



# Fidelity National Title Insurance Company

## COMMITMENT FOR TITLE INSURANCE ISSUED BY FIDELITY NATIONAL TITLE INSURANCE COMPANY

### NOTICE

**IMPORTANT—READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

### COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Fidelity National Title Insurance Company, a Florida Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all the Schedule B, Part I—Requirements have not been met within 180 Days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

**Fidelity National Title Insurance Company**

By:

*[Signature]*

ATTEST

President

*[Signature]*

Secretary

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ALTA Commitment for Title Insurance 8-1-16

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# Fidelity National Title Insurance Company

## **Transaction Identification Data for reference only:**

Issuing Agent: Jay F. Pumroy

Issuing Office: Wilson, Dillon, Pumroy & James, LLC

ALTA® Universal ID: 1072808

Loan ID Number: Unknown

Issuing Office File Number: 19-0402A

Property Address: U.S. Highway 431, Calhoun County, Alabama (for Company purposes only)

Revision Number: N/A

## **SCHEDULE A**

1. Commitment Date: June 17, 2019, at 8:00 o'clock a.m.
2. Policy(ies) to be issued:
  - (a) 2006 ALTA® Owner's Policy:  
Proposed Insured: A purchaser with contractual rights under a purchase agreement with the vested owner identified at Item 4 below.  
Proposed Policy Amount: \$ TBD not to exceed \$999,999.00
  - (b) 2006 ALTA® Loan Policy:  
Proposed Insured: N/A  
Proposed Policy Amount: \$N/A
3. The estate or interest in the Land described or referred to in this Commitment is fee simple.
4. Title to the fee simple estate or interest in the Land is at the Commitment Date vested in:  
  
Donald L. Smith
5. The Land is described as follows:

See Exhibit "A" to Schedule A which includes legal description of the Land.

**FIDELITY NATIONAL TITLE INSURANCE COMPANY**

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

Jay F. Pumroy, Authorized Signatory

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## Fidelity National Title Insurance Company

Issuing Office File Number: 19-0402A

### Exhibit "A" to Schedule A Legal description of the Land.

#### Parcel One:

A parcel of land located in the NE 1/4 of the NE 1/4 of Section 10, Township 15 South, Range 7 East, Calhoun County, Alabama, more particularly described as follows:

Commence at the NE corner of said NE 1/4 of the NE 1/4 of Section 10; thence North 85 degrees 30 minutes 40 seconds West along the North line of said NE 1/4 of the NE 1/4 of Section 10 a distance of 2.65 ft.; thence South 04 degrees 02 minutes 27 seconds West a distance of 451.21 ft. to the true point of beginning; thence North 73 degrees 10 min. 27 sec. West a distance of 476.64 ft.; thence South 05 degrees 54 min. 26 sec. East a distance of 217.63 ft.; thence South 73 degrees 12 min. 54 sec. East a distance of 418.05 ft. to the observed West ROW line of Anniston-Alexandria Road; thence North 09 degrees 34 min. 28 sec. East along said observed West ROW line of Anniston-Alexandria Road a chord length of 202.03 ft. to the point of beginning, containing 2.06 acres, more or less (according to a survey by B.J. Bailey dated March 7, 2000, Job No. 00-100); situated, lying and being in Calhoun County, Alabama.

Parcel One appears to be identified by the Revenue Commissioner of Calhoun County, Alabama, as of October 1, 2018, as Parcel No. 17-02-10-0-000-001.007 (PPIN 54325).

#### Parcel Two:

A parcel of land located in the NE 1/4 of the NE 1/4 of Section 10, Township 15 South, Range 7 East, Calhoun County, Alabama, more particularly described as follows:

Commence at the NE corner of said NE 1/4 of the NE 1/4 of Section 10; thence North 85 degrees 30 minutes 40 seconds West along the North line of said NE 1/4 of the NE 1/4 of Section 10 a distance of 2.65; thence South 04 degrees 02 minutes 27 seconds West a distance of 451.21 ft.; thence North 73 degrees 10 minutes 27 seconds West a distance of 476.64 ft. to the true point of beginning; thence South 05 degrees 53 minutes 57 seconds East a distance of 161.63 ft.; thence South 77 degrees 27 minutes 09 seconds West a distance of 282.74 ft. to a point on the Easterly right of way line of U.S. Highway #431; thence North 13 degrees 20 minutes 14 seconds West along the Easterly right of way line of U.S. Highway #431 a distance of 268.0 ft.; thence North 76 degrees 40 minutes 19 seconds East a distance of 377.11 ft.; thence South 00 degree 51 minutes 43 seconds East a distance of 140.0 ft.; thence North 73 degrees 10 minutes 27 seconds

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Exhibit "A" to Schedule A  
Legal description of the Land.  
(continued)

West a distance of 50.0 ft. to the point of beginning; situated, lying and being in Calhoun County, Alabama.

Parcel Two appears to be identified by the Revenue Commissioner of Calhoun County, Alabama, as of October 1, 2018, as Parcel No. 17-02-10-000-001.009 (PPIN 54327).

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## Fidelity National Title Insurance Company

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### SCHEDULE B, PART I-Requirements

All the following Requirements must be met for issuance of the Policy(ies):

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy(ies) to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered and recorded in the Public Records, as follows:

(a) Warranty Deed from Donald L. Smith to the person or entity identified in Schedule A conveying the Land described in Exhibit "A" to Schedule A. Section 40-22-1 of the Code of Alabama (1975, as amended) as amended by Act 2012-494 effective August 1, 2012, requires completion and attestation of a Real Estate Sales Validation Form or inclusion of the requirements required by Act 2012-494 within the deed of conveyance with respect to the Land.

**NOTE:** We reserve the right to make other and further requirements upon being furnished the identity of the proposed purchaser.

**NOTE:** The Warranty Deed described in 4(a) above must include the marital status of Donald L. Smith and, if Donald L. Smith is married, his spouse must also execute the Warranty Deed if the Land comprises a portion of the homestead of Donald L. Smith and his spouse. If Donald L. Smith is married but no portion of the Land comprises the homestead of Donald L. Smith and his spouse, the Warranty Deed should include an appropriate non-homestead disclaimer.

5. Payment of the indebtedness secured by, and release of record of, that certain Real Estate Mortgage and Security Agreement dated March 30, 2009, from Donald L. Smith to Farmers & Merchants Bank to secure a Loan for [REDACTED] and recorded in Mort Book 4540, Page 345. Release of record of that certain Assignment of Rents and Leases

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### SCHEDULE B, PART I-Requirements (continued)

recorded in Mort Book 4540, Page 350, given as additional security for the Loan.  
(Affects Parcel One).

6. Payment of the indebtedness secured by, and release of record of, that certain Real Estate Mortgage and Security Agreement dated June 25, 2009, from Donald L. Smith to Farmers & Merchants Bank to secure a Loan for [REDACTED] and recorded in Mort Book 4552, Page 293. Release of record of that certain Assignment of Rents and Leases recorded in Mort Book 4552, Page 298, given as additional security for the Loan.  
(Affects Parcel One and Two).
7. Payment of the indebtedness secured by, and release of record of, that certain Mortgage and Security Agreement dated June 15, 2010, from Donald L. Smith to Farmers & Merchants Bank to secure a Loan for [REDACTED] and recorded in Mort Book 4586, Page 239. Release of record of that certain Assignment of Rents and Leases recorded in Mort Book 4586, Page 246, given as additional security for the Loan. (Affects Parcel One and Two).
8. Payment of the indebtedness secured by, and release of record of, that certain Mortgage and Security Agreement dated December 14, 2010, from Donald L. Smith to Farmers & Merchants Bank to secure a Loan for [REDACTED] and recorded in Mort Book 4605, Page 504. Release of record of that certain Assignment of Rents and Leases recorded in Mort Book 4605, Page 511, given as additional security for the Loan. (Affects Parcel One and Two).
9. Section 35-11-451 of the Code of Alabama (1975, as amended) applies to a sale, lease or other transfer of commercial real estate; therefore, we will require disclosure from Seller and Purchaser, in affidavit form satisfactory to the Company, stating (i) whether or not Broker's services have been engaged with regard to the management, sale, purchase, lease, option or other conveyance of any interest in the Land, and (ii) whether or not a notice of lien for any such services has been received. Where the possibility of a right to file a Broker's Lien under Section 35-11-451 of the Code of Alabama (1975, as amended) exists, satisfaction (waiver, estoppel statement and payment) of such lien right must occur prior to or at closing or an exception to any such right to a Broker's Lien will appear in Schedule B of the Policy.

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### SCHEDULE B, PART I-Requirements (continued)

10. Section 40-18-86 of the Code of Alabama (1975, as amended) requires the Purchaser to withhold a percentage of the proceeds from the sale or transfer of real estate by non-residents of the State of Alabama. The Purchaser should determine if the Seller is a non-resident of Alabama within the meaning of Section 40-18-86 of the Code of Alabama (1975, as amended) and if the transaction is subject to the withholding requirement.

THE RECORDING REQUIREMENTS IN THIS COMMITMENT, UNLESS OTHERWISE INDICATED, REFER TO THE RECORDS OF THE PROBATE OFFICE OF CALHOUN COUNTY, ALABAMA.

END OF SCHEDULE B – PART I

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## SCHEDULE B, PART II Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all the Schedule B, Part I—Requirements are met.
2. Rights of persons or parties in possession of any portion of the Land.
3. Any encroachment, encumbrance, violation, variation, easement, land use or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term “encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
4. Easements or claims of easements not shown by the public records.
5. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**NOTE: Exceptions 1, 2 and 5 will be deleted from the Policy provided an acceptable Affidavit is provided to the Company by the current owner of the Land. Exception 3 will be deleted from the Policy provided an acceptable survey is provided to the Company.**

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# Fidelity National Title Insurance Company

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## SCHEDULE B, PART II

### Exceptions

(continued)

6. All taxes for the year 2019 (covering the period October 1, 2018, through September 30, 2019) and subsequent years, not yet due and payable. Any loss, claim, damage or expense including additional taxes due, if any, as a result of the fact that ad valorem taxes for the land have heretofore been paid under a current use assessment.
7. Minerals of whatever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests.
8. No insurance is given by the Company, or is such to be implied, as to the exact amount of acreage or square feet contained in the Land described in Schedule "A".
9. Easements of record, easements as located and restrictive covenants made applicable to the Land by recorded instruments.
10. Recitation/limitation in Warranty Deed recorded in Book 2013, Page 993, restricting use of Land to "Institutional, commercial or industrial use only and may not be used for residential purposes." (Affects Parcel One).
11. Right-of- Way Easement for water meter recorded in Book 2083, Page 3. (Affects Parcel One).
12. Easement to Alabama Power Company recorded in Book 3124, Page 910. (Affects Parcel One).

ALL RECORDING REFERENCES HEREIN REFER TO THE RECORDS OF THE PROBATE OFFICE OF CALHOUN COUNTY, ALABAMA.

END OF SCHEDULE B, PART II

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## COMMITMENT CONDITIONS

### 1. DEFINITIONS:

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements; and
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

### 4. COMPANY'S RIGHT TO AMEND.

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

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### 5. LIMITATIONS OF LIABILITY.

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - (i) comply with the Schedule B, Part I—Requirements;
  - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
  - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

### 6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT.

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

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7. **IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT.** The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.
8. **PRO-FORMA POLICY.** The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.
9. **ARBITRATION.** The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

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