



*First American*

# Commitment

## ALTA Commitment for Title Insurance

ISSUED BY

**First American Title Insurance Company**

File No: NCS-948739-PHX1

### COMMITMENT FOR TITLE INSURANCE

Issued By

***FIRST AMERICAN 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, ***First American Title Insurance Company***, a Nebraska 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 of the Schedule B, Part I-Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

***First American Title Insurance Company***

Dennis J. Gilmore  
President

Jeffrey S. Robinson  
Secretary

**If this jacket was created electronically, it constitutes an original document.**

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions.*

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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.

### 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.

### 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 of 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.

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**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.

**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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# Schedule A

## ALTA Commitment for Title Insurance

ISSUED BY

**First American Title Insurance Company**

File No: NCS-948739-PHX1

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

Issuing Agent: First American Title Insurance Company National  
Commercial Services

Commitment No.: NCS-948739-PHX1

Property Address: 229 Gleneagle Gate View, Colorado Springs,  
CO 80921

Revision No.:

Issuing Office: 2425 E. Camelback Road, Suite 300,  
Phoenix, AZ 85016

Phone Number: (602)567-8100

Issuing Office File No.: NCS-948739-PHX1

### **SCHEDULE A**

1. Commitment Date: March 05, 2019 at 5:00 PM
2. Policy or Policies to be issued:
  - (a) ☒ ALTA® Owner's Policy (6-17-06)  
Proposed Insured: Pecos-Windmill Ltd., a Nevada limited partnership  
Proposed Policy Amount: \$5,817,115.00
  - (b) ☐ ALTA® Loan Policy (6-17-06)  
Proposed Insured:  
Proposed Policy Amount: \$
3. The estate or interest in the Land described or referred to in this Commitment is  
  
Fee Simple, as to Parcel A and Easement, as to Parcel B.
4. The Title is, at the Commitment Date, vested in:  
  
38107 Northgate, LLC, a Florida limited liability company
5. The Land is described as follows:

**See Exhibit "A" attached hereto and made a part hereof**

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## ALTA Commitment for Title Insurance

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**First American Title Insurance Company**

File No: NCS-948739-PHX1

# Exhibit A

Commitment No.: NCS-948739-PHX1

The Land referred to herein below is situated in the County of El Paso, State of Colorado, and is described as follows:

Parcel A:

Lot 1, Academy Gateway Subdivision Filing No. 1, in the County of EL Paso, State of Colorado according to the plat thereof recorded July 11, 2017 under Reception No. 217713997 as corrected by that Affidavit of Correction recorded August 21, 2017 under Reception No. 217100004.

Parcel B:

Non-exclusive easements for ingress, egress, drainage and utility purposes over and across portions of Academy Gateway Subdivision Filing No. 1 as set forth and described in Declaration of Covenants for Academy Gateway recorded June 29, 2017 under Reception No. 217076379 and as shown on the plat thereof recorded July 11, 2017 under Reception No. 217713997 as corrected by that Affidavit of Correction recorded August 21, 2017 under Reception No. 217100004.

For informational purposes only: APN: 6206306001

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# Schedule BI & BII

## ALTA Commitment for Title Insurance

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**First American Title Insurance Company**

File No: NCS-948739-PHX1

Commitment No.: NCS-948739-PHX1

### SCHEDULE B, PART I

#### Requirements

All of the following Requirements must be met:

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 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.
5. Payment of all taxes and assessments now due and payable as shown on a certificate of taxes due from the County Treasurer or the County Treasurer's Authorized Agent.
6. Evidence that all assessments for common expenses, if any, have been paid.
7. Receipt by the Company of an ALTA/NSPS Land Title Survey, certified to First American Title Insurance Company, and in form and content satisfactory to the Company. The Company reserves the right to make further requirements and/or exceptions upon review of this survey.
8. Evidence that the Right of First Refusal provisions set forth in the Memorandum of Lease recorded April 20, 2018 at Reception No. 218044699, have been complied with.
9. Recordation of a Release of the Deed of Trust from 38107 Northgate, LLC, a Florida limited liability company to the Public Trustee of El Paso County for the use of Crossfirst Bank to secure an indebtedness in the principal sum of \$3,541,272.00, and any other amounts and/or obligations secured thereby, dated April 19, 2018 and recorded April 20, 2018 at Reception No. 218044700.

NOTE: Assignment of Lessor's Interest in Contracts and Leases in connection therewith recorded April 20, 2018 at Reception No. 218044701.

NOTE: Subordination, Non-Disturbance and Attornment Agreement in connection therewith recorded April 20, 2018 at Reception No. 218044828.

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10. Receipt by the Company of the following documentation for 38107 Northgate, LLC, a Florida limited liability company:

Operating Agreement, and all amendments thereto, if any.

Certificate of Good Standing issued by the Florida Secretary of State.

NOTE: The Company reserves the right to make further requirements and/or exceptions upon review of the above item(s).

11. Receipt by the Company of the following documentation for Pecos-Windmill Ltd., a Nevada limited partnership:

Partnership Agreement, and all amendments thereto, if any.

NOTE: The Company reserves the right to make further requirements and/or exceptions upon review of the above item(s).

12. Receipt by the Company of a satisfactory Final Affidavit and Indemnity, executed by 38107 Northgate, LLC, a Florida limited liability company.

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## Schedule BI & BII (Cont.)

### ALTA Commitment for Title Insurance

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**First American Title Insurance Company**

File No: NCS-948739-PHX1

Commitment No.: NCS-948739-PHX1

#### 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 facts, rights, interests or claims which are not shown by the Public Records, but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
2. Easements, or claims of easements, not shown by the Public Records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct land survey and inspection of the Land would disclose, and which are not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown in the Public Records.
5. 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 of the Schedule B, Part I-Requirements are met.

Note: Exception number 5 will be removed from the policy provided the Company conducts the closing and settlement service for the transaction identified in the commitment.

6. Any and all unpaid taxes, assessments and unredeemed tax sales.
7. Any water rights, claims of title to water, in, on or under the Land.
8. Any tax, lien, fee or assessment by reason of inclusion of subject property in the Donala Water & Sanitation District, as evidenced by instrument recorded December 1, 1972 at Reception No. 938939 and February 10, 1992 in Book 5934 at Page 443.

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9. An easement for lines for transmission and distribution of electrical energy and incidental purposes granted to The Mountain View Electric Association, as set forth in an instrument recorded November 11, 1974 in Book 2717 at Page 160. (Affects Parcel B)
10. Conveyance of Water Rights to Donala Water & Sanitation District as contained in Quit Claim Deed recorded July 10, 1985 in Book 5033 at Page 599.
11. Any tax, lien, fee or assessment by reason of inclusion of subject property in the Struthers Road Local Improvement District, as evidenced by instruments recorded September 4, 1997 at Reception No. 97102655, September 15, 1998 at Reception No. 98133275, September 22, 1998 at Reception No. 98136768, October 19, 1998 at Reception No. 98151193, March 19, 2009 at Reception No. 209028149 and May 22, 2015 at reception No. 215051623.
12. Terms, conditions, provisions, obligations and agreements as set forth in the Resolution No. 99-94 Regarding Zoning recorded August 30, 1999 at Reception No. 99137265.
13. An easement for sewage list station and incidental purposes granted to Donala Water & Sanitation District, as set forth in an instrument recorded October 30, 2000 at Reception No. 200131246. (Affects Parcel B)
14. An easement for sewage list station and incidental purposes granted to Donala Water & Sanitation District, as set forth in an instrument recorded October 30, 2000 at Reception No. 200131247.
15. An easement for underground sewer lines, water lines, related facilities and incidental purposes granted to Donala Water & Sanitation District, as set forth in an instrument recorded October 30, 2000 at Reception No. 200131248.
16. Terms, conditions, provisions, obligations, easements and agreements as set forth in the Permanent Utility Easement Agreement recorded March 15, 2005 at Reception No. 205036419. (Affects Parcel B)
17. Terms, conditions, provisions, obligations and agreements as set forth in the Resolution 17-157 of the EL Paso County Board of Commissioners Approving Preliminary Plan Request for Academy Gateway recorded May 24, 2017 at Reception No. 217059765.
18. Terms, conditions, provisions, obligations and agreements as set forth in the Resolution 17-157 of the EL Paso County Board of Commissioners Approving Final Plat for Academy Gateway recorded May 24, 2017 at Reception No. 217059766.
19. Terms, conditions, provisions, obligations and agreements as set forth in the Development Agreement - Academy Gateway recorded May 24, 2017 at Reception No. 217059767.
20. Covenants, conditions, restrictions, provisions, easements and assessments as set forth in Declaration of Covenants recorded June 29, 2017 at Reception No. 217076379, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin, and any and all amendments, assignments, or annexations thereto.
21. Terms, conditions, provisions, obligations, easements and agreements as set forth in the Private Detention Basin/Stormwater Quality Best Management Practice Maintenance Agreement and Easement recorded July 11, 2017 at Reception No. 217081215, and Amendment thereto recorded September 27, 2017 at Reception No. 217116625.

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22. Terms, conditions, provisions, obligations and agreements as set forth in the Subdivision Improvements Agreement recorded July 11, 2017 at Reception No. 217081216.
23. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of Academy Gateway Subdivision Filing No. 1, recorded July 11, 2017 at Reception No. 217713997 as corrected by that Affidavit of Correction recorded August 21, 2017 at Reception No. 217100004.
24. Terms, conditions, restrictions, provisions, obligations and agreements as set forth in the Declaration of Restrictive Use Covenant (Lot 1) recorded November 15, 2017 at Reception No. 217139051.
25. Terms, conditions, restrictions, provisions, obligations and agreements as set forth in the Declaration of Restrictive Use Covenant (Lot 2) recorded November 15, 2017 at Reception No. 217139052.
26. Lease by and between 38107 Northgate, LLC, a Florida limited liability company, as lessor, and 7-Eleven, Inc. a Texas corporation, as lessee, set forth in Memorandum of Lease recorded April 20, 2018 at Reception No. 218044699, which includes an option to purchase.
27. An easement for lines for transmission and distribution of electrical energy and incidental purposes granted to Mountain View Electric Association, Inc., a Colorado corporation, as set forth in an instrument recorded June 14, 2018 at Reception No. 218068363.
28. Any existing leases or tenancies.
29. Any claim that the Title is subject to a trust or lien created under The Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §§499a, et seq.) or the Packers and Stockyards Act (7 U.S.C. §§181 et seq.) or under similar state laws.

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## DISCLOSURE STATEMENT

Pursuant to C.R.S. 30-10-406(3)(a) all documents received for recording or filing in the Clerk and Recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one-half of an inch. The Clerk and Recorder will refuse to record or file any document that does not conform to the requirements of this section.

NOTE: If this transaction includes a sale of the property and the price exceeds \$100,000.00, the seller must comply with the disclosure/withholding provisions of C.R.S. 39-22-604.5 (Nonresident withholding).

NOTE: Colorado Division of Insurance Regulations 8-1-2 requires that "Every title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title commitment, other than the effective date of the title commitment, for all matters which appear of record prior to the time of recording whenever the title insurance company, or its agent, conducts the closing and settlement service that is in conjunction with its issuance of an owner's policy of title insurance and is responsible for the recording and filing of legal documents resulting from the transaction which was closed.

Pursuant to C.R.S. 10-11-122, the company will not issue its owner's policy or owner's policies of title insurance contemplated by this commitment until it has been provided a Certificate of Taxes due or other equivalent documentation from the County Treasurer or the County Treasurer's authorized agent; or until the Proposed Insured has notified or instructed the company in writing to the contrary.

The subject property may be located in a special taxing district. A Certificate of Taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent. Information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

**NOTE: Pursuant to CRS 10-11-123, notice is hereby given:**

**This notice applies to owner's policy commitments containing a mineral severance instrument exception, or exceptions, in Schedule B, Section 2.**

- A. **That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and**
- B. **That such mineral estate may include the right to enter and use the property without the surface owner's permission.**

**NOTE: Pursuant to Colorado Division of Insurance Regulations 8-1-2, Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:**

- A. **The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.**
- B. **No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.**
- C. **The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.**
- D. **The Company must receive payment of the appropriate premium.**
- E. **If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of the Commitment, the**

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**requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium, fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.**

**No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.**

NOTE: Pursuant to C.R.S. 38-35-125(2) no person or entity that provides closing and settlement services for a real estate transaction shall disburse funds as a part of such services until those funds have been received and are available for immediate withdrawal as a matter of right.

NOTE: C.R.S. 39-14-102 requires that a real property transfer declaration accompany any conveyance document presented for recordation in the State of Colorado. Said declaration shall be completed and signed by either the grantor or grantee.

**NOTE: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.**

NOTE: Pursuant to Colorado Division of Insurance Regulations 8-1-3, notice is hereby given of the availability of an ALTA Closing Protection Letter which may, upon request, be provided to certain parties to the transaction identified in the commitment.

Nothing herein contained will be deemed to obligate the company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.

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