms at the Policy Date. This does not however limit the cover described in clauses 2 (j) and 2(k).
- (c) If we remove the claim against the title to the Property within a reasonable time after receiving written notice of it, we will have no further liability to you for it.
- (d) Our obligation to you will be reduced or terminated if you voluntarily assume liability in negotiating or settling any claim or litigation without our prior written consent or if you fail or refuse to comply with your obligations under this policy and your failure or refusal affects our ability to dispose of your claim, discharge our duty to defend or to take action against third parties or affects our ability to mitigate your loss.

### **12.3 Termination**

Our liability under this policy terminates upon the occurrence of any one of the following:

- (a) you receive from any person complete payment of the indebtedness secured by the Insured Mortgage;
- (b) we pay you 125% of the Insurance Amount then in effect together with Approved Cost;
- (c) pursuant to the terms of this policy, we purchase the debt secured by the Insured Mortgage for the amount owed under it together with any Approved Costs; or
- (d) the Insured Mortgage is redeemed.

## **13. TRANSFER OF YOUR RIGHTS**

### **13.1 Transfer of your Rights on a Claim**

When we settle a claim, we have all the rights you had against any person or property relating to the claim, Property or indebtedness secured by the Insured Mortgage. You must transfer to us these rights and any collateral securities and credit enhancements and give all necessary written notices of that transfer or assignment when we ask. You must not do anything to affect these rights, securities and enhancements. You must let us use your name if required to enforce these rights, securities and enhancements. 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 may recoup any amounts and costs that we have paid out either to you or any third party under this policy and pay to you the remainder.

### **13.2 Our Rights against Guarantors etc**

Our rights under this clause will not be negated by any transfer of the Insured Mortgage to a person who has acquired the Insured Mortgage as a result of payment under any indemnity or guarantee given for amounts due under the Insured Mortgage. We shall have the same rights against such transferee as we had against you.

## **14. GENERAL**

### **14.1 Our Liability is Limited to this Policy**

This policy, plus any endorsements, is the entire contract between you and us. Any claim you make against us must be made under this policy and is subject to its terms.

#### **14.2 Invalid Provisions**

In the event that any provision of this policy is held to be invalid or unenforceable under any Law, that provision may be removed without affecting the remaining provisions.

#### **14.3 Non-Waiver**

We will not have waived any provision of this policy or any of our rights under it if we fail to enforce a provision or right or we grant you time or indulgence.

#### **14.4 Variations and Endorsements**

A variation or endorsement to this policy will be of no effect unless made in writing and signed by us.

#### **14.5 Disputes**

Any dispute concerning the interpretation of this policy will be dealt with in the courts of Hong Kong and in accordance with the Law.

#### **14.6 Interpretation**

References to clauses and Schedule A are to those sections of this policy.

#### **14.7 Notices**

Notices under this policy are to be given to us by hand or registered post at our registered office in Hong Kong for the time being.

## SCHEDULE A

**Policy No:**

**Insurance Amount:**

**Date of Commitment:**

**Premium:**

1. **The insured lender is:**
2. **The owner of the estate or interest in the Property is:**
3. **The Insured Mortgage is:**

The First Legal/Equitable\* Charge dated [ ] entered into in favour of the insured lender by **the Mortgagor(s)**[ ] **\*and Borrower(s)** [ ]

4. **The Property is:**

[ ]

The Property is subject to and with the benefit of the deed of mutual covenant registered in the Public Records by Memorial No.[ ]

5. **The Permitted Use of the Property as stated in the Occupation Permit is:**
6. **The Additional Exclusions are:**

\*delete as appropriate

### **First American Title Insurance Company**

Alison Cooke  
Chief Executive  
Hong Kong