LTAMS Land Title Association of Mississippi

Back to Basics

COMMITMENT PREPARATION

This information is being provided by the Land Title Association of Mississippi ("LTAMS") for educational and reference purposes only, and is not intended to represent the only approach to any particular issue. This information should not be construed as legal, financial or business advice from or on behalf of LTAMS, and users should consult their own legal counsel and subject-matter experts to ensure that any policies adopted or actions taken meet the requirements unique to their company.

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1

Speaker

2

Charles E. Greer V

Sr. Underwriting Counsel

First American Title Insurance Company

601-325-0462 | cgreer@firstam.com

LTAMS Land Title Association of Mississippi

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Topics to be Covered

3

- What is a Commitment?
  - The Jacket – Terms and Conditions
  - Preparing Schedule A – Transaction Details
  - Preparing Schedule B, Part I – Requirements
  - Preparing Schedule B, Part II – Exceptions
  - Handling Exceptions

3

What is a Title Commitment?

4

A document issued in advance of a closing that commits a title company to issue a policy insuring (a) title to particular parcel of real property, or (b) the priority of an insured mortgage, subject to certain terms and conditions.

Lists all requirements that must be met before a title policy may be issued.

Discloses to the proposed insureds what, if any, liens, defects, or burdens and obligations affect the subject property.

A commitment may sometimes be referred to as a "*binder*."

4

Form of Commitment

5

ALTA owns the copyright on all forms used for title insurance in the United States.

As of 2009, use of ALTA forms requires a license.

The license grants right to use forms for a one-year period.

Because almost all underwriters use ALTA forms, most commitments and policies are organized in much the same way.

The current commitment form is based on the 2016 ALTA Commitment.

5

Parts of Commitment

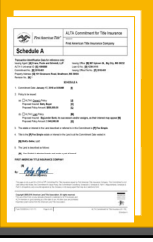
6

The commitment consists of two primary parts:

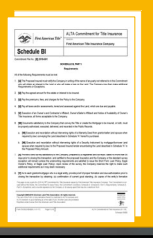
The Jacket

Schedules

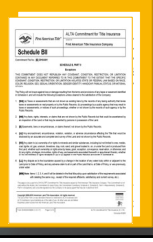
A



B, Part I



B, Part II



6

The Jacket

7

- Contains all of the pre-printed terms and conditions.
- Consists of four primary areas.
  - the Notice,
  - the commitment to issue,
  - a footer, and
  - the commitment conditions.

7

ALTA Commitment for Title Insurance

First American Title Insurance Company

Commitment

COMMITMENT FOR TITLE INSURANCE

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OF 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 STATE 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

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; and a countersignature by the Company or its issuing agent that may be in electronic form.

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AMERICAN LAND TITLE ASSOCIATION

Form 50-00000 (1-31-17) Page 1 of 9 ALTA Commitment for Title Insurance (8-1-16)

Notice

8

- Liability is limited to contract claims.
- Commitment is an "offer to insure", not an abstract of title and creates no extra-contractual liability.
- Procedures used to "determine the insurability of title" are proprietary and performed for the insurer's benefit.
- Obligation is to issue policy only.

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ALTA Commitment for Title Insurance

First American Title Insurance Company

Commitment

COMMITMENT FOR TITLE INSURANCE

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

NOTICE

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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

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Form 50-00000 (1-31-17) Page 1 of 9 ALTA Commitment for Title Insurance (8-1-16)

Commitment to Issue

9

- Policy to be issued according to the terms of the commitment, subject to the Notice, Commitment Conditions, Schedule BI Requirements, and Schedule BII exceptions.
- Effective as of the Commitment Date when both Proposed Policy Amount and Proposed Insured have been entered in Schedule A.
- Expires in 6 months.

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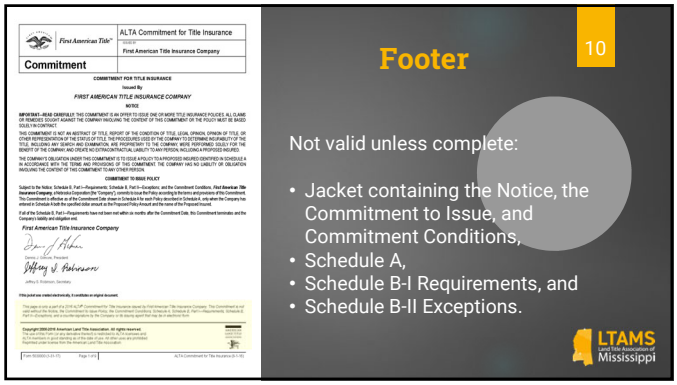

Footer

10

Not valid unless complete:

- Jacket containing the Notice, the Commitment to Issue, and Commitment Conditions,
- Schedule A,
- Schedule B-I Requirements, and
- Schedule B-II Exceptions.

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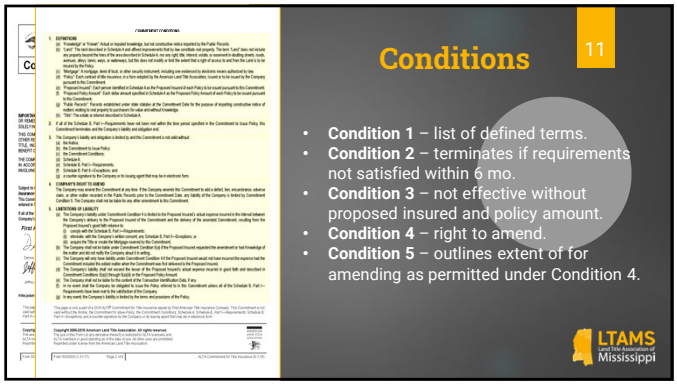
10



Conditions

11

- **Condition 1** – list of defined terms.
- **Condition 2** – terminates if requirements not satisfied within 6 mo.
- **Condition 3** – not effective without proposed insured and policy amount.
- **Condition 4** – right to amend.
- **Condition 5** – outlines extent of for amending as permitted under Condition 4.

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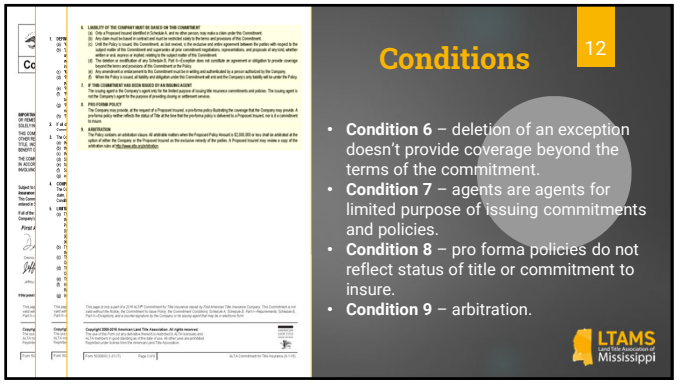
11



Conditions

12

- **Condition 6** – deletion of an exception doesn't provide coverage beyond the terms of the commitment.
- **Condition 7** – agents are agents for limited purpose of issuing commitments and policies.
- **Condition 8** – pro forma policies do not reflect status of title or commitment to insure.
- **Condition 9** – arbitration.

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Schedule A

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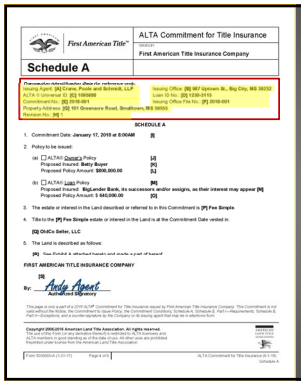
- Schedule A can be broken down into two parts.
  - Optional Information
    - The "optional Information" is generally related to the issuing agent.
  - Required Information
    - The "required information" is related to the transaction.

13



First American Title™

ALTA Commitment for Title Insurance

Issued by:
First American Title Insurance Company

Schedule A

Transaction Identification Data for reference only:
Issuing Agent: **[B] Crews, Poole and Schmidt, LLP**
ALTA ® Universal ID: **[C] 1065688**
Commitment No.: **[D] 2018-001**
Property Address: **[G] 101 Greenacre Road, Smallhoven, MS 39555**
Revision No.: **[H]** 1

Issuing Office: **[E] 987 Uptown St., Big City, MS 39232**
Loan ID No.: **[D] 1230-3115**
Issuing Office File No.: **[F] 2018-001**

SCHEDULE A

1. Commitment Date: **January 17, 2018 at 8:00AM** **[I]**
2. Policy to be issued:
   (a) ☐ ALTA® Owner's Policy **[J]**
   Proposed Insured: **Betty Buyer** **[K]**
   Proposed Policy Amount: **$500,000.00** **[L]**
   (b) ☐ ALTA® Loan Policy **[M]**
   Proposed Insured: **BigLender Bank, its successors and/or assigns, as their interest may appear [N]**
   Proposed Policy Amount: **$ 640,000.00** **[O]**
3. The estate or interest in the Land described or referred to in this Commitment is **[P] Fee Simple**.
4. Title to the **[P] Fee Simple** estate or interest in the Land is at the Commitment Date vested in:
   [Q] OldCo Seller, LLC
5. The Land is described as follows:
   [R] See Exhibit A attached hereto and made a part of hereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

[S]
By: Andy Agent
Authorized Signatory

Schedule A – Optional Info

14

- [A] Name of the issuing agent;
- [B] Agent's office;
- [C] Agent's ALTA Universal ID;
- [D] Lender's loan ID number;
- [E] Commitment number;
- [F] Agent's file number;
- [G] Property address; and
- [H] Revision number (Rev 1, 2, etc.).

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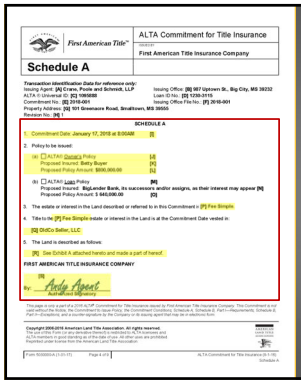
14



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FIRST AMERICAN TITLE INSURANCE COMPANY

[S]
By: Andy Agent
Authorized Signatory

Schedule A – Required Info

15

- [I] Commitment Date
- [J] Proposed Policy
- [K] Proposed Insured
- [L] Proposed Policy Amount
- [P] Estate or Interest
- [Q] Vesting Information
- [R] Legal Description
- [S] Counter Signature

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15

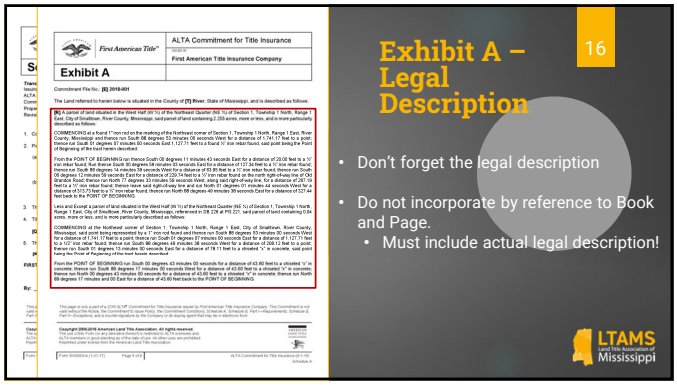

Exhibit A – Legal Description

16

- Don't forget the legal description
- Do not incorporate by reference to Book and Page.
  - Must include actual legal description!

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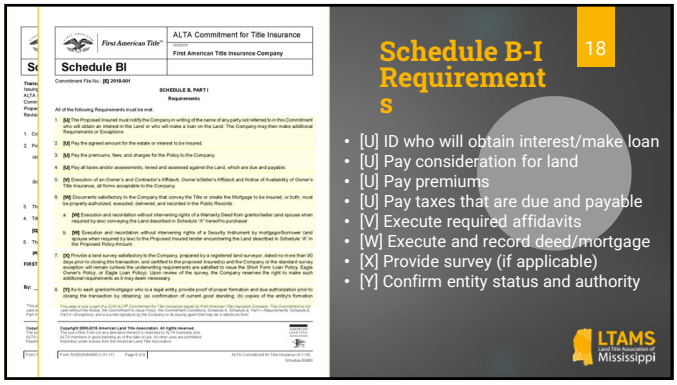
Schedule B, Part I - Requirements

17

- **Schedule B-I can also be broken down into two parts.**
  - **Standard requirements**
  - **Specific requirements**
- **The "standard requirements" apply generally to all transactions.**
  - **Most insurers will have their standard pre-printed requirements**
- **The "specific requirements" are related to the current transaction.**

17



Schedule B-I Requirements

18

- [U] ID who will obtain interest/make loan
- [U] Pay consideration for land
- [U] Pay premiums
- [U] Pay taxes that are due and payable
- [V] Execute required affidavits
- [W] Execute and record deed/mortgage
- [X] Provide survey (if applicable)
- [Y] Confirm entity status and authority

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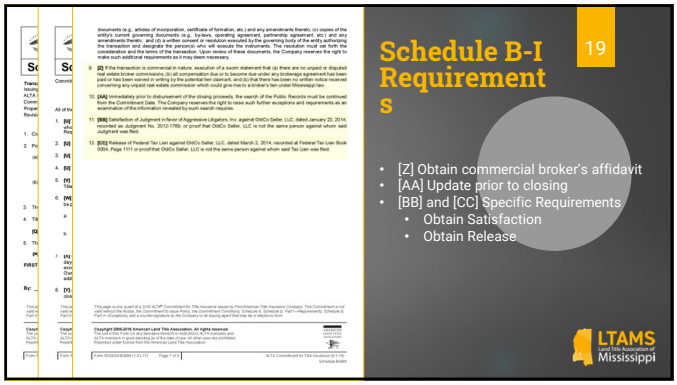
18



Schedule B-I Requirements

19

- [Z] Obtain commercial broker's affidavit
- [AA] Update prior to closing
- [BB] and [CC] Specific Requirements
  - Obtain Satisfaction
  - Obtain Release

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Practice Pointers

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- Requirements are your pre-closing checklist;
- Review relevant portions of Underwriting Manual for your transaction to draft necessary requirements.
- Add requirements title search indicated were necessary by title search, i.e. Deed of Trust, Judgment or Corrective Deed.
- Requirements should be written as full sentences that are clear to the Insured

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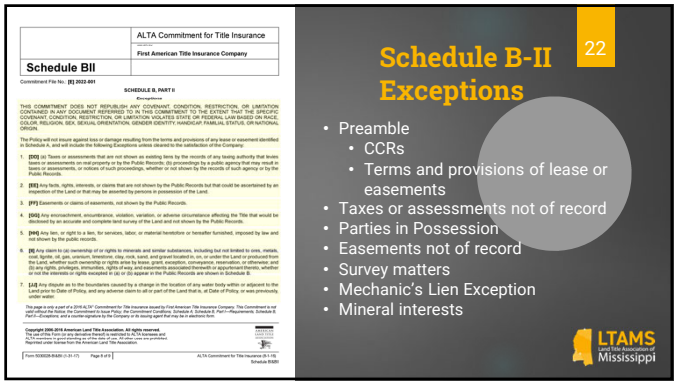
Schedule B, Part II - Exceptions

21

- Schedule B-II can be broken down into two parts.
  - Standard exceptions
  - Specific exceptions
- The "standard exceptions" apply generally to all transactions.
  - There are currently 8 standard pre-printed exceptions
- The "specific exceptions" are related to the current transaction.

21



	ALTA Commitment for Title Insurance
	First American Title Insurance Company
Schedule BII	

Commitment File No.: **[B] 2022-001**

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. **[DD]** (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. **[EE]** Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. **[FF]** Easements or claims of easements, not shown by the Public Records.
4. **[GG]** Any encroachment, encumbrance, violation, variation, or 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. **[HH]** 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.
6. **[II]** Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, limestone, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records are shown in Schedule B.
7. **[JJ]** Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the Land prior to Date of Policy, and any adverse claim to all or part of the Land that is, at Date of Policy, or was previously, under water.

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Schedule B-II Exceptions

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- Preamble
  - CCRs
  - Terms and provisions of lease or easements
- Taxes or assessments not of record
- Parties in Possession
- Easements not of record
- Survey matters
- Mechanic's Lien Exception
- Mineral interests

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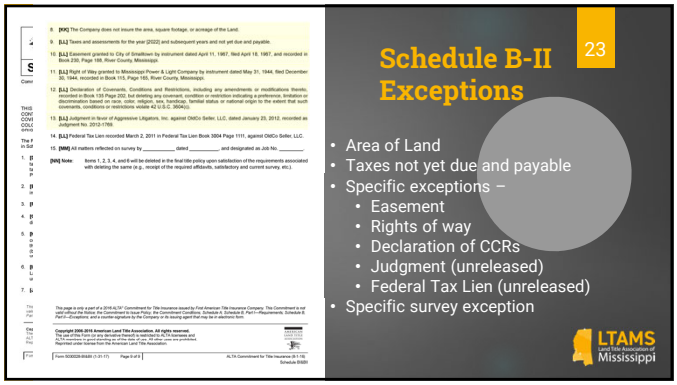
22



8. **[KK]** The Company does not insure the area, square footage, or acreage of the Land.
9. **[LL]** Taxes and assessments for the year [2022] and subsequent years and not yet due and payable.
10. **[LL]** Easement granted to City of Smalltown by instrument dated April 11, 1967, filed April 18, 1967, and recorded in Book 230, Page 188, River County, Mississippi.
11. **[LL]** Right of Way granted to Mississippi Power & Light Company by instrument dated May 31, 1944, filed December 30, 1944, recorded in Book 115, Page 165, River County, Mississippi.
12. **[LL]** Declaration of Covenants, Conditions and Restrictions, including any amendments or modifications thereto, recorded in Book 105 Page 202, 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 that such covenants, conditions or restrictions violate 42 U.S.C. 3604(c).
13. **[LL]** Judgment in favor of Aggressive Litigators, Inc. against OldCo Seller, LLC, dated January 23, 2012, recorded as Judgment No. 2012-1789.
14. **[LL]** Federal Tax Lien recorded March 2, 2011 in Federal Tax Lien Book 3004 Page 1111, against OldCo Seller, LLC.
15. **[MM]** All matters reflected on survey by _____ dated _____ and designated as Job No. _____.

[NN] Note: Items 1, 2, 3, 4, and 6 will be deleted in the final title policy upon satisfaction of the requirements associated with deleting the same (e.g., receipt of the required affidavits, satisfactory and current survey, etc.).

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Schedule B-II Exceptions

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- Area of Land
- Taxes not yet due and payable
- Specific exceptions –
  - Easement
  - Rights of way
  - Declaration of CCRs
  - Judgment (unreleased)
  - Federal Tax Lien (unreleased)
- Specific survey exception

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Extended Coverage

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- "*Extended coverage*" is the term for providing coverage on an Owner's Policy or Loan Policy by deleting from the policy one or more of the standard exceptions.
- To provide extended coverage in Mississippi, requires the deletion from the policy of one or more of the following five (5) standard exceptions you see in most policies:
  - Standard Exception #1 – Taxes or Special Assessments
  - Standard Exception #2 – Parties in Possession
  - Standard Exception #3 – Non-Record Easements
  - Standard Exception #4 – Survey Matters
  - Standard Exception #5 – Mechanic's Liens
- *Remember: Most insurers in Mississippi do not allow deletion of the Standard Exception relating to Minerals Interest!*

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Standard Exception #1 – Taxes or Special Assessments

25

- SE # 1 relates to taxes or special assessments not of record.

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.

- Underwriting Requirements
  - Confirm that there are no garbage liens or other non-record liens.
- Ensure there is an exception for taxes not yet due and payable.

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Standard Exception #2 – Parties in Possession

26

- SE # 2 relates to parties in possession.

2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

- Underwriting Requirements
  - *Obtain seller's affidavit confirming there are no parties in possession.*

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Standard Exception #3 – Easements not in Public Records

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- SE # 3 relates to … easements or claims of easements not of record.

3. Easements, or claims of easements, not shown by the Public Records.

- Underwriting Requirements
  - Obtain owner's/seller's affidavit (confirming no unrecorded easements or adverse rights)

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Standard Exception #4 – Survey Matters

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- SE # 4 relates to survey matters.

4. Any encroachment, encumbrance, violation, variation, or 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.

- General Underwriting Requirements
  - Obtain "satisfactory and current" survey and add specific exception for survey.

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Standard Exception #5 – Mechanic's Liens

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- SE # 5 relates to mechanic's liens.

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.

- Underwriting Requirements vary widely depending on the policy to be issued, the size of the policy, and the character of the transaction (residential or commercial).
- Be sure to obtain specific guidelines from your underwriter, which could include requirements for owner's/seller's affidavits indicating no work in the last 90 days, lien waivers and/or indemnities from the owner and/or contractor.

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Standard Exception #8 – Taxes and assessments

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- SE # 8 relates to taxes and assessments … not yet due and payable.

8. Taxes and assessments for the [current year] and subsequent years and not yet due and payable.

- Underwriting Requirements
  - This exception cannot be deleted!
  - Ad valorem taxes assessed and levied for previous year are due on Feb. 1st.
    - If not paid within 6 months, the property will be offered for sale to the highest bidder.
    - The reference to [current year] should be the last year for which taxes have been assessed, but are not yet due and payable.
    - All taxes due, must be paid at closing.

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How to Annotate Deletion of Standard Exceptions

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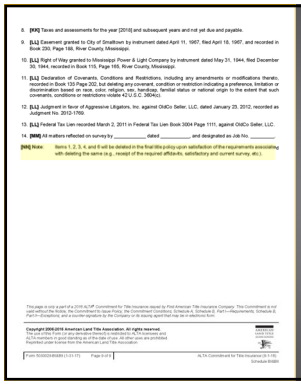
- Standard exceptions should never be deleted from the commitment itself.
- To show that a standard exception will be deleted from the final policy:
  - List the requirements to delete the exception in Schedule B-I; and
  - Add a note to Schedule B-II indicating which exception will be deleted from the final

31



8. **[KK]** Taxes and assessments for the year [2018] and subsequent years and not yet due and payable.
9. **[LL]** Easement granted to City of Smalltown by instrument dated April 11, 1967, filed April 18, 1967, and recorded in Book 230, Page 180, River County, Mississippi.
10. **[LL]** Right of-Way granted to Mississippi Power & Light Company by instrument dated May 31, 1944, filed December 30, 1944, recorded in Book 115, Page 165, River County, Mississippi.
11. **[LL]** Declaration of Covenants, Conditions and Restrictions, including any amendments or modifications thereto, recorded in Book 120 Page 202, 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 that such covenants, conditions or restrictions violate 42U.S.C. 3604(c).
12. **[LL]** Judgment in favor of Aggressive Litigators, Inc. against ChiCo Seller, LLC, dated January 23, 2012, recorded as Judgment No. 2012-1760.
13. **[LL]** Federal Tax Lien recorded March 2, 2011 in Federal Tax Lien Book 3004 Page 1111, against ChiCo Seller, LLC.
14. **[MM]** All matters reflected on survey by _____, dated _____ and designated as Job No. _____.

[NN] Note: Items 1, 2, 3, 4, and 6 will be deleted in the final title policy upon satisfaction of the requirements associated with deleting the same (e.g., receipt of the required affidavits, satisfactory and current survey, etc.).

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, and a countersignature by the Company or its issuing agent that may be in electronic form.

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AMERICAN LAND TITLE ASSOCIATION

Form 5030200-6/06/06 (1-31-17) Page 9 of 9 ALTA Commitment for Title Insurance (8-1-16)
Schedule B-II(b)

How to show future deletion

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Add "Note" on Schedule BII
After the last Standard Exception ;
or
After the last exception in Schedule BII.

State which Items will be deleted

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How to Provide Affirmative Coverage for a Specific Exception

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- To provide affirmative or "insure over" an exception:
  - List the exception on Schedule B-I; and
  - Issue the ALTA 34-06 Identified Risk Coverage Endorsement.
- While an exception may be insured over by using "affirmative" language at the end or below the exception, the language used is critical.
  - For this reason – the ALTA 34-06 is preferred.
- Providing affirmative coverage for an exception – whether by endorsement or the addition of affirmative language – requires prior Underwriting approval.

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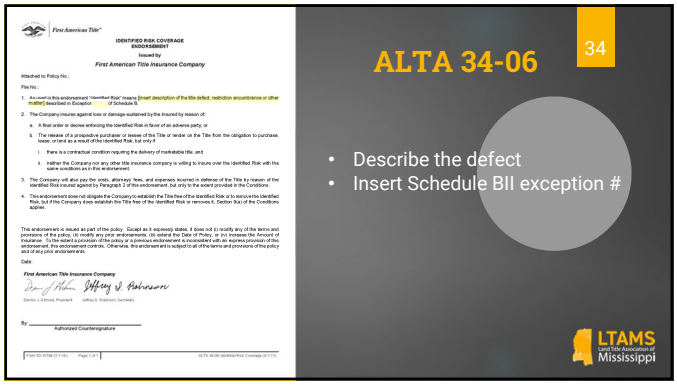

First American Title™

IDENTIFIED RISK COVERAGE
ENDORSEMENT
Issued by
First American Title Insurance Company

Attached to Policy No.:

File No.:

1. As used in this endorsement "Identified Risk" means [insert description of the title defect, restriction encumbrance or other matter] described in Exception of Schedule B.
2. The Company insures against loss or damage sustained by the Insured by reason of:
   a. A final order or decree enforcing the Identified Risk in favor of an adverse party; or
   b. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if:
      i. there is a contractual condition requiring the delivery of marketable title, and
      ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement.
3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.
4. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the Identified Risk or removes it, Section 3(a) of the Conditions applies.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date:

First American Title Insurance Company

Dennis J. Gilmore, President Jeffrey S. Robinson, Secretary

By: _____
Authorized Countersignature

Form 50-10758 (11-1-06) Page 1 of 1 ALTA 34-06 Identified Risk Coverage (8-1-11)

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ALTA 34-06

- Describe the defect
- Insert Schedule BII exception #

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Amending the Commitment

- If, after issuing the commitment but before disbursement of funds at closing, you become aware of additional matters, then:
  - Add the additional defects, liens, encumbrances, or other matters affecting title to Schedule BII;
  - Update Schedule A to reflect a new revision; and
  - Issue the revised commitment.

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THANK YOU!

Have Questions?

Send Charles an email at cgreer@firstam.com

Or call him at (601) 325-0462

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