



# 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 the Insurance Amount, sustained or incurred by you as a result of any of the Covered Risks if they exist or occur on or before the Policy Date and where there are Covered Risks and the circumstances require defend the title to the Property and pay the Approved Costs we incur in that defence.

## 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) an order by the Building Authority forcing you to remove or remedy all or any alterations to the Property because those alterations were made without the approval of 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 4 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 because that use contravenes (a) an occupation permit or (b) any user covenant in any lease, grant or deed;
  - (v) the lack of a legal right of access to and from the Property; and
  - (vi) a document not being properly signed or executed.
- (c) There is a defect in the title to the property as a result of forgery, fraud, undue influence, duress, incompetency or incapacity.
- (d) 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.
- (e) 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.
- (f) 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.

- (g) There are due and unpaid management fees pursuant any deed of mutual covenant or similar instrument relating to the Property, government rents or government rates as of 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) and 2(b)(iv).

#### **3.2 Insolvency**

Any claim that the assignment of the Property to you 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) cause you no loss; or
- (d) occur or come into existence after the Policy Date.

#### **3.4 Additional Exclusions**

Any additional exclusions listed in paragraph 5 of Schedule A.

### **4. DEFINITIONS**

In this policy, unless the context otherwise requires:

**“Approved Costs”** means any costs, legal fees and expenses that we have approved.

**“Covered Risks”** 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 increased in accordance with clause 13.
<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 3 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 Policy Date and to which you would be entitled.
<b>“we/our/us”</b>	means First American Title Insurance Company, a company registered in Hong Kong under Part XI of the Companies Ordinance.
<b>“you/your”</b>	means the insured person named in paragraph 1 of Schedule A and those persons identified in clause 5.2 reserving however all rights and defences as to a subsequent owner that we would have against any previous insured.

## **5. CONTINUATION OF INSURANCE**

### **5.1 Ownership of Interest**

This policy protects you as long as you:

- (a) own the title to the Property;
- (b) retain an estate or interest in the Property;
- (c) take back a mortgage from any one who buys the Property from you;
- (d) are liable for any covenants concerning title given by you for the benefit of a purchaser and/or subsequent purchasers of the Property.

## **5.2 Transfer or Succession**

This policy also protects:

- (a) where you are an individual, your spouse who receives the title to the Property for nominal consideration;
- (b) the trustee or successor trustee of a trust, in which you are the donor, to whom you transfer the title to the Property;
- (c) where you are an individual, the beneficiaries to whom the trustee or successor trustee of a trust in which you are the settlor, transfers the title to the Property on your death pursuant to the terms of the trust deed;
- (d) where you are an individual, anyone who receives the title to the Property because of your death;
- (e) a corporation, partnership or limited liability company in which you are the majority shareholder to which you have transferred the Property for no or nominal consideration only and not part of a purchase and sale transaction; and
- (f) where you are an incorporation, the assignee of an assignment which is exempted from payment of stamp duty pursuant to s.45 of the Stamp Duty Ordinance.

## **5.3 Sale or Assignment**

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

## **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 title to the Property;
- (b) any claim which is or may be adverse to 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 and pay any Approved Costs incurred in so doing;
- (d) 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;
- (e) 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 attorney (with power of substitution) to do so and you agree to ratify and confirm any document signed or anything done from time to time by us as your attorney; and
- (f) 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(d) and 9(e) we must do so diligently.

**10. 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.

## **11. LIMITATION OF OUR LIABILITY**

### **11.1 Calculation of Payment**

Subject to clause 11.2 and 11.3, we will pay you the lesser of:

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

### **11.2 Calculation of Payment for Covered Risk 2(b)(i)**

Notwithstanding clause 11.1, in respect of claims under Covered Risk 2(b)(i) we will pay you your actual loss in excess of a deductible amount equal to the lesser of 1% of the Insurance Amount or HK\$100,000, subject always to a maximum liability of HK\$500,000.

### **11.3 Reduction of Liability**

- (a) The Insurance Amount will be reduced by all payments under this policy except for Approved Costs. 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) 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.
- (c) 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.
- (d) The Insurance Amount will also be reduced by any amount we pay to the insured holder of any mortgage shown in Schedule A or a later mortgage given by you.

## **12. TRANSFER OF YOUR RIGHTS**

When we settle a claim, we have all the rights you had against any person or property relating to the claim or the Property. You must transfer to us these rights and give all necessary written notices of that transfer or assignment when we ask. You must not do anything to affect these rights. You must let us use your name if required to enforce 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 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. INFLATION COVERAGE**

Where the Insurance Amount is less than or equal to HK\$20,000,000, the Insurance Amount will increase based on an increase in the open market value of the Property after the Policy Date up to a maximum of 200%.

## **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 is:**

**2. The owner of the estate or interest in the Property is:**

**3. 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 [            ].

**4. The permitted use of the Property as stated in the Occupation Permit is:**

**5. The Additional Exclusions are:**

**6. The Mortgage is:**

**First American Title Insurance Company**

Alison Cooke  
Chief Executive  
Hong Kong