



Town of Apple Valley
1777 N Meadowlark Dr
Apple Valley UT 84737
T: 435.877.1190 | F: 435.877.1192
www.applevalleyut.gov

paid before

Fee: \$500.00 + Acreage Fee
1 – 100 Acres: \$25.00/Acre
101 – 500 Acres: \$15.00/Acre
501 + Acres: \$10/Acre

For Office Use Only: File No. _____ Receipt No. _____

Zone Change Application

Applications Must Be Submitted A Minimum of 21 Days in Advance of The Planning Commission Meeting

Name: DRL Investments, LLC		Phone: [REDACTED]	
Address: [REDACTED]		Email: [REDACTED]	
City: [REDACTED]	State: [REDACTED]	Zip: [REDACTED]	
Agent: (If Applicable)		Phone:	
Address/Location of Property: ROME AVE		Parcel ID: AV-1329-B	
Existing Zone: OST		Proposed Zone: RE-1.0	
Reason for the request: Prepare for residential development in the future.			

Submittal Requirements: The zone change application shall provide the following:

- ☒ A. The name and address of every person or company the applicant represents [↑]
- ☒ B. An accurate property map showing the existing and proposed zoning classifications *map*
- ☒ C. All abutting properties showing present zoning classifications *map*
- ☒ D. An accurate legal description of the property to be rezoned *Attached*
- ☒ E. Stamped envelopes with the names and address of all property owners within 500' of the boundaries of the property proposed for rezoning. Including owners along the arterial roads that may be impacted
- ☒ F. Warranty deed or preliminary title report and other document (see attached Affidavit) showing evidence the applicant has control of the property *✓*

Note: To avoid delays in processing your Zone Change request, it is important that all applicable information noted above, along with the fee, is submitted with the application. An incomplete application will not be scheduled for the Planning Commission. Planning Commission meetings are held on the first Wednesday of each month at 6:00 pm. Submission of a completed application does not guarantee your application will be placed on the next PC meeting agenda. It may be placed on the next available PC meeting agenda. No additions or changes may be made to an application within one week of the scheduled meeting.

REQUIRED CONSIDERATIONS TO APPROVE A ZONE CHANGE

When approving a zone change the following factors shall be considered by the Planning Commission and City Council:

1. Whether the proposed amendment is consistent with the Goals, Objectives and Policies of the Town's General Plan;
2. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;
3. The extent to which the proposed amendment may adversely affect adjacent property; and
4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to roadways, parks and recreation facilities, fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.

Official Use Only	
Date Received: RECEIVED MAY 06 2025	By: 
Date Application Deemed Complete:	By:

DRL INVESTMENTS LLC - ZONE APPLICATION

AV-1321-C
EXT ZONING: A-X-A AGRIC

AV-1321-A
EXT.ZONING:
A-X-A
AGRICULTURE

AV-1328-B
EXT ZONING:
A-X-A
AGRICULTURE

AV-1328-A
EXISTING
ZONING:
A-X-A
AGRICULTURE

AV-1320 NP
EXISTING ZONE: OST

SUBJECT PARCEL:
AV-1329-B
61.78 AC
EXISTING ZONE: OST
PROPOSED ZONE: RE 1.0

WILLS ESTATES SUBD..
EXISTING ZONING: RE 1.0 & 2.5

AV-1319-B
EXT ZONING:
RE-10

APPLE
VALLEY
RANCH
SUBD.
EXISTING
ZONE: RE 1.0

EXHIBIT "A" - LEGAL DESCRIPTION

PARCEL 1:

Beginning at the Northwest Corner of Section 29, Township 42 South, Range 11 West, Salt Lake Base and Meridian, and running thence South 89°57'52" East, along the Section line 2639.81 feet to the North Quarter Corner of said Section 29; thence South 0°05'25" East, along the Quarter Section line, 1019.60 feet; thence North 89°57'52" West 2639.41 feet to a point on the Section line; thence North 0°06'46" West, along the Section line, 1019.60 feet to the point of beginning.

PARCEL 2:

Easement for ingress and egress, as created by Warranty Deed, recorded August 9, 2006, as Doc. No. 20060035761, Official Washington County Records, across the North 50.00 feet of the following described parcel:

Beginning at the Northeast Corner of Section 29 Township 42 South, Range 11 West, Salt Lake Base and Meridian, and running thence South 0°05'43" East along the Section line 1019.21 feet; thence South 89°57'16" West 2642.00 feet to a point on the Quarter Section line; thence North 0°04'45" West along the Quarter Section line, 1019.21 feet to the North Quarter Corner of said Section 29; thence North 89°57'16" East, along the Section line, 2641.71 feet to the point of beginning.

Tax ID Number AV-1329-B

* * *

AFFIDAVIT
PROPERTY OWNER

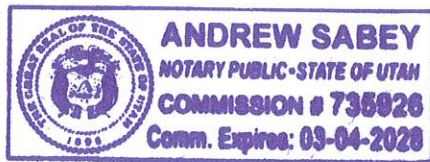
STATE OF UTAH)
COUNTY OF Utah)
~~WASHINGTON~~

I (We) DRL INVESTMENTS LLC, LADD MACDONALD, being duly sworn, depose and say that I (We) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (We) also acknowledge that I (We) have received written instructions regarding the process for which I (We) am (are) applying and the Apple Valley Town planning staff have indicated they are available to assist me in making this application.

Ladd MacDonald
Property Owner

Property Owner

Subscribed and sworn to me this 29th day of April, 2025.



Andrew Sabey
Notary Public

Residing in: Utah County

My Commission Expires: 3/4/2028

AGENT AUTHORIZATION

I (We), _____, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) _____ to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative body in the Town of Apple Valley considering this application and to act in all respects as our agent in matters pertaining to the attached application.

Property Owner

Property Owner

Subscribed and sworn to me this _____ day of _____, 20____.

Notary Public

Residing in: _____

My Commission Expires: _____

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WHEN RECORDED MAIL DEED AND TAX NOTICE TO:

DRL Investments
985 North Shadow Ridge Avenue
Eagle, Idaho 83616

Order No. 136491
Tax I.D. No. AV-1329-B

DOC # 20060058754

Warranty Deed Page 1 of 2
Russell Shirts Washington County Recorder
12/19/2006 02:36:54 PM Fee \$ 13.00 by SOUTHERN UTAH TITLE CO

WARRANTY DEED

MCM LAND AND DEVELOPMENT, LLC, a Utah Limited Liability Company, grantor(s), of St. George, County of Washington, State of Utah, hereby

CONVEY and WARRANT to

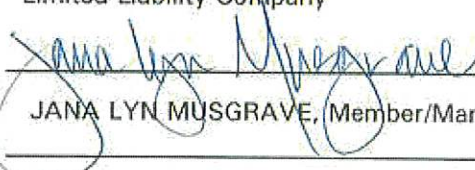
DRL INVESTMENTS, LLC, an Idaho Limited Liability Company, grantee(s) of Eagle, County of Ada, State of Idaho, for the sum of
TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION
the following described tract of land in WASHINGTON County, State of UTAH:

SEE ATTACHED EXHIBIT "A" - LEGAL DESCRIPTION

TOGETHER WITH all improvements and appurtenances thereunto belonging.
LESS AND EXCEPTING any and all water rights.
SUBJECT TO easements, rights of way, restrictions, and reservations of record and those enforceable in law and equity.

WITNESS the hand(s) of said grantor(s), this 15 day of December, A. D. 2006.

MCM LAND AND DEVELOPMENT, LLC, a Utah
Limited Liability Company


JANA LYN MUSGRAVE, Member/Manager


MATTHEW C. MUSGRAVE, Member/Manager

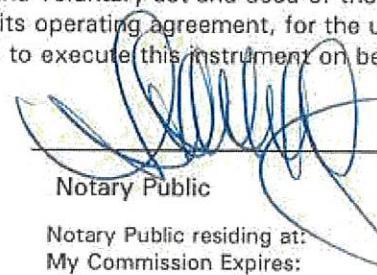
NOTARY

STATE OF UTAH)

County of Washington)

On the 15 day of December, A. D. 2006, personally appeared before me Matthew C. Musgrave and Jana Lyn Musgrave, Managing Members of MCM LAND AND DEVELOPMENT, LLC, a Utah Limited Liability Company and known to me to be members or designated agents of the Limited Liability Company that executed the herein instrument and acknowledged the instrument to be the free and voluntary act and deed of the Limited Liability Company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes herein mentioned, and on oath stated that they are authorized to execute this instrument on behalf of the Limited Liability Company.




Notary Public

Notary Public residing at:
My Commission Expires:

This Legal description is attached to that Warranty Deed, between DRL Investments, LLC, grantee(s), and MCM LAND AND DEVELOPMENT, LLC, a Utah Limited Liability Company, as to an undivided 50% interest, Grantor(s).

EXHIBIT "A"

AN UNDIVIDED 50% INTEREST IN AND TO THE FOLLOWING DESCRIBED PROPERTIES:

PARCEL 1:

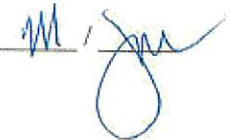
Beginning at the Northwest Corner of Section 29, Township 42 South, Range 11 West, Salt Lake Base and Meridian, and running thence South 89°57'52" East, along the Section line 2639.81 feet to the North Quarter Corner of said Section 29; thence South 0°05'25" East, along the Quarter Section line, 1019.60 feet; thence North 89°57'52" West 2639.41 feet to a point on the Section line; thence North 0°06'46" West, along the Section line, 1019.60 feet to the point of beginning.

PARCEL 2:

Easement for ingress and egress, as created by Warranty Deed, recorded August 9, 2006, as Doc. No. 20060035761, Official Washington County Records, across the North 50.00 feet of the following described parcel:

Beginning at the Northeast Corner of Section 29 Township 42 South, Range 11 West, Salt Lake Base and Meridian, and running thence South 0°05'43" East along the Section line 1019.21 feet; thence South 89°57'16" West 2642.00 feet to a point on the Quarter Section line; thence North 0°04'45" West along the Quarter Section line, 1019.21 feet to the North Quarter Corner of said Section 29; thence North 89°57'16" East, along the Section line, 2641.71 feet to the point of beginning.

Initials

The block contains handwritten initials and a signature in blue ink. The initials are written on a line, followed by a vertical line and a large, stylized signature.

WHEN RECORDED MAIL DEED AND TAX NOTICE TO:

DRL Investments
985 North Shadow Ridge Avenue
Eagle, Idaho 83616

Order No. 136491
Tax I.D. No. AV-1329-B

DOC # 20060058753

Warranty Deed Page 1 of 2
Russell Shirts Washington County Recorder
12/19/2006 02:36:54 PM Fee \$ 13.00 By SOUTHERN UTAH TITLE CO



WARRANTY DEED

KB WILLEY HOLDINGS, LC, a Utah Limited Liability Company,, grantor(s), of St. George, County of Washington, State of Utah, hereby

CONVEY and WARRANT to

DRL INVESTMENTS, LLC, an Idaho Limited Liability Company, grantee(s) of Eagle, County of Ada, State of Idaho, for the sum of
TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION
the following described tract of land in WASHINGTON County, State of UTAH:

SEE ATTACHED EXHIBIT "A"- LEGAL DESCRIPTION

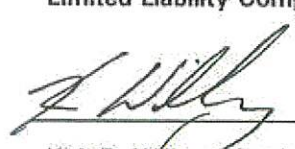
TOGETHER WITH all improvements and appurtenances thereunto belonging.

LESS AND EXCEPTING any and all water rights.

SUBJECT TO easements, rights of way, restrictions, and reservations of record and those enforceable in law and equity.

WITNESS the hand(s) of said grantor(s), this 15 day of December, A. D. 2006.

**KB WILLEY HOLDING COMPANY, LC, a Utah
Limited Liability Company**


Kirk B. Willey, Member/Manager

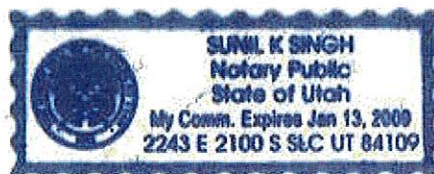
NOTARY

STATE OF UTAH

County of Salt Lake

)
) ss
)

On the 15 day of December, A. D. 2006, personally appeared before me Kirk B. Willey, Member/Manager of KB Willey Holdings, LC, a Utah Limited Liability Company and known to me to be members or designated agents of the Limited Liability Company that executed the herein instrument and acknowledged the instrument to be the free and voluntary act and deed of the Limited Liability Company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes herein mentioned, and on oath stated that they are authorized to execute this instrument on behalf of the Limited Liability Company.




Notary Public

This Legal description is attached to that Warranty Deed, between DRL Investments, LLC, grantee(s), and KB WILLEY HOLDINGS, LC, a Utah Limited Liability Company, as to an undivided 50% interest, Grantor(s).

EXHIBIT "A"

AN UNDIVIDED 50% INTEREST IN AND TO THE FOLLOWING DESCRIBED PROPERTIES:

PARCEL 1:

Beginning at the Northwest Corner of Section 29, Township 42 South, Range 11 West, Salt Lake Base and Meridian, and running thence South 89°57'52" East, along the Section line 2639.81 feet to the North Quarter Corner of said Section 29; thence South 0°05'25" East, along the Quarter Section line, 1019.60 feet; thence North 89°57'52" West 2639.41 feet to a point on the Section line; thence North 0°06'46" West, along the Section line, 1019.60 feet to the point of beginning.

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Initials ZW / _____



Terra Title Company
265 West Tabernacle #100
St. George, UT 84770

Thank you!

Ladd MacDonald

PROPERTY ADDRESS (TAX ID): (Not Addressed), Apple Valley, Utah 84737 (AV-1329-B)

FILE NUMBER: 36091

The attached Owner's Policy of Title Insurance and recorded Trust Deed(s) are provided electronically as a courtesy.



SCHEDULE A

STANDARD GUARANTEE

File No.	36091	Liability	\$1,000.00
Fee	\$350.00	Guarantee No.	SG-08015336

1. Name of Insured: Ladd MacDonald and David Fitzgerald
2. Date of Guarantee: September 24, 2021 at 7:00AM

The assurances referred to on the face page hereof are:

That, according to the Company's property records relative to the following described land:

Parcel 1:

Beginning at the Northwest Corner of Section 29, Township 42 South, Range 11 West, Salt Lake Base and Meridian, and running thence South 89°57'52" East, along the Section line 2639.81 feet to the North Quarter Corner of said Section 29; thence South 0°05'25" East, along the Quarter Section line, 1019.60 feet; thence North 89°57'52" West 2639.41 feet to a point on the Section line; thence North 0°06'46" West, along the Section line, 1019.60 feet to the point of beginning.

Parcel 2:

Easement for ingress and egress, as created by Warranty Deed, recorded August 9, 2006, as Doc. No. [20060035761](#), Official Washington County Records, across the North 50.00 feet of the following described parcel:

Beginning at the Northeast Corner of Section 29 Township 42 South, Range 11 West, Salt Lake Base and Meridian, and running thence South 0°05'43" East along the Section line 1019.21 feet; thence South 89°57'16" West 2642.00 feet to a point on the Quarter Section line; thence North 0°04'45" West along the Quarter Section line, 1019.21 feet to the North Quarter Corner of said Section 29; thence North 89°57'16" East, along the Section line, 2641.71 feet to the point of beginning.

- A. The record owner is: DRL Investments, LLC, an Idaho Limited Liability Company
- B. Subject to those exceptions shown on Schedule "B"
- C. That, according to the public records of Washington County, Utah, and the Utah Secretary of State for a period of 10 years immediately prior to the date hereof, there are no Federal Tax Liens, Abstracts of Judgement, or Certificates of State Tax Liens filed or recorded against the herein named parties, other than those for which a release appears and other than those shown on Schedule "B"

No guarantee is made regarding (a) matters affecting the beneficial interest of any mortgage or deed of trust which may be shown herein as an exception, or (b) other matters which may affect any such mortgage or deed of trust.

No guarantee is made regarding any liens, claims of liens, defects or encumbrances other than those specifically provided for above, and, if information was requested by reference to a street address, no guarantee is made that said land is the same as said address.

SCHEDULE B
Exceptions

The following is a list of exceptions that effect title to the herein described property:

1. Any facts, rights, interests, or claims which are not shown by the public records but which could be by an inspection of the land or which may be asserted by persons in possession, or claiming be in possession, thereof.
2. Easements, liens, encumbrances, or claims thereof, which are not shown by the public records.
3. 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 that is not shown by the Public Records.
4. Any lien, or right to a lien, imposed by law for services, labor, or material heretofore or hereafter furnished, which lien, or right to a lien, is not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Indian treaty or aboriginal rights, including, but not limited to, easements or equitable servitudes; or, (d) water rights, claims or title to water, whether or not the matters excepted under (a), (b), (c) or (d) are shown by the public records.
6. Taxes or assessments which are not now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
7. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity, or garbage collection or disposal or other utilities unless shown as an existing lien by the public records.
8. Claim, right, title or interest to water or water rights whether or not shown by the Public Records.
9. Rights of way for any roads, ditches, canals, or transmission lines now existing over, under, or across said property.
10. Taxes for the current year 2021, which are liens, but not yet due or payable in the estimated amount of \$6.35, under Tax Serial No. AV-1329-B, Account No. 0690399. (For the amount due contact the Washington County Treasurer's Office at #435-634-5711)

(Note: It appears that a partial payment or a credit in the amount of \$9.45 has been applied towards the 2021 taxes. For a current payoff contact the Washington County Treasurer's Office.)
11. Liability to Assessments levied by Washington County for the Southeastern Special Service District for fire protection facilities and services, as disclosed by Resolution No. 668, dated November 10, 1997, recorded November 12, 1997, as Entry No. [582401](#), in Book 1149, at Pages 208-212, Official Washington County Records. (Affects this and other property)
12. Any Afterassessment and/or Rollback of Taxes which may become a lien on said Land by reason of an Annual Application for Assessment and Taxation of Agricultural Lands 1969 Farmland Assessment Act, executed by DRL INV LLC, recorded May 2, 2007, as Doc. No. [20070022387](#), Official Washington County Records.

SCHEDULE B - CONTINUED

13. Subject to a 50 foot Right of Way easement, created by Warranty Deed, recorded June 1, 2005, as Entry No. [948543](#), in Book 1750, at Pages 1086-1087, Official Washington County Records, described as follows: (Affects the North 50 feet and the West 50 feet and other property)

A non-exclusive 50 foot Right-of-Way easement for ingress and egress and public utilities, over the following described property:

Beginning at a point lying South 89°57'16" West, along the Section line, 1981.74 feet from the Southeast Corner of Section 20, Township 42 South, Range 11 West, Salt Lake Base and Meridian, and running thence South 89°57'16" West, along the section line, 609.97 feet; thence South 0°04'45" East 50.00 feet; thence South 89°58'39" West 2639.81 feet; thence South 0°04'26" East 822.39 feet; thence South 89°55'34" West 50.00 feet to a point on the West boundary line of Section 29, Township 42 South, Range 11 West, Salt Lake Base and Meridian, and a point on the East right-of-way line of a public street referred to as Rome Way; thence North 0°04'26" West along said Section line 872.43 feet to the Southwest Corner of said Section 20; thence North 89°58'39" East along the Section line, 2639.81 feet to the South Quarter corner of said Section 20; thence North 0°03'18" West, along the Quarter Section line, 50.00 feet; thence North 89°57'16" East 659.97 feet to a point on the West line Parcel 1 described above; thence South 0°03'18" East, along said West line, 50.00 feet to the point of beginning.

14. Subject to the terms and provisions as set forth in Easement, executed by and between DRL INVESTMENTS, LLC, AN IDAHO LIMITED LIABILITY COMPANY, as Grantor and PAUL E. JOHNSON, an individual, as Grantee, and rights incidental thereto, recorded April 22, 2010, as Doc. No. [20100013048](#), Official Washington County Records. (Affects the North 50.0 feet and the West 50.0 feet of the North 872.43 feet)
15. Resolution No. 2011-25, dated September 1, 2011, creating the Big Plains Water and Sewer Special Service District, to provide water and sewerage services within said boundaries of the municipality of Apple Valley Town, as recorded October 18, 2011, as Doc. No. [20110031703](#), Official Washington County Records. (Affects this and other property)

Town of Apple Valley, Utah Resolution No. 2019-01, A Resolution Modifying, Limiting, and Revoking the Delegation of Authority to The Big Plains Water and Sewer Special Services District, recorded January 9, 2019, as Doc. No. [20190000956](#), Official Washington County Records.



GUARANTEE

Policy Number **SG-08015336**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, AND SUBJECT TO THE FURTHER EXCLUSION AND LIMITATION THAT NO GUARANTEE IS GIVEN NOR LIABILITY ASSUMED WITH RESPECT TO THE IDENTITY OF ANY PARTY NAMED OR REFERRED TO IN SCHEDULE A OR WITH RESPECT TO THE VALIDITY, LEGAL EFFECT OR PRIORITY OF ANY MATTER SHOWN THEREIN. OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Florida corporation, herein called the Company GUARANTEES the Assured named in Schedule A, against actual monetary loss or damage not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A

IN WITNESS WHEREOF, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Guarantee to become valid when countersigned on Schedule A by an authorized officer or agent of the Company.

Issued through the Office of:

Terra Title Company
(435) 628-7054
265 West Tabernacle #100
St. George, UT 84770

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By

President

Attest

Secretary

Terra Title Company

By: _____

Authorized Signatory

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company
- (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public record": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

2. Exclusions from Coverage of this Guarantee.

The Company assumes no liability for loss or damage by reason of the following:

- (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
- (b) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water: whether or not the matters excluded by (1), (2) or (3) are shown by the public records.
- (c) Assurances to title any property beyond the lines of the land expressly described in the description set forth in Schedule (A)(C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, alleys, lanes, ways or waterways in which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.
- (d) (1) Defects, liens encumbrances, adverse claims against the title, if assurances are provided as to such title, and as limited by such assurances.
(2) Defects, liens, encumbrances, adverse claims or other matters (a) whether or not shown by the public records, and which are created, suffered, assumed or agreed to by one or more of the Assureds; (b) which result in no loss to the Assured; or (c) which do not result in the invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of assurances provided.

3. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case any knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by such failure and then only to the extent of the prejudice.

4. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

5. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 4 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its right under this paragraph, it shall do so diligently.
If the Company elects to exercise its option as stated in Paragraph 5(a) the Company shall have the rights to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (b) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured hereunder shall secure to the Company the right to prosecute or provide defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the legal rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

6. Proof of Loss or Damage.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within 90 days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by an authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for the claim.

7. Options to Pay or Otherwise Settle Claims: Termination of Liability

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claims has been given to the Company by the Assured the Company offers to purchase the indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5, and the Guarantee shall be surrendered to the Company for cancellation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorney's fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5

8. Determination and Extent of Liability

This Guarantee is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in the Guarantee and only to the extent herein described, and subject to the exclusions stated in Paragraph 2. The liability of the the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A;

- (b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 7 of these Conditions and Stipulations or as reduced under Section 10 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
- (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to the defect, lien or encumbrance assured against by this Guarantee.

9. Limitaion of Liability.

- (a) If the Company establishes the title, or removes the alleged defect, lien or encombrance, or cures the any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to the matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
- (c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

10. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 5 shall reduce the amount of liability pro tanto.

11. Payment of Loss.

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

12. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

13. Arbitration.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the Amount of Liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the COmpany upon request.

14. Liability Limited to this Guarantee; Guarantee Entire Contract.

- (a) This Guarantee together with all endersements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
- (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to: Old Republic National Title Insurance Company, 400 Second Avenue South, Minneapolis, Minnesota 55401, (612)371-1111