

# Personal Property Title Insurance Owner's Policy (PPT-9)

Attached to Policy No.

Issued by

## COVERAGE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS TO COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS AND STIPULATIONS, (the "Company"), insures, as of Date of Policy, against actual loss or damage, not exceeding the Maximum Amount of Insurance or any lesser amount expressly set forth below, sustained or incurred by the Insured by reason of:

1. The existence of any Security Interest of any Secured Party Perfected against a Seller in any portion of the Acquired Assets;
2. The existence of any Security Interest of any Secured Party Perfected against an owner of the Acquired Assets other than a Seller in any portion of the Acquired Assets in an amount not to exceed the lesser of the Maximum Amount of Insurance or \$250,000.00;
3. The existence of any Lien of any Lien Creditor in any portion of the Acquired Assets suffered by a Seller;
4. The existence of any Lien of any Lien Creditor in any portion of the Acquired Assets suffered by an owner of the Acquired Assets other than a Seller in an amount not to exceed the lesser of the Maximum Amount of Insurance or \$250,000.00;
5. The existence of any perfected federal or state tax lien(s) in any portion of the Acquired Assets in an amount not to exceed, in the aggregate, the lesser of the Maximum Amount of Insurance or \$250,000.00; and
6. Any claim covered by insuring clauses 1 through 5 that arises out of any adversary proceeding under Federal Rule of Bankruptcy Procedure 7001(2) filed by or against a Secured Party under the Bankruptcy Code to determine the Unencumbered Lien Status of the Acquired Assets.

The Company will also pay the costs, legal fees and expenses incurred in defense of the Insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

## EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, legal fees or expenses that arise by reason of:

1. The Insured not having Rights in the Acquired Assets at Date of Policy.
2. Any of the information provided on Schedule A not being as stated in Schedule A.
3. Perfection by a Secured Party of a Security Interest in any portion of the Acquired Assets by any method other than by the Filing of a Financing Statement;  
this exclusion does not apply to Perfection by Possession of the Possessory Acquired Assets or

by Control of the Control Acquired Assets itemized in paragraph 7 of Schedule A.

4. A Purchase Money Security Interest in the Acquired Assets that has complied with the Filing and Notice requirements of the Uniform Commercial Code with respect to Perfection or Priority afforded to Purchase Money Security Interests under the Uniform Commercial Code within 20 days of Date of Policy.
5. Any claim arising: (a) as a result of the operation of bankruptcy, receivership, assignment for the benefit of creditors, insolvency or similar creditors' rights Laws or proceedings, and any Laws that operate only in the event of such proceedings, including any claim that is based

upon fraudulent transfer or fraudulent conveyance, the application of the doctrine of equitable subordination, or preferential transfer; or (b) out of any case filed by or against any Seller under the Bankruptcy Code; subparagraph (b) of this exclusion does not limit the coverage provided by insuring clause 6.

6. An Adverse Interest:
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, but Known to the Insured Claimant or of which the Insured Claimant has Notice;
  - (c) resulting in no loss or damage to the Insured Claimant; or
  - (d) attaching or created subsequent to Date of Policy.

## CONDITIONS AND STIPULATIONS

### A. Definition of Terms

1. Any capitalized term or phrase used in this policy, not defined in this policy, and defined or used in the Uniform Commercial Code, shall have the meaning given to it in the Uniform Commercial Code by definition or applicable usage. If a term is defined or used in Article 9 of the Uniform Commercial Code and is defined or used in a different manner in another article of the Uniform Commercial Code, the definition or usage in Article 9 shall control.
2. The following terms when used in this policy mean:
  - (a) "Acquired Assets": the Personal Property and Fixtures specified in paragraph 7 of Schedule A except for Excluded Acquired Assets.
  - (b) "Adverse Interest": A Security Interest, Lien of a Lien Creditor, or state or federal tax lien that impairs the Unencumbered Lien Status of the Acquired Assets and is not listed on Schedule B.
  - (c) "Amount of Insurance": as defined in Section F.2 of these Conditions and Stipulations.
  - (d) "Article 9": Article 9 of the uniform version of the Uniform Commercial Code, without regard to the adoption of the Uniform Commercial Code in the Jurisdiction.
  - (e) "Bankruptcy Code": Title 11 of the United States Code, as amended.
  - (f) "Control Acquired Assets": Deposit Accounts, Electronic Chattel Paper, Investment Property, and Letter-of-Credit Rights.
  - (g) "Date of Policy": the policy date specified in Schedule A.

- (h) "Excluded Acquired Assets": Personal Property and Fixtures (i) in which a Security Interest may not be obtained or maintained under the Uniform Commercial Code, or (ii) that are Acquired Assets in a transaction to which Article 9 of the Uniform Commercial Code does not apply.
- (i) "File", "Filing", or "Filed": file, record, and/or register in the Public Records of the Filing Office.
- (j) "Filing Office": the governmental or quasi-governmental agency or agencies and their locations shown in Schedule B.
- (k) "Insured": the party or parties named in paragraph 1 of Schedule A.
- (l) "Insured Claimant": an Insured claiming loss or damage.
- (m) "Jurisdiction": the State whose law applies, as applicable, to the Unencumbered Lien Status of the Acquired Assets, the Attachment of any Security Interest in the Acquired Assets, the Perfection of any Security Interest in the Acquired Assets, or the Priority of any Security Interest in the Acquired Assets.
- (n) "Law" or "Laws": law(s), by-law(s), ordinance(s), order(s), code(s), rule(s), or governmental regulation(s) of executive or legislative branches of government.
- (o) "Maximum Amount of Insurance": the Maximum Amount of Insurance specified in Schedule A.
- (p) "Possessory Acquired Assets": Certificated Securities, Instruments, Money, Negotiable Documents of Title, and Tangible Chattel Paper.
- (q) "Public Records": those records maintained by the Filing Office.
- (r) "Schedule A": Schedule A attached hereto, and any supplemental or additional schedules (identified as Schedule A-1, Schedule A-2, and so on) when there are multiple Sellers and/or Insured Parties.
- (s) "Seller" or "Sellers": the transferor or transferors identified on Schedule A attached hereto, and any supplemental or additional schedules (identified as Schedule A-1, Schedule A-2, and so on) when there are multiple transferors.
- (t) "Unencumbered Lien Status of the Acquired Assets": the status of the Acquired Assets as being free and clear of any Adverse Interest.
- (u) "Uniform Commercial Code": the Uniform Commercial Code as in effect in the Jurisdiction. (v) "Value of the Acquired Assets": the fair market value of the

Acquired Assets as of the date of the notice of a claim provided by the Insured Claimant to the Company in accordance with Section B of these Conditions and Stipulations.

**B. Notice of Claim to be Given by Insured Claimant.**

The Insured Claimant shall promptly notify the Company in writing in the event of each of the following:

1. any litigation or other proceeding as set forth in Section C.1 below; and
2. the Insured Claimant shall acquire Knowledge of any claim adverse to the Unencumbered Lien Status of the Acquired Assets which might cause loss or damage for which the Company may be liable by virtue of this policy.

**C. Defense and Prosecution of Actions; Duty of Insured Claimant to Cooperate.**

1. Upon written request by the Insured and subject to the options contained in Section E of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of the Insured in litigation or other proceeding in which any third party asserts an Adverse Interest. The Company shall have the right to select lawyer(s) of its choice to represent the Insured as to the litigation or other proceeding and shall not be liable for and will not pay the fees of any other lawyer(s).
2. The Company will not pay any fees, costs or expenses (a) incurred in the defense of those allegations or causes of action which allege matters not insured against by this policy, or (b) incurred by the Insured which were not authorized by the Company in writing.
3. 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 Unencumbered Lien Status of the Acquired Assets, to maintain the Unencumbered Lien Status of the Acquired Assets, to remove an Adverse Interest, or otherwise 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 the Company shall be liable under this policy. The taking of action by the Company shall not concede any liability by the Company or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
4. 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 or proceeding to final determination by a court of competent jurisdiction. The Company reserves the right, in its sole discretion and at its expense, to appeal from any adverse ruling, judgment, decree, order or similar determination.

5. 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 prosecute, or provide defense in, the action or proceeding, and all appeals related to the action or proceeding. The Insured shall 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 assistance:
  - (a) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and
  - (b) in any other lawful act which, in the opinion of the Company, may be necessary or desirable to establish or maintain the Unencumbered Lien Status of the Acquired Assets.

**D. Proof of Loss or Damage.**

1. In addition to and after the notices required under Section B 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.
2. The proof of loss or damage shall describe the Adverse Interest or other matter insured against by this policy which constitutes the basis of loss or damage and shall state the basis of calculating the amount of the loss or damage.
3. The Insured Claimant shall, in the discretion of the Company, be required to submit to examination under oath by any authorized representative of the Company.
4. The Insured Claimant shall produce for examination, inspection and copying, at such times and places as may be designated by any authorized representative of the Company, all documents, instruments, writings, policies of insurance, records, books, ledgers, checks, correspondence, electronic files, e-mails, disks, tapes, memoranda, and other evidence, whether bearing a date before or after Date of Policy,

which, in the opinion of the Company, may pertain to the loss or damage.

5. 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 documents, instruments, writings, policies of insurance, records, books, ledgers, checks, correspondence, electronic files, e-mails, disks, tapes, memoranda, and other evidence in the custody or control of a third party, whether bearing a date before or after Date of Policy and which, in the opinion of the Company, may pertain to the loss or damage.
6. 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 opinion of the Company, it is appropriate in the administration of the claim.

**E. 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:

1. To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance, together with any costs, legal fees and expenses incurred by the Insured Claimant, which were authorized by the Company up to the time of payment or tender of payment which the Company is obligated to pay. Upon the exercise by the Company of its option provided for in this paragraph, 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 or proceeding, and this policy shall be surrendered to the Company for cancellation.
2. To Pay or Otherwise Settle with Parties Other Than the Insured Claimant or With the Insured Claimant.
  - (a) To pay or otherwise settle with other parties for or in the name of the Insured Claimant any claim insured against under this policy, together with any costs, legal 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
  - (b) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, legal 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 2(a) or (b), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation or proceeding.

**F. Determination and Extent of Liability; Amount of Liability**

1. 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 described in this policy.
2. "Amount of Insurance" means, and the liability of the Company under this policy shall not exceed, the lesser of:
  - (a) the Maximum Amount of Insurance specified in Schedule A or, if applicable, any lesser amount expressly set forth in Insuring Clauses 2, 4 or 5; and
  - (b) the amount by which the Value of the Acquired Assets is reduced by the Adverse Interest. The Company will pay only those costs, legal fees and expenses incurred in accordance with Section C of these Conditions and Stipulations.
3. The liability of the Company under this policy shall be reduced as provided in Section H of these Conditions and Stipulations.
4. The Company will not pay a claim resulting in no loss or damage to the Insured Claimant.
5. If the Company is prejudiced by the failure of the Insured to perform any of its agreements or obligations under this policy, the Company's liabilities or obligations to the Insured under this policy shall be reduced or terminated to the extent the failure prejudices the Company.

**G. Limitation of Liability.**

1. The Company shall have fully performed its obligations with respect to a matter and shall not be liable for any loss or damage caused by the matter if the Company:
  - (a) removes the Adverse Interest, or
  - (b) otherwise establishes the Unencumbered Lien Status of the Acquired Assets, in a reasonably diligent manner by any method, including litigation or other proceeding and the completion of any appeals related to the litigation.

2. The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

#### **H. Reduction of Insurance; Reduction or Termination of Liability.**

All payments under this policy, except payments made for costs, legal fees, and expenses, which were authorized by the Company in writing, shall reduce the Amount of Insurance pro tanto.

#### **I. Liability Non-cumulative.**

It is expressly understood that the Maximum Amount of Insurance shall be reduced by any amount the Company may pay under any EAGLE 9<sup>®</sup> UCC Insurance Policy insuring the Attachment, Perfection or Priority of a Security Interest listed on Schedule B or an Adverse Interest as to which the Insured has agreed, assumed, or taken subject, or an Adverse Interest which is hereafter granted in the Acquired Assets by an Insured, and the amount so paid shall be deemed a payment under this policy.

#### **J. Payment of Loss.**

1. No payment shall be made without producing this policy for endorsement as to the payment made 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.
2. In the event of any litigation or proceeding, including litigation or proceedings instituted 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 related to the litigation or other proceeding, adverse to the Unencumbered Lien Status of the Acquired Assets.
3. The loss or damage shall be payable within 30 days after the liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations.

#### **K. Subrogation Upon Payment or Settlement.**

1. 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.
2. The Company shall be subrogated and 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, in a form satisfactory 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, litigation or other proceeding involving these rights or remedies.

3. 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 the amount by which the Value of the Collateral is reduced by the amount of the indebtedness secured by an Adverse Interest.
4. The Insured will not take any action that unreasonably impairs the Company's rights of subrogation.

#### **L. Liability Limited to This Policy; Policy Entire Contract.**

1. This policy together with all endorsements, if any, attached to this policy by the Company is the entire policy and contract between the Insured and the Company. Without limiting the foregoing, all prior or contemporaneous oral agreements, understandings, representations and statements are merged into this policy and shall be of no further force or effect. In interpreting any provision of this policy, this policy shall be construed as a whole.
2. Any modification, amendment or alteration of the terms of this policy shall be effective only if made by a written endorsement attached to this policy and signed by any President, Vice President, Secretary, Assistant Secretary, validating officer or other authorized signatory of the Company.
3. Each endorsement attached to this policy at any time is made a part of this policy and is subject to all of the terms and provisions of this policy. Unless otherwise expressly set forth in the endorsement, it shall not (i) modify any of the terms and provisions of this policy or other endorsements, (ii) extend Date of Policy or the date of any endorsements, or (iii) increase the Maximum Amount of Insurance.
4. Any claim of loss or damage, whether or not based on negligence or any other theory in tort, and which arises out of the validity, enforceability or Priority of an Adverse Interest or by any action or proceeding asserting such

claim, shall be restricted to the provisions of this policy.

and all other provisions shall remain in full force and effect.

**M. Severability.**

In the event any provision of this policy is held invalid or unenforceable under applicable Law, this policy shall be deemed not to include that provision

**N. 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,

**SCHEDULE A**

**Policy Number:**

**Date of Policy:**

**Search Through Date(s):** See Paragraph 7 of this Schedule

**Maximum Amount of Insurance:** \$

**Premium:** \$

**Endorsement(s):**

The Company agrees to issue, if any, the Endorsement(s) listed in the following table:

<i>Endorsement</i>	<i>Premium</i>

**1. Name and mailing address of Insured:**

**2. Name of Debtor:**

(a) Debtor's current exact legal name is:

(b) Debtor has no additional exact legal names during the 12 months prior to Date of Policy except as follows:

**3. Mailing address of Debtor:**

**4. Organizational Status of Debtor:**

Debtor is a corporation organized under the laws of the State of \_\_\_\_\_, with the following organization number \_\_\_\_\_ (or indicate "None" if one does not exist). Debtor has not been a party to a merger or other reorganization nor has debtor acquired an operating business or significant assets out of the ordinary course of business of the transferor. The foregoing information is complete for the 12 months immediately preceding Date of Policy except as follows: \_\_\_\_\_.

**OR**

Debtor is a limited liability company organized under the laws of the State of \_\_\_\_\_, with the following organization number \_\_\_\_\_ (or indicate "None" if one does not exist). Debtor has not been a party to a merger or other reorganization nor has debtor acquired an operating business or significant assets out of the ordinary course of business of the transferor. The foregoing information is complete for the 12 months immediately preceding Date of Policy except as follows: \_\_\_\_\_.

**OR**

Debtor is a limited partnership organized under the laws of the State of \_\_\_\_\_, with the following organization number \_\_\_\_\_ (or indicate "None" if one does not exist). Debtor has not been a party to a merger or other reorganization nor has debtor acquired an operating business or significant assets out of the ordinary course of business of the transferor. The foregoing information is complete for the 12 months immediately preceding Date of Policy except as follows: \_\_\_\_\_.

**OR**

Debtor is an individual with his or her principal residence located in the State of \_\_\_\_\_. Debtor has not acquired an operating business or significant assets out of the ordinary course of business of the transferor. The foregoing information is complete for the 12 months immediately preceding Date of Policy except as follows: \_\_\_\_\_.

**OR**

Debtor is a general partnership formed under the laws of the State of \_\_\_\_\_, with its sole place of business, or if more than one place of business, with its chief executive office located in the State of \_\_\_\_\_. Debtor has not been a party to a merger or other reorganization nor has debtor acquired an operating business or significant assets out of the ordinary course of business of the transferor. The foregoing information is complete for the 12 months immediately preceding Date of Policy except as follows: \_\_\_\_\_.

**OR**

Debtor is a Trust formed under the laws of the State of \_\_\_\_\_, with its sole place of business, or if more than one place of business, with its chief executive office located in the State of \_\_\_\_\_. The name of the settlor of the Trust is \_\_\_\_\_, and the name of the trustee of the Trust is \_\_\_\_\_. Debtor has not acquired an operating business or significant assets out of the ordinary course of business of the transferor. The foregoing information is complete for the 12 months immediately preceding Date of Policy except as follows: \_\_\_\_\_.

**5. The Collateral that is covered by this Policy is described in the Debtor Security Agreement.**

For purposes of insuring clauses 2-6, 8 and 9, the Collateral (i) **only includes** Instruments, Tangible Chattel Paper, Negotiable Documents of Title, and Investment Property to the extent of the Perfection of the Insured Security Interest by the Filing of a Financing Statement, and does not include coverage as to the Priority of the Insured Security Interest therein, and (ii) **does not include** Money, Deposit Accounts, Letter-of-Credit Rights, Timber to be Cut, As-extracted Collateral (including Minerals), Farm Products (including Crops), Commercial Tort Claims, and Consumer Goods.

**OR**

For purposes of insuring clauses 2-6, 8 and 9, the Collateral (i) **includes** Instruments, Tangible Chattel Paper, Negotiable Documents of Title, or Investment Property **only** to the extent of the Perfection of the Insured Security Interest by the Filing of a Financing Statement, and does not include coverage as to the Priority of the Insured Security Interest therein **unless** covered Instruments, Tangible Chattel Paper, Negotiable Documents of Title, or Investment Property are listed in the following tables; (ii) **does not include** Commercial Tort Claims or Consumer Goods, unless covered Commercial Tort Claims or Consumer Goods are listed in the following tables; (iii) **does not include** Deposit Accounts or Money, unless covered Deposit Accounts or Money are listed in the following tables; and (iv) **does not include** Letter-of-Credit Rights, Timber to be Cut, As-extracted Collateral, or Farm Products, **unless** covered Letter-of-Credit Rights, Timber to be Cut, As-extracted Collateral, or Farm Products are listed in the following tables:

[Include Tables as appropriate]

**INSTRUMENTS (DEBT):**

Maker	Date	Original Principal Amount of the Instrument	In Possession of
		\$	

**TANGIBLE CHATTEL PAPER:**

Description	Tangible Chattel Paper in Possession of

**NEGOTIABLE DOCUMENTS OF TITLE:**

Description	Negotiable Documents of Title in Possession of

**INVESTMENT PROPERTY (HELD BY SECURITIES INTERMEDIARY):**

Issuer	Percentage of Interest	Name of Securities Intermediary	Account No.

**SCHEDULE A (Continued)**

**INVESTMENT PROPERTY (NOT HELD BY SECURITIES INTERMEDIARY):**

Issuer	Percentage of Interest	Certificate No.	Certificated Securities in Possession of

**COMMERCIAL TORT CLAIMS:**

Tort Obligor	Amount of Claim	Brief Description of Claim
	\$	

**CONSUMER GOODS:**

Specific Description of Goods (e.g. "one gold bracelet," *not* "all my jewelry", "one Wyeth painting," *not* "all my paintings")

1.

**MONEY:**

Amount	In Possession of
\$	

**DEPOSIT ACCOUNTS:**

Name on Account	Name of Depository Institution	Account No.

**LETTER-OF-CREDIT RIGHTS:**

Issuer	Date	Amount of Issuer's Undertaking	Location
		\$	

**TIMBER TO BE CUT, AS-EXTRACTED COLLATERAL (INCLUDING MINERALS), FARM PRODUCTS (INCLUDING CROPS):**

Description of Collateral	Street Address of Location	Legal Description of Location

6. The Debtor Security Agreement and assignments of the Debtor Security Agreement, if any, are described as follows:

Name of Document	Date	List of Parties