



**First American Title Insurance Company  
National Commercial Services**

**1850 Mt. Diablo Blvd., Suite 300  
Walnut Creek, CA 94596**

August 8, 2006

Port of Oakland and State of California  
State Lands Commission  
c/o Oakland Base Reuse Authority  
Attn: John Monetta  
700 Murmansk Street #3  
Oakland, CA 94607

Order Number: NCS-224879-CC

Escrow Officer: Liz Treangen  
Phone: (925)927-2100

Buyer: Port of Oakland

Property: Parcels F, G and H, Oakland Army Base, Oakland, CA

Attached please find the following item(s):

A Policy of Title Insurance

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

*Customer First!*

# Policy of Title Insurance



ISSUED BY

**First American Title Insurance Company**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a CA 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.

*First American Title Insurance Company*

BY  PRESIDENT

ATTEST  SECRETARY



**SCHEDULE A**

Premium: \$Prepaid

Amount of Insurance: \$10,200,000.00

Policy Number: NCS-224879-CC

Date of Policy: August 7, 2006 at at 12:23 p.m.

1. Name of insured:

The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, as a trustee pursuant to the public trust for commerce, navigation, and fisheries and the terms and conditions of Chapter 657, Statutes of 1911 and Chapter 664, Statutes of 2005, both as amended, and the State of California, acting by and through the State Lands Commission, as their interests may appear.

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:

The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, as a trustee pursuant to the public trust for commerce, navigation, and fisheries and the terms and conditions of Chapter 657, Statutes of 1911 and Chapter 664, Statutes of 2005, both as amended, and the State of California, acting by and through the State Lands Commission, as to those interests reserved to it through Chapter 657, Statutes of 1911 and Chapter 664, Statutes of 2005, both as amended.

4. The land referred to in this policy is described as follows:

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

TRACT 1:

Parcel F

All of Parcels 3 and 4 as described in that certain Quitclaim Deed for Berth 21 Submerged/Upland Property recorded August 8, 2003 as Doc. No. 2003466373 in the Office of the Recorder of said County of Alameda (hereinafter referred to as Doc. 2003466373), being more particularly described as follows:

Parcel F-1

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990,

filed for record in Book 18 of Records of Surveys, at Pages 50-60, Official Records of the said County of Alameda;

Thence South 38°00'05" West, 989.35 feet to the eastern most corner of Parcel Seven as described in that certain Quitclaim Deed, recorded on June 15, 1999 as Doc. No. 99222447 of Official Records, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as Doc. 99222447), being a point on the line of ordinary low tide in the Bay of San Francisco as it existed on the 4th day of May in the year 1852 (hereinafter referred to as the Agreed Low Tide Line of 1852) as described and agreed upon in City of Oakland Ordinance No. 3099, a certified copy of which was recorded on October 10, 1910 in Book 1837 of Deeds, Page 84, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as 1837 Deeds 84), said point being marked by a pin set in concrete in a monument well, as shown on said Army Map;

Thence northeasterly along said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84) North 41°00'50" East, 3829.19 feet to a point hereinafter referred to as Point "A";

Thence departing from the said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84), North 48°48'07" West, 1380.09 feet to a point on the generally southerly line of Parcel 1, Tract 14 as described in said Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said The said County of Alameda (hereinafter referred to as Reel: 32, Image:660), said point being the POINT OF BEGINNING of Parcel 3 as described in said Quitclaim Deed (Doc. 2003466373);

Thence westerly along said generally southerly line of said Parcel 1, Tract 14 (Reel: 32, Image:660) the following seven courses:

1) South 86°48'30" West, 38.65 feet;

2) South 59°33'40" West, 589.58 feet;

3) North 75°26'49" West, 983.14 feet;

4) South 49°35'36" West, 978.73 feet;

5) North 40°23'33" West, 539.98 feet to Pierhead Point No. 44, as said pierhead point is shown on Sheet No. 5 of that certain map in 8 sheets entitled "Harbor Lines, San Francisco Bay, California, Oakland-Alameda", prepared by U.S. Engineer Office, San Francisco, California, dated September 19, 1940, and approved March 31, 1941, by the Secretary of War;

6) from said Pierhead Point No. 44 and running along the pierhead line as shown on the above mentioned maps, South 31°07'59" West, 1610.00 feet to Pierhead Point No. 43;

7) South 82°10'52" West, 510.13 feet to a point on said generally southerly line, from which the southwest corner of said Parcel 1, Tract 14 (Reel: 32, Image:660) bears South 82°10'52" West 3279.06 feet, said point being the southeastern corner of that portion of Parcel 1 of Tract 14 that is alleged to have been transferred to the General Services Agency by the Army in an unrecorded form entitled "Real Property Acquisition Advice" dated March 28, 1983 and which alleges to describe the "underwater portion of Tract A-114 comprising the westward 138 acres+/-" (hereinafter referred to as the GSA Parcel);

Thence departing from said generally southerly line of said Parcel 1, Tract 14 (Reel: 32, Image:660), along a line that is parallel with the western line of said Parcel 1, Tract 14 (Reel: 32, Image:660), being the eastern line of the GSA Parcel, North 01°07'59" East, 1113.29 feet;

Thence departing from said parallel line at right angles, South 88°52'01" East, 611.72 feet to an angle point in the existing face of wharf located at the portion of the Oakland Army Base formerly known as Pier 7;

Thence easterly and northeasterly along said face of wharf of Piers 7 and 8, the following six courses:

- 1) South 48°42'09" East, 259.68 feet to an angle point in said face of wharf;
- 2) North 41°20'07" East, 1332.88 feet to an angle point in said face of wharf;
- 3) North 48°06'56" East, 79.89 feet to an angle point in said face of wharf;
- 4) North 61°28'19" East, 85.21 feet to an angle point in said face of wharf;
- 5) North 74°45'15" East, 80.05 feet to an angle point in said face of wharf;
- 6) North 81°35'04" East, 751.30 feet to an angle point in said face of wharf;

Thence departing from said face of wharf, North 62°12'05" East, 257.07 feet;

Thence North 81°26'43" East, 354.67 feet to a point on a line that bears North 48°48'07" West from the hereinabove described Point "A";

Thence along said line South 48°48'07" East, 916.41 feet to the POINT OF BEGINNING, containing 2,409,018 square feet (55.303 acres), more or less, measured in ground distances, of which 237,479 square feet (5.451 acres), more or less, is comprised of wharf structures and uplands, and 2,171,539 square feet (49.852 acres), more or less, is comprised of submerged lands

APN: 000-0335-002 (portion), 000-0330-002-02 (portion)

Parcel F-2

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Official Records of the said County of Alameda;

Thence South 38°00'05" West, 989.35 feet to the eastern most corner of Parcel Seven as described in that certain Quitclaim Deed, recorded on June 15, 1999 as Doc. No. 99222447 of Official Records, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as Doc. 99222447), being a point on the line of ordinary low tide in the Bay of San Francisco as it existed on the 4th day of May in the year 1852 (hereinafter referred to as the Agreed Low Tide Line of 1852) as described and agreed upon in City of Oakland Ordinance No. 3099, a certified copy of which was recorded on October 10, 1910 in Book 1837 of Deeds, Page 84, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as 1837 Deeds 84), said point being marked by a pin set in concrete in a monument well, as shown on said Army Map and being the POINT OF BEGINNING of Parcel 4 as described in said Quitclaim Deed (Doc. 2003466373);

Thence departing from said agreed upon location of the "Agreed Low Tide Line of 1852" (1837

Deeds 84), along the northeast, north and generally northwestern lines of said Parcel Seven (Doc. 99222447), the following eight courses:

1) North  $51^{\circ}26'28''$  West, 40.85 feet to the beginning of a non-tangent curve concave southeasterly, having a radius of 137.91 feet and a central angle of  $36^{\circ}35'48''$ , from which the radius point bears South  $12^{\circ}23'22''$  East;

2) along said curve to the left, an arc distance of 88.09 feet;

3) South  $41^{\circ}00'50''$  West, 320.04 feet;

4) South  $48^{\circ}54'49''$  East, 5.00 feet;

5) South  $41^{\circ}00'50''$  West, 423.59 feet;

6) North  $81^{\circ}57'10''$  West, 8.34 feet;

7) South  $41^{\circ}00'50''$  West, 10.00 feet;

8) South  $48^{\circ}59'10''$  East, 12.14 feet to a point on the northern line of Seventh Street as described in City of Oakland Ordinance No. 481 N.S., finally passed by the Council of the City of Oakland on June 17, 1913;

Thence westerly along said northern line of Seventh Street, North  $81^{\circ}57'10''$  West, 54.98 feet to the southwest corner of Parcel 2, Tract 14 as described in Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said The said County of Alameda (hereinafter referred to as Reel: 32, Image:660);

Thence departing from the said northern line of Seventh Street, along the northwest line of said Parcel 2, Tract 14 (Reel: 32, Image:660) also being the northwest line of Maritime Street, North  $41^{\circ}00'50''$  East, 4524.40 feet to the southerly most corner of Parcel 1, Tract 14 (Reel: 32, Image:660);

Thence departing from the said northwest line of said Parcel 2, Tract 14 (Reel: 32, Image:660), along the generally southerly line of said Parcel 1, Tract 14 (Reel: 32, Image:660) the following two courses:

1) North  $81^{\circ}56'51''$  West, 519.29 feet;

2) North  $08^{\circ}03'07''$  East, 550.74 feet to a point on a line that bears North  $48^{\circ}48'07''$  West from the hereinabove described Point "A", said Point "A" bearing North  $41^{\circ}00'50''$  East, 3829.19 feet from the POINT OF BEGINNING;

Thence South  $48^{\circ}48'07''$  East, 839.34 feet to a point on said agreed upon location of the "Agreed Low Tide Line of 1852", said point being the hereinabove described Point "A";

Thence southwesterly along said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84) South  $41^{\circ}00'50''$  West, 1642.10 feet to the northern line of the "Parcel Encompassing Building 762" as described in that certain unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd R.S.C., dated September 3, 1997 (herein after referred to as the Building 762 Parcel);

Thence along the northern, western and southerly lines of said Building 762 Parcel the following three courses:

1) North  $82^{\circ}00'39''$  West, 6.24 feet;

2) South  $41^{\circ}02'39''$  West, 238.78 feet to an angle point marked by a rebar and cap stamped "LS 5671";

3) South  $81^{\circ}54'53''$  East, 6.38 feet to said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84);

Thence southerly along said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84), South  $41^{\circ}00'50''$  West, 1633.72 feet to a point on the eastern line of the roadway easement connecting Seventh Street with Maritime Street described in the document recorded on July 5, 1979 as Doc. No. 79130905 of Official Records, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as Doc. 79130905), being a point on the beginning of a curve concave easterly, having a radius of 297.98 feet and a central angle of  $55^{\circ}24'48''$ ;

Thence along said eastern line of said roadway easement (Doc. 79130905) the following three courses:

- 1) along said curve to the left, an arc distance of 288.19 feet;
- 2) South  $14^{\circ}23'58''$  East, 88.56 feet;
- 3) South  $00^{\circ}04'41''$  West, 13.30 feet to an angle point in the northern line of Parcel Six of said Quitclaim Deed (Doc. 99222447);

Thence along said northern line of said Parcel Six (Doc. 99222447), North  $51^{\circ}26'30''$  West, 210.65 feet to the POINT OF BEGINNING, containing 659,842 square feet (15.148 acres), more or less, measured in ground distances.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

APN: 000-0330-002-02 (portion) and 000-0315-002-06 (portion)

TRACT 2:

Parcel G

A portion of Parcel 1 as described in that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel, County of Alameda, California, recorded August 8, 2003 as Doc. No. 2003466370 in the Office of the Recorder of the said County of Alameda, being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Official Records of the said County of Alameda;

Thence South  $38^{\circ}00'05''$  West, 989.35 feet to the eastern most corner of Parcel Seven as described in that certain Quitclaim Deed, recorded on June 15, 1999 as Doc. No. 99222447 of Official Records, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as Doc. 99222447), being a point on the line of ordinary low tide in the Bay of San Francisco as it existed on the 4th day of May in the year 1852 (hereinafter referred to as the Agreed Low Tide Line of 1852) as described and agreed upon in City of Oakland Ordinance No. 3099, a certified copy of which was recorded on October 10, 1910 in Book 1837 of Deeds, Page 84, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as 1837 Deeds 84),

said point being marked by a pin set in concrete in a monument well, as shown on said Army Map;

Thence along the northern line of said Parcel Six (Doc. 99222447) South  $51^{\circ}26'30''$  East, 210.65 feet to the eastern line of the roadway easement connecting Seventh Street with Maritime Street described in the document recorded on July 5, 1979 as Doc. No. 79130905 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 79130905), being the POINT OF BEGINNING of Parcel 5 as herein described;

Thence northerly along said eastern line of said roadway easement (Doc. 79130905) the following three courses:

1) North  $00^{\circ}04'41''$  East, 13.30 feet;

2) North  $14^{\circ}23'58''$  West, 88.56 feet to the beginning of a curve, concave easterly and tangent to the preceding course, having a radius of 297.98 feet, and a central angle of  $55^{\circ}24'48''$ ;

3) along the arc of said curve to the right, for an arc distance of 288.19 feet to a point on the said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84);

Thence northerly along said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84) North  $41^{\circ}00'50''$  East, 1633.72 feet to the southern line of the "Parcel Encompassing Building 762" as described in that certain unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated September 3, 1997 (herein after referred to as the Building 762 Parcel);

Thence along the southern, eastern and northern lines of said Building 762 Parcel the following three courses:

1) South  $81^{\circ}54'53''$  East, 424.30 feet to an angle point marked by a rebar and cap stamped "LS 5671";

2) North  $07^{\circ}51'10''$  East, 200.86 feet to an angle point marked by a rebar and cap stamped "LS 5671";

3) North  $82^{\circ}00'39''$  West, 293.72 feet to a point on said agreed upon location of the "Agreed Low Tide Line of 1852";

Thence northerly along said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84) North  $41^{\circ}00'50''$  East, 1642.10 feet to a point hereinafter referred to as Point "A";

Thence departing from said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84) South  $48^{\circ}48'07''$  East, 534.07 feet;

Thence North  $45^{\circ}53'06''$  East, 550.21 feet to the beginning of a curve, concave southeasterly and tangent to the preceding course, having a radius of 1739.00 feet and a central angle of  $30^{\circ}14'40''$ ;

Thence along the arc of said curve to the right, for an arc distance of 917.96 feet;

Thence North  $76^{\circ}07'45''$  East, 555.85 feet to the beginning of a curve, concave northerly and tangent to the preceding course, having a radius of 599.96 feet and a central angle of  $3^{\circ}36'49''$ ;

Thence along the arc of said curve to the left, for an arc distance of 37.84 feet to the point of a cusp lying on the generally southwestern line of Parcel 56444 as described in that certain Quitclaim Deed (I-880 Connector Corridor) recorded on February 13, 2002 as Document No.



2002072863 of Official Records in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 2002072863), being the beginning of a non-tangent curve, concave westerly and whose center bears South 66°43'21" West, having a radius of 926.00 feet and a central angle of 17°33'44;

Thence along said curve to the right, for an arc distance of 283.84 feet;

Thence departing said generally southwestern line of Parcel 56444 (Doc. 2002072863), South 51°21'23" West, 313.04 feet;

Thence South 16°32'37" East, 23.54 feet;

Thence South 51°26'50" West, 148.59 feet to the beginning of a curve, concave southeasterly and tangent to the preceding course, having a radius of 2000.00 feet and a central angle of 14°59'03;

Thence along the arc of said curve to the left, for an arc distance of 523.05 feet;

Thence South 36°27'47" West, 905.70 feet to the beginning of a curve, concave northwesterly and tangent to the preceding course, having a radius of 573.00 feet and a central angle of 08°21'47";

Thence along the arc of said curve to the right, for an arc distance of 83.64 feet;

South 44°49'34" West, 669.58 feet;

South 48°15'09" West, 1451.92 feet;

South 41°53'34" West, 162.50 feet;

South 48°15'09" West, 317.35 feet;

South 50°22'40" West, 637.46 feet to the beginning of a curve, concave northerly and tangent to the preceding course, having a radius of 100.00 feet and a central angle of 47°40'40";

Thence along the arc of said curve to the right, for an arc distance of 83.21 feet to a point on the northern line of said Parcel Six described in said Quitclaim Deed (Doc. 99222447);

Thence, along the northern line of said Parcel Six (Doc. 99222447), the following five courses:

1) North 81°56'42" West, 500.09 feet;

2) North 56°26'26" West, 360.91 feet;

3) North 20°08'21" West, 15.45 feet;

4) North 14°24'00" West, 25.00 feet;

5) North 00°04'48" East, 10.68 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM that portion of the hereinabove described parcel of land commonly known and referred to as the "Building 780 Parcel" being more particularly described as follows:

A portion of that certain Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of the said County of Alameda

(hereinafter referred to as 4189 O.R. 197), being Parcel B as described in that unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated December 17, 1998 and being more particularly described as follows (hereinafter referred to as the Building 780 Parcel):

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Survey, at Pages 50-60, Official Records of the said County of Alameda;

Thence North 77°06'11" East 1106.11 feet to the western most corner of said Building 780 Parcel, said corner being marked by a bolt and washer stamped "LS 6379", being the POINT OF BEGINNING of Parcel 1A as herein described;

Thence along the northwest, northeast, southeast and generally southwestern lines of said Building 780 Parcel, the following eight courses:

- 1) North 08°06'06" East, 425.20 feet to the northern most corner of said parcel, said corner being marked by a concrete nail and shiner stamped "LS 6379";
- 2) South 81°58'14" East, 655.73 feet to the eastern most corner of said parcel;
- 3) South 08°01'46" West, 294.89 feet to the southeast corner of said parcel, said corner being marked by a pipe and plug stamped "LS 6379";
- 4) North 82°02'59" West, 117.67 feet to an angle point in said generally southwestern line, said angle point being marked by a pipe and plug stamped "LS 6379"; 5) North 07°49'06" East, 31.76 feet to an angle point in said generally southwestern line, said angle point being marked by a pipe and plug stamped "LS 6379"; 6) North 82°00'47" West, 261.81 feet to an angle point in said generally southwestern line;
- 7) South 07°59'16" West, 161.25 feet to an angle point in said generally southwestern line, said angle point being marked by a 2.5" brass disk and bolt stamped "LS 6379"; 8) North 82°03'57" West, 276.78 feet to the POINT OF BEGINNING.

The net area for hereinabove described contains 5,702,042 square feet (130.901 acres), more or less, measured in ground distances.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

APN: 000-0315-002-06 (portion) 000-0310-002-06 (portion)

TRACT 3:

Parcel H

All of Parcel 8 as described in that certain Quitclaim Deed for West Maritime Submerged Property recorded August 8, 2003 as Doc. No. 2003466374 in the Office of the Recorder of the said County of Alameda (hereinafter Referred to as Doc. 2003466374), being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Official Records of the said County of Alameda;

Thence South  $38^{\circ}00'05''$  West, 989.35 feet to the eastern most corner of Parcel Seven as described in that certain Quitclaim Deed, recorded on June 15, 1999 as Doc. No. 99222447 of Official Records, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as Doc. 99222447), being a point on the line of ordinary low tide in the Bay of San Francisco as it existed on the 4th day of May in the year 1852 (hereinafter referred to as the Agreed Low Tide Line of 1852) as described and agreed upon as described in City of Oakland Ordinance No. 3099, a certified copy of which was recorded on October 10, 1910 in Book 1837 of Deeds, Page 84, in the Office of the Recorder of the said County of Alameda (hereinafter referred to as 1837 Deeds 84), said point being marked by a pin set in concrete in a monument well, as shown on said Army Map;

Thence northeasterly along said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84) North  $41^{\circ}00'50''$  East, 3829.19 feet to a point hereinafter referred to as Point "A";

Thence departing from the said agreed upon location of the "Agreed Low Tide Line of 1852" (1837 Deeds 84), North  $48^{\circ}48'07''$  West, 2296.50;

Thence South  $81^{\circ}26'43''$  West, 354.67 feet to the POINT OF BEGINNING of Parcel 8 as described in said Quitclaim Deed (Doc. 2003466374);

Thence South  $62^{\circ}12'05''$  West, 257.07 feet to an angle point on the existing face of wharf located at the portion of the Oakland Army Base formerly known as Pier 8;

Thence North  $07^{\circ}08'26''$  West, 42.27 feet;

Thence North  $08^{\circ}24'05''$  West, 40.51 feet;

Thence North  $80^{\circ}58'50''$  East, 241.56 feet to the POINT OF BEGINNING, containing 9,977 square feet (0.229 acres), more or less, measured in ground distances.

APN: 000-0330-002-02 (portion)

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Records of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

## **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:

#### **THE FOLLOWING AFFECTS TRACT 1:**

1. Any easements or lesser rights for any and all utilities, sanitary sewers, storm drains or transportation facilities located within those portions of the land lying within Maritime Street.
2. The terms and provisions contained in the document entitled "Indenture and Conveyance" recorded February 17, 1942 as Instrument No. PP-7972, Book 4186, Page 156 of Official Records.
3. The terms and provisions contained in the document entitled "Deed" recorded July 23, 1943 as Instrument No. QQ-36186, Book 4404, Page 171 of Official Records.

Said mater affects a portion of said land.

4. An easement for public highway and incidental purposes in the document recorded July 23, 1943 as Instrument No QQ-36186, Book 4404, Page 171 of Official Records.

Affects: A portion of Parcel F-2

5. The terms and provisions contained in the document entitled "San Francisco Bay Conservation and Development Commission Permit No. 8-94" recorded April 3, 1995 as Instrument No. 95071017 of Official Records.

Document(s) declaring modifications thereof recorded November 16, 1995 as Instrument No. 95269022 of Official Records.

6. The fact that the land lies within the boundaries of the Oakland Army Base Redevelopment Project Area, as disclosed by the document recorded August 3, 2000 as Instrument No. 2000232151 of Official Records.

7. An easement for the construction of the San Francisco - Oakland Bay Bridge East Span Seismic Safety Project, including but not limited to governmental, non-commercial harbor and port uses and incidental purposes in the document recorded February 13, 2002 as Instrument No. 2002072862 of Official Records.

Said mater affects a portion of Parcel F-1.

Terms and provisions contained in the above document.

8. An easement for rights of access to perform acts of environmental investigation and remediation and incidental purposes, recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.
- In Favor of: United States of America, acting by and through the Secretary of the Army
- Affects: All of said land

Terms and provisions contained in the above document.

9. An unrecorded easement (DACA05-2-00-526) for underground fiber optics line and incidental purposes, dated August 8, 2003, as disclosed by the Quitclaim Deed recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.
- In Favor of: U.S. Army Reserves, 63rd Regional Support Command
- Affects: The location is not defined of record.

Terms and provisions contained in the above document.

10. An unrecorded easement (DA-04-167-Eng-2830) for water pipeline and incidental purposes, dated June 15, 1964, as disclosed by the Quitclaim Deed recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.
- In Favor of: East Bay Municipal Utility District
- Affects: A portion of Parcel F-2

Terms and provisions contained in the above document.

11. An unrecorded easement (DACA05-2-70-1) for communication facilities and incidental purposes, dated January 8, 1970, as disclosed by the Quitclaim Deed recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.
- In Favor of: The Pacific Telephone and Telegraph Company
- Affects: A Northern portion of Parcel F-2

Terms and provisions contained in the above document.

12. The terms and provisions contained in the document entitled "Covenant to Restrict Use of Property Environmental Restriction" recorded August 8, 2003 as Instrument No. 2003466371 of Official Records.
13. The terms and provisions contained in the document entitled "Oakland Army Base Title Settlement and Exchange Agreement" recorded August 7, 2006 as Instrument No. 2006-301845 of Official Records.

Among other matters, said document contains provisions that land herein are imposed with and subject to the "public trust" as set forth therein

The imposition of said "public trust" is made effective as to the lands herein on that certain Patent by the State of California to the City of Oakland, acting by and through its Board of Port Commissioners recorded August 7, 2006 as Instrument No. 2006-301849 of Official Records.

14. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/ACSM survey.

**THE FOLLOWING AFFECTS TRACT 2:**

15. Any easements or lesser rights for any and all utilities, sanitary sewers, storm drains or transportation facilities located within those portions of the land lying within Wake Avenue, 22nd Street, Maritime Street and 14th Street.

16. An easement for public street or highway purposes and incidental purposes in the document recorded June 12, 1924 as Instrument No. T-128165, Book 731, Page 216 of Official Records.

Said matter affects that portion of Parcel G within 14th Street.

17. The terms and provisions contained in the document entitled "Indenture" recorded April 23, 1941 as Instrument No. OO-22157, Book 4017, page 485 of Official Records.

Said matter affects a portion of Parcel G.

18. An unrecorded agreement dated June 28, 1938 and an unrecorded supplemental agreement dated May 6, 1940, upon the terms and conditions contained therein, as disclosed by the documents recorded April 23, 1941 and October 6, 1941 as Instrument No. OO-22157, Book 4017, Page 485 and Instrument No. OO-54854, Book 4121, Page 191

Said matter affects a portion of Parcel G.

19. Any easements or lesser rights in favor of Pacific Gas and Electric Company or others, to use, operate, maintain or reconstruct an existing line of electric poles and wires located on a portion of Parcel 5, as disclosed by the Indenture recorded April 23, 1941, Instrument No. OO-22157, Book 4017, Page 485 of Official Records.

20. The terms and provisions contained in the document entitled "Indenture" recorded October 6, 1941 as Instrument No. OO-54854, Book 4121, Page 191 of Official Records.

Said matter affects an eastern portion of Parcel G.

21. Any easements or lesser rights in favor of Pacific Gas and Electric Company or others, to use, operate, maintain or reconstruct an existing line of electric poles and wires located on an eastern portion of Parcel 5, as disclosed by the Indenture recorded October 6, 1941, Instrument No. OO-54854, Book 4121, Page 191 of Official Records.

22. The terms and provisions contained in the document entitled "Indenture and Conveyance" recorded February 17, 1942 as Instrument No. PP-7972, Book 4186, Page 156 of Official Records.

23. The terms and provisions contained in the document entitled "Deed" recorded October 30, 1979 as Instrument No. 79-218683 of Official Records.

An easement as contained in the above document.

For: public streets and highways and incidental purposes.

Said easement affects that portion of Parcel g lying within 14th Street

24. An easement for overhead electric power transmission pole line and incidental purposes in the document recorded February 16, 1996 as Instrument No. 96038774 of Official Records.

Said matter affects a southern portion of Parcel G

Terms and provisions contained in the above document.

25. An easement for overhead electric power transmission pole line and incidental purposes in the document recorded March 18, 1996 as Instrument no. 96066993 of Official Records.

Said matter affects a portion of Parcel G

Terms and provisions contained in the above document.

26. The fact that the land lies within the boundaries of the Oakland Army Base Redevelopment Project Area, as disclosed by the document recorded August 3, 2000 as Instrument No. 2000232151 of Official Records.
27. Any easements, relinquishments of abutter's rights or any other rights in favor of the State of California or the public in and to those portions of the land lying within or adjoining the relocated Cypress Freeway (Route 880) and Route 80 as shown on Record of Survey No. 1687, filed August 7, 2000 in Book 25 of Records of Surveys, Pages 58 through 69, inclusive, Alameda County Records.
28. Abutters rights of ingress and egress to or from the areas described in the Quitclaim Deed recorded February 13, 2002 as Instrument No. 2002072863 of Official Records have been relinquished in said Quitclaim Deed.
29. An easement for rights of access to perform acts of environmental investigation and remediation and incidental purposes, recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: United States of America, acting by and through the Secretary of the Army

Affects: All of said lands

Terms and provisions contained in the above document.

30. An unrecorded easement (DACA05-2-00-526) for underground fiber optics line and incidental purposes, dated March 20, 2000, as disclosed by the Quitclaim Deed recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: U.S. Army Reserves, 63rd Regional Support Command

Affects: The location is not defined of record

Terms and provisions contained in the above document.

31. The terms and provisions contained in the document entitled "Covenant to Restrict Use of Property Environmental Restriction" recorded August 8, 2003 as Instrument No. 2003466371 of Official Records.
32. The terms and provisions contained in the document entitled "Oakland Army Base Title Settlement and Exchange Agreement" recorded August 7, 2006 as Instrument No. 2006-301845 of Official Records.

Among other matters, said document contains provisions that land herein are imposed with and subject to the "public trust" as set forth therein

The imposition of said "public trust" is made effective as to the lands herein on that certain

Patent by the State of California to the City of Oakland, acting by and through its Board of Port Commissioners recorded August 7, 2006 as Instrument No. 2006-301849 of Official Records.

33. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/ACSM survey.

**THE FOLLOWING AFFECTS TRACT 3:**

34. The terms and provisions contained in the document entitled "Indenture and Conveyance" recorded February 17, 1942 as Series No. PP-7922, Book 4186, Page 156 of Official Records.

35. The terms and provisions contained in the document entitled "Deed" recorded July 23, 1943 as Series No. QQ-36186, Book 4404, Page 171 of Official Records.

36. The terms and provisions contained in the document entitled "San Francisco Bay Conservation and Development Commission Permit No. 8-94" recorded April 3, 1995 as Instrument No. 95071017 of Official Records.

Document(s) declaring modifications thereof recorded November 16, 1995 as Instrument No. 9526022 of Official Records.

37. The fact that the land lies within the boundaries of the Oakland Army Base Redevelopment Project Area, as disclosed by the document recorded August 3, 2000 as Instrument No. 2000232151 of Official Records.

38. An easement for rights of access to perform acts of environmental investigation and remediation and incidental purposes, recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: United States of America, acting by and through the Secretary of the Army

Affects: all of said lands

Terms and provisions contained in the above document.

39. An easement for underground fiber optics line and incidental purposes, recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: U.S. Army Reserves, 63rd Regional Support Command

Affects: The location is not defined of record

Terms and provisions contained in the above document.

40. The terms and provisions contained in the document entitled "Covenant to Restrict Use of Property Environmental Restriction" recorded August 8, 2003 as Instrument No. 2003466371 of Official Records.

41. The terms and provisions contained in the document entitled "Oakland Army Base Title Settlement and Exchange Agreement" recorded August 7, 2006 as Instrument No. 2006-301845 of Official Records.

Among other matters, said document contains provisions that land herein are imposed with and subject to the "public trust" as set forth therein

The imposition of said "public trust" is made effective as to the lands herein on that certain

*First American Title Insurance Company National Commercial Services*



Patent by the State of California to the City of Oakland, acting by and through its Board of Port Commissioners recorded August 7, 2006 as Instrument No. 2006-301849 of Official Records.

42. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/ACSM survey.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

### 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 the 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:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) 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:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

### 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 any 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), 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, 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 an 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, an 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 an 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 an 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 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 First American Title Insurance Company, 1 First American Way, Santa Ana, CA 92707, or to the office which issued this policy.