

Michael F. Thomson (#9707)  
Peggy Hunt (#6060)  
Jessica G. McKinlay (#11210)  
Megan K. Baker (#15086)  
DORSEY & WHITNEY LLP  
111 South Main Street, 21<sup>st</sup> Floor  
Salt Lake City, UT 84111-2176  
Telephone: (801) 933-7360  
Facsimile: (801) 933-7373  
Email: thomson.michael@dorsey.com  
hunt.peggy@dorsey.com  
mckinlay.jessica@dorsey.com  
baker.megan@dorsey.com

*Attorneys for Michael F. Thomson, Chapter 11 Trustee*

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

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In re:

THE FALLS EVENT CENTER LLC; THE  
FALLS AT GILBERT, LLC; THE FALLS  
AT ST. GEORGE, LLC; THE FALLS AT  
FRESNO, LLC; THE FALLS AT CLOVIS,  
LLC; THE FALLS OF LITTLETON, LLC;  
THE FALLS AT CUTTEN ROAD, LLC;  
THE FALLS AT STONE OAK PARKWAY,  
LLC; THE FALLS AT BEAVERTON, LLC;  
AND THE FALLS AT ROSEVILLE, LLC

Consolidated Debtors.

Bankr. Case Nos.

18-25116; 18-25419; 18-26653; 18-27713;  
18-28140; and 18-27111  
(Substantively Consolidated as Case No. 18-  
25116)

Chapter 11

The Honorable R. Kimball Mosier

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**DECLARATION OF MICHAEL F. THOMSON, CHAPTER 11 TRUSTEE, IN  
SUPPORT OF MOTION TO SELL REAL PROPERTY OUT OF THE ORDINARY  
COURSE OF BUSINESS, FREE AND CLEAR OF ALL INTERESTS AND SUBJECT  
TO HIGHER AND BETTER OFFERS PURSUANT TO 11 U.S.C. § 363**

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I, Michael F. Thomson, being of lawful age, declare, certify, verify and state as follows:

1. I am the duly appointed Chapter 11 Trustee (the “Trustee”) for the bankruptcy estate of above-referenced substantively consolidated debtors (collectively, the “Debtors”) in the above-entitled bankruptcy case.

2. I make the statements in this Declaration based upon my personal knowledge and belief. I submit this Declaration in support of the *Motion to Sell Real Property Out of the Ordinary Course of Business, Free and Clear of All Interests and Subject to Higher and Better Offers Pursuant to 11 U.S.C. § 363* (the “Motion”). Unless stated otherwise, capitalized terms used herein have the meaning ascribed to them in the Motion.

3. A component of the property comprising the Debtors’ estate is certain real and personal property located in Washington County, Utah (collectively, the “Property”), more particularly described as:

- (a) The real property and building consisting of approximately 11,083 square feet located at 170 South Mall Drive, St. George, Washington County, Utah 84790, and more particularly described as:

PARCEL 1:

Lots 3 and 6, WILLOWBROOK PROFESSIONAL PARK, according to the official plat thereof, on file in the office of the Recorder of Washington County, State of Utah, recorded March 2, 2006 as Entry No. 20060006091.

PARCEL 1A:

A perpetual right-of-way access easement for ingress and egress and the use of the parking areas as cross parking as defined in that certain Right-of-Way Access Easement Agreement recorded March 2, 2016 as Entry No. 20060006092 of official records of Washington County, State of Utah (collectively the “Land”); and

- (b) All personal property, intangibles, building systems (including all existing security systems and CCTV), equipment, permits, and contracts rights.

4. On January 17, 2019, I entered into a Listing Agreement with Jones Lang Lasalle Americas, Inc. (“JLL”) to list the Property for sale, agreeing to pay JLL a commission of up to 6% of the sales price of the Property.

5. On or about January 28, 2019, I received an offer to purchase the Property from MCR Limited Liability Company (the “Buyer”) for \$1,750,000.00, and began negotiations with the Buyer.

6. On or about March 20, 2019, I, as the Trustee of TFEC, which is the manager of the Seller, entered into the Agreement agreeing to sell the Property to the Buyer for the amount of \$1,950,000.00.

7. On or about April 29, 2019, the Buyer and I, as the Trustee of TFEC, which is the manager of the Seller, entered into an Amendment to the Agreement to reflect a purchase price of \$1,680,00.00, after we discovered the square footage of the Property was 1,187 square feet less than we originally believed. As part of this Amendment, the Buyer agreed that the deposit would be non-refundable and the due diligence period would be terminated.

8. Based upon my investigation, including the review of the exceptions identified in the Commitment for Title Insurance issued by Fidelity National Title Insurance Company (the “Title Report”) obtained in conjunction with the proposed sale, I determined that the following liens and interests may encumber the Property:

- (i) A Deed of Trust dated April 24, 2013 in favor of The Village Bank<sup>1</sup> in the initial amount of \$825,000.00;

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<sup>1</sup> The Deed of Trust was assigned to Eagle Group Finance, L.P. on July 3, 2014, and a Substitution of Trustee, appointing Vendotrak Title Agency, LLC as Trustee under the Deed of Trust was recorded May 9, 2018.

- (ii) A Trust Deed dated April 24, 2013 in favor of TFEC in the initial amount of \$1,094,762.27.
- (iii) Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture filing dated September 20, 2017 in favor of TFEC.
- (iv) Property taxes owing for the year 2016 in the amount of approximately \$17,266.36.
- (v) Property taxes owing for the year 2017 in the amount of approximately \$15,199.38

(together with all other purported liens and encumbrances on the Property, the “Liens and Encumbrances”). A copy of the Title Report is attached hereto as Exhibit 1.

9. I propose to sell the Property free and clear of interests, including the Liens and Encumbrances, pursuant to 11 U.S.C. § 363(f), with the Liens and Encumbrances or any other interests that may be raised in conjunction with this Motion, if any, attaching to the proceeds of the sale, after the deduction of the costs of sale, including, the Agent’s commission, the Seller’s costs of sale, outstanding taxes and assessments, and any costs that the bankruptcy estate has incurred in relation to the Property that are allowable under 11 U.S.C. § 506(c) (the “Net Sale Proceeds”).

10. I submit that each of the holders of the Liens and Encumbrances are adequately protected by the proposed sale inasmuch as such interests will attach to the Net Sale Proceeds. In addition, I intend to pay the Liens and Encumbrances at the time of the closing. However, in the event a dispute arises with respect to the Liens and Encumbrances I will deposit the Net Sale Proceeds in a segregated account. Such Proceeds will not be deposited into my general account until such time as the validity, extent and priority of any interests in the Property are agreed to, or disputes related thereto, are resolved after notice and hearing.

11. The sale of the Property to the Buyer is subject to higher and better offers. If I receive an offer for the Property that I deem, in my sole and absolute discretion, to be higher and better (a “Qualified Offer”), then I will give written notice to the Buyer, as well as to any other parties that have submitted a Qualified Offer, of my intent to conduct an auction of the Property.

12. If an auction is held relating to the Property, I shall determine, in my sole and absolute discretion, which offer made at the auction constitutes the highest and best offer. Immediately thereafter, I shall report the results of the auction by filing a Notice of Auction Sale with the Court, and it will be the sale to the winning auction bidder for which Court approval shall be sought pursuant to this Motion.

13. I submit that the proposed sale of the Property pursuant to the above terms and procedures is based on sound business judgment, and I have made an independent and informed decision based on my knowledge of the Property that the proposed sale terms and procedures are the best way to maximize the Property’s value for the benefit of the Debtors’ creditors, produce a good faith sale of the Property, and minimize further costs to the bankruptcy estate.

14. In my business judgment, the sale of the Property pursuant to the terms and procedures contained in the Motion is in the best interest of the Debtors’ estate.

15. I have no relationship with Buyer.

16. I believe that the sale of the Property as proposed herein is fair, reasonable and will ensure that the estate obtains the highest and best price for the Property. In my business judgment, I have received a fair and reasonable offer from the Buyer to purchase the Property. Additionally, if I receive a Qualified Offer, the auction of the Property will create a competitive bidding process that ensures the Property will be sold for a fair and reasonable price.

17. To the best of my knowledge, the Buyer is a third-party purchaser who has no connections to me, my professionals, the Office of the United States Trustee or its employees, or the Debtors.

18. I submit that the proposed sale is an arm's length transaction, made to a good faith purchaser, that is entitled to protection under 11 U.S.C. § 363(m).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated this 3rd day of May, 2019.

/s/ Michael F. Thomson  
Michael F. Thomson  
*Chapter 11 Trustee*

# EXHIBIT 1



File Number: 111438-ETF

**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 of 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]*

President

ATTEST

*[Signature]*

Secretary

*[Signature]*

Authorized Countersignature  
Salt Lake City, Utah

File No.: 111438-ETF

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Fidelity National 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; and Schedule B, Part II-Exceptions.*





## 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.

### 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.

### 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.



**COMMITMENT CONDITIONS**  
**(Continued)**

- (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>.

**COTTONWOOD TITLE INSURANCE AGENCY, INC. PRIVACY POLICY**

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a notice of its privacy policies and practices, such as the type of information that it collects about the consumer and the categories of persons or entities to whom it may be disclosed.

In compliance with the GLBA, we do not share nonpublic personal information about a consumer with a nonaffiliated third party, unless allowed or required by law.

In compliance with the GLBA, our privacy practices regarding nonpublic personal financial information of consumers and customers (as defined by GLBA) are as follows, subject to any exceptions as permitted by law.

- We protect nonpublic personal information of customers and consumers.
- We allow access on a need to know basis only. Only title company personnel who need to know can access nonpublic personal information. Examples may include bookkeepers, title examiners, title underwriter personnel, auditors, closers and their assistants, management, scanning personnel, and claims related investigation personnel, and including but not limited to retained counsel.
- We allow customers and consumers to review their nonpublic personal information that we have collected, and we allow them to provide us with requests for amendment or deletion of such information, to which we will reasonably respond.
- We require consent from a proper party to the transaction to provide nonpublic personal information relating to that transaction. On closed files, we require a written instruction by a party.
- We have implemented a security procedure for protection of nonpublic personal information: We allow only authorized personnel to review the information, and we keep closed files in secure storage, with limited access, or we store the files on computer with limited password access.
- We generally do not keep copies of credit reports, loan applications, and tax returns on consumers and customers.
- We don't share copies of owner's policies of customers on residential transactions, unless at the request of the insured owner.
- If we share starter title information, we don't share nonpublic personal information, such as sales price (unless it is public information), policy numbers, or the amount of insurance on owner's policies issued to customers.
- We don't share nonpublic personal information, such as social security numbers, shown on affidavits of identity.
- We periodically inform our personnel about our policy.
- We don't share nonpublic personal information with independent contractors, unless there is a need to process the transaction as allowed by law, and the contractors agree in writing not to further share the information.

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We will use our best efforts to train and oversee our employees and authorized contractors to ensure that your information will be handled responsibly and in accordance with this Privacy Policy. We currently maintain physical, electronic, and procedural safeguards that comply with Federal regulations to guard your nonpublic personal information.



File Number: 111438-ETF

**COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A**

- 1. Commitment Date: March 13, 2019 at 7:30AM
- 2. Policy (or Policies) to be issued: **Policy Amount**
  - (a) Owner's Policy (ALTA Ext. Owners Policy (2006)) \$1,950,000.00  
Proposed Insured:  
**MCR Limited Liability Company, an Arizona limited liability company**
  - (b) Loan Policy  
Proposed Insured:
  - (c) Endorsements:
- 3. The estate or interest in the Land described or referred to in this Commitment and covered herein is Fee Simple as to Parcel 1; Easement as to Parcel 1A.
- 4. Title to the estate or interest in the Land is at the Commitment Date vested in:  
The Falls at St. George, LLC, a Utah Limited Liability Company
- 5. The Land referred to in this Commitment is situated in the County of Washington, State of Utah, and is described as follows:

**See Exhibit A attached hereto**

NOTE: Parcel Identification Numbers: SG-WPP-3 and SG-WPP-6 (for reference purposes only)

The Land described herein also known by the street address of:

170 South Mall Drive  
St. George, UT 84790

**MCR Companies                      Z1929369 MB1**  
The Falls at St. George LLC  
170 South Mall Drive  
St. George, UT                      Washington County

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Cottonwood Title Insurance Agency, Inc. Utah State License Number: **UT 92856**

Erika Pratt Utah State License Number: **UT 438881**

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Form 27C165A



**SCHEDULE B  
PART I - REQUIREMENTS**

All of the following requirements must be met:

- A. 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.
- B. Pay the agreed amount for the estate or interest to be insured.
- C. Pay the premiums, fees, and charges for the Policy to the Company. In the event the transaction for which this commitment is furnished cancels, the minimum cancellation fee will be \$125.00.
- D. 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.
- E. Any additional documentation requested by Cottonwood Title Insurance Agency, Inc. and/or Fidelity National Title Insurance Company, its underwriter.

**NOTICE TO APPLICANT**

The company requires that the following additional requirements be complied with:

- 1. The Company requires for its review a satisfactory copy of the "Operating Agreement" and the regulations of the The Falls at St. George, LLC, and any amendment thereof, a certificate of good standing, and satisfactory evidence of authority of the officers, managers or members to execute the documents.
- 2. The Company requires for its review a satisfactory copy of the "Operating Agreement" and the regulations of the MCR Limited Liability Company, and any amendment thereof, a certificate of good standing, and satisfactory evidence of authority of the officers, managers or members to execute the documents.
- 3. Warranty Deed from The Falls at St. George, LLC, a Utah Limited Liability Company vesting fee simple title in MCR Limited Liability Company, an Arizona limited liability company.
- 4. Mortgage or Deed of Trust from MCR Limited Liability Company, an Arizona limited liability company to secure your loan.
- 5. Reconveyance of Deed(s) of Trust shown herein as Exception No(s). 16, 17 and 19.
- 6. Release of that certain Junior Assignment of Rents and Leases shown herein as Exception No(s). 18.
- 7. Release of that certain Mortgage shown herein as Exception No(s). 20.
- 8. The Company requires the payment of all taxes and assessments and any penalties and interest for the year(s) 2016 through 2018, due and payable at closing.
- 9. Exception No. 1 ("Taxes or special assessments which are not shown as existing liens by the public records") of this commitment may be deleted if at the time of closing, the Company can ascertain that all taxes and assessments are paid, that there are no pending proceedings to create or confirm a special assessment on the Land and that there is no work that may result in an assessment lien. Comment: In order to delete this exception, the Company requires proof that there is no work or proceeding that may result in assessments, and no possible rollback or supplemental taxes due to failure to assess the Land or improvements or due to change in use.
- 10. Provided the Land is not one-to-four family residential land, Exception No. 2 ("Rights or claims of parties in possession not shown by the public records") of this commitment may be deleted if the Company makes a

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**SCHEDULE B  
PART I - REQUIREMENTS  
(Continued)**

satisfactory inspection for its sole benefit and if the Company is furnished, prior to closing, with a satisfactory affidavit executed by the owner of the Land identifying the Land and stating that no one is in possession of the Land other than said owner and the tenants of said owner. If there are tenants, their names and form of leases must also be indicated. The Company may except in the Policy to any such tenancy or other matter that is a product of this requirement.

11. Exception No. 3 ("Easements or claims of easements not shown by the public records") and Exception No. 4 ("Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey and inspection of the land") of this commitment may be deleted upon review and examination by this Company, prior to closing, of a satisfactory current Certificate of Survey of the land duly certified by a satisfactory registered land surveyor, and stating that it was made either in accordance with the "Minimum Standard Detail National Requirements for ALTA/NSPS Land Title Surveys as adopted by the American Land Title Association and the American Congress on Surveying & Mapping" or in accordance with the State Land and Survey Standards. The Company may except in the Policy to any item that is a product of this requirement.
12. Exception No. 6 ("Any lien, or right of a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records") of this commitment may be deleted if the Company receives satisfactory final Affidavits, verification that all funds have been disbursed and all bills paid, list of all materialmen, subcontractors, and contractors, indemnities and audited financial statements if appropriate, proof of final payment and waiver of liens, and determination that any new loan is not a construction loan, if applicable. The Company may, at its option, require an inspection of the Land. At the time the Company is furnished these items, the Company may make additional requirements or exceptions.



**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:

**NOTE: Exceptions 1-8 will be eliminated in an ALTA Extended Lender's Policy**

1. a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims which are not shown by the Public Records but that could be ascertained by inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, of adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. a) Unpatented mining claims; b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; c) water rights, claims or title to water, whether or not the matters excepted under a), b), or c) are shown by the Public Records.
6. Any liens, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the Public Records.
7. 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 in the date on which all of the Schedule B, Part I-Requirements are met.
8. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity or garbage collection or disposal or other utilities unless shown as an existing lien by the Public Records.
9. Taxes for the year 2019 are accruing as a lien, not yet due and payable under Parcel No. SG-WPP-3.

**Taxes for 2018 are a lien past due and payable in the amount of \$13,301.91, plus penalties and interest under Parcel No. SG-WPP-3.**

**Taxes for 2017 are a lien past due and payable in the amount of \$13,204.84, plus penalties and interest under Parcel No. SG-WPP-3.**

**Taxes for 2016 are a lien past due and payable in the amount of \$14,059.96, plus penalties and interest under Parcel No. SG-WPP-3. (affects Lot 3)**

Taxes for the year 2019 are accruing as a lien, not yet due and payable under Parcel No. SG-WPP-6.

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**SCHEDULE B  
PART II - EXCEPTIONS  
(Continued)**

**Taxes for 2018 are a lien past due and payable in the amount of \$864.96, plus penalties and interest under Parcel No. SG-WPP-6.**

**Taxes for 2017 are a lien past due and payable in the amount of \$884.67, plus penalties and interest under Parcel No. SG-WPP-6.**

**Taxes for 2016 are a lien past due and payable in the amount of \$961.05, plus penalties and interest under Parcel No. SG-WPP-6. (affects Lot 6)**

10. The herein described Land is located within the boundaries of St George City, The Washington County Water Conservancy District, Washington County Special Service District No. 1, Southwest Mosquito Abatement & Control District, and is subject to any and all charges and assessments levied thereunder.
11. Minerals of whatsoever 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. There may be leases, grants, exceptions or reservations of interests that are not listed.
12. Claim, right, title or interest to water or water rights whether or not shown by the public records.
13. Easements, notes and restrictions as shown on the recorded plat for Willowbrook Professional Park, recorded March 2, 2006 as Entry No. 20060006091.
14. Right-of-Way Access Easement Agreement by and between all current property owners of sub-division known as Willowbrook Professional Park, dated January 3, 2006 and recorded March 2, 2006 as Entry No. 20060006092.
15. Protective Covenants, Conditions and Restrictions, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate Title 42, USC 3604. Recorded March 2, 2006 as Entry No. 20060006093.
16. A Deed of Trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby: Trustor: The Falls at St. George, LLC; Trustee: The Village Bank; Beneficiary: The Village Bank; Amount: \$825,000.00; Dated: April 24, 2013; Recorded: April 25, 2013 as Entry Number 20130015728.  
  
Substitution of Trustee naming Vendortrak Title Insurance Agency, LLC, Successor Trustee, dated May 4, 2018, and recorded May 9, 2018, as Entry No. 20180019365.  
  
Notice of Default and Election to Sell under said Deed of Trust was recorded May 9, 2018 as Entry No. 20180019366.
17. Junior Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing to secure an indebtedness in the amount shown below, and any other obligations secured thereby: Trustor: The Falls at St. George, LLC, a Utah limited liability company; Trustee: Inwest Title Services, Inc.; Beneficiary: Eagle Group Finance, L.P., a California limited partnership, and its successors and assigns; Amount: \$6,175,000.00; Dated: July 3, 2014; Recorded: July 7, 2014 as Entry Number 20140020578.

The above stated Deed of Trust was assigned to Tempic Five, LLC, a California limited liability company,

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*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Fidelity National 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; and Schedule B, Part II-Exceptions.*



**SCHEDULE B  
PART II - EXCEPTIONS  
(Continued)**

a 50% undivided beneficial interest, recorded July 11, 2014 as Entry No. 20140021003.

18. Junior Assignment of Rents and Leases recorded July 7, 2014 as Entry No. 20140020579, as additional security for the payment of the indebtedness secured by said Deed of Trust.
19. A Trust Deed to secure an indebtedness in the amount shown below, and any other obligations secured thereby: Trustor: The Falls at St. George, LLC, a Utah limited liability company; Trustee: The Falls Event Center, LLC, a limited liability company; Beneficiary: The Falls Event Center, LLC; Amount: \$1,094,762.27; Dated: April 24, 2013; Recorded: July 27, 2017 as Entry Number 20170030612.
20. Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing to secure an indebtedness in the amount shown below, and any other obligations secured thereby: Mortgagor: The Falls at St. George, LLC, a Utah limited liability company; Mortgagee: The Falls Event Center, LLC, a Utah limited liability company; Amount: Not Disclosed; Dated: September 20, 2017; Recorded: September 21, 2017 as Entry No. 20170038281.
21. Rights of tenant(s) in the Land, if any, and rights of all parties claiming by, through or under said tenant(s).
22. **Taxes for 2018 are a lien past due and payable in the amount of \$13,301.91, plus penalties and interest under Parcel No. SG-WPP-3.**

**Taxes for 2017 are a lien past due and payable in the amount of \$13,204.84, plus penalties and interest under Parcel No. SG-WPP-3.**

**Taxes for 2016 are a lien past due and payable in the amount of \$14,059.96, plus penalties and interest under Parcel No. SG-WPP-3. (affects Lot 3)**

**Taxes for 2018 are a lien past due and payable in the amount of \$864.96, plus penalties and interest under Parcel No. SG-WPP-6.**

**Taxes for 2017 are a lien past due and payable in the amount of \$884.67, plus penalties and interest under Parcel No. SG-WPP-6.**

**Taxes for 2016 are a lien past due and payable in the amount of \$961.05, plus penalties and interest under Parcel No. SG-WPP-6. (affects Lot 6)**

**NOTE:** The following names have been checked for judgments:

**MCR Limited Liability Company, an Arizona limited liability company**

**The Falls at St. George, LLC, a Utah Limited Liability Company**

No unsatisfied judgments appear of record in the last eight years except as shown herein.

**In the event the transaction for which this commitment was ordered "cancels", please refer to Paragraph C under Schedule B, Part 1 for required cancellation fee.**

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**SCHEDULE B  
PART II - EXCEPTIONS  
(Continued)**

**NOTE:** The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.



**EXHIBIT A  
LEGAL DESCRIPTION**

PARCEL 1:

Lots 3 and 6, WILLOWBROOK PROFESSIONAL PARK, according to the official plat thereof, on file in the office of the Recorder of Washington County, State of Utah, recorded March 2, 2006 as Entry No. 20060006091.

PARCEL 1A:

A perpetual right-of-way access easement for ingress and egress and the use of the parking areas as cross parking as defined in that certain Right-of-Way Access Easement Agreement recorded March 2, 2016 as Entry No. 20060006092 of official records of Washington County, State of Utah.