



# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Policy No.:

## COOPERATIVE UNIT OWNER'S POLICY OF TITLE INSURANCE

Issued by

*Fidelity National Title Insurance Company*

**Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.**

**COVERED RISKS**  
[www.agenttrax.com](http://www.agenttrax.com)

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation (the "Company") insures, as of Date of Policy against Loss or Damage arising from the application of the laws of the State of New York in existence on the Date of Policy, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

### COVERED RISKS

1. The Cooperative Interest or the ownership of the Land being vested other than as stated in Schedule A.
2. Defects in or lien or encumbrances;
  - (a) affecting the Cooperative Interest caused by
    - (i) forgery, fraud, undue influence, duress incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer;
    - (iii) a document not properly created, executed, witnessed, sealed, acknowledged, notarized or delivered;
    - (iv) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (v) a defective judicial or administrative proceeding;
    - (vi) a Security Interest Filed or Recorded in the Public Records;
    - (vii) any claim by a Lien Creditor Filed or Recorded in the Public Records;
    - (viii) unpaid Cooperative Organization Security Interest due at Date of Policy;
    - (ix) failure of the Cooperative Interest by reason of a right of first refusal in favor of the Cooperative Organization to purchase the Cooperative Interest, which right was exercised or could have been exercised at Date of Policy;
    - (x) the Cooperative Interest not being a part of a Cooperative Organization validly created pursuant to the laws of the State of New York;
    - (xi) Unmarketable Title;
    - (xii) any Loss or claim described in Covered Risk 2(a), whether asserted in a bankruptcy action or otherwise.
  - (b) affecting the Land caused by
    - (i) any Lien, defect or encumbrance arising in conjunction with or subsequent to the vesting of ownership in the Cooperative Organization if notice of such lien, defect or encumbrance appears in or is Filed or Recorded in the Public Records;
    - (ii) mortgages Recorded in the Public Record arising in conjunction with or subsequent to the vesting of ownership in the Cooperative Organization;
    - (iii) real estate taxes, assessments, water and sewer charges and other charges which are due and payable liens against the Land at Date of Policy;



## 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 that arise by reason of:

1. (a) any Law, ordinance, permit or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use or enjoyment;
  - (ii) the character, dimensions or location of any improvement;
  - (iii) subdivision;
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 2(b)(v) or (vi).
2. Rights of eminent domain. This exclusion does not modify or limit the coverage provided under Covered Risk 2(b)(vii).
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 appearing in or Filed or 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 the Date of Policy;
  - (e) resulting in Loss or Damage that would not have been sustained if the Insured Claimant had paid value for the Cooperative Interest.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Cooperative Interest is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer.
5. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Land that would be disclosed by an accurate and complete land survey of the Land.
6. Any statutory lien for services, labor or materials not Filed or Recorded affecting the Cooperative Interest or the Land. This exclusion does not modify or limit the coverage provided under Covered Risk 2(a)(vii) or 2(b)(i).
7. Any increase in maintenance or similar charges due to the restoration of full real estate taxes, assessments and other charges by reason of any tax abatement rights held by the occupant or Seller of the Cooperative Interest or the termination of any tax abatement rights affecting the Land.
8. The terms and provisions of the offering plan, as amended, the Proprietary Lease or the house rules made pursuant to the authority of the Cooperative Organization.

## CONDITIONS

### 1. Definition of Terms

The following terms when used in this policy mean:

- (a) "Amount of Insurance": the amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b); or decreased by Sections 10 and 11 of these Conditions.
- (b) "Cooperative Interest": The ownership interest in a cooperative organization, which interest, when created, is coupled with possessory rights of a proprietary nature in identified physical space belonging to the cooperative organization.
- (c) "Cooperative Organization": an organization which has as its principal asset an interest in real property in this state (the Land as described on Schedule A-I hereof), and in which organization all ownership interests are cooperative interests.
- (d) "Cooperative Unit": the physical space associated with a Cooperative Interest.
- (e) "Cooperative Organization Security Interest": a security interest which is in a cooperative interest, is in favor of the cooperative organization, is created by the those records which, as a whole, evidence cooperative interests and define the mutual rights and obligations of the owners of the cooperative interests and the Cooperative organization, and secures only obligations incident to ownership of that cooperative interest.
- (f) "Date of Policy": the date specified on Schedule A.
- (g) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (h) "File" or "Record", "Filed" or Recorded": perfecting by entering or registering in the Public Records pursuant to the laws of the State of New York.
- (i) "Insured": the insured named in Schedule A.
- (i) Subject to the conditions, provisions or restrictions on transfer contained in the by-laws of the Cooperative Organization or Proprietary Lease the term "Insured" also includes
- (A) successors to the Cooperative Interest of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
- (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization or permitted substitution of equity interests;
- (C) successors to an Insured by its conversion to another kind of Entity.
- (D) an assignee of an Insured under an assignment of the Cooperative Interest delivered without payment of actual valuable consideration
- (1) if the stock, shares, memberships, or other equity interests of the assignee are wholly-owned by the named Insured.
- (2) if the assignee wholly owns the named Insured,
- (3) if the assignee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
- (4) if the assignee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
- (ii) With regard to (A), (B), (C) and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (j) "Insured Claimant": An Insured claiming Loss or Damage.
- (k) "Knowledge" or Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Cooperative Interest and the Land.
- (l) "Land": The estate or interest in the real property described in Schedule A-I owned by the Cooperative Organization named on Schedule A, and the improvements affixed thereto which, by law, constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A-I, nor any

right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways unless such rights are expressly insured by the policy, but this does not modify or limit the extent of the right of access to and from the Land as insured by this policy.

- (m) "Lien": The enforceable interest held by a Lien Creditor Filed or Recorded in the Public Records, but excluding real estate taxes, assessments, water and sewer charges imposed by a taxing authority.
- (n) "Lien creditor": (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like; (B) an assignee for benefit of creditors from the time of assignment; C) a trustee in bankruptcy from the date of the filing of the petition; or (D) a receiver in equity from the time of appointment. In respect to the Land, a creditor under a money judgment, warrant or notice of federal tax lien appearing in the Public Record. Lien Creditor shall also include money judgments which by law become a lien on the Land.
- (o) "Loss" or "Damage" shall mean loss or damage arising from the application of the laws of the State of New York in existence on Date of Policy.
- (p) "Mortgage": A Mortgage, deed of trust, trust deed, or other security instrument affecting the Land, including one evidenced by electronic means authorized by law.
- (q) "Proprietary Lease": The lease granting possessory rights of a proprietary nature in identified physical space belonging to the Cooperative Organization.
- (r) "Public Records": The records maintained in the County where the Cooperative Organization is located established under the law of the State of New York at Date of Policy for the purpose of imparting constructive notice of matters relating to the Cooperative Interest or the Land to purchasers for value and without Knowledge.
- i. In respect to Covered Risk 2(a)(vii), Public Records shall also mean the records of the New York Secretary of State for the Filing of notices of federal tax lien in favor of the United States.
  - ii. In respect to Covered Risk 2(b)(v)(D), it shall also include environmental protection liens docketed with the clerk of the United State District Court for the district where the Land is located.
- (s) "Security Interest" a pledge of the shares of stock and Proprietary Lease in the Cooperative Interest created and Filed under Article 9 of the Uniform Commercial Code.
- (t) "Seller": The transferor of the Cooperative Interest to the Insured in the transaction described in Schedule A.
- (u) "Uniform Commercial Code": The Uniform Commercial Code in effect in the State of New York at Date of Policy.
- (v) "Unmarketable Title": The Cooperative Interest affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Cooperative Interest or lender on the Cooperative Interest to be released from the obligation to purchase, lease or lend if there is a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of the Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Cooperative Interest, or holds an obligation secured by a Security Interest given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Cooperative 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 Cooperative Interest, or (ii) an obligation secured by a Security Interest given to the Insured by a purchaser from the 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 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Cooperative Interest, as insured, and that might cause Loss or Damage for which the Company may be liable by virtue of this Policy, or (iii) if the Cooperative Interest, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

## 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of Loss or Damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien encumbrance or other matter insured against by this Policy that 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.

## 5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, 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 covered by this policy adverse to the Cooperative Interest, as insured. This obligation is limited to only those stated causes of action alleging matters 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. It shall not be liable for and will not pay the fees of any other counsel.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Cooperative Interest, as insured, or to prevent or reduce Loss or Damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to the final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

## 6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right 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 securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Cooperative Interest or any other matter 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.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that 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 of these records in the custody or control of a third party that 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 any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

## 7. 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 that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(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. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that 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 that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (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.

#### **8. DETERMINATION AND EXTENT OF LIABILITY.**

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 because of matters insured against by this policy.

(a) The extent of liability of the Company for Loss or Damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Cooperative Interest as Insured and the value of the Cooperative Interest subject to the risk insured against by this policy.

In respect to any Loss or Damage under Covered Risk 2(b) the portion of loss for which the Company shall be liable shall not exceed the interest in the Cooperative Organization allocated to the Insured Cooperative Interest.

(b) if the Company pursues its rights under Section c of these Conditions and is unsuccessful in establishing the Cooperative Interest, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the Loss or Damage determined either as of the date of the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

#### **9. LIMITATION OF LIABILITY**

(a) If the Company establishes the Cooperative Interest, or removes the alleged defect, Lien, Security Interest or encumbrance, or cures the right of access to and from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any Loss or Damage caused to the Insured.

(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 appeal, adverse to the Cooperative Interest, as insured.

#### **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 Insurance by the amount of the payment.

#### **11. LIABILITY NONCUMULATIVE**

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Security Interest to which exception is taken in Schedule B or to which the Insured has agreed, assumed or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or Lien on the Cooperative Interest, and the amount so paid shall be deemed a payment to the Insured under this policy.

#### **12. PAYMENT OF LOSS**

When liability and the extent of Loss or Damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

#### **13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. 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 and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

#### **14. ARBITRATION**

Either the Company or the Insured may demand that the claim or controversy shall be submitted arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the rules, there shall be no joinder or consolidation with claims or controversies of other persons. 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 in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 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 \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

#### **15. LIABILITY LIMITED TO THIS POLICY, POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any attached to it 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 that arises out of the status of the Cooperative Interest or the Land or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

#### **16. SEVERABILITY**

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

#### **17. CHOICE OF LAW**

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the Laws of the State of New York.

Therefore, the court or an arbitrator shall apply the law of the State of New York to determine the validity of claims against the Cooperative Interest or the Land, as Insured, that are adverse to the Insured, and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

#### **18. NOTICES WHERE SENT**

(a) Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Fidelity National Title Insurance Company, Attn: Claims Department, P.O. Box 45023, Jacksonville, FL 32232-5023.