



**Eagle 9® UCC Cooperative Interest Insurance Policy for Buyers**

ISSUED BY

**First American Title Insurance Company**

POLICY NUMBER

**XXXXXXXX-XXXXXXX**

**Owner's Policy**

**COVERAGE**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS TO COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS AND STIPULATIONS, **FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK**, a New York corporation (the "Company"), insures, as of Date of Policy, against actual loss or damage, not exceeding the Maximum Amount of Insurance, insures, sustained or incurred by the Insured by reason of:

1. Any person other than the Insured having Rights in the Cooperative Interest;
2. The existence of any Security Interest of any Secured Party Perfected in any portion of the Cooperative Interest;
3. The existence of any Lien of any Lien Creditor in any portion of the Cooperative Interest;
4. The existence of any perfected federal or state tax lien(s) in any portion of the Cooperative Interest; and
5. Any claim covered by insuring clauses 1 through 4 that arises out of any adversary proceeding under Federal Rule of Bankruptcy Procedure 7001(2) filed by or against a Secured Party under the Bankruptcy Code to determine the Unencumbered Status of the Cooperative Interest or that the Insured did not have Rights in the Cooperative Interest.

The Company will also pay the costs, legal fees and expenses incurred in defense of the Insured, but only to the extent provided in the Conditions and Stipulations.

In Witness Whereof, First American Title Insurance Company of New York has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

**First American Title Insurance Company**



Dennis J. Gilmore  
President

Timothy Kemp  
Secretary

(This Policy is valid only when Schedules A and B are attached)

## EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, legal fees or expenses that arise by reason of:

1. The Cooperative Organization not being a corporation duly organized under the laws of the State of New York.
2. The failure of the Insured or any lender to the Insured, which has been granted a Security Interest in the Insured's Cooperative Interest, to have at Date of Closing Possession in the State of New York of the certificate(s) evidencing the common stock of the Cooperative Organization comprising a portion of the Cooperative Interest, registered either in the name of the Insured or in the name of the Seller endorsed in the name of the Insured.
3. Any claim arising: (a) as a result of the operation of bankruptcy, receivership, assignment for the benefit of creditors, insolvency or similar creditors' rights Laws or proceedings, and any Laws that operate only in the event of such proceedings, including any claim that is based upon fraudulent transfer or fraudulent conveyance, the application of the doctrine of equitable subordination, or preferential transfer; or (b) out of any case filed by or against any Seller under the Bankruptcy Code; *subparagraph (b) of this exclusion does not limit the coverage provided by insuring clause 5.*
4. An Adverse Interest:
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, but Known to the Insured Claimant or of which the Insured Claimant has Notice;
  - (c) resulting in no loss or damage to the Insured Claimant; or
  - (d) attaching or created subsequent to Date of Policy.

## CONDITIONS AND STIPULATIONS

### A. Definition of Terms.

1. Any capitalized term or phrase used in this policy, not defined in this policy, and defined or used in the Uniform Commercial Code, shall have the meaning given to it in the Uniform Commercial Code by definition or applicable usage. If a term is defined or used in Article 9 of the Uniform Commercial Code and is defined or used in a different manner in another article of the Uniform Commercial Code, the definition or usage in Article 9 shall control.
2. The following terms when used in this policy mean:
  - (a) **"Adverse Interest"**: Any matter, including but not limited to, a Security Interest, Lien of a Lien Creditor, or state or federal tax lien, that impairs the Unencumbered Status of the Cooperative Interest and is not listed on Schedule B.
  - (b) **"Amount of Insurance"**: as defined in Section F2 of these Conditions and Stipulations.
  - (c) **"Article 9"**: Article 9 of the Uniform Commercial Code.
  - (d) **"Bankruptcy Code"**: Title 11 of the United States Code, as amended.
  - (e) **"Cooperative Interest"**: the Cooperative Interest of the Insured in the Cooperative Organization identified in Schedule A.
  - (f) **"Cooperative Organization"**: the Cooperative Organization identified in Schedule A.
  - (g) **"Date of Policy"**: the date specified in Schedule A.
  - (h) **"File", "Filing", or "Filed"**: file, record, and/or register in the Public Records of the Filing Office.
  - (i) **"Filing Office"**: the Office of the County Clerk or Office of the Register, City of New York, as applicable, shown in Schedule B.
  - (j) **"Insured"**: the party or parties named in paragraph 1 of Schedule A.
  - (k) **"Insured Claimant"**: an Insured claiming loss or damage.
  - (l) **"Jurisdiction"**: the State of New York.
  - (m) **"Law" or "Laws"**: law(s), by-law(s), ordinance(s), order(s), code(s), rule(s), or governmental regulation(s) of executive or legislative branches of government.
  - (n) **"Maximum Amount of Insurance"**: the Maximum Amount of Insurance specified in Schedule A.
  - (o) **"Public Records"**: those records maintained by the Filing Office.
  - (p) **"Schedule A"**: Schedule A attached hereto, and any supplemental or additional schedules (identified as Schedule A-1, Schedule A-2, and so on) when there are multiple Sellers and/or Insured Parties.
  - (q) **"Seller" or "Sellers"**: the transferor or transferors identified on Schedule A attached hereto, and any supplemental or additional schedules (identified as Schedule A-1, Schedule A-2, and so on) when there are multiple transferors.
  - (r) **"Unencumbered Status of the Cooperative Interest"**: the status of the Cooperative Interest as being free and clear of any Adverse Interest.
  - (s) **"Uniform Commercial Code"**: the Uniform Commercial Code as in effect in the State of New York as of the Date of Policy.

## CONDITIONS AND STIPULATIONS (Continued)

### B. Notice of Claim to be Given by Insured Claimant.

The Insured Claimant shall promptly notify the Company in writing in the event of each of the following:

1. any litigation or other proceeding affecting the Cooperative Interest, as insured; and
2. the Insured Claimant shall acquire knowledge of any claim adverse to the Insured Cooperative Interest which might cause loss or damage for which the Company may be liable by virtue of this policy.

### C. Defense and Prosecution of Actions; Duty of Insured Claimant to Cooperate.

1. Upon written request by the Insured and subject to the options contained in Section E of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of the Insured in litigation or other proceeding in which any third party asserts an Adverse Interest. The Company shall have the right to select lawyer(s) of its choice to represent the Insured as to the litigation or other proceeding and shall not be liable for and will not pay the fees of any other lawyer(s).
2. The Company will not pay any fees, costs or expenses (a) incurred in the defense of those allegations or causes of action which allege matters not insured against by this policy, or (b) incurred by the Insured which were not authorized by the Company in writing.
3. 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 Unencumbered Status of the Cooperative Interest, to remove an Adverse Interest, or otherwise 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 the Company shall be liable under this policy. The taking of action by the Company shall not concede any liability by the Company or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
4. 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 or proceeding to final determination by a court of competent jurisdiction. The Company reserves the right, in its sole discretion and at its expense, to appeal from any adverse ruling, judgment, decree, order or similar determination.
5. 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 prosecute, or provide defense in, the action or proceeding, and all appeals related to the action or proceeding.

The Insured shall 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 assistance:

- (a) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and
- (b) in any other lawful act which, in the opinion of the Company, may be necessary or desirable to establish the Unencumbered Status of the Cooperative Interest, as insured.

### D. Proof of Loss or Damage.

1. In addition to and after the notices required under Section B 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.
2. The proof of loss or damage shall describe the Security Interest, defect, Lien, encumbrance or other matter insured against by this policy, which constitutes the basis of loss or damage and shall state the basis of calculating the amount of the loss or damage.
3. The Insured Claimant shall, in the discretion of the Company, be required to submit to examination under oath by any authorized representative of the Company.
4. The Insured Claimant shall produce for examination, inspection and copying, at such times and places as may be designated by any authorized representative of the Company, all documents, instruments, writings, policies of insurance, records, books, ledgers, checks, correspondence, electronic files, e-mails, disks, tapes, memoranda, and other evidence, whether bearing a date before or after Date of Policy, which, in the opinion of the Company, may pertain to the loss or damage.
5. 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 documents, instruments, writings, policies of insurance, records, books, ledgers, checks, correspondence, electronic files, e-mails, disks, tapes, memoranda, and other evidence in the custody or control of a third party, whether bearing a date before or after Date of Policy and which, in the opinion of the Company, may pertain to the loss or damage.
6. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to

## CONDITIONS AND STIPULATIONS (Continued)

others unless, in the opinion of the Company, it is appropriate in the administration of the claim.

### E. 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:

#### 1. To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

To pay or tender payment of the Amount of Insurance, together with any costs, legal fees and expenses incurred by the Insured Claimant, which were authorized by the Company up to the time of payment or tender of payment which the Company is obligated to pay. Upon the exercise by the Company of its option provided for in this paragraph, 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 or proceeding, and this policy shall be surrendered to the Company for cancellation.

#### 2. To Pay or Otherwise Settle with Parties Other Than the Insured Claimant or With the Insured Claimant.

(a) To pay or otherwise settle with other parties for or in the name of the Insured Claimant any claim insured against under this policy, together with any costs, legal 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

(b) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, legal 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 2(a) or (b), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation or proceeding.

### F. Determination and Extent of Liability; Amount of Liability.

1. 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 described in this policy.

2. "Amount of Insurance" means, and the liability of the Company under this policy shall not exceed, the lesser of:

(a) the Maximum Amount of Insurance specified in Schedule A; and

(b) the fair market value of the Cooperative Interest as of the date on which a notice of claim is provided by the Insured Claimant to the Company.

3. The Company will pay only those costs, legal fees and expenses incurred in accordance with Section C of these Conditions and Stipulations.

4. The liability of the Company under this policy shall be reduced as provided in Section H of these Conditions and Stipulations.

5. The Company will not pay a claim resulting in no loss or damage to the Insured Claimant.

6. If the Company is prejudiced by the failure of the Insured to perform any of its agreements or obligations under this policy, the Company's liabilities or obligations to the Insured under this policy shall be reduced or terminated to the extent the failure prejudices the Company.

### G. Limitation of Liability.

1. The Company shall have fully performed its obligations with respect to a matter and shall not be liable for any loss or damage caused by the matter if the Company:

(a) removes the Adverse Interest, or

(b) otherwise establishes the Unencumbered Status of the Cooperative Interest in a reasonably diligent manner by any method, including litigation or other proceeding and the completion of any appeals related to the litigation.

2. 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.

### H. Reduction of Insurance; Reduction or Termination of Liability.

All payments under this policy, except payments made for costs, legal fees, and expenses, which were authorized by the Company in writing, shall reduce the Amount of Insurance *pro tanto*.

### I. Liability Noncumulative.

It is expressly understood that the Maximum Amount of Insurance shall be reduced by any amount the Company pays under any EAGLE 9® UCC Cooperative Interest Insurance Policy insuring the Attachment, Perfection or Priority of a Security Interest listed on Schedule B, an Adverse Interest as to which the Insured has agreed, assumed, or taken subject to, or an Adverse Interest which is hereafter granted in the Cooperative Interest by an Insured, and the amount so paid shall be deemed a payment under this policy.

**CONDITIONS AND STIPULATIONS (Continued)**

**J. Payment of Loss.**

1. No payment shall be made without producing this policy for endorsement as to the payment made 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.
2. In the event of any litigation or proceeding, including litigation or proceedings instituted 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 related to the litigation or other proceeding, adverse to the Insured Cooperative Interest.
3. The loss or damage shall be payable within 30 days after the liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations.

**K. Subrogation Upon Payment or Settlement.**

1. 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.
2. The Company shall be subrogated and 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, in a form satisfactory 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, litigation or other proceeding involving these rights or remedies.
3. 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 the amount by which the value of the Cooperative Interest has been reduced by the actual loss or damage sustained or incurred by the Insured by reason of matters covered by the insuring clauses of this policy.
4. The Insured will not take any action that unreasonably impairs the Company's rights of subrogation.

**L. Liability Limited to This Policy; Applicable Law; Policy Entire Contract.**

1. This policy together with all endorsements, if any, attached to this policy by the Company is the entire policy and contract between the Insured and the Company. Without limiting the foregoing, all prior or contemporaneous oral agreements, understandings, representations and statements are merged into this policy and shall be of no further force or effect. In interpreting any provision of this policy, this policy shall be construed as a whole.
2. Any modification, amendment or alteration of the terms of this policy shall be effective only if made by a written endorsement attached to this policy and signed by any President, Vice President, Secretary, Assistant Secretary, validating officer or other authorized signatory of the Company.
3. Each endorsement attached to this policy at any time is made a part of this policy and is subject to all of the terms and provisions of this policy. Unless otherwise expressly set forth in the endorsement, it shall not (i) modify any of the terms and provisions of this policy or other endorsements, (ii) extend Date of Policy or the date of any endorsements, or (iii) increase the Maximum Amount of Insurance.
4. Any claim of loss or damage, whether or not based on negligence or any other theory in tort, resulting from an Adverse Interest or by any action or proceeding asserting such claim, shall be restricted to the provisions of this policy.
5. **THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS POLICY AND ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS POLICY, WHETHER SOUNDING IN CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE GOVERNED BY THE LAWS AND DECISIONS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.**

**M. Severability.**

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

**N. 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, 633 Third Avenue, New York, New York, 10017-6706, Telephone 800-437-1234.**

SPRING

*First American Title*



ISSUED THROUGH THE OFFICE OF:



FIRST AMERICAN  
TITLE INSURANCE  
COMPANY

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1 First American Way  
Santa Ana, CA 92707  
(800) 854-3643