

This instrument prepared by/return to:

Jeremy S. Friedberg, Esq.
Leitess Friedberg PC
10451 Mill Run Circle, Suite 1000
Owings Mills, Maryland 21117
(410) 581-7400

STATE OF NORTH CAROLINA)
:)
ROCKINGHAM COUNTY)

ASSIGNMENT OF CONSTRUCTION DEED OF TRUST
(Mayodan Shopping Center, Rockingham County, North Carolina)

KNOW ALL MEN BY THESE PRESENTS; that KeyBank National Association, a national banking association having its address at 127 Public Square, Mailcode: OH-01-27-0504, Cleveland, Ohio 44114-1306, Attention: Dale Clayton, (“Assignor”), for valuable consideration, the receipt of which is hereby acknowledged, does hereby assign, without recourse, to ECP Commercial I LLC, a Delaware limited liability company having its address at 4695 MacArthur Court, Suite 370 Newport Beach, CA 92660, Attention: Ravi Bhagavatula, (“Assignee”), all of Assignor’s legal and equitable right, title, and interest in that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing granted by Tyler Shopping Center LLC, a Delaware limited liability company, Pulaski Shopping Center LLC, a Delaware limited liability company, Shawnee Shopping Center LLC, a Delaware limited liability company, Ft. Dodge Shopping Center LLC, a Delaware limited liability company, Keokuk Shopping Center LLC, a Delaware limited liability company, West Burlington Shopping Center LLC, a Delaware limited liability company, Marshalltown Shopping Center LLC, a Delaware limited liability company and Oskaloosa Shopping Center LLC, a Delaware limited liability company (together “Grantor”) to Lawyers Title Insurance Corporation, as Trustee for the benefit of Assignor, as Beneficiary, recorded on August 29, 2006 at Book 1294 Page 1984 in the official records of Rockingham County, North Carolina, as amended by that certain First Amendment to Construction Deed of Trust between Grantor and Assignor, recorded on September 3, 2009 at Book 1381 Page 2228 in the official records of Rockingham County, North Carolina (collectively, the “Construction Deed of Trust”), encumbering certain premises described in the Construction Deed of Trust and in Exhibit A attached hereto, together with the note(s) and obligations described in the Construction Deed of Trust and the moneys due and to grow due thereon with interest; provided, however, such assignment does not include the note(s), obligations and moneys due with respect to the Swap Termination Loan (as such term is defined in that certain Purchase and Sale Agreement for Distressed Trades by and between Assignor and Assignee, dated as of September 16, 2013, (the “Purchase and Sale Agreement”));

TO HAVE AND TO HOLD same unto Assignee, its successors and assigns, forever, subject only to the provisions of the Construction Deed of Trust.

This Assignment is made **WITHOUT RECOURSE OR REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, OF ANY KIND AND NATURE WHATSOEVER**, except as expressly set forth in the Purchase and Sale Agreement.

This Assignment may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and any party hereto may execute this Assignment by signing any such counterpart.

The terms and provisions of this Assignment shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, this instrument was signed as of the 27 day of September, 2013.

ASSIGNOR:

KEYBANK NATIONAL ASSOCIATION, a national banking association

[Signature]
Witness Signature

James Henderson
Witness Printed Name

By: [Signature]
Name: Jason E. Egger
Its: Vice President

STATE OF OHIO)
 :
COUNTY OF CUYAHOGA)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that JASON E. EGGER, whose name as Vice President of KEYBANK NATIONAL ASSOCIATION, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this 27 day of September, 2013.

Carla D. Winters
Notary Public

[NOTARIAL SEAL]

My commission expires: _____



CARLA D. WINTERS
NOTARY PUBLIC - STATE OF OH
MY COMMISSION EXPIRES
DECEMBER 18, 2016

DATED and effective as of this 27 day of September, 2013.

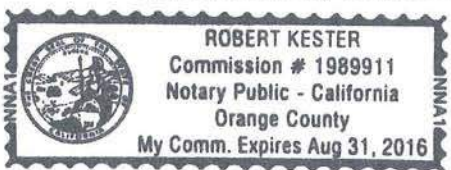
ECP COMMERCIAL I LLC, a Delaware limited liability company

By: [Signature]
Name: Ravi S. Bhagavatula
Its: Authorized Signatory

STATE OF CALIFORNIA)
ORANGE COUNTY)

I, the undersigned, a Notary Public in and for said county in said State, hereby certify that Ravi S. Bhagavatula, whose name as Authorized Signatory of **ECP COMMERCIAL I LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 27 day of September, 2013.



[Signature]
Notary Public

AFFIX SEAL

My commission expires: 8/31/2016

EXHIBIT A

Description of Land

All of that certain lot or parcel of land situated in Mayo Township, Rockingham County, North Carolina, and more particularly described as follows:

All of Lot 1 as shown on the plat of IDK, LLC Subdivision recorded in Plat Book 60, Page 11, Rockingham County Registry (the "Plat").

TOGETHER WITH non-exclusive easements for ingress, egress, regress, and utility purposes over portions of Lots 2, 3, 4, and 5 as shown on the Plat for the benefit of said Lot 1, as follows:

1. A 30-foot access and utility easement designated as "1" on the Plat;
2. A 25-foot access and utility easement designated as "2" on the Plat; and
3. A 30-foot access and utility easement designated as "3" on the Plat.

578465.1

5

This instrument prepared by/return to:

Jeremy S. Friedberg, Esq.
Leitess Friedberg PC
10451 Mill Run Circle, Suite 1000
Owings Mills, Maryland 21117
(410) 581-7400

STATE OF COLORADO)
:
PUEBLO COUNTY)

1957991 ASN_TD 10/15/2013 12:20:51 PM
Page: 1 of 5 R 31.00 D 0.00 T 31.00
Gilbert Ortiz Clerk/Recorder, Pueblo County, Co


ASSIGNMENT OF CONSTRUCTION DEED OF TRUST
(Pueblo West Shopping Center, Pueblo County, Colorado)

KNOW ALL MEN BY THESE PRESENTS; that KeyBank National Association, a national banking association having its address at 127 Public Square, Mailcode: OH-01-27-0504, Cleveland, Ohio 44114-1306, Attention: Dale Clayton, (“Assignor”), for valuable consideration, the receipt of which is hereby acknowledged, does hereby assign, without recourse, to ECP Commercial I LLC, a Delaware limited liability company having its address at 4695 MacArthur Court, Suite 370 Newport Beach, CA 92660, Attention: Ravi Bhagavatula, (“Assignee”), all of Assignor’s legal and equitable right, title, and interest in that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing granted by Durant Shopping Center LLC, a Delaware limited liability company, Newton Shopping Center LLC, a Delaware limited liability company and Zachary Shopping Center LLC, a Delaware limited liability company, (together, “Grantor”) to Public Trustee of Pueblo County, Colorado, as Trustee for the benefit of Assignor, as Beneficiary, recorded on October 20, 2006 as instrument # 1698835 in the official records of Pueblo County, Colorado, as amended by that certain First Amendment to Construction Deed of Trust between Grantor and Assignor, recorded on August 25, 2009 as instrument # 1816477 in the official records of Pueblo County, Colorado (collectively, the “Construction Deed of Trust”), encumbering certain premises described in the Construction Deed of Trust and in Exhibit A attached hereto, together with the note(s) and obligations described in the Construction Deed of Trust and the moneys due and to grow due thereon with interest; provided, however, such assignment does not include the note(s), obligations and moneys due with respect to the Swap Termination Loan (as such term is defined in that certain Purchase and Sale Agreement for Distressed Trades by and between Assignor and Assignee, dated as of September 16, 2013, (the “Purchase and Sale Agreement”));

TO HAVE AND TO HOLD same unto Assignee, its successors and assigns, forever, subject only to the provisions of the Construction Deed of Trust.

This Assignment is made **WITHOUT RECOURSE OR REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, OF ANY KIND**

AND NATURE WHATSOEVER, except as expressly set forth in the Purchase and Sale Agreement.

This Assignment may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and any party hereto may execute this Assignment by signing any such counterpart.

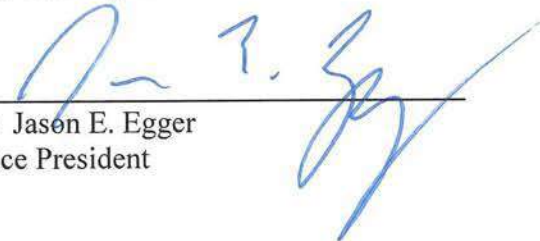
The terms and provisions of this Assignment shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties hereto.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, this instrument was signed as of the 27 day of September, 2013.

ASSIGNOR:

KEYBANK NATIONAL ASSOCIATION, a national banking association


By: 
Name: Jason E. Egger
Its: Vice President


Witness Signature
Jay Henderson
Witness Printed Name

STATE OF OHIO)
 :
COUNTY OF CUYAHOGA)

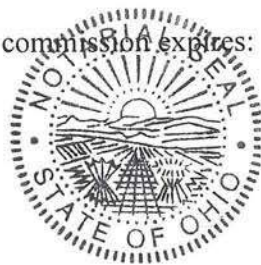
I, the undersigned, a Notary Public in and for said county in said state, hereby certify that JASON E. EGGER, whose name as Vice President of KEYBANK NATIONAL ASSOCIATION, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this 27 day of September, 2013.


Notary Public

[NOTARIAL SEAL]

My commission expires: _____



CARLA D. WINTERS
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION EXPIRES
DECEMBER 18, 2016



DATED and effective as of this 27 day of September, 2013.

ECP COMMERCIAL I LLC, a Delaware limited liability company

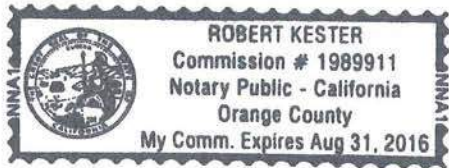
By: 
Name: Ravi S. Bhagavatula
Its: Authorized Signatory

STATE OF CALIFORNIA)

ORANGE COUNTY)

I, the undersigned, a Notary Public in and for said county in said State, hereby certify that Ravi S. Bhagavatula, whose name as Authorized Signatory of **ECP COMMERCIAL I LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 27 day of September, 2013.




Notary Public

AFFIX SEAL

My commission expires: 8/31/2016



T8113526 Page 9 of 9
08/25/2009 02:10:10 PM

EXHIBIT A

Description of Land

Parcel "A", Lot Line Vacation No. 2006 - 010 (formerly Lots 13 through 17, Block 2, Tract 240) according to the plat thereof filed for record October 3, 2006 Reception Number 1696395 in the Office of the Pueblo County Clerk & Recorder, County of Pueblo, State of Colorado.



First American

First American Title Insurance Company

COMMITMENT INFORMATION SHEET

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact:

First American Title Insurance Company National Commercial Services
Six Concourse Parkway, Suite 2000
Atlanta, GA 30328

or

The office which issued this Commitment

TABLE OF CONTENTS

AGREEMENT TO ISSUE POLICY

SCHEDULE A

1. Commitment Date
2. Policies to be Issued, Amounts and Proposed Insureds
3. Interest in the Land and Owner
4. Description of the Land

SCHEDULE B-I -- REQUIREMENTS

SCHEDULE B-II -- EXCEPTIONS

CONDITIONS

TITLE INSURANCE COMMITMENT

BY

First American Title Insurance Company

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of the Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

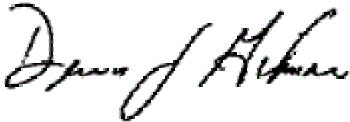
The Requirements in Schedule B-I.

The Exceptions in Schedule B-II.

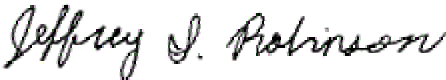
The Conditions.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

First American Title Insurance Company



Dennis J. Gilmore
President



Jeffrey S. Robinson
Secretary

SCHEDULE A

File No.: **NCS-708676-3-ATL**

1. Commitment Date: December 23, 2014 at 8:00 a.m.
2. Policy (or Policies) to be issued:
 - a. ALTA Owners Policy (06-17-06) \$To Be Determined

Proposed Insured:
ECP Commercial I, LLC
 - b. ALTA Loan Policy (06-17-06) \$To Be Determined

Proposed Insured:
A Natural Person or Legal Entity to be Designated
3. Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date, by Plainview Shopping Center II LLC, a Delaware limited liability company by virtue of that certain QuitClaim Deed from Plainview Shopping Center LLC, a Delaware limited liability company, as to an undivided 91.67% tenant in common interest (Tell City Shopping Center LLC, a Delaware limited liability company [as to an undivided 78.34% interest]; Ottumwa Shopping Center LLC, a Delaware limited liability company [as to an undivided 11.05% interest]; and Keokuk Shopping Center LLC, a Delaware limited liability company [as to an undivided 2.28% interest], have merged into Plainview Shopping Center LLC, a Delaware limited liability company), and Newcastle Shopping Center LLC, a Delaware limited liability company (as to an undivided 8.33% interest), dated February 4, 2013, filed February 12, 2013, and recorded in Deed [Book 1456, Page 168](#), Polk County, Georgia records.
4. The Land referred to in this Commitment is described as follows:

See Schedule A attached hereto and made a part hereof

SCHEDULE A (Continued)

File No.: **NCS-708676-3-ATL**

All that tract or parcel of land lying and being in Land Lots 1075 and 1086 of the 2nd District, 4th Section, Polk County, Georgia, and being more particularly described as follows:

Commencing at the Northwest corner of Land Lot 1075, said corner being common to Land Lots 1013, 1014, 1075 and 1076; thence along the westerly land lot line of Land Lot 1075 the following courses and distances South 00 degrees 27 minutes 05 seconds West, 99.88 feet to a point; South 00 degrees 40 minutes 37 seconds West, 112.59 feet to a point; South 01 degree 41 minutes 15 seconds West, 617.55 feet to a 5/8 inch capped rebar found, said point being the True Point of Beginning;

thence leaving said westerly land lot line South 73 degrees 13 minutes 13 seconds East, 89.54 feet to a 5/8 inch capped rebar found; thence North 16 degrees 45 minutes 46 seconds East, 46.21 feet to a 5/8 inch capped rebar found; thence South 73 degrees 17 minutes 27 seconds East, 71.38 feet to a 5/8 inch capped rebar found; thence along a curve to the left, an arc distance of 122.11 feet, said curve having a radius of 78.50 feet and being subtended by a chord of 109.55 feet, at North 61 degrees 10 minutes 20 seconds East, to a 5/8 inch capped rebar found; thence North 17 degrees 09 minutes 12 seconds East, 19.32 feet to a 5/8 inch capped rebar found; thence along a curve to the right, an arc distance of 107.60 feet, said curve having a radius of 68.50 feet and being subtended by a chord of 96.87 feet, at North 61 degrees 50 minutes 01 second East, to a 5/8 inch capped rebar found; thence South 73 degrees 09 minutes 17 seconds East, 605.78 feet to a 5/8 inch capped rebar found; thence South 18 degrees 51 minutes 11 seconds West, 29.38 feet to a 5/8 inch capped rebar found; thence South 73 degrees 10 minutes 30 seconds East, 140.35 feet to a 5/8 inch capped rebar found; thence South 18 degrees 41 minutes 23 seconds West, 149.68 feet to a 5/8 inch capped rebar found; thence South 64 degrees 46 minutes 57 seconds East, 205.97 feet to a 5/8 inch capped rebar found on the westerly right-of-way of U.S. Highway 27 (variable right-of-way); thence along said westerly right-of-way and a curve to the right, an arc distance of 148.87 feet, said curve having a radius of 4842.80 feet and being subtended by a chord of 148.67 feet, at South 28 degrees 40 minutes 10 seconds West, to a 5/8 inch capped rebar found; thence leaving said westerly right-of-way North 60 degrees 30 minutes 25 seconds West, 84.67 feet to a 5/8 inch capped rebar found; thence North 73 degrees 10 minutes 24 seconds West, 1107.27 feet to a 5/8 inch capped rebar found on the westerly land lot line of Land Lot 1075; thence along said westerly land lot line North 01 degree 38 minutes 29 seconds East, 128.51 feet to a 5/8 inch capped rebar found, said point being the True Point of Beginning;

Said tract or parcel of land contains 7.520 acres and is more accurately depicted on a plat of survey prepared by GeoSurvey, Ltd., dated January 31, 2006, Job Number 20052638.

As shown on ALTA/ACSM Land Title Survey for Cedartown Shopping Center, LLC, prepared by GeoSurvey, Ltd., bearing the seal and certification of Joseph T. Baker, Georgia Land Surveyor No. 2674, dated June 23, 2006.

Together with rights and benefits pursuant to and contained in the following:

(A) Access Easement by and between Wal-Mart Stores East, LP, a Delaware limited partnership and Cedartown LLC, a Delaware limited liability company, dated as of March 23, 2006, filed March 29, 2006 and recorded in Deed [Book 1146, Page 527](#), records of the Superior Court of Polk County, Georgia; and

(B) Utility Easement Agreement by and between Wal-Mart Stores East, LP, a Delaware limited partnership and Cedartown LLC, a Delaware limited liability company, dated as of March 23, 2006, filed March 29, 2006 and recorded in Deed [Book 1146, Page 538](#), aforesaid records.

SCHEDULE B - SECTION I

REQUIREMENTS

File No.: **NCS-708676-3-ATL**

The following requirements must be met:

1. Pay the agreed amounts for the interest in the Land and/or mortgage to be Insured.
2. Pay us the premiums, fees and charges for the policy.
3. Pay all taxes and/or assessments, levied and assessed against the land, which are due and payable.
4. You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the Land or who will make a loan on the Land. We may then make additional requirements or exceptions.
5. Documents satisfactory to us creating the interest in the Land and/or the Mortgage to be insured must be signed, delivered and recorded:
 - a. **Limited Warranty Deed** from **Plainview Shopping Center II LLC, a Delaware limited liability company**, in a form approved by the Company, to **ECP Commercial I, LLC** conveying interest in subject property.
 - b. Deed to Secure Debt from **ECP Commercial I, LLC**, in a form approved by the Company, to **A Natural Person or Legal Entity to be Designated**, conveying interest in subject property to secure the loan.
6. As to the execution of the aforementioned Deed(s), the Company requires proof, satisfactory to us, that:
 - a. The Articles of Organization listing the members of the limited liability company have been produced and reviewed;
 - b. The Deeds(s), required above, has been authorized by the managing member, reciting the terms of the conveyance; and
 - c. The member executing the above-required Deed(s) hold office in the company as evidenced by a certificate of incumbency.
7. Evidence of the good standing of Owners and, as appropriate, of the Insured, and of the incumbency and authority of the officers of Owners and of the Insured who will execute the instrument of conveyance.
8. Execution and delivery to us of an Owner's Affidavit, in context to the transaction. NOTE: if brokers are involved in this transaction, we will require evidence of release and satisfaction of broker's liens.

9. A current and accurate survey of the land, certified to the Company, to the Insured, and to the Lender, if we are expected to delete or modify the general survey exception.
10. Proof satisfactory to the Company that no improvements or repairs were made upon the land within the 95 days preceding the filing for record of the instrument creating the interest to be insured, or in the event such improvements or repairs were made, that they are completed and that all costs incurred in connection therewith have been fully paid; that there are no easements or claims of easements which do not appear of public record; and that there are no parties in possession or with a right to possession of the subject property.
11. Payment, satisfaction and cancellation of or release from Deed to Secure Debt, Assignment of Rents and Security Agreement from Cedartown LLC, a Delaware limited liability company, the sole member of which is Building Exchange Company, as Virginia corporation to Phillip Bittker, et. al, in the original principal amount of \$1,100,000.00, dated March 23, 2006, filed March 29, 2006, and recorded in Deed [Book 1146, Page 559](#), Polk County, Georgia, records; as affected by that certain Loan Assumption Agreement by and among Cedartown LLC, a Delaware limited liability company and Tell City Shopping Center LLC, a Delaware limited liability company (an undivided 78.34% interest); Ottumwa Shopping Center LLC, a Delaware limited liability company (an undivided 11.05% interest); Newcastle Shopping Center LLC, a Delaware limited liability company (an undivided 8.33% interest) and Keokuk Shopping Center LLC, a Delaware limited liability company (an undivided 2.28% interest), dated August 22, 2006, filed September 7, 2006, and recorded in Deed [Book 1177, Page 357](#), aforesaid records; as affected by that certain Subordination Agreement by and among Cedartown LLC, a Delaware limited liability company and Jeff H. Farmer, III, a Tennessee resident and duly authorized collection agent for the Payees listed in the Deed to Secure Debt, for the use and benefit of KeyBank National Association, a national banking association, dated August 25, 2006, filed September 7, 2006, and recorded in Deed [Book 1177, Page 364](#), aforesaid records; as affected by that certain Confirmatory Subordination Agreement by Jeff H. Farmer, III, a Tennessee resident, as Collection Agent for the use and benefit of KeyBank National Association, a national banking association, dated June 29, 2009, filed September 9, 2009, and recorded in Deed [Book 1340, Page 133](#), aforesaid records; as affected by that certain Confirmatory Subordination Agreement, dated July 28, 2011, filed July 29, 2011, and recorded in Deed [Book 1402, Page 98](#), aforesaid records.
12. Payment, satisfaction and cancellation of or release from Mortgage Assignment of Rents, Security Agreement and Fixture Filing from Cedartown LLC, a Delaware limited liability company to KeyBank National Association, its successors and assigns, in the original principal amount of \$3,800,000.00, dated August 4, 2006, filed August 9, 2006, and recorded in Deed [Book 1172, Page 1](#), aforesaid records; as affected by that certain Transferee Agreement by and among Tell City Shopping Center LLC, a Delaware limited liability company, Ottumwa Shopping Center LLC, a Delaware limited liability company, New Castle Shopping Center LLC, a Delaware limited liability company, and Keokuk Shopping Center LLC, a Delaware limited liability company and Cedartown LLC, a Delaware limited liability company, and KeyBank National Association, dated, August 22, 2006, filed September 7, 2006, and recorded in Deed [Book 1177, Page 344](#), aforesaid records; as amended by that certain First Amendment to Mortgage, Assignment of Rents, Security Agreement and Fixture Filing and Deed to Secure Debt, dated June 26, 2009, filed September 9, 2009, and recorded in Deed [Book 1340, Page 112](#), aforesaid records; as assigned by that certain Assignment of Mortgage from KeyBank National Association, a national banking association to ECP Commercial I LLC, a Delaware limited liability company, dated September 27, 2013, and filed October 7, 2013, and recorded in Deed [Book 1483, Page 219](#), aforesaid records.
13. Release from Assignment of Leases and Rents from Cedartown LLC, a Delaware limited liability company to KeyBank National Association, a national banking association, dated August 4, 2006, filed August 9, 2006, and recorded in Deed [Book 1172, Page 30](#), aforesaid records; as amended by that certain First Amendment to Assignment of Leases and Rents by and among Tell City Shopping Center LLC, a Delaware limited liability company, Ottumwa Shopping Center LLC, a Delaware limited liability company, New Castle Shopping Center LLC, a Delaware limited liability

- company, and Keokuk Shopping Center LLC, a Delaware limited liability company and KeyBank National Association, a national banking association, dated June 26, 2009, filed September 9, 2009, and recorded in Deed [Book 1340, Page 123](#), aforesaid records; assigned by that certain Assignment of Assignment of Leases and Rents from KeyBank National Association and KeyBank National Association to ECP Commercial I LLC, a Delaware limited liability company, dated September 27, 2013, filed October 7, 2013, and recorded in Deed [Book 1483, Page 238](#), aforesaid records.
14. Termination of or release from UCC Financing Statement showing Cedartown LLC, a Delaware limited liability company as Debtor, and KeyBank National Association as Secured Party, filed August 9, 2006, and recorded in Deed [Book 1172, Page 43](#), aforesaid records; as amended to continue by that certain UCC Financing Statement Amendment, filed April 4, 2011, and recorded in Deed [Book 1392, Page 526](#), aforesaid records; as amended to assign by that certain UCC Financing Statement from KeyBank National Association to ECP Commercial I LLC, filed October 28, 2013, and recorded in Deed [Book 1485, Page 246](#), aforesaid records.
 15. Payment, satisfaction and cancellation of or release from Deed to Secure Debt, Assignment of Rents, Security Agreement and Fixture Filing from Tell City Shopping Center LLC, a Delaware limited liability company, Ottumwa Shopping Center LLC, a Delaware limited liability company, New Castle Shopping Center LLC, a Delaware limited liability company, and Keokuk Shopping Center LLC, a Delaware limited liability company to Keybank National Association, its successors and assigns, in the original principal amount of \$68,416,993.77, dated July 28, 2011, filed July 29, 2011, and recorded in Deed [Book 1402, Page 55](#), aforesaid records; as affected by that certain Confirmatory Subordination Agreement, dated July 28, 2011, filed July 29, 2011, and recorded in Deed [Book 1402, Page 98](#), aforesaid records; as assigned by that certain Assignment of Deed to Secure Debt from KeyBank National Association, a national banking association to ECP Commercial I LLC, a Delaware limited liability company, dated September 27, 2013, filed October 7, 2013, and recorded in Deed [Book 1483, Page 227](#), aforesaid records.
 16. Release from Assignment of Leases and Rents from Tell City Shopping Center LLC, a Delaware limited liability company, Ottumwa Shopping Center LLC, a Delaware limited liability company, New Castle Shopping Center LLC, a Delaware limited liability company, and Keokuk Shopping Center LLC, a Delaware limited liability company to KeyBank National Association, a national banking association, dated July 28, 2011, filed July 29, 2011, and recorded in Deed [Book 1402, Page 83](#), aforesaid records; as assigned by that certain Assignment of Assignment of Leases and Rents from KeyBank National Association, a national banking association to ECP Commercial I LLC, a Delaware limited liability company, dated September 27, 2013, filed October 7, 2013, and recorded in Deed [Book 1483, Page 234](#), aforesaid records.
 17. Termination of or release from UCC Financing Statement showing Tell City Shopping Center LLC, a Delaware limited liability company as Debtor, and KeyBank National Association as Secured Party, filed July 29, 2011, and recorded in Deed [Book 1402, Page 94](#), aforesaid records; as assigned by that certain UCC Financing Statement Amendment from KeyBank National Association to ECP Commercial I LLC, filed October 28, 2013, and recorded in Deed [Book 1485, Page 247](#), aforesaid records.
 18. Payment, satisfaction and cancellation of or release from that Fifa by Tell City Shopping Center LLC, dated June 11, 2014, filed June 25, 2014, and recorded in Lien [Book 152, Page 233](#), aforesaid records, in the original sum of \$35,831.55, plus penalty and interest, if any.
 19. Payment, satisfaction and cancellation of or release from that Fifa by Tell City Shopping Center LLC, dated May 20, 2014, filed June 2, 2014, and recorded in Lien [Book 150, Page 342](#), aforesaid records, in the original sum of \$14, 814.24, plus penalty and interest, if any.

20. Payment, satisfaction and cancellation of or release from that Fifa by Tell City Shopping Center LLC, dated June 28, 2013, filed July 22, 2013, and recorded in Lien [Book 144, Page 801](#), aforesaid records, in the original sum of \$42,510.09, plus penalty and interest, if any.
21. Payment, satisfaction and cancellation of or release from that Fifa by Tell City Shopping Center LLC, dated July 8, 2013, filed for record July 15, 2013, and recorded in Lien [Book 143, Page 42](#), aforesaid records, in the original sum of \$17,642.36, plus penalty and interest, if any.

NOTE: The Company will insure without exception for secured indebtedness which appears of record only if:

a. A current payoff letter with a per diem accrual and wiring instructions is received by the company at or prior to closing from the record holder of the debt and funds for the payoff are paid to the Company's account for satisfaction of the amount due;

OR

b. On or before the date set for closing the Company receives a duly executed and recordable release, cancellation and satisfaction the debt, duly executed by and with a cover letter from the record holder of the debt, which unconditionally authorizes the Company to record the release upon the occurrence of closing.

22. The Georgia Commercial Real Estate Broker Lien Act applies to a sale, lease, option, loan or other transfer of commercial real estate. The Company must be provided proof, in affidavit form from the Seller and Purchaser, satisfactory to the Company, (a) of payment in full of any broker's services which have been engaged with regard to the management, sale, purchase, lease, option or other conveyance or proposed conveyance of any interest in the subject commercial real estate, together with a lien waiver or estoppel letter from any party determined by such affidavit to have a right to file a broker's lien, and (b) that no notice of lien for any such services has been received. In the event that said affidavit(s) contain any qualification with respect to any such services, proof of payment in full for all such services, together with a lien waiver or estoppel letter from such identified Broker(s) must be obtained.

NOTE: Where the possibility of a right to file a broker's lien is determined and no lien waiver or estoppel letter provided to the Company, the following exception will be included in the policy to be issued pursuant to this Commitment.

Any broker's lien, or right to a broker's lien, imposed by law.

23. Based upon information developed or received in satisfaction of the above, the Company reserves the right to impose additional conditions or to set new requirements.

SCHEDULE B - SECTION II

EXCEPTIONS FROM COVERAGE

File No.: **NCS-708676-3-ATL**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Taxes or assessments of any taxing authority that levies taxes or assessments on real property.
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.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
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.
5. Any mineral or mineral rights leased, granted or retained by current or prior owners.
6. Taxes and assessments for the year 2014 which are liens due and payable, taxes for the year 2015 and subsequent years, not yet due and payable, and taxes for prior years arising from reassessments or digest disputes.

The 2014 State and Polk County, Georgia taxes are due and payable in the amount of \$31,465.24 on January 31, 2015 for tax map reference no. 029 002D. (The base amount was \$30,848.27) Amount due is good through February 2, 2014.

The 2014 City of Cedartown taxes are due and payable in the amount of \$12,974.49 on January 31, 2015 for tax map reference no. 029 002D. (The base amount was \$12,720.09)

The 2013 State and Polk County taxes are due and payable in the amount of \$37,974.12 on January 31, 2015 for tax map reference no. 029 002D. (The base amount was \$30,608.16) Amount due is good through February 2, 2014.

The 2013 City of Cedartown taxes are due and payable in the amount of \$8,640.48 on January 31, 2015 for tax map reference no. 029 002D. (The base amount was \$12,778.48) (Note: Amount paid was not available)

The 2012 State and Polk County taxes are due and payable in the amount of \$8,528.77 on January 31, 2015 for tax map reference no. 029 002D. (The base amount was \$36,316.32 and a payment was made in the amount of \$40,518.26) Amount due is good through February 2, 2014.

7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest covered by this Commitment.

8. 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.
9. No insurance is afforded as to the acreage or square footage contained in the insured property.
10. Rights of upper and lower riparian owner's in and to the waters of any creek or stream which bounds or traverses the land, free from increase, decrease or pollution.
11. Rights of tenants in possession, as tenants only, under unrecorded occupancy agreements.
12. Use restrictions as contained in that certain Warranty Deed from Wal-Mart Stores East, LP, a Delaware limited partnership to Cedartown LLC, a Delaware limited liability company, dated March 23, 2006, filed for record March 29, 2006, and recorded in Deed [Book 1146, Page 519](#), Polk County, Georgia records.
13. Drainage Easement from Cedartown LLC, a Delaware limited liability company to Wal-Mart Stores East, LP, a Delaware limited partnership, dated March 23, 2006, filed for record April 18, 2006, and recorded in Deed [Book 1150, Page 508](#), aforesaid records.
14. Terms and provisions of that certain Utility Easement Agreement, by and between Wal-Mart Stores East, LP, a Delaware limited partnership and Cedartown LLC, a Delaware limited liability company, dated March 23, 2006, filed for record March 29, 2006, and recorded in Deed [Book 1146, Page 538](#), aforesaid records. (insurable appurtenant easement)
15. Access Easement from Wal-Mart Stores East, LP, a Delaware limited partnership to Cedartown LLC, a Delaware limited liability company, dated March 23, 2006, filed for record March 29, 2006, and recorded in Deed [Book 1146, Page 527](#), aforesaid records. (insurable appurtenant easement)
16. Conveyance of access rights as contained in that certain Right of Way Deed from Mary Virginia Hamrick to Department of Transportation, dated July 31, 1995, filed for record July 31, 1995, and recorded in Deed [Book 519, Page 650](#), aforesaid records.
17. Easement from D. C. Brock to Georgia Power Company dated April 11, 1944, filed for record April 26, 1944, and recorded in Deed [Book 66, Page 167](#), aforesaid records.
18. Matters as shown on that certain plat recorded in Plat [Book Z, Page 106](#), aforesaid records.
19. Matters as would be disclosed by a current and accurate survey and inspection of the subject premises.

CONDITIONS

1. DEFINITIONS

(a) "Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting your title according to the state statutes where your Land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

Comply with the Requirements shown in Schedule B - Section I

or

Eliminate with our written consent any Exceptions shown in Schedule B - Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the Land must be based on this Commitment and is subject to its terms.



First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

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

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.

In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.



First American

First American Title Insurance Company

COMMITMENT INFORMATION SHEET

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Policy contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact:

First American Title Insurance Company National Commercial Services
Six Concourse Parkway, Suite 2000
Atlanta, GA 30328

or

The office which issued this Commitment

TABLE OF CONTENTS

AGREEMENT TO ISSUE POLICY

SCHEDULE A

1. Commitment Date
2. Policies to be Issued, Amounts and Proposed Insureds
3. Interest in the Land and Owner
4. Description of the Land

SCHEDULE B-I -- REQUIREMENTS

SCHEDULE B-II -- EXCEPTIONS

CONDITIONS

EXHIBIT 48

TITLE INSURANCE COMMITMENT

BY

First American Title Insurance Company

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of the Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-I.

The Exceptions in Schedule B-II.

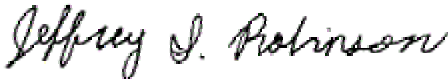
The Conditions.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

First American Title Insurance Company



Dennis J. Gilmore
President



Jeffrey S. Robinson
Secretary

SCHEDULE A

1. Commitment Date: January 07, 2015 at 8:00 am
2. Policy (or Policies) to be issued:
 - a. ALTA Owners Policy (06-17-06) \$0.00

Proposed Insured:
ECP Commercial I, LLC
 - b. ALTA Loan Policy (06-17-06) \$0.00

Proposed Insured:
Will Advise
3. The Estate or Interest in the land described or referred to in the Commitment is:

Leasehold Interest
4. Title to the estate or interest in the land is at the Effective Date vested in:

Eden Shopping Center LLC
5. The Land referred to in this Commitment is located in Rockingham County, North Carolina is described as follows:

See Exhibit A attached hereto and made a part hereof:

EXHIBIT A (Continued)

File No.: **NCS-708676-4-ATL**

Property of Osborne Investments, L.L.C.; all that certain parcel of land with improvements thereon, situated in the City of Eden, Leaksville Township, County of Rockingham, State of North Carolina, and lying North of Arbor Lane, East of Pierce Street, and West of Southwood Drive, being known as Tax Parcel 798906481295, more particularly bounded and described as follows:

Beginning at an existing #5 rebar lying in the northern right of way of Arbor Lane; said point lies S 14°05'45" W, 5236.24' (Grid Tie = 5236.70' C.F. = 1.0000880) from an existing North Carolina Geodetic Survey Monument "Club"; thence with the northern right of way of Arbor Lane and the eastern right of way of pierce street a curve turning to the right with a radius of 20.00', with an arc length of 31.27', with a chord bearing of N 43°33'22" W, with a chord length of 28.18' to a new #5 Rebar set, thence with the eastern right of way of Pierce Street the following calls N 01°14'17" E a distance of 73.23' to a new #5 rebar set; thence with a curve turning to the left with a radius of 430.00', with an arc length of 182.91' with a chord bearing of N 10°56'51" W, with a chord length of 181.53' to a new #5 rebar set, thence with a curve turning to the left with a radius of 950.00', with an arc length of 87.21', with a chord bearing of N 25°45'47" W, with a chord length of 87.18' to a new #5 rebar set, thence N 28°23'35" W a distance of 135.19' to a new #5 rebar set in the eastern right of way of Pierce Street and at the Southwest corner of the property of Morehead Memorial Hospital (Deed Book 1241, Page 1966); thence with the southern property of Morehead Memorial Hospital N 77°35'42" E a distance of 341.25' to an existing #5 rebar found in the western right of way of Southwood Drive; thence with the western right of way of Southwood Drive a curve turning to the left with a radius of 950.00', with an arc length of 502.46', with a chord bearing of S 26°20'40" E, with a chord length of 496.62' to a new #5 rebar set, thence with the western right of way of Southwood Drive and the northern right of way of Arbor Lane a curve turning to the right with a radius of 20.00', with an arc length of 31.99', with a chord bearing of S 04°19'20" W, with a chord length of 28.69' to an existing #5 rebar found in the northern right of way of Arbor Lane, thence with the northern right of way of Arbor Lane a curve turning to the right with a radius of 320.00', with an arc length of 231.83', with a chord bearing of S 70°53'43" W, with a chord length of 226.79' to an existing #5 rebar found, thence N 88°21'02" W a distance of 182.79' to an existing #5 rebar found; said #5 rebar is the point and place of beginning, having an area of 179288.75 square feet and 4.116 acres.

SCHEDULE B - SECTION I

REQUIREMENTS

File No.: **NCS-708676-4-ATL**

The following requirements must be met:

1. Pay the agreed amounts for the interest in the Land and/or mortgage to be Insured.
2. Pay us the premiums, fees and charges for the policy.
3. Pay all taxes and/or assessments, levied and assessed against the land, which are due and payable.
4. You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the Land or who will make a loan on the Land. We may then make additional requirements or exceptions.
5. Documents satisfactory to us creating the interest in the Land and/or the Mortgage to be insured must be signed, delivered and recorded.
6. For insurance regarding priority of conveyance by Seller to Proposed Insured Owner over potential liens for labor, service or materials, including surveyors, architects, engineers and rental equipment (herein "liens") of Seller, or priority of Proposed Insured Lender's Deed of Trust (once recorded) over said liens of Seller and/or Construction Borrower, receipt of applicable NCLTA form (or substantially similar form approved by Company counsel prior to closing), completed and executed by all required parties in compliance with the applicable form's instructions regarding same, as follows:

NO RECENT (last 120 days) OR CONTEMPLATED CONSTRUCTION :

NCLTA FORM 1 (Owner Affidavit) from every seller (on sale) or borrower (on refinance) who has not contracted for recent or contemplated improvements on the Land or for a construction loan.

NOTE: If a contract purchaser has contracted for or is contemplating improvements, see "CONSTRUCTION CONTEMPLATED OR IN PROCESS" below.

RECENTLY COMPLETED IMPROVEMENTS:

Non-MLA project: NCLTA FORM 2 (Owner/Contractor Affidavit, Lien Waiver, and Indemnity) from every Owner and every Contractor.

MLA project:

- (1) Receipt of proof satisfactory to the Company that prior to closing or prior to first contracting for construction (whichever occurs first),
 - a. A Lien Agent was designated on the LiensNC.com website, AND
 - b. The Appointment of Lien Agent was posted at the Land.
- (2) ***NCLTA FORM 5 (Owner Affidavit)*** from every Owner; AND
- (3) ***NCLTA FORM 6 (MLA Lien Waiver)*** from every PLC-MLA.

CONSTRUCTION CONTEMPLATED OR IN PROCESS:

Non-MLA project: NCLTA FORM 3 (Owner/Contractor Affidavit, Indemnity and Lien Subordination) (for lender coverage only) from every Owner and every Contractor.

MLA project:

- (1) Receipt of proof satisfactory to the Company that prior to closing or prior to first contracting for construction (whichever occurs first):
 - a. A Lien Agent was designated on the LiensNC.com website, AND
 - b. The Appointment of Lien Agent was posted at the Land;
- (2) ***NCLTA FORM 5 (Owner Affidavit)*** from every Owner; AND;
- (3) ***NCLTA FORM 6 (MLA Lien Waiver)*** or ***NCLTA FORM 7 (MLA Subordination of Liens)*** from every PLC-MLA.

NOTE: If a contract purchaser has contracted for or is contemplating improvements prior to closing, see "NO RECENT IMPROVEMENTS" above regarding seller lien affidavits as well.

MLA Project – MLA NOT Appointed Prior to Contracting for Labor Services or Materials

In all cases in which an MLA was required but not (timely) appointed, prior approval and terms of coverage (if any) by Company underwriting counsel is required.

Applicable Definitions

“Non-MLA Projects”: Improvements are (1) first contracted before April 1, 2013, (2) for a value less than \$30,000 OR (3) solely for improvements to owner’s existing residence. All other projects (other than public projects) are MLA projects.

“Owner” is holder of any interest in the Land, including leasehold owner or contract purchaser.

“Potential Lien Claimant” (or “PLC - MLA”) is any person (or entity) entitled to file a claim of lien on real property (herein “Liens”), for providing labor, services, (including design professionals such as surveyors, architects, engineers and landscape engineers), materials or rental equipment provided for improvements to the Land (herein “Improvements”), pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes AND who either has filed a Notice to Lien Agent, OR was identified in the original Appointment, OR is a Design Professional OR is a PLC whose first furnishing was within 15 days prior to closing OR (for waivers) delivered a claim of lien upon funds on the Owner.

“Contractor” Any person or entity who has performed or furnished or has contracted to perform or furnish Labor, Services or Materials pursuant to a contract, either express or implied, with the Owner of real property for the making of an Improvement thereon OR who has delivered a claim of lien upon funds to the Owner.

The Company may require additional documentation review for construction loans or where construction has recently been completed. In these situations, please notify the Company as quickly as possible for additional requirements.

7. Receipt of satisfactory Broker’s Lien Waiver, if applicable.
8. Company to be provided with a list of endorsements, if any, to be issued in conjunction with this policy.
9. Company to be provided with the necessary information and/or documentation to complete requested endorsements, if any.
10. Cancellation or Release of Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing for Keybank National Association recorded in [Book 1252, Page 483](#); amended by that certain First Amendment to Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded [Book 1381, Page 2214](#); assigned by that certain Assignment of Construction Deed of Trust recorded in [Book 1464, Page 1898](#); further assigned by that certain Collateral Assignment of Loan and Loan Documents recorded in [Book 1483, Page 2733](#); affected by Assignment of Leases and Rents recorded in [Book 1252, Page 515](#); amended by that certain First Amendment to Assignment of Leases and Rents recorded in [Book 1381, Page 2222](#); assigned by that certain Assignment of Assignment Leases and Rents recorded [Book 1464, Page 1910](#); and further assigned by that certain Assignment of Assignment of Leases and Rents recorded in [Book 1465, Page 653](#), Rockingham County Registry. If such Deed of Trust secures an equity line of credit, the equity line balance must be reduced to zero and the borrower or borrower's attorney must request in writing that the lender make written entry upon the security instrument showing payment in full and satisfaction thereof pursuant to North Carolina General Statutes 45-81(c).
11. Termination or release of UCC Financing Statement showing Eden Shopping Center, LLC as Debtor, and KeyBank National Association as Secured Party, recorded in [Book 1252, Page 524](#) continued by that certain UCC Financing Statement Amendment recorded in [Book 1392 and Page 175](#), Rockingham County Registry.
12. Cancellation or Release of Deed of Trust to Neale Johnson for the benefit of Allan M. Bittner, successor to Jeff H. Farmer, Jr., recorded in [Book 1404, Page 1943](#), Rockingham County Registry.

SCHEDULE B - SECTION II

EXCEPTIONS FROM COVERAGE

File No.: **NCS-708676-4-ATL**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes for the year 2015, which are a lien, not yet due and payable, and all subsequent years.
3. Terms and provisions of that certain unrecorded Lease executed by Osborne Investments, LLC, a North Carolina limited liability company to Eden Shopping Center LLC, a Delaware limited liability company dated as evidenced by a Memorandum of which is recorded in [Book 1252, Page 477](#), Rockingham County Registry.
4. Terms and provisions of that certain unrecorded Lease executed by Eden Shopping Center LLC, a Delaware limited liability company to The Cato Corporation, a Delaware Corporation dated as evidenced by a Memorandum of which is recorded in [Book 1276, Page 1979](#), Rockingham County Registry.
5. Right of Way Agreement to Duke Energy Corporation recorded in [Book 1241, Page 264](#), Rockingham County Registry.
6. Right(s) of way Agreement to Duke Energy Corporation recorded in [Book 1205, Page 1242](#), Rockingham County Registry.
7. Right of Way Deed to Duke Power Company recorded in [Book 384, Page 467](#), Rockingham County Registry.
8. Right of Way Deed to Duke Power Company recorded in [Book 506, Page 289](#), Rockingham County Registry.
9. Right of Way Deed to Duke Power Company recorded in [Book 570, Page 57](#), Rockingham County Registry.
10. Right of Way Deed to Duke Power Company recorded in [Book 576, Page 132](#), Rockingham County Registry.
11. Easements and any other facts as shown in Plat [Book 54, Page 44](#), Rockingham County Registry.
12. Right of Way to Southern Power Company recorded in [Book 185, Page 66](#), Rockingham County Registry.

13. Right of Way to Southern Power Company recorded in [Book 185, Page 76](#), Rockingham County Registry.
14. Right of Way to Duke Power Company recorded in [Book 349, Page 411](#), Rockingham County Registry.
15. Easement to International, Telephone Co. recorded in [Book 240, Page 117](#), Rockingham County Registry.
16. Easement to Central Telephone Company recorded in [Book 384, Page 287](#), Rockingham County Registry.
17. Right of Way to Southern Power Company recorded in [Book 247, Page 61](#), Rockingham County Registry.
18. Right of Way Deed to Duke Power Company recorded in [Book 418, Page 11](#), Rockingham County Registry.
19. Right of Way Deed to Duke Power Company recorded in [Book 418, Page 277](#), Rockingham County Registry.
20. Rights of parties in possession as tenants only, under unrecorded leases(s) or rental agreement(s).
21. Encroachments, overlaps, boundary line disputes, deficiency in amount of area, rights, easements, ditches, cartways, setbacks, rights of parties in possession, interests or claims which would be revealed by a current and accurate survey and inspection of the Land.

CONDITIONS

1. DEFINITIONS

(a) "Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting your title according to the state statutes where your Land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

Comply with the Requirements shown in Schedule B - Section I

or

Eliminate with our written consent any Exceptions shown in Schedule B - Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the Land must be based on this Commitment and is subject to its terms.



First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

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

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.

In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.



First American

First American Title Insurance Company

COMMITMENT INFORMATION SHEET

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Policy contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact:

First American Title Insurance Company National Commercial Services
Six Concourse Parkway, Suite 2000
Atlanta, GA 30328

or

The office which issued this Commitment

TABLE OF CONTENTS

AGREEMENT TO ISSUE POLICY

SCHEDULE A

1. Commitment Date
2. Policies to be Issued, Amounts and Proposed Insureds
3. Interest in the Land and Owner
4. Description of the Land

SCHEDULE B-I -- REQUIREMENTS

SCHEDULE B-II -- EXCEPTIONS

CONDITIONS

TITLE INSURANCE COMMITMENT

BY

First American Title Insurance Company

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of the Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.


The Requirements in Schedule B-I.

The Exceptions in Schedule B-II.

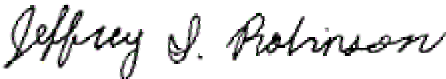
The Conditions.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

First American Title Insurance Company



Dennis J. Gilmore
President



Jeffrey S. Robinson
Secretary

SCHEDULE A

1. Commitment Date: January 07, 2015 at 8:00 am
2. Policy (or Policies) to be issued:
 - a. ALTA Owners Policy (06-17-06) \$0.00

Proposed Insured:
ECP Commercial I, LLC
 - b. ALTA Loan Policy (06-17-06) \$0.00

Proposed Insured:
Will Advise
3. The Estate or Interest in the land described or referred to in the Commitment is:

Fee Simple
4. Title to the estate or interest in the land is at the Effective Date vested in:

Mayodan Shopping Center, LLC
5. The Land referred to in this Commitment is located in Rockingham County, North Carolina is described as follows:

See Exhibit A attached hereto and made a part hereof:

EXHIBIT A (Continued)

File No.: **NCS-708676-5-ATL**

All of that certain lot or parcel of land situated in Mayo Township, Rockingham County, North Carolina, and more particularly described as follows:

All of Lot 1 as shown on the plat of the IDK, LLC Subdivision recorded in Plat [Book 60, Page 11](#), Rockingham County Registry (the "Plat").

Together with, non-exclusive easements for ingress, egress, regress and utility purposes over portion of Lots 2, 3, 4 and 5 as shown on the Plat for the benefit of said Lot 1 as follows:

1. A 30-foot access and utility easement designated as "1" on the Plat;
2. A 25-foot access and utility easement designated as "2" on the Plat;
3. A 30-foot access and utility easement designated as "3" on the Plat;

SCHEDULE B - SECTION I

REQUIREMENTS

File No.: **NCS-708676-5-ATL**

The following requirements must be met:

1. Pay the agreed amounts for the interest in the Land and/or mortgage to be Insured.
2. Pay us the premiums, fees and charges for the policy.
3. Pay all taxes and/or assessments, levied and assessed against the land, which are due and payable.
4. You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the Land or who will make a loan on the Land. We may then make additional requirements or exceptions.
5. Documents satisfactory to us creating the interest in the Land and/or the Mortgage to be insured must be signed, delivered and recorded.
6. For insurance regarding priority of conveyance by Seller to Proposed Insured Owner over potential liens for labor, service or materials, including surveyors, architects, engineers and rental equipment (herein "liens") of Seller, or priority of Proposed Insured Lender's Deed of Trust (once recorded) over said liens of Seller and/or Construction Borrower, receipt of applicable NCLTA form (or substantially similar form approved by Company counsel prior to closing), completed and executed by all required parties in compliance with the applicable form's instructions regarding same, as follows:

NO RECENT (last 120 days) OR CONTEMPLATED CONSTRUCTION :

NCLTA FORM 1 (Owner Affidavit) from every seller (on sale) or borrower (on refinance) who has not contracted for recent or contemplated improvements on the Land or for a construction loan.

NOTE: If a contract purchaser has contracted for or is contemplating improvements, see "CONSTRUCTION CONTEMPLATED OR IN PROCESS" below.

RECENTLY COMPLETED IMPROVEMENTS:

Non-MLA project: NCLTA FORM 2 (Owner/Contractor Affidavit, Lien Waiver, and Indemnity) from every Owner and every Contractor.

MLA project:

- (1) Receipt of proof satisfactory to the Company that prior to closing or prior to first contracting for construction (whichever occurs first),
 - a. A Lien Agent was designated on the LiensNC.com website, AND
 - b. The Appointment of Lien Agent was posted at the Land.
- (2) ***NCLTA FORM 5 (Owner Affidavit)*** from every Owner; AND
- (3) ***NCLTA FORM 6 (MLA Lien Waiver)*** from every PLC-MLA.

CONSTRUCTION CONTEMPLATED OR IN PROCESS:

Non-MLA project: NCLTA FORM 3 (Owner/Contractor Affidavit, Indemnity and Lien Subordination) (for lender coverage only) from every Owner and every Contractor.

MLA project:

- (1) Receipt of proof satisfactory to the Company that prior to closing or prior to first contracting for construction (whichever occurs first):
 - a. A Lien Agent was designated on the LiensNC.com website, AND
 - b. The Appointment of Lien Agent was posted at the Land;
- (2) ***NCLTA FORM 5 (Owner Affidavit)*** from every Owner; AND;
- (3) ***NCLTA FORM 6 (MLA Lien Waiver)*** or ***NCLTA FORM 7 (MLA Subordination of Liens)*** from every PLC-MLA.

NOTE: If a contract purchaser has contracted for or is contemplating improvements prior to closing, see "NO RECENT IMPROVEMENTS" above regarding seller lien affidavits as well.

MLA Project – MLA NOT Appointed Prior to Contracting for Labor Services or Materials

In all cases in which an MLA was required but not (timely) appointed, prior approval and terms of coverage (if any) by Company underwriting counsel is required.

Applicable Definitions

"Non-MLA Projects": Improvements are (1) first contracted before April 1, 2013, (2) for a value less than \$30,000 OR (3) solely for improvements to owner's existing residence. All other projects (other than public projects) are MLA projects.

"Owner" is holder of any interest in the Land, including leasehold owner or contract purchaser.

"Potential Lien Claimant" (or "PLC - MLA") is any person (or entity) entitled to file a claim of lien on real property (herein "Liens"), for providing labor, services, (including design professionals such as surveyors, architects, engineers and landscape engineers), materials or rental equipment provided for improvements to the Land (herein "Improvements"), pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes AND who either has filed a Notice to Lien Agent, OR was identified in the original Appointment, OR is a Design Professional OR is a PLC whose first furnishing was within 15 days prior to closing OR (for waivers) delivered a claim of lien upon funds on the Owner.

"Contractor" Any person or entity who has performed or furnished or has contracted to perform or furnish Labor, Services or Materials pursuant to a contract, either express or implied, with the Owner of real property for the making of an Improvement thereon OR who has delivered a claim of lien upon funds to the Owner.

The Company may require additional documentation review for construction loans or where construction has recently been completed. In these situations, please notify the Company as quickly as possible for additional requirements.

7. Receipt of satisfactory Broker's Lien Waiver, if applicable.
8. Company to be provided with a list of endorsements, if any, to be issued in conjunction with this policy.
9. Company to be provided with the necessary information and/or documentation to complete requested endorsements, if any.
10. Cancellation or Release of Deed of Trust to Lawyers Title Insurance Corporation for the benefit of Keybank National Association, recorded in [Book 1294, Page 1984](#), as amended in [Book 1381, Page 2228](#), and as assigned in [Book 1464, Page 1888](#); as affected by Assignment of Leases recorded in [Book 1294, Page 2015](#), as amended in [Book 1381, Page 2240](#), as assigned in [Book 1464, Page 1882](#), and as further assigned in [Book 1464, Page 1910](#), Rockingham County Registry.
11. Cancellation or Release of Deed of Trust to Lawyers Title Insurance Corporation for the benefit of Jeff H. Farmer, Jr., Collection Agent, recorded in [Book 1294, Page 2028](#), Rockingham County Registry.
12. Termination or release of UCC Financing Statement showing Blue Naples Mayodan LLC as Debtor, and Bank of North Carolina as Secured Party, recorded in [Book 1417, Page 2538](#), Rockingham County Registry.

SCHEDULE B - SECTION II

EXCEPTIONS FROM COVERAGE

File No.: **NCS-708676-5-ATL**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes for the year 2015, which are a lien, not yet due and payable, and all subsequent years.
3. Easement to Duke Power Company recorded in [Book 903, Page 1745](#), Rockingham County Registry.
4. Easement to Duke Power Company recorded in [Book 318, Page 560](#), Rockingham County Registry.
5. Terms and provisions of that certain unrecorded Lease executed by Jeanette O. Hudson to L.O.T. 2540, Inc., as evidenced by Memorandum of Commercial Lease recorded in [Book 1475, Page 1761](#), Rockingham County Registry.
6. Easements and any other facts as shown in Plat [Book 60, Page 11](#), Rockingham County Registry.
7. Terms, provisions, covenants, conditions, easements and restrictions as provided in Declaration of Restrictive Covenants recorded in [Book 1310, Page 1215](#), Rockingham County Registry, but omitting any covenant, condition, easement, and/or restriction, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, source of income, disability, handicap or national origin unless and only to the extent that the covenant, condition, easement or restriction (a) is exempt under Title 42 of the United States Code or (b) related to a handicap, but does not discriminate against handicapped persons.
8. Terms and provisions, including easement rights and construction and maintenance obligations, described in General Warranty Deed recorded in Deed [Book 1294, Page 1979](#), Rockingham County Registry.
9. Rights of parties in possession as tenants only, under unrecorded leases(s) or rental agreement(s).
10. Encroachments, overlaps, boundary line disputes, deficiency in amount of area, rights, easements, ditches, cartways, setbacks, rights of parties in possession, interests or claims which would be revealed by a current and accurate survey and inspection of the Land.

CONDITIONS

1. DEFINITIONS

(a) "Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting your title according to the state statutes where your Land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

Comply with the Requirements shown in Schedule B - Section I

or

Eliminate with our written consent any Exceptions shown in Schedule B - Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the Land must be based on this Commitment and is subject to its terms.



First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

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

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.

In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE

Issued by

First American Title Insurance Company

First American Title Insurance Company, a Nebraska corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

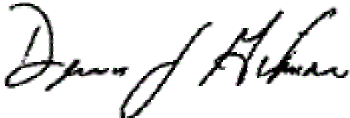
This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

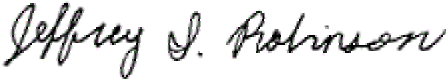
The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, First American Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

First American Title Insurance Company



Dennis J. Gilmore
President



Jeffrey S. Robinson
Secretary

COMMITMENT FOR TITLE INSURANCE FORM
SCHEDULE A

1. Effective Date: January 06, 2015 at 5:00 p.m.
 - a. ALTA Owner's Policy (06-17-06) \$TBD

Proposed Insured:
ECP Commercial I, LLC, a Delaware limited liability company
 - b. ALTA Loan Policy (06-17-06) \$TBD

Proposed Insured:
A Lender To Be Determined

2. The estate or interest in the Land described or referred to in this Commitment is:

Fee Simple

3. Title to the estate or interest in the Land is at the Effective Date vested in:

Newton Shopping Center LLC, a Delaware limited liability company,
Pueblo West Shopping Center LLC, a Delaware limited liability company, and
Boaz Shopping Center LLC, a Delaware limited liability company, as their interest may appear
(subject to requirements)

4. The Land referred to in this Commitment is described as follows:

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

For informational purposes only: 74 North Component Drive,
Pueblo West, Colorado

EXHIBIT A

Commitment No.: NCS-708676-8-ATL

The land referred to in Schedule A is situated in the County of Pueblo, State of Colorado and is described as follows:

Parcel "A", Lot Line Vacation No. 2006-010 (formerly Lots 13 through 17, Block 2, Tract 240) according to the plat thereof filed for record October 3, 2006, Reception No. [1696395](#) in the Office of the Pueblo County Clerk and Recorder,
County of Pueblo,
State of Colorado.

For informational purposes only: APN: 06-021-06-019

COMMITMENT FOR TITLE INSURANCE FORM
SCHEDULE B
SECTION ONE
REQUIREMENTS

The following requirements must be met:

1. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Payment of all taxes and assessments now due and payable.
4. Recordation of a Quit Claim Deed satisfactory to the Company, from Boaz Shopping Center LLC, a Delaware limited liability company, to Pueblo West Shopping Center LLC, a Delaware limited liability company.

NOTE: This requirement is necessary to divest any interest retained by Boaz Shopping Center LLC, a Delaware limited liability company by reason of the merger documents attached to Quitclaim Deed recorded February 7, 2013 at Reception No. 1933473.

5. Recordation of a Warranty Deed satisfactory to the Company, from Newton Shopping Center LLC, a Delaware limited liability company, and Pueblo West Shopping Center LLC, a Delaware limited liability company, vesting fee simple title in and to ECP Commercial I, LLC, a Delaware limited liability company.
6. Recordation of a Deed of Trust satisfactory to the Company, from ECP Commercial I, LLC, a Delaware limited liability company, to the Public Trustee of Pueblo County, for the benefit of the proposed insured lender.
7. Recordation of a Release of the Deed of Trust from Durant Shopping Center, LLC, a Delaware limited liability company as to an undivided 43% interest, Zachary Shopping Center, LLC, a Delaware limited liability company as to an undivided 7% interest and Newton Shopping Center, LLC, a Delaware limited liability company as to an undivided 50% to the Public Trustee of Pueblo County for the use of Jeff H. Farmer, Jr. to secure an indebtedness in the principal sum of \$85,000.00, and any other amounts and/or obligations secured thereby, dated May 12, 2006 and recorded May 17, 2006 at Reception No. [1675899](#).

NOTE: Subordination Agreement in connection therewith recorded October 20, 2006 at Reception No. [1698838](#).

NOTE: Confirmatory Subordination Agreement in connection therewith recorded August 25, 2009 at Reception No. [1816479](#).

8. Recordation of a Release of the Deed of Trust from Durant Shopping Center, LLC, a Delaware limited liability company as to an undivided 43% interest, Zachary Shopping Center, LLC, a Delaware limited liability company as to an undivided 7% interest and Newton Shopping Center, LLC, a Delaware limited liability company as to an undivided 50% to the Public Trustee of Pueblo County for the use of Jeff H. Farmer, Jr. to secure an indebtedness in the principal sum of \$210,000.00, and any other amounts and/or obligations secured thereby, dated June 28, 2006 and recorded July 11, 2006 at Reception No. [1683492](#).

NOTE: Subordination Agreement in connection therewith recorded October 20, 2006 at Reception No. [1698837](#).

NOTE: Confirmatory Subordination Agreement in connection therewith recorded August 25, 2009 at Reception No. [1816480](#).

9. Recordation of a Release of the Deed of Trust from Durant Shopping Center, LLC, a Delaware limited liability company, Newton Shopping Center, LLC, a Delaware limited liability company, and Zachary Shopping Center, LLC, a Delaware limited liability company to the Public Trustee of Pueblo County for the use of KeyBank National Association to secure an indebtedness in the principal sum of \$2,250,000.00, and any other amounts and/or obligations secured thereby, dated October 11, 2006 and recorded October 20, 2006 at Reception No. [1698835](#).

NOTE: Assignment of Leases and Rents in connection therewith recorded October 20, 2006 at Reception No. [1698836](#), and First Amendment recorded August 25, 2009 at Reception No. [1816478](#), and Assignment recorded October 15, 2013 at Reception No. [1957992](#).

NOTE: First Amendment in connection therewith recorded August 25, 2009 at Reception No. [1816477](#).

NOTE: Assignment of Deed of Trust to ECP Commercial I LLC, a Delaware limited liability company recorded October 15, 2013 at Reception No. [1957991](#).

NOTE: Assignment of Deed of Trust to Pacific Western Bank recorded December 18, 2014 at Reception No. [1992620](#).

10. Recordation of a Termination of the Financing Statement between Durant Shopping Center, LLC, Newton Shopping Center, LLC, and Zachary Shopping Center, LLC, as debtor, and KeyBank National Association, as secured party, recorded October 20, 2006 at Reception No. [1698839](#).

NOTE: Continuation of Financing Statement in connection therewith recorded April 18, 2011 at Reception No. [1872845](#).

11. Receipt by the Company of the following documentation for Pueblo West Shopping Center LLC, a Delaware limited liability company:

Operating Agreement, and all amendments thereto, if any.
Certificate of Good Standing issued by the Delaware Secretary of State.

12. Receipt by the Company of the following documentation for Newton Shopping Center LLC, a Delaware limited liability company:

Operating Agreement, and all amendments thereto, if any.
Certificate of Good Standing issued by the Delaware Secretary of State.

13. Receipt by the Company of the following documentation for ECP Commercial I, LLC, a Delaware limited liability company:

Operating Agreement, and all amendments thereto, if any.
Certificate of Good Standing issued by the Delaware Secretary of State.
14. Receipt by the Company of a satisfactory Final Affidavit and Indemnity, executed by Pueblo West Shopping Center LLC, a Delaware limited liability company.
15. Receipt by the Company of a satisfactory Final Affidavit and Indemnity, executed by Newton Shopping Center LLC, a Delaware limited liability company.
16. Receipt by the Company of a satisfactory Final Affidavit and Indemnity, executed by Boaz Shopping Center LLC, a Delaware limited liability company.
17. Receipt by the Company of a satisfactory Final Affidavit and Indemnity, executed by ECP Commercial I, LLC, a Delaware limited liability company.
18. Receipt by the Company of an ALTA/ACSM 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.

COMMITMENT FOR TITLE INSURANCE FORM
SCHEDULE B
SECTION TWO
EXCEPTIONS

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of 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 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 and all unpaid taxes, assessments and unredeemed tax sales.
6. Covenants, conditions, restrictions, provisions, easements and assessments as set forth in Declaration of Reservations Tract 240, Pueblo West recorded December 18, 1969 in [Book 1663 at Page 835](#), 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.

NOTE: Assignment and Assumption of Declarant's Rights and Duties in connection therewith recorded December 30, 1992 in [Book 2632 at Page 840](#), August 12, 1996 in [Book 2919 at Page 506](#), and May 29, 2009 at Reception No. [1807027](#).

7. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of Pueblo West Colorado Tract No. 240, recorded December 18, 1969 at Reception No. [385766](#).
8. Terms, conditions, provisions, obligations and agreements as set forth in the Resolution No. P&D 06-94 recorded October 3, 2006 at Reception No. [1696393](#).
9. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of Plat Amendment No. 2006-001 Amendment to the Recorded Plat of Tract 240, Pueblo West, Colorado, recorded October 3, 2006, at Reception No. [1696394](#).
10. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of Lot Line Vacation No. 2006-010, recorded October 3, 2006, at Reception No. [1696395](#).

11. Lease by and between Pueblo West Shopping Center LLC, a Delaware limited liability company, as lessor, and The CATO Corporation, a Delaware corporation, as lessee, as evidenced by Memorandum of Lease recorded November 27, 2007 at Reception No. [1749866](#).
12. Existing leases and tenancies.

EXHIBIT B
Statement of Charges

ALTA Extended Owner Policy	\$ TBD
ALTA Extended Loan Policy	\$ TBD
Tax Certification	\$ TBD

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.



First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

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

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.

In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

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 (Non-residential withholding).

NOTE: Colorado Division of Insurance Regulations 3-5-1, requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed." Provided that First American Title Insurance Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction.

Pursuant to C.R.S. 10-11-122, the company will not issue its policy or 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 3-5-1, 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 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.

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.

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.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ECP COMMERCIAL I LLC,)
)
 Plaintiff,)
)
 v.)
)
 BOAZ SHOPPING CENTER LLC, et al.,)
)
 Defendants.)
 _____)

CASE NO.: 15-cv-02247-STA-cgc

AGREED ORDER APPOINTING RECEIVER

THIS MATTER is before the Court on the Amended Complaint for Foreclosure, Appointment of a Receiver, and Injunctive Relief (the "Complaint") and accompanying Second Amended Motion for Appointment of a Receiver and Related Injunctive Relief and Memorandum of Law in Support (the "Motion") filed by the plaintiff, ECP Commercial I LLC ("ECP"). It appears that due and sufficient notice of the Complaint and Motion have been given to all Defendants. Having read and considered the Complaint and the Motion, the arguments and statements of counsel having been presented and considered, and it appearing that venue and jurisdiction are proper in this Court and the relief requested is necessary to prevent irreparable harm and injury to ECP's rights and the Mortgaged Properties (defined below), and the rents and profits therefrom, as to which ECP has no adequate remedy at law, the Court hereby makes the following findings of fact and conclusions of law:

Findings of Fact

A. The proposed receivership is a receivership of the Mortgaged Properties (as defined below).

B. The proposed receiver, George E. Shoup, III, (“Shoup”) an employee of Development Specialists, Inc. (“DSI”), is experienced in the arenas of distressed property, business management and sales. Both Shoup and DSI, who Shoup intends to retain as a financial consultant in this matter, have no interests or connections with any Defendant.

Conclusions of Law

(i) The Court has jurisdiction over this matter and venue is proper, pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1391.

(ii) ECP has no adequate remedy at law to prevent potential irreparable harm and injury to its rights under the Loan Documents and with respect to the Mortgaged Properties (as defined in the Motion), and therefore, ECP is entitled to the relief requested in the Complaint and the Motion as hereinafter provided.

(iii) Adequate notice of the Motion and the relief requested by ECP has been given to all Defendants.

IT IS ACCORDINGLY HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Motion is hereby GRANTED, as provided herein.
2. George E. Shoup, III be, and hereby is, appointed, with bond in the amount of \$10,000, to serve as receiver (in that office and capacity, the "Receiver") for the Mortgaged Properties and for all of the Receivership Assets (as defined below), all of which will form a part of the estate that is in receivership (the "Receivership Estate"), such appointment to become effective upon the filing of an Oath of Receiver with this Court (the "Effective Date"). As used herein, the term "Receivership Assets" shall be construed broadly to include the Mortgaged Properties, whether real or personal, tangible or intangible and wherever located, including, without limitation, all rents and profits of the Mortgaged Properties and all of the types and items of property described in paragraph 3 below. Except as otherwise provided herein with respect to actions that may be taken by ECP, the Receiver shall be exclusively authorized to manage the Receivership Estate and to possess, manage and safeguard the Mortgaged Properties and no other person or entity claiming to have an interest in the Receivership Assets, shall have any authority or control over or with respect to the Receivership Estate or any of the Receivership Assets.

3. Subject only to the rights and liens of ECP, the Receiver shall have all powers and rights to administer and manage the Receivership Estate and to assume custody and control over certain Receivership Assets, including, but not limited to, the following property, whether or not such property constitutes Mortgaged Properties:

- a. all of Defendants' interests as landlord under any lease of premises or any other place at which any Receivership Assets are located (but neither the Receiver nor the

Receivership Estate shall be deemed to have assumed any of the obligations under any lease with any other person, but the use and occupancy of any such premises shall be conditioned upon the Receiver receiving rent accruing hereafter in respect of any premises that are used for purposes beneficial to the Receivership Estate) and Defendants' interest in any leasehold improvements on any leased premises (all such business premises and improvements being collectively referred to as the "Facilities");

b. all items of machinery or equipment owned by Defendants, wherever located, or used by Defendants and located in, on or about the Facilities, including, without limitation, all computer equipment, office equipment and supplies (collectively, the "Equipment");

c. all accounts receivable, promissory notes, payment intangibles, chattel paper, instruments and other rights of Defendants to the payment of money in connection with the operation and management of the Mortgaged Properties (collectively, the "Accounts");

d. all deposit accounts of Defendants relating to the operation and management of the Mortgaged Properties (collectively, the "Deposit Accounts"), including, without limitation, all checking accounts, savings accounts, payroll accounts, payroll tax accounts, petty cash accounts, and escrow accounts;

e. all business records of Defendants relating to the operation and management of the Mortgaged Properties, in whatever form or media maintained (collectively, the "Records"), including, but not limited to, all documents evidencing ownership of any Receivership Assets (including bills of sale and certificates of title),

books of accounts, financial statements, balance sheets, ledgers, expense statements, logs, maintenance and servicing records, journals, reports, and other documents relating to the past or future use, operation or maintenance of any Receivership Assets;

f. all of Defendants' investment property relating to the operation and management of the Mortgaged Properties, including, without limitation, stocks, bonds, and other securities;

g. all insurance policies relating to the operation of the Mortgaged Properties;

h. all of Defendants' permits, licenses, registrations and certificates (including, without limitation, certificates of registration and re-registration relating to any aircraft) that were issued by governmental authorities or are necessary for the ownership or use of any of the Receivership Assets or the operation of any of the business of Defendants, and the Receiver shall be entitled to operate and to all of the other benefits and privileges arising under all of such permits, licenses, registrations and certificates;

i. all of Defendants' general intangibles, customer lists, and rights under contracts relating to the operation and management of the Mortgaged Properties;

j. all causes of action, claims, rights in respect of pending or potential litigation and arbitration proceedings, and judgments owned by or in favor of Defendants relating to the operation and management of the Mortgaged Properties;

k. all patents, trademarks, copyrights and other intellectual property of Defendants relating to the operation and management of the Mortgaged Properties;

l. all of Defendants' rent deposits, security deposits and other refundable deposits of money or other property, as well as all of Defendants' rights to receive rent and storage fees and claims against others for unpaid rent or storage fees;

m. all tax refund claims of Defendants, whether now in existence or hereafter arising, relating to the operation and management of the Mortgaged Properties; and

n. all rents, income, monies, fees, revenues, proceeds, and profits now existing or hereafter generated from the collection, sale or other disposition of any of the Mortgaged Properties (collectively, the "Revenues").

4. Except as otherwise expressly restricted in this Order, the Receiver shall have and possess all powers, privileges and prerogatives ordinarily provided to receivers under law. In addition, and without limiting the generality of the foregoing, but subject to paragraph 6 below, the Receiver is hereby authorized and empowered to:

a. take immediate possession of, hold and secure all Receivership Assets;

b. manage, control, operate and maintain the Receivership Estate;

c. receive, collect, sue for, settle or compromise all Accounts, Revenues and other Receivership Assets;

d. make such ordinary and necessary payments, distributions, and disbursements as the Receiver deems advisable or proper for the marshaling, maintenance or preservation of the Receivership Assets;

e. negotiate with any creditors and contract counterparties of Defendants for the purpose of compromising or settling any claim, including, without limitation, the surrender of assets to secured creditors;

f. renew, cancel, terminate, or otherwise adjust any current or pending lease agreements to which Defendants is a party;

g. institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as the Receiver in his discretion may deem to be advisable for the protection and administration of the Receivership Estate;

h. institute actions, suits or other proceedings to obtain possession or custody of or control over any Receivership Assets, to pursue causes of action held by Defendants, and to collect any amounts owed to Defendants, including, but not limited to, accounts receivable, whether any such suits or proceedings are instituted in this Court or any other court or tribunal having competent jurisdiction, to the extent that the Receiver determines that such actions will preserve or maximize the value of the estate;

i. execute any necessary documents to allow the Receiver to take possession of and control of, and to draw checks on, any Deposit Accounts and to open bank accounts or other depository accounts, in the name of the Receiver on behalf of the Receivership Estate, provided that the Receiver shall provide ECP with at least five (5) business days prior notice before opening any new bank or other depository account;

j. issue subpoenas as the Receiver deems necessary to determine any and all parties asserting any rights to the Mortgaged Properties or the Receivership Estate, without the necessity of compliance with any rule or provision of law that would impose any limitations on the Receiver's ability to issue such subpoenas;

k. prepare tax returns and related documents regarding the assets and operation of the Receivership Estate;

l. file such reports and documents with federal, state and local officials as are required or are deemed by the Receiver to be necessary or appropriate in connection with the operation of Defendants' business;

m. following at least five (5) business days' prior notice to Defendants, abandon any Receivership Assets that, in the exercise of the Receiver's business judgment, are burdensome to the Receivership Estate;

n. The Receiver is hereby authorized to employ Harris P. Quinn and Prochaska Quinn & Ferraro, P. C. as his counsel and attorneys, engage other attorneys, accountants, appraisers, brokers, auctioneers, environmental experts, and other consultants and experts (collectively, the "Professionals"), on terms acceptable to ECP, to assist the Receiver in the performance and discharge of her rights, powers, and duties hereunder and pay such Professionals reasonable retainers and their fees and expenses as such become due and payable; provided, however, that prior to any such payment by the Receiver to a Professional, the Receiver shall provide copies of the Professional's invoices to ECP, who shall have a period of ten (10) business days after receipt of an invoice within which to send a written objection to payment to the Receiver, and if an objection is timely made by ECP, the fees and expenses that are subject to the objection shall not be paid except upon the subsequent written consent of ECP or further order of this Court;

o. subject only to the requirements and limitations in this or future Orders of this Court, sell, lease or otherwise dispose of any of the Receivership Assets in or outside of the ordinary course of business, as a going concern or as part of an orderly liquidation, or in such public auctions or private sales as the Receiver may deem appropriate; and execute and deliver such bills of sale and other related documents in order to transfer all of Defendants' right, title, and interest in and to any of the Receivership Estate to any purchaser thereof;

p. pay from the Revenues (to the extent agreed by ECP or otherwise ordered by this Court) or Protective Advances (defined below) the expenses of the Receivership Estate, including Professional Fees (defined below), and the costs of entering into any new lease agreements deemed to increase the value of the Receivership Estate by the Receiver, including, without limitation, expenses for rent, utilities (gas, electric and water), supplies, wages and salaries, taxes (payroll, sales and personal property ad valorem), tenant improvements, capital expenses and ordinary and necessary repairs and maintenance to any of the Receivership Estate;

q. approve all existing and prospective subcontractors, vendors, suppliers, distributors, customers, licensors, licensees, landlords, tenants and subtenants of Defendants, including, without limitation, by way of approving leases, licenses, and other agreements and any amendments, renewals, extensions, modifications, or waivers of any leases, licenses, or other agreements between Defendants and any existing or prospective subcontractors, vendors, suppliers, distributors, customers, licensors, licensees, landlords,

tenants and subtenants of Defendants, with any disputes related to such dealings to be subject to the jurisdiction of the Court;

r. receive, open, read, and respond to all mail addressed to Defendants; provided that if the Receiver receives and reviews communications to Defendants that are marked confidential, attorney-client privileged or similarly restricted, he shall maintain the confidentiality of such communications and neither his receipt nor his review of any such communications shall be deemed a waiver of any attorney-client privilege or similar protection that otherwise applies;

s. provide a written statement each month (for the prior month) of cash receipts and cash disbursements to Defendants and ECP as well as any other reports and budgets reasonably requested by ECP or required by the Court;

t. request and receive from Defendants' outside accountants and auditors (collectively, the "Auditors") all records and information relating to Defendants' financial performance and condition in 2011, 2012, 2013 and 2014 for the purpose of, among other things, filing amended tax returns for Defendants and seeking any tax refund to which Defendants may be entitled (and such Auditors are hereby authorized and directed to turn over all such records and information to the Receiver) and provide Defendants with copies of any amended returns;

u. communicate and negotiate with any regulatory or other authority regarding the operation of the Receivership Estate or the issuance or renewal of any permits, licenses, certificates or registrations in connection therewith; and

v. take such other action as may be approved by this Court following prior

notice to ECP and Defendants.

In addition to the powers and instructions set forth hereinabove, the Receiver shall have all of the powers of a receiver that are authorized by law and all other powers necessary or proper to preserve and manage the Receivership Estate, including, without limitation, the Mortgaged Properties, and to perform obligations and exercise rights and remedies under existing agreements between or among Defendants and any third parties.

5. The Receiver is authorized to take any and all actions not specifically enumerated herein which are necessary and proper to properly and adequately sell, lease, license, encumber, collect, compromise, or otherwise dispose of or use the proceeds of all or any part of the Mortgaged Properties. Notwithstanding anything to the contrary in this Order, the Receiver shall not be authorized to sell, lease, license, encumber, collect, compromise or otherwise dispose of, or use the proceeds of, any part of the Mortgaged Properties without (i) the prior express consent of ECP, which consent may be given or withheld in ECP's sole and absolute discretion and may, if so elected by ECP, be conditioned upon ECP's agreement as to the timing, method, manner and terms of any sale, lease, encumbrance, compromise or other disposition of any Mortgaged Properties, or (ii) an Order from this Court after notice to all creditors with an opportunity to be heard pursuant to applicable law; and the Receiver shall in all events promptly account for and turn over to ECP, for application to the Obligations, all cash and non-cash proceeds received in connection with any sale, lease, collection or other disposition of any Mortgaged Properties. . The Receiver shall, upon the entry of judgment in mortgage foreclosure, be authorized to expose the Mortgaged Properties to public foreclosure sales pursuant to 28 U.S.C. § 2001, et seq., and shall thereafter pass title to the Property to the successful bidder.

6. Except with respect to lockboxes and other payment addresses in the control of ECP to which account debtors of Defendants make payments in respect of Accounts, the Receiver is hereby authorized to notify the United States Postal Service to forward any mail addressed to Defendants who are owners of any Mortgaged Property to any Post Office box or other mail depository. Further, the Receiver is authorized to open and inspect all such mail (subject to the same limitations noted in Paragraph 4(r) above), to determine the location or identity of assets or the existence and amount of claims.

7. The Receiver shall be authorized to request and receive from ECP from time to time advances of funds (collectively, "Protective Advances") that are necessary for the Receiver's operation of Defendants' business or the management, maintenance, marketing, sale, safeguarding, insurance, operation, increasing the value or repair of the Mortgaged Properties or other Receivership Assets, including, without limitation, payroll and payroll taxes, premiums for insurance, tenant improvements and amounts needed to make necessary and essential repairs to the Facilities, all of which Protective Advances by ECP shall be deemed an Advance under (and as defined in) the Loan Agreement to protect and preserve the Mortgaged Properties, shall form a part of the Obligations, and shall be secured by all and in the priority of the liens and security interests granted or conveyed by Defendants to or in favor of ECP. All Protective Advances may be made by ECP at such times and in such amounts as ECP may elect in its sole and absolute discretion. If ECP elects to discontinue making Protective Advances, ECP shall provide at least five (5) business days' prior written notice of such election to the Receiver (a "Funding Termination Notice"), and, if such notice is given, ECP shall fund one final Protective Advance to the Receiver in an amount sufficient to permit the Receiver to pay budgeted expenses and

accounts payable with regard to the Receivership Assets which are incurred in the normal and ordinary course of business of the Receivership Assets and which are incurred by the Receiver on or after the Receiver's taking possession of the Receivership Assets, including accrued unpaid expenses, all unpaid wages, salary, payroll and payroll taxes attributable to time actually worked (excluding any severance, bonus or other extraordinary items), sales, use, and excise taxes and Professional Fees until the Receiver is released from his fiduciary obligations by this Court, in each case to the extent accrued through and including the date that ECP delivers such written notice of termination of funding to the Receiver. The Receiver shall provide prompt written notice to ECP of any payroll, payroll taxes, sales, use and excise taxes owed by the Receivership Estate that have not been (prior to entry of this Order) or are not (after entry of this Order) paid as and when due. If ECP elects to send a Funding Termination Notice, then ECP shall file such notice with the Court, together with a motion seeking to terminate the receivership established pursuant to this Order; and at the hearing on any such motion, the Court may consider and determine the extent (if any) to which Protective Advances from ECP may be required to be made available to the Receiver in order to permit the Receiver to pay (i) unpaid actual expenses that were approved and incurred by the Receiver after his appointment through the effective date of the Funding Termination Notice which may be disputed by ECP and (ii) a reasonable estimate of fees and expenses of the Receiver and his Professionals for services to be rendered after the effective date of the Funding Termination Notice in connection with winding up the receivership.

8. Receiver's compensation and the compensation owed to Development Specialists, Inc., financial consultant to the Receiver, and any other professional retained by the Receiver including but not limited to counsel, accountants, property managers and/or other retained

professionals (collectively “Professionals’ Fees”), shall be paid monthly according to the hourly fees and other terms and conditions as more fully set forth on Exhibit 2 attached to the Motion and incorporated by reference (“Retention Letter”). Pursuant to the terms of the Retention Letter, ECP shall be obligated to advance sums for the payment of Professional Fees, including the holdbacks (upon Court approval) referred to in the Retention Letters.

9. Professional Fees shall be paid first from income; if any; second, from any proceeds from the disposition of Receivership Property; and third, from sums advanced by ECP.

10. ECP shall be authorized, at any time or times, to enter upon the Facilities (or any other location at which the Receiver maintains any of the Receivership Assets) for the purpose of inspecting the Mortgaged Properties or any other Receivership Assets, including all Records, Inventory or Equipment; conferring with officers, employees, or agents of the Receiver; and reviewing and making copies of any and all of the Records and any other documents at any time in the possession, custody or control of the Receiver. The Receiver shall periodically, at such intervals as ECP and the Receiver shall mutually agree upon (but no less frequently than once monthly), provide to ECP and Defendants reports of the Receiver's operations, cash receipts, disbursements and maintenance of the Receivership Estate. In no event shall ECP, by virtue of its exercising any right, power or privilege hereunder, be deemed to be in possession or control of any of the Receivership Estate, or to have asserted any supervisory control or decision-making authority with respect to the management, operation, protection or maintenance of any Receivership Assets, and ECP shall not be deemed to have assumed any obligation under Defendants’ agreements with any third parties and shall not be liable for the use, maintenance, repair, or operation of any of the Receivership Estate. All officers, attorneys and authorized

representatives of Defendants shall be entitled to review, inspect and copy any of the Records during normal business hours and at their own expense.

11. Defendants and each of their officers, directors, agents, attorneys and employees, all other persons acting at the direction of Defendants, and each other person or entity receiving notice of this Order by service or otherwise (but specifically excluding ECP), are hereby ordered immediately to (i) turn over to the Receiver the Records; (ii) pay over to the Receiver all cash and all funds and deposits in any Deposit Accounts or investments of Defendants, except for funds required to pay checks for expenses of Defendants that have been issued on or before the date of entry of this Order but have not yet been presented for payment; and (iii) cooperate with the Receiver in identifying and locating Receivership Assets, transitioning the operations of any Receivership Assets to the Receiver, and identifying and investigating any causes of action of Defendants. Notwithstanding the foregoing, all proceeds of the Mortgaged Properties shall be remitted by the Receiver (or any other person or entity in possession thereof) to ECP for application first to Professional Fees and then to the Obligations.

12. Defendants shall fully cooperate with Receiver in adding Receiver and Plaintiff as additional insureds and ECP and Receiver as the loss payee on all insurance policies relating to the management of the Receivership Assets including, but not limited to, fire, extended coverage, vehicle coverage, property damage, liability, fidelity, errors and omissions, and workers' compensation, and modifying the policies if deemed appropriate by Receiver, but subject to approval by ECP. As to property damage only, but not for to liability to third parties, the rights of ECP as loss payee with respect to proceeds of insurance upon the Mortgaged Properties shall at all times be superior to Receiver until Defendants' obligations to ECP are

repaid in full. Defendants shall provide the Receiver with a complete and accurate copy of all existing insurance policies related to the Receivership Property or, if coverage has lapsed, a complete set of the most recent policies and papers related to the most recent insurance coverage maintained for the Receivership Property. Defendants and their members, managers, officers, independent contractors, employees and agents are prohibited from canceling, modifying, reducing, or otherwise changing any and all insurance coverage in existence with respect to the Receivership Property, provided, further that the Defendants shall not be obligated to fund any premium payment on any insurance policy subsequent to the entry of this Order.

13. Within thirty (30) days of the date of this Order, the Receiver shall prepare for review and approval an initial thirteen (13) week cash flow budget (the “Initial Budget”). For each period covered by the Initial Budget and any subsequent updated Budget, the aggregate actual disbursements by Receiver during such period of determination shall be no greater than 110% of the aggregate amount of projected disbursements for such period as set forth in the Initial Budget or any subsequent Budget. Receiver shall provide to ECP no later than the 15th of each month, unless otherwise requested by ECP, a line-by-line variance report for the immediately preceding month as well as on a cumulative basis from the date of entry of this Order to the report date (each a “Variance Report”) showing the actual amounts attributable to each line item in the Budget. Concurrent with delivery of the Variance Report, Receiver shall provide to ECP an update of the most recent Budget prepared in substantially the same form as the initial Budget, (the “Rolling Budget”), which Rolling Budget shall be satisfactory in form and substance to ECP. The Initial Budget and each subsequent Rolling Budget may be amended from time to time without further notice to any parties in interest in this matter or further order of

this Court upon the prior written agreement of ECP, and the amended budget shall become the Budget or applicable Rolling Budget under the terms of this Agreed Order.

14. The Receiver may, in his discretion and for the purpose of maintaining going-concern value of any Receivership Assets, permit officers or employees of Defendants or Spectra Properties, Inc. to collect, sell, possess, manage, protect, market and otherwise deal with some or all of the Receivership Assets on such terms, and subject to such limitations and conditions, as the Receiver deems appropriate, but in all events subject to the prior written consent of ECP and the other provisions of this Order requiring a turnover to ECP, for application to the Obligations, of proceeds of the Mortgaged Properties.

15. During the pendency of this Receivership, absent express permission of this Court, all actions by any creditors, lessors, landlords, taxing authorities and other persons and entities seeking money damages, dispossession of Receivership Assets or other relief from Defendants or the Receivership Estate and all others acting on behalf of any such creditors and other persons, including sheriffs, marshals, and all officers and deputies, and their respective attorneys, servants, agents and employees, are, until further order of this Court, hereby stayed. Further, except for ECP, all persons and entities who have or receive notice of this Order, including (i) Defendants (and all officers, directors, employees and agents of Defendants), (ii) all creditors of Defendants, and (iii) all persons or entities acting at the direction or on behalf of any of the persons described in clauses (i) or (ii), including, without limitation, sheriffs, marshals, and all officers and deputies, and their respective attorneys, servants, agents and employees, are hereby **RESTRAINED AND ENJOINED** from (a) destroying, concealing, using, collecting, taking possession of, transferring, asserting dominion or control over, repossessing, seizing,

attaching, garnishing, executing upon, seeking to impose a judicial lien upon any Receivership Assets, (b) otherwise interfering with the possession, custody, control, use, or management by the Receiver of any Receivership Assets or with the Receiver's exercise of powers or discharge of duties under this Order, (c) altering any Records, (d) cancelling, terminating or limiting any insurance coverage, permits, registrations, certificates, licenses or contracts of Defendants, or (e) filing or prosecuting any actions or proceedings that involve the Receiver or that affect any Receivership Assets, except to the extent authorized by the Receiver or to the extent that any party to such action or proceeding may be required to answer or reply to any pending complaint, motion or other pleading in order to avoid default.

16. The Receiver is authorized to file, record or register this Order with appropriate government offices and courts and to serve this Order on any person or entity whom the Receiver reasonably believes to be in custody or control of funds or other assets properly belonging to the Receivership Estate.

17. If the Receiver determines that the aggregate amount of Revenues and Protective Advances available to the Receiver are insufficient to pay the reasonable and necessary expenses of maintaining, preserving, and operating the Facilities in compliance with applicable law, then the Receiver may, on not less than ten (10) business days' written notice to ECP and Defendants, file with the Court a resignation and termination of the Receiver's further responsibilities to serve as receiver hereunder, whereupon, subject to a surrender of all of the Mortgaged Properties to ECP and the filing of a final report regarding the receivership with the Court, the Receiver shall be discharged. In connection with any such surrender of the Mortgaged Properties to ECP, the Receiver, for himself, on behalf of the Receivership Estate and on behalf of Defendants, shall be

deemed to have waived any notices otherwise required to be given by ECP in connection with any sale or other disposition of any of the Mortgaged Properties, including, without limitation, any notices otherwise required under the Uniform Commercial Code.

18. The Receiver is authorized to communicate with all persons as he deems appropriate to inform them of the status of this matter and the Receivership Estate. In connection with any final report, accounting and discharge of the Receiver, the Receiver shall seek and obtain final approval from the Court of the professional fees and expenses of the Receiver, his firm and his counsel.

19. Upon the request of the Receiver, the United States Marshal's Office, in any judicial district, is hereby authorized to assist the Receiver in carrying out his duties to take possession, custody or control of, or identify the location of, any assets, records or other materials belonging to the Receivership Estate.

20. Notwithstanding anything to the contrary in this Order, ECP is hereby authorized (but not required) to take all actions it deems necessary or appropriate to realize upon any of the Mortgaged Properties, including, without limitation, collection of any Accounts, foreclosure of its liens upon any or all of the Mortgaged Properties or exercise any power of sale granted in any of the Loan Documents, and apply the proceeds thereof to the payment of the Obligations. Except as otherwise expressly agreed by ECP, the Receiver shall turn over all proceeds of the Mortgaged Properties to ECP for application to the Obligations. Upon any foreclosure by ECP, the Receiver shall cooperate with ECP and the party purchasing any of the Mortgaged Properties at foreclosure by relinquishing possession of such Mortgaged Properties and taking any other actions that may be necessary or desirable in connection with a foreclosure by ECP.

21. The Clerk of the Court is authorized and directed to make certified copies of this Order, at the Receiver's request, for use by the Receiver.

22. The Receiver, while lawfully acting as such (including his employees, agents, and professionals that he may retain to assist him with the performance of his duties, and others engaged in connection herewith), is deemed an agent of the Court and is entitled to and shall have immunity to the fullest extent of the law, from and against any and all causes of action, suit, proceedings, claims, demands, suits, losses, damages and liability, including costs and a reasonable receiver and attorney's fees ("Claims"), in any manner arising from, in connection with or relating to any of the Assets and/or in the course of his acting in such court appointed capacity. The Receiver is entitled to rely on all outstanding rules of law and Court orders and shall not be liable to anyone for his own good faith compliance with any order, rule, law, judgment or decree. In no event shall the Receiver be liable for his good faith compliance with the terms and provision of this Order, nor shall he be liable to anyone for any action taken omitted by it except upon a finding by this Court that he acted or failed to act as a result of misfeasance, bad faith, gross negligence or in reckless disregard of his duties. Further, so long as the Receiver acts as authorized herein, the Receiver, and his employees, agents, retained professionals, and others engaged in connection herewith, shall be indemnified and held harmless by the Receivership estate from any and all right, claim, or causes of action brought against the Receiver, and his employees, agents, retained professionals, and others engaged in connection herewith, including the costs and expenses of defense of such claims or actions. The Receiver shall not be liable for the obligations of Defendants to third parties (whether or not such persons or entities are a party to this litigation) to include, without limitation, tax liability

(payroll taxes, income taxes, or back taxes of any kind); worker's compensation and unemployment compensation premiums or other obligations; wages, benefits, and other compensation due to employees, officers, directors, or agents; and contract indebtedness to third parties arising prior to his appointment and qualification as the Receiver.

23. Defendants, ECP and any other person asserting a lien upon any assets in the Receivership Estate, may request, by written motion filed with the Court and with at least five (5) business days' notice to ECP and Defendants, a status conference or any other appropriate relief as to the results of the Receiver's management and liquidation of the Receivership Estate, the necessity or appropriateness of continuing the receivership, or whether any of the terms and conditions of this Order should be amended or modified in any way.

24. The Receiver shall be authorized to apply to this Court, with notice to ECP and Defendants, for issuance of such other orders as may be necessary and appropriate in order to carry out the mandate of this Court.

25. This Court shall retain jurisdiction of this matter for all purposes, including, without limitation, for the purpose of amending, interpreting and enforcing any of the provisions of this Order.

26. This Order is without prejudice to ECP's continued enforcement of the foreclosure actions and execution on any order of possession in coordination with the Receiver or otherwise, by whatever means considered necessary to Plaintiff.

27. This Order shall be effective upon the oath of the Receiver and for all purposes.

28. There being no just reason for delay, the Court finds this is a final, appealable order.

JUDGE, UNITED STATES DISTRICT COURT

AGREED TO BY:

**BRADLEY ARANT BOULT
CUMMINGS LLP**

By: /s/ Austin L. McMullen
Austin L. McMullen
Roundabout Plaza
1600 Division Street, Ste. 700
Nashville, TN 37203
Telephone: (615) 244-2582
Facsimile: (615) 252-6380
Email: amcmullen@bab.com

LEITESS FRIEDBERG PC

/s/ Jeremy S. Friedberg
Jeremy S. Friedberg, Pro Hac Vice
10451 Mill Run Circle, Suite 1000
Baltimore, Maryland 21117
Telephone: (410) 581-7400
Facsimile: (410) 581-7410
Email: jeremy.friedberg@lf-pc.com

Counsel for Plaintiff

GLANKLER BROWN, PLLC

By: /s/ Michael P. Coury
Michael P. Coury
6000 Poplar Avenue
Suite 400
Memphis, TN 38119
Telephone: (901) 525-1322
Facsimile: (901) 525-2389
Email: mcoury@glankler.com

Counsel for Defendants

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: