

Practice Note

New Hampshire

Volume 11
December 2006

Leasehold Interests and Title Policies: Protecting Lessees and Their Lenders

Overview

Leases are common in up and down markets, but are especially attractive development vehicles in a slower economic market. Agents can expand their title insurance activities by offering leasehold policies to clients. Leasehold interests affecting real property, if recorded, can be insured. This *Practice Note* provides the attorney-agent with a toolkit to address the needs of a lessee or lessee mortgage client. Forms, policy language and guidelines for underwriting and policy preparation are included in the *Practice Note* and are available to CATIC agents upon request. Please contact Carol D. Brooks, New Hampshire Title Counsel, with any questions.

Origins and Nature of the Leasehold Interest

A fee simple or freehold landowner holds a full “bundle of sticks” in real property. Since feudal times, an owner or lessor has been able to convey part of its fee simple or freehold sticks to another, the lessee. The lessee receives a non-freehold right to use the designated land for a specified time period, in accordance with an agreement containing terms and conditions. *Black’s Law Dictionary* describes a leasehold interest as an estate in realty

held under a lease, with the leasehold asset representing the right of the lessee to use the property. The owner remains the fee owner but is subject to the lessee’s right to use all or part of the specified fee property.

In the 21st century, leasehold interests are commonly found in fee-owned single-family homes situated on leased land, student and luxury apartment rentals, office rentals, farm leases, anchor store tenancies in malls, medical office rentals, cell tower leases and many other residential and commercial properties.

A leasehold conveyance involves an agreement and a conveyance of rights to use the land. New Hampshire has developed a split view of leases: whether a lease is a contract or an interest in land. In feudal times, the primary concern was the duration of the lessee’s use of the land, whereas, in the 1971 case *Kline v. Burns*, 111 N.H. 87, the Court viewed a lease as a contract governing the terms of occupancy, housing quality and eviction. Where residential leases are involved, public policy and statutes govern landlord and tenant relations, impose conditions that override individual agreements and define a lease as primarily a contract. Where commercial leases are involved,

however, the parties have greater latitude to negotiate the terms of the lease contract, and the real property interest has greater importance. See *Szypszak, New Hampshire Practice, Real Estate* Sec. 17:7 (1st ed. 2003). State law, however, still governs many aspects of a lease on real property.

Where the lease agreement affects or includes land, common law and statutory rules apply. In regard to long term or perpetual leases, the Supreme Court has viewed a lease as almost a fee interest. In *Piper v. Meredith*, 83 N.H. 107 (1927), the Court stated at page 110, that it "...is well settled law that a perpetual lease upon condition conveys to the lessee a determinable or base fee. 'Every estate which may be of perpetual continuance is deemed to be a fee, and may come within the definition of Lord Coke, of a fee-simple absolute, conditional, qualified, or base fee.' *1 Washb., Real Prop.*, s. 162." See the discussion of real estate taxes below.

Statute of Frauds

Where real property is involved, the Statute of Frauds applies and requires that a conveyance of land, to be valid, must be made by a written instrument. See *Webster v. Blodgett*, 59 N.H. 120 (1879). NH RSA 477:15 provides that "Every estate *or interest in lands* created or conveyed without an instrument in writing signed by the grantor or his attorney shall be deemed an estate at will only, *and no estate or interest in lands shall be assigned, granted or surrendered except by writing signed as aforesaid or by operation of law.*" (emphasis added)

Creation of a Leasehold Interest by Contract

Once a fee simple owner and a renter or lessee agree to convey a leasehold interest in land, the agreement or lease must be in writing. A detailed lease agreement should set forth the key elements of the agreement. Residential leases are governed by statute and the tenant's rights may not be circumvented. (See RSA 540; 540-A; 540-B.) Commercial leases are not subject to the same restrictions and may be tailored to the needs of the particular landlord and tenant. Whether residential or commercial, the lease should include the

following terms: parties, premises, permitted use (and common areas if any), term, rent, default and remedies, and other provisions as needed. Commercial lease agreements should also address: insurance, constructions and improvements, loss of premises, and other special circumstances including severance clauses and applicability of New Hampshire law. Note that if title insurance is requested the premises must be specifically identified and described in the lease agreement, and there must be a recorded Notice of Lease, described below. In summary, a leasehold affecting land must meet the following criteria:

1. Leases for more than 7 years must be recorded to be valid. See RSA 477:7.
2. For title insurance purposes, a leasehold interest for *any* term or time period, including terms less than 7 years, may be insured so long as a Lease Agreement is signed and a Notice of Lease is recorded.
3. The lessor must deliver a copy of the written lease to the lessee within 30 days of the execution by all parties. RSA 477:7-b.

Notice of Lease Must Be Recorded

A Notice of Lease must be in writing and executed and acknowledged by the Fee Owner/Lessor and Lessee and recorded with all the following information as prescribed by RSA 477:7-a "Notice of Lease":

- a. the names and addresses of each party to the lease;
- b. the date of execution of the lease;
- c. a description of the land and premises as it appears in the lease agreement;
- d. the term of such lease; and
- e. the date of commencement of such term and all rights of extension or renewal.

In order to be effective against bona fide purchasers, the lease must be recorded. (RSA 477:3-a.) A leasehold title insurance policy will be effective upon the date and time of the recording of the Notice of Lease. *A Sample Notice of Lease follows below, with statutory references noted parenthetically.* The form is available to agents upon request.

Sample Notice of Lease

In accordance with the provisions of NH RSA 477:7-a, notice is hereby given of the following described lease:

I. Names & Addresses of the parties to the lease [477:7-a (a)]: This Notice of Lease is made this ___ day of _____, 20___, by and between _____, hereinafter referred to as landlord/lessor, of _____, Town, State and _____, hereinafter referred to as tenant/lessee of ___ Town, State.

II. Date of Execution of the Lease [477-7-a (b)]: The aforementioned parties executed a Lease Agreement on the ___ day of _____, 20___, hereinafter referred to as the lease.

III. Demised premises [477:7-a (c)]: [*Select the applicable description format and include it in the body of the Notice or in an attached Exhibit A.*]

(Description for a lease on *all of fee simple*) Said lease is to cover all of the land/land and premises containing _____ square footage/acreage/in land/land and building located at _____ Town, NH and known as “ZZZ Building” as designated on Exhibit A attached hereto and located on land of ZZZ recorded at Book ___ and Page ___ in the _____ County Registry of Deeds, together with a right to use in common with others, all of the automobile parking areas, driveways, malls, courts, corridors, sidewalks and footways, loading facilities and common areas and facilities designated by the Landlord/Lessor, subject to the terms of the lease and the rules and regulations prescribed.

OR

(Description of a lease on *part of fee simple*) Said lease is to cover part of the land/land and premises containing _____ square footage in land/land and building located at _____, Town, NH and known as “ZZZ Building” (or Lease Lot D) as designated on Exhibit A attached hereto and located on land of ZZZ recorded at Book ___ and Page ___ in the _____ County Registry of Deeds, together with such appurtenant access easement rights as described in said deed and a right to use in common with others, all of the automobile parking areas, driveways, malls, courts, corridors, sidewalks and footways, loading facilities and common areas and facilities designated by the Landlord/Lessor, subject to the terms of the lease and the rules and regulations prescribed.

IV. Term of the Lease [477:7-a (d)]: The term of the lease shall be for a period of _____ calendar months/years, plus the number of days remaining in the calendar month in which the lease commences.

V. Commencement Date [477:7-a (e)]: The lease commenced on ___ day of _____, 20___. Tenant has the right to renew this lease for an additional term of ___ months/years upon notice in writing to the landlord/lessor on or before ___ months/years before the date of expiration of the initial terms of the lease.

VI. Miscellaneous: The lease sets forth additional rights and obligations, terms and conditions, not enumerated in the Notice of Lease herein. [*This section may include agreements concerning the payment of taxes, lease payments and procedures, responsibility for obtaining municipal approvals, etc.*] This instrument is not meant to vary the rights, obligations, terms and conditions of the lease agreement. New Hampshire law applies.

In Witness whereof the parties have hereunto set their hands and respective seals, this ___day of ____, 20__.

Witness

Landlord/Lessor

Witness

Tenant/Lessee

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)).

(Seal, if any)

(Signature of notarial officer)

Title (and Rank)

(My commission expires :_____)

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, *e.g.*, officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Seal, if any)

(Signature of notarial officer)

Title (and Rank)

(My commission expires :_____)

Property Descriptions for the Notice of Lease and the Title Policy

A. Description of a leasehold interest on ALL of the fee title

If the Fee Simple Owner agrees to lease *all* of the land to the lessee, then the owner's vesting deed will be the basis for the leasehold description in the Notice of Lease. The description should follow this format: "...granting and conveying a leasehold interest in all of the land located on _____, Town, NH and described in a deed to Lessor recorded at Book ___ and Page ___ in XCRD and further described as follows: [then add the deed description]." If a plan has been recorded showing the boundaries of the entire fee and entire leasehold interest, cite the reference to the plan of record.

The title policy description for a leasehold interest on all of the fee property should follow this format:

A leasehold interest as described in a Notice of Lease recorded at Book ___ and Page ___ in the Great County Registry of Deeds. Said leasehold interest is granted on all of the fee simple land owned by and vested in John Doe by deed recorded at Book ___ Page ___ in the _____ County Registry of Deeds, is known as DoeAcre located at ___ Doe Drive, DoeCity, NH and said leasehold interest on all of the fee interest is more particularly described as follows:

A certain tract or parcel of land with any buildings thereon, situate on the westerly side of Main Street, DoeCity, County of Great and State of New Hampshire, and shown as Lot #33 on a plan of land of Mark Dalton entitled "Plan of Land of J.G. Hook, DoeCity, N.H., John Stark, Surveyor," recorded in the Great County Registry of Deeds in Plan 1234567.

B. Description of a leasehold interest on PART of the fee title and access issues

If the Fee Simple Owner agrees to lease a part of the land to the lessee, then the parties should designate the specific location of the leasehold within the fee property. A survey plan should be made and recorded to show the location of the leasehold interest within the bounds of the fee parcel. The leasehold agreement and Notice of Lease should also address legal access for the lessee. Access rights should be granted for ingress and egress to and from the leasehold parcel, over the fee simple land to get to a public road. An access easement will be appurtenant to the leasehold interest and run with the leasehold.

The recorded Notice of Lease on part of the fee should follow this format: "...granting and conveying a leasehold interest on part of the land located at _____, Town, NH and described in a deed to Owner/Lessor _____ recorded at Book ___ and Page ___ in _____ County Registry of Deeds and more particularly located and described as follows: a leasehold interest in and to the leasehold parcel shown on a Lease Plan of _____ dated _____ by _____ Surveyor and recorded at Plan # ___ in the XCRD."

The title policy description for a Leasehold Interest on part of the fee property should follow this format:

A leasehold interest as described in a Notice of Lease recorded at Book ___ and Page ___ in the Great County Registry of Deeds and located at _____, Town, NH. Said leasehold interest and access easement rights are granted on a part of the fee simple land owned by and vested in John Doe. John Doe's fee title was granted by a deed recorded at Book ___ Page ___ and known as DoeAcre located at _____ Doe Drive, DoeCity, NH.

The leasehold interest is a part of DoeAcre and is shown on the Doe leasehold plan dated January 1, 200X, approved by the DoeCity Planning Board and recorded as Plan # ____ in the _____ County Registry of Deeds and more particularly described as follows:

Leasehold parcel 'A' as shown on Plan # _____ which is bounded easterly by Main Street, DoeCity, County of Great and State of New Hampshire and is conveyed together with an access easement over the Doe driveway for ingress and egress to Main Street.

“Floating” Leases

Note that some recorded leasehold interests, affecting part of a fee title, are recorded without a plan. Due to the title vagueness of location, the leasehold should be considered to “float” over the entire fee. A floating lease encumbers the entire fee title on its date of recording and may create issues for the fee owner interested in obtaining fee financing or conveying additional partial leases. A floating lease provides no certainty of location or rights in title to the lessee and may affect subsequent lessee financing or assignments. Subsequent lessees may require the floating lessee and owner to record a plan showing location of the rights in the original lease and to release lessee rights to the remainder of the fee parcel. When numerous partial leaseholds are shown on a plan, the risks of overlapping interests or conflicts in access rights are eliminated. However, if new floating leases are recorded without the benefit of a plan, they will also float and encumber the entire fee, taking a priority position behind the first recorded floating lease, etc. Each “floating” lease (and its mortgages) on part of the fee will take subject to all prior leases in the order of recording. Any lessee mortgage on an undesignated partial lease will cloud the whole fee title at date of recording. It is a better practice to record a plan showing the specific location of a partial leasehold interest and any access easements.

Municipal Approvals: Project and Title Policy Considerations

Survey plans are often required by the local municipality prior to recording a Notice of Lease and leasehold location plan. Whether the leasehold interest is on part or all of the fee interest, check local planning ordinances for site plan and/or subdivision requirements and zoning ordinances for applicable permits, exceptions or certificates of occupancy.

On the date that a town adopts subdivision regulations, the state’s subdivision statutes control (NH RSA 672). RSA 672:14 states (*emphasis added*): “I. "Subdivision" means the division of the lot, tract, or parcel of land into 2 or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, *lease*, condominium conveyance or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.” Registries will generally refuse to record a plan unless it is approved as a subdivision by the local planning board or certified as a non-subdivision by a surveyor.

An agent seeking to insure a leasehold interest must check whether the existing or proposed leasehold interest complies with municipal zoning and planning ordinances and regulations and plan requirements. Confirm with local authorities whether a plan was/is required and whether certain boards must approve the leasehold project. A leasehold interest that is in violation of zoning, subdivision or other regulation and results in a loss of possession or prevention of use creates a loss under a leasehold title policy.

Title Search Considerations and Leases

When a fee title is searched, the fee owners in the chain of title are identified as the searcher goes back in time to establish the chain of ownership. Once a resting deed is found, each owner in the chain of title is run forward in the grantor index in order to identify conveyances of mortgages, easements and other interests, including leasehold interests. Look

for “Notices of Lease” recorded under the owner’s name. If a lease is found, it must be examined for its term, conditions, renewals and possible terminations. Termination of a lease may be clear by operation of the terms of the lease itself or may require a recorded termination by the lessee. The name of the Lessor and Lessee will need to be run in the grantor index to identify all matters affecting the fee *and* the leasehold interests: terminations, renewals, Lessor and Lessee mortgages, liens on the Lessor or Lessee interests as well as assignments to a new lessee or leasehold mortgage assignee. A title search may conclude that the fee is currently owned by John Doe subject to a fee purchase money mortgage to XYZ lender, and subject to a lease to Jane Smith and a leasehold mortgage to ABC lender. If the ABC mortgage is recorded after the XYZ mortgage, it is junior to the fee mortgage unless the fee mortgagee subordinated its interest to the leasehold mortgage. All interests and liens affecting the title must be identified and prioritized, paid off, discharged and leases terminated, if the new fee owner is to receive a fee simple title without encumbrances. Beware of floating leases and their mortgages on part of the fee simple as they affect all of the fee title unless released. See the discussion above concerning leases on part of the fee and floating leases.

NH Real Estate Transfer Tax on Leases

The NH Real Estate Transfer Tax is due on all leases when the term of a lease is for a period of 99 years or more. Lease terms of less than 99 years that contain renewal periods that, taken together, extend the term to 99 years or more are subject to the tax. The administrative rule that applies to leases is: “802.01 (f) *The lease of real estate shall be subject to the real estate transfer tax based on the fair market value of the property when the term of the lease is: (1) for a period of 99 years or more; or (2) for a period of less than 99 years and renewal rights could extend the total period of time to 99 years or more.*” Refer to the New Hampshire Department of Revenue Administration website for statutory and administrative rules at www.gencourt.state.nh.us/rules/rev800.html.

Real Property Taxes

When conducting a closing, it is standard practice to contact the municipality and confirm that all tax liens of record have been paid and that all current taxes and bills have been paid. When the title contains a current leasehold interest, review the “Notice of Lease” or full lease agreement to determine the term of the lease. A lease for a term of years is generally taxed to the Owner/Lessor and not taxed to the lessee. A lease that is perpetual or where renewals are for an indefinite period is taxable. It is prudent practice to check for paid taxes under the name of the fee owner *and* the lessee. Also, regardless of the nature of the term, review the recorded “Notice of Lease” or lease agreement for delegation of the tax payment responsibility from the fee owner to the lessee. A lessee with a lease on the entire fee parcel may assume the tax liability for the fee owner and consent to be the taxable party for the real estate. Tax liens may arise under the fee owner’s or lessee’s name.

NH RSA 73:10 states that (*emphasis added*) “*Real and personal property shall be taxed to the person claiming the same, or to the person who is in the possession and actual occupancy thereof, if such person will consent to be taxed for the same; but such real estate shall be taxed in the town in which it is situate.*” Any decision by the commissioner not to certify the assessments of a municipality pursuant to RSA 21-J:11-a (Certification of Assessments) shall not affect the obligation of the taxpayer to pay property taxes otherwise lawfully assessed.

In *Piper v. Meredith*, 83 N.H. 107 (1927), the Court stated at page 109 that “For the purpose of taxation, it is immaterial who is the ultimate owner of the fee. Title is not the test of taxability. ‘Real and personal property shall be taxed to the person claiming the same, or to the person who is in the possession and actual occupancy thereof, if such person will consent to be taxed for the same.’” The Court addressed perpetual leases as taxable at page 110 and stated “...The propriety of taxing the holder of such an estate as the owner of the property is

obvious, and has been uniformly recognized by the courts in almost every jurisdiction where the question has arisen.... The plaintiff, therefore, cannot escape taxation for that part of the town hall building which he holds under lease, because of the nature of his estate.” See also *Appeal of Reid*, 143 N.H. 246 (1998).

Special Leasehold Considerations: Cell Towers

A. Nature of the Interest

Cell towers have sprung up on the landscape enabling a new wireless technology to develop. Some municipalities and landowners are in favor of the towers; some ardently oppose the placement of towers. A cell tower company may contact a fee owner seeking permission to place a cell tower and pad on the property, along with an access easement to get from a public road to and from the cell tower pad. The cell tower company may request an easement (in gross) or a leasehold interest with an access easement. A grant of a leasehold interest with an access easement as shown on a plan depicting the location is the preferred practice in New Hampshire. The leasehold format is required if title insurance is required. A leasehold interest is a possessory interest in the use of the land of another and is considered a real property right or interest (or a contract right secured by a real property interest) and runs with the land.

An easement in gross is a non-possessory easement burdening the land of a fee owner and benefiting a non-abutting, non-contiguous party. An easement in gross benefits only the party to the grant, and is not inheritable and not assignable. An easement in gross in New Hampshire is considered a personal property right. An easement appurtenant is also a non-possessory interest to use another’s land, but the benefited easement holder is an abutter with land that is contiguous to the burdened parcel. The appurtenant easement runs with the land of the abutter.

Burcky v. Knowles, 120 N.H. 244 (1980), distinguished between an easement in gross and an appurtenant easement (emphasis added): “...(2) An *appurtenant easement* is a non-possessory right to the use of another's land. It is an incorporeal right generally created for the purpose of benefiting the owner of the dominant estate (land to which the easement is attached) as the possessor of such estate; it runs with the land, is incapable of existence separate and apart from the dominant tenement, and is inheritable.... (3) An *easement in gross* is also an incorporeal, non-possessory right to the use of another's land, but it is a mere personal interest.... It belongs to its owner independently of his ownership or possession of other land; it is generally not inheritable, and vests only in the person to whom it is granted.”

When reviewing a title containing a cell tower project or creating the cell tower documents for a fee owner or cell tower company, it is important to assess the existing or proposed grant. If the parties own fee parcels that share a common abutting boundary, an appurtenant easement may be granted and insured with the abutting fee parcel. If the cell tower company does not own an abutting parcel, any easement granted will be an easement in gross and will be viewed as a personal right to the cell tower company and not assignable to another cell tower company. Such an interest is not insurable. The better product is a leasehold grant for a cell tower pad and area along with a grant of an easement to get from the granted leasehold over the fee parcel to a public road. The Notice of Lease should show the part of the fee interest that is designated for the cell tower leasehold and the access easement. This legal framework will allow the lease or sublease to be assigned and the leasehold interest to be insured.

B. Subdivision issues

NH RSA 672:14 (I) defines a subdivision as a division of land into 2 or more lots or divisions for the purpose of sale or lease. However, 672:14 (IV) contains an exception from the definition for the lease of a wireless

communications facility, as defined: "...any towers, poles, antennas, or other unstaffed structure of less than 500 square feet intended for use in connection with licensed transmission or receipt of radio or television signals, or any other licensed spectrum-based transmissions or receptions." Note that most cell tower projects are at least 1000 square feet, so it is unlikely that the exception from subdivision will be useful.

Note, however, that 672:14(IV) does not exempt wireless communication facilities from other local zoning, site plan, or regulatory authorities. In order to insure title for a leasehold interest, the agent must investigate and confirm that all required plans, approvals and permits have been obtained. This is an additional responsibility that is unique to leasehold policies. Contact CATIC's New Hampshire Office for assistance in determining how to structure a cell tower project for title insurance protection.

Policy Preparation: Lessee Owner and Leasehold Mortgage Policies

A 1992 ALTA Standard Policy should be used to insure a leasehold interest on residential or commercial property. The agent must address a number of special issues on Schedules A, B and C and issue a Leasehold Endorsement.

Schedule A - The Date of Recording is the date of the recording of the Notice of the Lease for the lessee and the date of the recording of the mortgage for the leasehold mortgagee. The Name of the Insured for the OP is the name of the lessee as stated in the Notice of Lease, and, for the MP, is the name of the leasehold mortgagee as stated on the recorded mortgage. CATIC's Schedule A contains a preprinted statement that the interest to be insured is Fee Simple, unless the leasehold interest box is checked off as applicable. To insure a Leasehold interest, the box must be checked. If the proposed policy involves a combination of a fee interest and a leasehold interest (*e.g.*, leasehold on the land and fee in the building), contact the New Hampshire Office for appropriate language.

Amount of Insurance - The amount of a leasehold mortgage policy will be the amount of the recorded mortgage. The amount of a lessee policy on all of a fee parcel can be the value of the underlying fee parcel. The amount of a lessee policy on part of a fee parcel can be the value of the underlying portion of the fee parcel. Many commercial lessees, however, may request other valuation methods for the lessee policy. Contact the New Hampshire Office for assistance in determining whether alternative valuation methods may be more suitable. Such methods include the following: a policy based upon the aggregate base rent for the term; the aggregate amount of total rentals for the first 6 years after closing; ten times the annual gross rent for the lease term of 25 years or less; twenty times the annual gross rent for a term of 25-49 years; or the value of land and improvements for a lease term of more than 50 years.

Schedule B – Exceptions - Any leasehold policy should reflect all interests that the leasehold is subject to: the fee interest and any mortgages, liens, attachments on the fee, prior leasehold grants, prior assignments and prior mortgages. When insuring a leasehold interest, the agent must add a Schedule B exception for the fee owner's interest and the terms and conditions of the lease as referenced in the notice of the lease. A sample is: "*Fee Ownership of John Doe and Terms and Conditions of the Notice of Lease recorded at Book 1256 Page 99 in HCRD.*"

Schedule C - Property Description - The agent must clearly indicate that the insured property is a leasehold interest and note that it is located on the land owned by the fee owner. See the previous discussion and the following sample policy forms for reference.

Leasehold Endorsements - An owner's leasehold policy requires an Owner's Leasehold Endorsement, and a mortgagee leasehold policy requires a Mortgagee's Leasehold Endorsement when a Notice of lease is recorded. The Endorsements are required to amend the standard fee policy in order to address leasehold interests and losses. There is no charge for these endorsements.

Other Commercial Endorsements - The agent may receive requests from the proposed leasehold insured for certain commercial endorsements. The usual endorsement requirements and rates apply

when the endorsement is issued for an applicable Leasehold Owner or Leasehold Lender Policy.

Sample policy forms follow. *Instructions are written in Italics for reference.*

C A T I C

Policy No.	Amount of Insurance	Date of Policy
OP	Contact the State Office to confirm the amount of Insurance	Date: Recorded Notice of Lease
MP	Amount of Mortgage	Date: Recorded Mortgage
Agent Name		Agent Number

MORTGAGEE/OWNER TITLE INSURANCE POLICY
SCHEDULE A

- Name of Insured: (Lender) **Insert name of leasehold mortgagee as shown on recorded mortgage**, and its successors and assigns as their interests may appear of record and as defined by the policy.
- Name of Insured: (Owner) **Insert name of grantee/s exactly as shown on the recorded lessee/s on a recorded Notice of Lease.**
- The estate or interest in the land which is encumbered by the insured mortgage and which is covered by this policy is fee simple unless box is checked below. **Most titles are fee simple and the box below is left unchecked. Check the Leasehold box only if a "Notice of Lease" has been recorded and the leasehold title and fee title have been searched.**
 Leasehold Estate (See attached Leasehold Endorsement)
If a Notice of Lease has been recorded, then a leasehold policy may be issued and the Mortgagee Leasehold Endorsement and the Owner Leasehold Endorsement may be added to the policies. (No additional premium charge)
- Title to the estate or interest in the land is vested in: **Insert the name/s of the Lessee/s of record exactly as shown on the notice of lease of record which creates the insured interest for the named Lessee/s and the book and page of the Notice of Lease. Do not insert any name other than the Lessee/s name in a recorded lease.**
- MORTGAGEE POLICY - The insured mortgage and assignments thereof, if any, are described as follows: Mortgage from _____ to _____ in the principal amount of \$_____ dated _____ and recorded/filed in the _____ Registry of Deeds as Document No. _____ and Book _____ Page _____ on _____ at _____ am/pm and assigned to _____ by instrument dated _____ and recorded in the aforesaid registry as Document No. _____ and Book _____ Page _____ on _____ at _____ am/pm.
- The land referred to in this policy is known as _____ New Hampshire, and is more particularly described on Schedule C, attached hereto.

Countersigned and validated

By

Signature of Issuing Attorney

Type Name of Issuing Attorney

Policy not valid unless Schedule B - Part I is attached.

C A T I C

MP Policy No.
OP Policy No.

MORTGAGEE/OWNER TITLE INSURANCE POLICY
SCHEDULE B - PART I
EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

The applicable RESIDENTIAL or COMMERCIAL OWNER’S USE AND SURVEY AFFIDAVIT must be signed at closing.

General Exceptions:

1. Rights or claims of persons in possession, other than the insured, which are not shown by the public records.
2. Any easements or claims of easements not shown by the public records, boundary line disputes, overlaps, encroachments, title to filled lands (if any) and all other facts which an accurate survey and inspection of the land would disclose and which are not shown by the public records.
3. Unrecorded mechanic’s liens.

The Mortgage Policy deletes Schedule B Exceptions _____. (___Mortgage Inspection Report used)

Exceptions 1, 2, 3 are not deleted from the Owner policy unless specifically deleted in Special Exceptions.

Special Exceptions:

4. Liens for real estate taxes, municipal and private association assessments which become due and payable after the date of the policy. This policy insures that taxes are paid through: March 31, ___.
5. If the insured premises is a condominium unit: Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, power of attorney, and limitations on title, created by the laws of the State of the insured premises or set forth in the Master Deed or Declaration of Condominium, in the related By-Laws, in the Declaration of Trust, or Site Plans and Floor Plans as duly recorded in the appropriate land records office and as the same may have been lawfully amended, and in any instrument creating the estate or interest insured by this policy
6. The mortgage listed on Schedule A item 5 (applies to the Owner Policy only).

See attached continuation sheet for additional Schedule B Exceptions from Coverage.

If a Leasehold interest is insured, a special exception must be taken on Schedule B Continuation Page along with other title matters affecting the fee and the leasehold interest.

To the extent that they are checked, the following standard endorsements are incorporated by reference as if they were attached to the policy:

MP OP

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | ALTA Endorsement 4.1-Condominium |
| <input type="checkbox"/> | <input type="checkbox"/> | ALTA Endorsement 5.1-Planned Unit Development (PUD) |
| <input type="checkbox"/> | | ALTA Endorsement 6 -Variable Rate Mortgage (MP ONLY) |
| <input type="checkbox"/> | | ALTA Endorsement 8.1-Environmental Protection Lien: Paragraph (b): insert NONE (Res.MP Only) |
| <input type="checkbox"/> | | CATIC Endorsement E-15.2 NH-Secondary Mortgage Market (MP ONLY) |

C A T I C

Continuation Page
Schedule B Exceptions

MP Policy No. _____
OP Policy No. _____

For leasehold policies, exception must be taken for the Fee Owner's interest and for the terms of the Notice of the Lease:

12. Fee Ownership interest of _____ and terms and conditions of the Notice of Lease recorded at Book 1256 Page 99 in HCRD.

13., 14. etc. Add any fee simple as well as any prior leasehold liens, attachments, encumbrances, easements, restrictions, etc. that the leasehold takes subject to.

(End of Continuation Page Schedule B Exceptions: Normally a full page; however this page is reprinted in these materials for demonstration purposes.)

C A T I C

**SCHEDULE B, PART II
SUBORDINATE MATTERS
MATTERS RECORDED AFTER THE INSURED MORTGAGE
AND INSURED DEED**

Mortgagee Policy No. _____

Owner Policy No. _____

In addition to the matters set forth in Part I of this Schedule, the Owner's 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 the Lender that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

Use this form to list matters recorded after the insured mortgage and insured Notice of Lease.

1. Subordination agreement of Good Sport Bank dated December 24, 2005 and recorded December 24, 2005 at Book 5 Page 10 in the Coos County Registry of Deeds subordinating its fee mortgage to Mortgage from Lessee to Premier Bank dated December 24, 2005 in the amount of \$500,000.00 and recorded at Book 5, Page 9 in said county.

(End of Schedule B, Part II Subordinate Matters: Normally a full page; however this page is reprinted in these materials for demonstration purposes)

C A T I C

Schedule C

MP Policy No. _____

OP Policy No. _____

Leasehold policies: To insure a leasehold interest, a leasehold agreement must exist and a "Notice of Lease" be recorded, containing a description of the leasehold property. The leasehold property description should address one of the following types of leasehold:

A. Fee Simple Owner grants a Lease to Lessee on ALL of the Fee Simple property. Schedule C should describe the following:

"A leasehold interest on all of the land owned in fee simple by _____ (Current Fee owner) in a Notice of Lease recorded at Book____, Page____ in the _____ County Registry of Deeds and located at _____(property location/address) in Town, NH. Said leasehold interest is further described as _____." (Insert the deed description for all of the fee simple property that is subject to the lease.)

B. Fee Owner grants a Lease to Lessee on PART of the Fee Simple property. Schedule C should describe the following:

"A leasehold interest on part of the land owned in fee simple by _____ (Current Fee owner) in a Notice of Lease recorded at Book____, Page____ in the _____ County Registry of Deeds. Said fee interest is described as a property located at _____ (property location/address) in Town, NH. The part of the fee simple that is subject to the leasehold interest is more particularly described as _____ (i.e. 'the Leasehold Parcel') and as shown on a survey entitled _____(Name of Survey), dated____ and prepared by _____ Surveyor." (Or insert the description of that portion of the fee simple that is subject to the lease.)

NOTE: in order to show the location of a leasehold interest on a particular PART of the fee simple, the actual location of the leasehold must be shown on a recorded plan. In some cases, subdivision or site plan review approvals may be required and shown on the plan.

As with any Schedule C description:

Omit all recitations of acreage and square footage.

Omit references on Schedule C to matters that encumber the property: Example: "subject to an easement at Book 10 Page 40." These matters should be listed on Schedule B.

Include references on Schedule C to "together with an easement over Whiteacre" ONLY if the title to Whiteacre and the grant of the easement by Whiteacre has been searched and all superior mortgages, liens and attachments of Whiteacre prior to the easement grant either have been released or are listed on the Schedule B Exceptions to the policy.

Include references on Schedule C to "together with an easement over Whiteacre in common with others" ONLY if the title to Whiteacre and the grant of the easement has been searched and all superior mortgages liens and attachments of record prior to the easement grant either have been released or are listed on the Schedule B Exceptions of the policy.

C A T I C

1992 ALTA OWNER'S LEASEHOLD ENDORSEMENT

Attached to Policy OP No. _____

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.

Connecticut Attorneys Title Insurance Company



RICHARD J. PATTERSON
PRESIDENT

By _____
Authorized Signatory

C A T I C

LEASEHOLD MORTGAGEE POLICY ENDORSEMENT For 1992 ALTA Mortgagee Policies

Attached to and made a part of Mortgagee Policy MP _____.

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, and 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.

Connecticut Attorneys Title Insurance Company



RICHARD J. PATTERSON
PRESIDENT

By: _____
Authorized Signatory