



Policy No. 7410709-102251

**Policy of Title Insurance**

**American Land  
Title Association  
Loan Policy  
(10-17-92)  
(With Florida  
Modifications)**

**SUBJECT TO THE EXCLUSIONS FROM  
COVERAGE, THE EXCEPTIONS FROM  
COVERAGE CONTAINED IN SCHEDULE B  
AND THE CONDITIONS AND STIPULATIONS,  
TICOR TITLE INSURANCE COMPANY, a  
California 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;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material;

- (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
- (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;

8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

This policy shall not be valid or binding until countersigned below by an authorized signatory of the Company.

Issued by:

Ruden, McClosky, Smith, Schuster & Russell, P.A.  
222 Lakeview Avenue, Suite 800  
West Palm Beach, Florida 33401  
(561) 838-4500

**TICOR TITLE INSURANCE COMPANY**

By

*[Signature]*

President

Attest

*[Signature]*

Secretary

*[Signature]*  
Authorized Signatory



## 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 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 (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or
- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee 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 interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee 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 judgement 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. The term "insured" also includes
  - (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);
  - (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;
  - (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.
- (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 the 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, or in Schedule C if not provided for 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 the applicable Schedule, 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 or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE

(a) **After Acquisition of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **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 the insured.

## Policy of Title Insurance

## TICOR TITLE INSURANCE COMPANY

## Schedule A

Order Number: W0700356

Policy Number: 7410709-102251

Reference Number: 58151-0001

Amount of Insurance: \$11,850,000.00

Date of Policy: January 7, 2008 at 12:33 p.m.

## 1. Name of Insured:

Comerica Bank, N.A., its successors and/or assigns, as their interest may appear.

## 2. The estate or interest in the land described herein and which is covered by this policy is:

Fee Simple (As to Parcel A and Parcel B) and Leasehold Interest (As to Parcel C)

## 3. Title to the estate or interest in the land is vested in:

Ocean 4660, LLC, a Florida limited liability company, by virtue of Warranty Deed (as to Parcel A) recorded January 7, 2008 in Official Records Book 44971, Page 757; Warranty Deed (as to Parcel B) recorded January 7, 2008 in Official Records Book 44971, Page 759; and Assignment of Leasehold Interest (as to Parcel C) recorded January 7, 2008 in Official Records Book 44971, Page 761, all of the Public Records of Broward County, Florida. (The Lease is described in Item 12 of Schedule B-I of this Policy.)

## 4. The insured mortgage and the assignments, thereof, if any, are described as follows:

Continuing Collateral Mortgage from Ocean 4660, LLC, a Florida limited liability company, to Comerica Bank, N.A., in the amount of \$11,850,000.00, dated as of January 3, 2008 and recorded on January 7, 2008 in Official Records Book 44971, Page 797, of the Public Records of Broward County, Florida.

5. The Land referred to in this policy is described as follows:  
(See attached Exhibit A for legal description)

Ruden, McClosky, Smith, Schuster & Russell, P.A.  
222 Lakeview Avenue, Suite 800  
West Palm Beach, FL 33401  
FL4669

Countersigned

By:

Marvin S. Rosen, Esq., Authorized Signatory



U.S.

ATTENT

President

Secretary

This policy is invalid unless a cover sheet and Schedule B are attached.

Exhibit A

**Parcel A:**

Lots 11, 12, 13, 14, 15, 16, 17, 18 and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida; ALSO all of that parcel of land, if any, bounded on the West by the Easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the North line of Lot 17 of said Block 9, extended Easterly to the Atlantic Ocean and bounded on the South by the South line of Lot 14 of said Block 9, extended Easterly to the Atlantic Ocean, said land fronting the Atlantic Ocean.

**Parcel B:**

Lots 20 and 21, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

**Parcel C:**

Lots 9, 10, 22, 23 and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

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Subject to Confidentiality Agreement

**Schedule B-I****Policy Number: 7410709-102251**

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:

1. Taxes and assessments for the year 2008 and subsequent years, which are not yet due and payable.
2. Rights of parties in possession, if any, other than the record owner.
3. Restrictions, dedications and easements as contained on the Plat of LAUDERDALE BY THE SEA, as recorded in the Plat thereof, recorded in Plat Book 6, Page 2.
4. Easement in favor of Selkirk Communications, Inc., recorded April 10, 1987 in Official Records Book 14336, Page 999.
5. Perpetual Beach Storm Damage Reduction Easement recorded in Official Records Book 32599, Page 1521.
6. Notwithstanding the legal description in Schedule A, this policy does not insure against rights of the State of Florida based on the doctrine of the state's sovereignty ownership of lands lying below the mean high water line of any navigable or tidally influenced waters.
7. Rights, if any, of the public to use as a public beach or recreation area any part of the land lying between the body of water abutting the subject property and the natural line of vegetation, bluff, extreme high water line, or other apparent boundary line separating the publicly used area from the upland private area.
8. Any land described in Schedule A, which is artificially filled land in what was formerly navigable waters, is subject to the rights of the United States government, arising by said government's control over navigable waters involving navigation and commerce.
9. Notwithstanding the legal description in Schedule A, this commitment/policy does not insure any portion of the land lying waterward of the Erosion Control Line, as set forth in Official Records Book 10881, Page 588.
10. Applicable Coastal Construction Set back line, pursuant to the Florida Statutes, as same may affect the property.
11. Terms, conditions, and provisions of Lease dated September 5, 1957 and commencing on October 1, 1957 and terminating on September 30, 2056, by and between, John J. Demko and Margaret H. Demko, Lessor, and Solar Groves, Inc., a Florida corporation, Lessee, recorded in Official Records Book 1020, Page 302, as assigned from Solar Groves, Inc., a Florida corporation, Assignee, to Big B Development Company, Inc., a Florida corporation, Assignee, by Assignment of Lease recorded April 16, 1981 in Official Records Book 9530, Page 191, Assignment from Big B Development Co., Inc., Assignor, to Maurice Lopatin, as Trustee of the Antonio Cioeta Irrevocable Trust dated March 16, 1992, Assignee, by Assignment of Lease recorded April 17, 1992 in Official Records Book 19396, Page 956, as assigned by Marie A. Moore, as Successor Trustee of the Antonio Cioeta Irrevocable Trust dated March 16, 1992, Assignor, to Antonio Cioeta, Trustee of the Antonio Cioeta Revocable Trust dated January 19, 1989, General Partner of the Cioeta Family limited partnership, Assignee, by Partial Assignment of Lease recorded January 8, 1996 in Official Records Book 24357, Page 67, and as assigned by that Partial Assignment of Lease by Marc Lopatin, Personal Representative of the Estate of Maurice Lopatin, Assignor, and Marie A. Moore, Co-Trustee of the Christina Cioeta Irrevocable Trust dated December 14, 1995 and recorded December 12, 1996 in Official Records Book 25771, Page 597, Assignee, and as assigned by Antonio Cioeta, Trustee of the Antonio Cioeta Revocable Trust dated January 19, 1989, General Partner of the Cioeta Family limited partnership, a Florida limited partnership, assignor, to Antina Investments III, Inc., a Florida corporation, Assignee, by Assignment of Lease recorded July 20, 2007 in Official Records Book 44361, Page 543.
12. Terms, conditions and provisions of Lease dated and commencing on September 1, 1973 until September 30, 2056, by and between Solar Groves, Inc., a Florida corporation, Lessor, and Willard G. Franks and James N. Walker, Lessee, recorded

WPB:357470:2

November 6, 1973 in Official Records Book 5515, Page 406, as assigned by Willard G. Franks, joined by his wife Elizabeth Jane Franks, Assignors, to Sara-Sea, a Florida partnership, Assignee, by Assignment of Lease recorded March 3, 1975 in Official Records Book 6124, Page 242, and assigned by James N. Walker, joined by his wife, Ellen Walker, as Assignors, to Sara-Sea, a Florida partnership, Assignee by Assignment of Lease recorded March 3, 1975 in Official Records Book 6124, Page 236; and as amended by Amendment to Lease dated May 27, 1975 and recorded June 5, 1975 in Official Records Book 6228, Page 15, and assigned to Intercoastal Investments N.V., a Netherlands Antilles corporation by Assignment of Lease recorded August 15, 1979 in Official Records Book 8385, Page 397, and Assignment of Leasehold Interest from Intercoastal Investments N.V., a Netherlands Antilles corporation, Assignor, and Ocean Equities, Ltd., a New Jersey limited partnership, Assignee, recorded November 24, 1982 in Official Records Book 10526, Page 913, and as assigned to Ocean 4660, LLC, a Florida limited liability company, by Assignment of Lease recorded on January 7, 2008 in Official Records Book 44971, Page 761, all of the Public Records of Broward County, Florida.

NOTE: All recording references in this commitment/policy shall refer to the Public Records of Broward County, Florida, unless otherwise noted.

Subject to Confidentiality Agreement

**Schedule B-II**

**Policy Number:** 7410709-102251

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

None.

Subject to Confidentiality Agreement

## ENDORSEMENT

Attached to Policy No. 7410709-102251

Issued by

**Ticor Title Insurance Company**

The Company hereby acknowledges the lands described in Schedule A are the same lands described in the survey prepared by Accurate Land Surveyors, Inc. dated November 4, 2007, last updated December 28, 2007 and identified under Sketch Number SU-07-4321; however, the Company does not insure the accuracy or completeness of said survey.

This endorsement is made a part of the policy and is subject to all 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.

This Endorsement shall not be valid or binding until countersigned by an authorized signature as designated below.

Date: January 7, 2008

Ticor Title Insurance Company

By: Ruden, McClosky, Smith, Schuster & Russell, P.A.  
222 Lakeview Avenue, Suite 800  
West Palm Beach, FL 33401  
FL4469

By: Marvin S. Rosen  
Marvin S. Rosen, Esq., Authorized Signatory



## ENDORSEMENT

Attached to Policy No. 7410709-102251

Issued by

**Ticor Title Insurance Company**

The Company insures the Insured herein against loss or damage by virtue of any inaccuracy in the following statement, to wit:

That portion of Parcel A:

Lots 11, 12, 13, 14, 15, 16, 17, 18 and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida; ALSO all of that parcel of land, if any, bounded on the West by the Easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the North line of Lot 17 of said Block 9, extended Easterly to the Atlantic Ocean and bounded on the South by the South line of Lot 14 of said Block 9, extended Easterly to the Atlantic Ocean, said land fronting the Atlantic Ocean,

which lies in Block 10, is contiguous with the North and West boundary lines of

Parcel B: Lots 20 and 21, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida,

and the Northern boundary lines of

Parcel C: Lots 9, 10, 22, 23 and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida,

are contiguous with the Southern boundary line of Parcel B and a portion of the Eastern and a portion of the Southern boundary lines of a portion of Parcel A which lies in Block 10;

AND, taken as a tract, constitute one parcel of land.

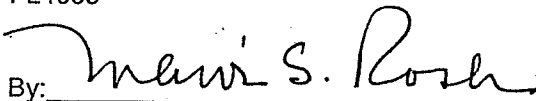
This endorsement is made part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective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

This endorsement shall not be valid or binding until countersigned by an authorized signatory.

Dated: January 7, 2008

Ticor Title Insurance Company

By: Ruden, McClosky, Smith, Schuster & Russell, P.A.  
222 Lakeview Avenue, Suite 800  
West Palm Beach, FL 33401  
FL4669

By:   
Marvin S. Rosen, Esq., Authorized Signatory

## ENDORSEMENT

Attached to Policy No. 7410709-102251

Issued by  
**Ticor Title Insurance Company**

The Company insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those 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, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

None.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

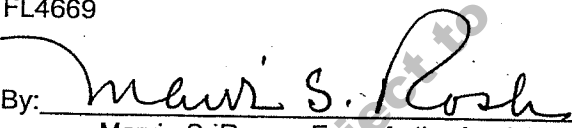
This endorsement shall not be valid or binding until countersigned by an authorized signatory.

Dated: January 7, 2008

Ticor Title Insurance Company

By: Ruden, McClosky, Smith, Schuster & Russell, P.A.  
222 Lakeview Avenue, Suite 800  
West Palm Beach, FL 33401  
FL4669

By:

  
Marvin S. Rosen, Esq., Authorized Signatory

## ENDORSEMENT

Attached to Policy No. 7410709-102251

Issued by  
**Ticor Title Insurance Company**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at date of policy:
  - (a) There are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.
  - (b) Unless expressly excepted in Schedule B:
    - (1) There are no present violations on the land of any enforceable covenants, conditions or restrictions nor do any existing improvements on the land violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.
    - (2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land does not, in addition, (i) establish an easement on the land; (ii) provide a lien for liquidated damages; (iii) provide for a private charge or assessment; (iv) provide for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.
    - (3) There is no encroachment of existing improvements located on the land onto adjoining land, nor any encroachment onto the land of existing improvements located on adjoining land.
    - (4) There is no encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.
    - (5) There are no notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public record.
2. Any future violation on the land of any existing covenant, condition or restriction occurring prior to the acquisition of the title to the estate or interest in the land, provided the violation results in:
  - (a) Impairment or loss of the lien of the insured mortgage; or,
  - (b) Loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.
3. Damage to existing improvements (excluding lawns, shrubbery or trees):
  - (a) Which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.
  - (b) Which results from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.
4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.
5. Any final court order or judgment denying the right to maintain any existing improvement on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraphs 1(b)(1) and 5, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is issued as part of the policy and is subject to all the terms and provisions thereof and 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.

This endorsement shall not be valid or binding until countersigned by an authorized signatory.

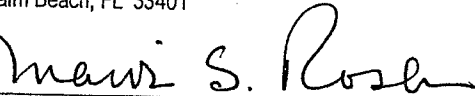
Dated: January 7, 2008

Ticor Title Insurance Company

By: Ruden, McClosky, Smith, Schuster & Russell, P.A.  
222 Lakeview Avenue, Suite 800  
West Palm Beach, FL 33401

FL4669

By:

  
Marvin S. Rosen, Esq., Authorized Signatory

# LEASEHOLD LOAN ENDORSEMENT

Attached to and forming a part of  
Loan Policy No. 7410709-102251

Issued by  
**TICOR 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.
- 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 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.

**TICOR TITLE INSURANCE COMPANY**

By:

ATTEST



President

Secretary

Dated: January 7, 2008

Issued By:

Ruden, McClosky, Smith, Schuster & Russell, P.A.  
222 Lakeview Avenue, Suite 800  
West Palm Beach, FL 33401  
FL4669

By:

Marvin S. Rosen  
Marvin S. Rosen, Esq., Authorized Signatory

WPB:357470:2

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

Reorder Form 9045 ALTA 13.1 Leasehold Loan Endorsement 10-13-01

☐ Original

☐ File Copy

☐ Underwriter Copy

(iii) 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 insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

#### 8. 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, or otherwise establishes the lien of the insured mortgage, 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 or to the lien of the insured mortgage, 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.

(d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

#### 9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

#### 10. 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.

#### 11. 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.

#### 12. 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 all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

##### (b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company 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.

##### (c) 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.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

#### 13. ARBITRATION

*Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be demanded if agreed to by both the Company and the insured. 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 the policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. 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.

#### 14. 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 lien of the insured mortgage or 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.

#### 15. SEVERABILITY

In the event any provision of this 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.

#### 16. 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 Tigor Title Insurance Company, National Claims Administration, P.O. Box 45023, Jacksonville, Florida 32232-5023.

IN FLORIDA CALL 1-800-883-2020



(c) **Amount of Insurance.** The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

- (i) the Amount of Insurance stated in Schedule A;
- (ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
- (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

### 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 or the lien of the insured mortgage, 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 or the lien of the insured mortgage, as 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 the 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 or the lien of the insured mortgage, 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 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 or the lien of the insured mortgage, 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, unless prohibited by law or governmental regulation, 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 or to Purchase the Indebtedness.**

(i) 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; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, 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 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 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, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or