

# **Benefits of the New Leasehold Endorsements for Owner's and Loan Policies**

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## **Introduction**

On October 13, 2001, the American Land Title Association (“ALTA”) adopted the new ALTA 13 Leasehold Owner’s Endorsement and ALTA 13.1 Leasehold Loan Endorsement (hereinafter collectively referred to as “2001 Leasehold Endorsements”). With the adoption of these endorsements, the old Owner’s and Lender’s Leasehold Policies are withdrawn (although they may still be available to those who wish to use them until they get comfortable with the new endorsements). These new forms may be obtained by accessing the ALTA Web site (alta.org), and clicking on the link that says “New Forms Proposed by the ALTA Forms Committee.” The new endorsements were created to address, and hopefully alleviate, the concerns of various title-insurance customer groups, who believed that the coverage under existing forms of leasehold policies did not adequately address the current realities of leasehold ownership and financing. The new endorsements provide significantly expanded coverage, as well as much needed clarification of essential terms. (Copies of the 2001 Leasehold Owner’s Endorsement and 2001 Leasehold Loan Endorsement are attached hereto as **Exhibit “A”** and **Exhibit “B,”** respectively. All terms hereinafter capitalized are capitalized terms in the 2001 Leasehold Endorsements).

## **Background**

The ALTA adopted standard Owner’s and Lender’s Leasehold Policy forms in 1975 (hereinafter collectively referred to as “1975 Leasehold Policies”). The format of the 1975 Leasehold Policies is similar in most respects to the standard Owner’s and Loan policy forms. The insured under a Leasehold Policy is generally concerned about the same risks that exist in connection with basic owner’s and lender’s policies, including the following: the true nature of the landlord entity; the conditions, covenants and restrictions that might affect the operation and use of the leased property; outstanding encumbrances such as mortgages and deeds of trust (and assurance of rights granted by recorded non-disturbance agreements) that might affect the tenant’s right of possession; the existence of third-party rights such as options to purchase and rights of first refusal; expansion rights granted to other tenants; and the tenant’s right of uninterrupted possession of the property for the entire lease term (including renewals).

The 1975 Leasehold Policies define the insured “leasehold estate” as “the right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the Lease which might limit the right of possession.” This limits the title

company's obligation solely to the tenant's possessory rights in the property, and does not include other landlord obligations such as maintenance, repair, or the obligation to supply utilities to the premises.

For the purpose of determining a loss under the 1975 Leasehold Policies, the value of the leasehold estate "shall consist of the then present worth of the excess, if any, of the fair market rental value of the estate or interest, undiminished by any matters for which claim is made, for that part of the term stated in Schedule A then remaining plus any renewal or extended term for which a valid option to renew or extend is contained in the Lease, over the value of the rent and other consideration required to be paid under the Lease for the same period."

This method of valuation is customarily based on an appraisal as of the time of loss, based on the difference between the fair market value of the leased property and the value of the rent required to be paid for the remainder of the lease term. If the tenant has a favorable below-market lease rental it will recover the additional cost required to lease new space; otherwise, it will not recover under this method of determining value. The 1975 Leasehold Policies also provide additional coverage and damages for the following items of loss: the reasonable cost of removing and relocating personal property, including transportation for the initial 25 miles, and the reasonable cost of repairing any personal property damaged during such removal and relocation (note that most leasehold improvements would not be covered under this item of loss because "personal property" is defined as chattels that can be removed without appreciable damage to the property; the determination of whether a particular item is a fixture or personal property likely will be based on applicable state statutory and case law); any rent or damages that the owner of the leasehold estate may be obligated to pay, prior to eviction, to any party determined to have a paramount title to that of the lessor in the Lease; the amount of rent that the owner of the leasehold estate may be required to pay to the lessor after it has been evicted from the land; the fair market value of any sublease entered into by the owner of the leasehold estate existing at the date of eviction; and any damages that the owner of the leasehold estate is obligated to pay to any sublessee on account of breach of the sublease caused by eviction of the insured.

The problem with the 1975 Leasehold Policies, at least as perceived more than a quarter-century later by title-insurance customer groups, is that these policies were designed to provide basic protection primarily for a tenant leasing space in an office building where the cost of tenant improvements is insignificant and the tenant's business does not depend on being in a specific location. These customer groups argued that the coverage provided by the 1975 Leasehold Policies does not protect major tenants (such as large law firms) who may have hundreds of thousands (or even millions) of dollars invested in tenant improvements and who are forced to vacate the leased premises because of failure of the lessor's title or the foreclosure of a prior lien. They further argued that the 1975 Leasehold Owner's Policy does not protect the purchaser of a business or one or more retail facilities (such as a chain of fast-food restaurants), who considers the unique location of such property or properties and the goodwill generated

thereby as important items of valuation when deciding to purchase the leasehold interest(s).

Another perceived shortcoming with the 1975 Leasehold Policies was the failure to address the needs of purchasers of ground leasehold estates, where the tenant anticipates constructing and financing significant leasehold improvements. Since the determination of loss under these policies does not take into account the value of these improvements, ground lessees and their lenders instead would often ask for the standard ALTA Owner's and Loan Policies, which would insure the tenant's (or lender's) leasehold interest in the property and a fee interest or estate for years in the leasehold improvements constructed by the tenant. These policies also would contain an exception for the ground lessor's fee interest, and would include an endorsement providing that any loss under the policy would be calculated so as to include all loss of value to the insured of its interest as owner of the improvements located on the land. The reason for this endorsement was to obtain the benefit of the revised method of determination of loss stated therein, instead of the limited loss coverage provided by the 1975 Leasehold Policies. See Harvey L. Temkin, *Reformulating the ALTA Leasehold Title Insurance Policy*, The ACREL Papers: Fall 2000, at Tab 18; Harvey L. Temkin, *The Value in Protecting the Tenant's Interest: Leasehold Title Insurance*, 16 PROB. & PROP. 35 (2002).

### **Benefits Provided by the New Leasehold Endorsements**

The 2001 Leasehold Endorsements provide significantly improved and enhanced coverage for leasehold owners and lenders, and effectively deal with almost all the customer concerns described above. These endorsements are designed primarily for long-term commercial leases with significant tenant improvements, and will be attached either to an owner's (or lender's) policy that covers a leasehold estate alone or that covers a leasehold estate in the land and the ownership interests in the improvements to be constructed or paid for by the insured tenant. The existing Leasehold Conversion Endorsement will be retained for residential leasehold transactions.

The definition of "Lease Term," as set forth in Section 1.g. of the 2001 Leasehold Endorsements, has been modified for clarity; it refers to "the duration of the Leasehold estate, including any renewal or extended term, if a valid option to renew or extend is contained in the Lease." (Note: this definition would not cover lease extensions or rights granted after the effective date of the title policy, in the absence of the issuance of a new endorsement covering such rights). Also, the definition of "Leasehold Estate," as set forth in Section 1.c. of the 2001 Leasehold Endorsements, is limited to "the right of possession for the Lease Term," and has deleted the (often contentious) language in the 1975 Leasehold Policy Forms that made the coverage subject to lease provisions that limited the tenant's right of possession. The ALTA Forms Committee also decided not to raise a specific Schedule B exception for duties and obligations of the tenant under the lease. The ALTA Forms Committee reasoned that no specific Schedule B exception was necessary because of Exclusion 3(a) of the ALTA Owner's and Loan Policies, which excludes from coverage those matters "created, suffered, assumed or agreed to by the

insured claimant.” Unchanged in the Leasehold Endorsements is that the value of the leasehold estate will be determined by the excess of the fair rental value of the remainder of the lease at the time of eviction over the rent required to be paid under the lease (after discounting that amount at an appropriate discount rate).

Section 1.g. of the 2001 Leasehold Endorsements defines “Tenant Leasehold Improvements” as “improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured’s expense or in which the insured has an interest greater than the right to possession during the Lease Term.” This language is modified from that contained in the 1975 Leasehold Policies, to make it clear that the tenant’s interest in the improvements will only be covered if the tenant has paid for the improvements or has more than a possessory right therein; otherwise the tenant’s rights in the property would be adequately covered under the definition of “Leasehold Estate.” Because of the desire of tenants who construct substantial improvements to obtain the benefits of tax depreciation thereon, it is likely that the tenant will seek to be characterized as the owner of the improvements during the term of the lease. A leasehold-mortgage lender should make certain that this is so in order to obtain the full benefit of the extended coverage provided under the new leasehold lender’s endorsement. As noted above, the endorsement provides that the lender will be covered for the value of the improvements upon foreclosure only if it has a right greater than possession or has paid for the improvements. Therefore, the lender should make certain that the tenant’s ownership of the improvements is clearly documented, or, if the lender’s loan is financing non-owned improvements, it should clearly document the use of the loan funds for construction of the improvements.

Section 2 of the 2001 Leasehold Owner’s Endorsement now states that “subsection (b) of Section 7 of the Conditions and Stipulations shall not apply to any Leasehold Estate covered by this policy.” This is in reference to the “coinsurance” provision of the standard ALTA Owner’s Policy (coinsurance does not apply with respect to the standard ALTA Loan Policy), which reduces the amount of coverage available to the insured if an insufficient amount of insurance is obtained for the property (thus disincentivizing an insured from attempting to obtain inexpensive “defense cost” insurance). (Note: A small number of states have regulations that may require that title insurance for leasehold estates be purchased at some multiple of the aggregate annual rental. Where this is the case, the title underwriter should be consulted). Because it is often difficult to accurately value a leasehold estate alone (as opposed to the leasehold estate with improvements) and most leasehold purchasers do not wish initially to incur the expense of an appraisal, the ALTA Forms Committee decided not to impose the coinsurance requirement. However, this exemption from the coinsurance requirement applies only to the valuation of the Leasehold Estate, and does not apply to the valuation of Tenant Leasehold Improvements, which present fewer valuation problems (because a construction budget usually has been prepared showing the cost of constructing the improvements) and is closer to the type of situation that the coinsurance provision was meant to cover.

The purchaser of a leasehold estate should be careful to estimate as closely as possible the amount of coverage for both the leasehold and tenant-improvement components, because the loss coverage in any event will be limited to the amount of insurance stated in Schedule A of the policy. The 2001 Leasehold Endorsements have substantially revised the definition of “Valuation of Estate or Interest Insured.” Section 3 of the 2001 Leasehold Owners’ Endorsement (Section 2 in the 2001 Leasehold Loan Endorsement) states that the value of the insured’s estates or interests “shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Improvements valued as a whole or separately.” This new provision allows for a negotiated basis for valuation of both the Leasehold Estate and the Tenant Leasehold Improvements if they are to be valued separately. If a subsequent loss occurs, the “value” of the leasehold interest for the Remaining Lease Term may be determined by appraisal, which could consist, at the option of the insured, either of a calculation of the value of both the Leasehold Estate and the Tenant Leasehold Improvements, or a separate calculation of the value of each of these components. The insured will be able to offer as proof of loss whatever damages it claims it has incurred by virtue of its loss of possession, and will not be limited by the language in the 1975 Leasehold Policies that restricted coverage to the difference between the fair market rental value of the leased premises for the remainder of the lease term and the value of the rent required to be paid under the lease for the same period. With respect to leasehold improvements, the Leasehold Endorsements do not provide a specific method of valuation. The value could be based on such methods as useful life (straight-line depreciation), replacement cost, or a more subjective appraisal technique.

This new method of valuation of leasehold interests constitutes a substantial expansion of coverage available to the insured and may obviate the need for a “pending improvements” endorsement which, similar to a “pending disbursements” endorsement issued in connection with a construction loan policy, automatically increases the amount of coverage under the policy in incremental amounts on a periodic basis as improvements are completed. The insured would be well advised to consult with the title insurer, at the time of ordering the title commitment for a leasehold estate, regarding the amount of coverage and the anticipated items of damage in the event of a loss, as the new leasehold endorsements do not provide a specific method for valuing leasehold improvements.

With respect to Tenant Leasehold Improvements that are not completed at the time of the loss, the 2001 Leasehold Endorsements will pay the actual costs incurred for such improvements by the insured up to that date (less the salvage value). This coverage, which is provided under Section 4.g. of the 2001 Leasehold Owner’s Endorsement (Section 3.g. in the 2001 Leasehold Loan Endorsement), includes both “hard” and “soft” costs such as “costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs and fees, costs and interest on loans for the acquisition and construction.” This is another significant expansion of coverage for insured leasehold owners and lenders.

The 2001 Leasehold Endorsements have added, as Section 1.a., a provision that specifically defines the terms “Evicted” and “Eviction.” These terms are defined to mean “the lawful deprivation” of the tenant’s right of possession contrary to the terms of the lease, or the lawful prevention of the tenant’s use of the land or Tenant Leasehold Improvements for the purposes set forth in the Lease. Thus, if the insured has specified the use of the leased premises and this use, however broad (or narrow), is specified in the Lease, the title insurer will be obligated (subject to other terms and conditions of the policy) to insure the tenant against any deprivation of this use. This is yet another important benefit to the insured provided by the 2001 Leasehold Endorsements. Also, this language recognizes that a tenant will incur a loss if it cannot possess the land to the fullest extent permitted by the lease. For example, if the lease provides for a certain number of parking spaces and failure of the lessor’s title reduces those spaces, then the title insurer may be liable – regardless of whether the tenant has the right under the applicable law of constructive eviction to withhold rent. However, “loss of business” income by reason of eviction is not covered under the Leasehold Endorsements, as such damages are too speculative and are not related to title to the real estate or matters of record (and may be prohibited from coverage in any event by applicable state statutes and regulations governing title insurers).

The additional items of damages covered by the 1975 Leasehold Policies, as described earlier in this paper (i.e., removing and relocating Personal Property, damage to such property, and transportation expenses; damages payable to a party having paramount title to that of the lessor under the lease; the amount of rent the insured tenant remains obligated to pay to the landlord after eviction from the Leasehold Estate; and damages incurred by the insured in connection with any sublease) remain basically the same. However, relocation loss has been expanded to include the reasonable cost of repair to covered personal property damaged by removal and relocation. (The determination of whether or not a particular item is a real estate “fixture” or personal property is determined by state law.) Also, the coverage for transportation of the insured’s Personal Property incurred in connection with relocation has been extended from 25 miles to 100 miles. Section 4.f. of the 2001 Leasehold Owner’s Endorsement (Section 3.f. of the 2001 Leasehold Loan Endorsement) adds an important new item of recoverable loss: “Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.” These costs presumably would include items such as brokerage commissions, travel expenses, costs to obtain land-use, zoning, building and occupancy permits, architectural and engineering fees, attorney’s fees, and other consultant fees incurred in finding replacement property and negotiating a new lease. Furthermore, as under the former policies the reasonable cost of removing and relocating any personal property chattels on the land is covered, but (as noted above) the maximum distance has been increased to 100 miles.

As mentioned above, a party insured under the 2001 Leasehold Endorsements is entitled to recover (under Section 4.b. of the Leasehold Owner’s Endorsement and Section 3.b. of the Leasehold Loan Endorsement) the amount of rent or damages that the tenant is obligated to pay, before eviction, to any person having “paramount title to that of the lessor under the lease.” A claim could occur under this provision if, e.g., the title

policy showed an incorrect party as the landlord and the tenant had been making rent payments to that party instead of the actual owner of the property. Another area in which such a claim might arise is in connection with synthetic leasing transactions. In the typical synthetic lease, the landlord makes no warranties with respect to the condition of title to the property. Therefore, if another person or entity in fact having paramount title to the property were successful in a legal action brought to evict the tenant and hold it accountable for rent that should have been paid to the true titleholder for the period of the tenant's "wrongful" possession, the tenant would have no cause of action against the landlord but would have a claim against the title company for rental amounts that it would be ordered to pay (as well as for any damages it would have to pay because of the termination of any sublease entered into by the tenant).

Furthermore, under Section 4.c. of the Leasehold Owner's Endorsement and Section 3.c. of the Leasehold Loan Endorsement, the insured party is entitled to compensation for loss for the amount of rent that it remains obligated to pay under the lease for the portion of the premises from which it has been evicted. There are relatively few situations in which such a claim is likely to arise. However, the insured party may be able to establish a claim where, e.g., the tenant is unable to use the property because of an alleged zoning violation and the title policy contained a zoning endorsement that covered the tenant's intended use of the property. A claim also may arise in connection with a synthetic lease transaction. Rental payments in a synthetic lease are set at a level to provide an uninterrupted stream of income sufficient to service the loan financing for the transaction and a return on the landlord's equity investment. Therefore, the typical synthetic lease is structured as a "triple-net," "bondable," or "hell or high water" lease, i.e., the stipulated rent must continue to be paid by the tenant under virtually all circumstances. As noted above, the landlord in a synthetic lease customarily makes no representation or warranty with respect to the status of title to the property. If the tenant is subsequently evicted as the result of a defect in the landlord's title to the property, the landlord nonetheless may continue to seek to enforce the tenant's obligation to pay rent in order to service the debt on the property. If the tenant has obtained an owner's title policy containing the new 2001 ALTA Leasehold Owner's Endorsement, the loss payable will be the difference in the value of the leasehold estate with the defect and without the defect, plus rental payments that the tenant remains obligated to pay notwithstanding the title defect (up to the stated liability amount of the policy), plus additional coverage for the cost of locating and moving to replacement premises (as well as damages suffered by any subtenant of the tenant).

## **Conclusion**

The 2001 Leasehold Endorsements represent a significant improvement in both the scope and substance of title insurance coverage available to leasehold owners and lenders. The ALTA, and the title insurers who comprise this organization, have solicited and listened to the concerns of their customers, and have responded to their valuable input. The result is a new leasehold title-insurance product that specifically addresses the issues raised by various customer groups. Title insurers have recognized the perceived

shortcomings of the 1975 Leasehold Policies, and the need to update and revise existing coverages to meet the demands of an ever-changing commercial real estate environment. By working together to provide comprehensive and practical leasehold title-policy endorsements, all parties have benefited -- leasehold owners, leasehold lenders, and title insurers.

**EXHIBIT "A"**

**ENDORSEMENT**

**ATTACHED TO POLICY NO.**

**ISSUED BY**

*First American Title Insurance Company*

1. As used in this endorsement, the following terms shall mean:
  - a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.
  - b. "Lease": the lease agreement described in Schedule A.
  - c. "Leasehold Estate": the right of possession for the Lease Term.
  - d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
  - e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to themselves or to the land to which they are affixed.
  - f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.
  - g. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.
2. The provisions of subsection (b) of Section 7 of the Conditions and Stipulations shall not apply to any Leasehold Estate covered by this policy.

3. Valuation of Estate or Interest Insured

If, in computing loss or damage, it becomes necessary to value the estates or interests of the insured as the result of a covered matter that results in an Eviction, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

4. Additional Items of Loss Covered by this Endorsement

If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by this policy.

- a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.
- b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate is obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
- e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.

- f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.
- g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs and fees, costs and interest on loans for the acquisition and construction.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

***First American Title Insurance Company***

BY: \_\_\_\_\_  
AUTHORIZED SIGNATORY

ALTA Form 13 (Leasehold – Owner’s) – (10-13-01)  
ALTA Owner’s Policy

**EXHIBIT “B”**

**ENDORSEMENT**

**ATTACHED TO POLICY NO.**

**ISSUED BY**

*First American Title Insurance Company*

1. As used in this endorsement, the following terms shall mean:
  - a. “Evicted” or “Eviction”: (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.
  - b. “Lease”: the lease agreement described in Schedule A.
  - c. “Leasehold Estate”: the right of possession for the Lease Term.
  - d. “Lease Term”: the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
  - e. “Personal Property”: chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to themselves or to the land to which they are affixed.
  - f. “Remaining Lease Term”: the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.
  - g. “Tenant”: the tenant under the Lease and, after acquisition of all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of the Conditions and Stipulations of this policy, the insured claimant.
  - h. “Tenant Leasehold Improvements”: those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured’s expense or in which the insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured

If, in computing loss or damage, it becomes necessary to value the estates or interests insured by this policy as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement:

If the insured acquires all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of the Conditions and Stipulations of this policy and thereafter is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by this policy.

a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.

f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

This endorsement is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

*First American Title Insurance Company*

BY:

AUTHORIZED SIGNATORY

ALTA Form 13.1 (Leasehold – Loan) – (10-13-01)  
ALTA Loan Policy