

Guarantee



SG-SG-8011240

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 of 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.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

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

By  President

Attest  Secretary

Issued through the Office of:
Alliance Title & Escrow Corp.

Authorized Signature

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 records": 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 to 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, or 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 or potential 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 rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options 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.
- (c) 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 lien 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 any 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 that 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 any claim which could result in loss to 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 claim 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, attorneys' 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 this Guarantee and only to the extent herein described, and subject to the exclusions stated in Paragraph 2.

The liability of 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. Limitation of Liability.

- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, 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 that 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 the 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.

13. 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 \$1,000,000 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 the 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.

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

- (a) This Guarantee together with all endorsements, 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.



OLD REPUBLIC

Subdivision Guarantee SCHEDULE A

ORDER NO. 442614

LIABILITY \$100,000.00

FEE: \$573.00

GUARANTEE NO. SG-8011240

1. Name of Assured: Town Pump, Inc.
2. Date of Guarantee: 25th day of June, 2019

The assurances referred to on the face page hereof are:

That, according to the Company's property records relative to the following described land (but without examination of those Company records maintained and indexed by name):

A. The public records purport that only the hereafter named parties appear to have an interest affecting the land necessitating their execution of the named proposed plat or map:
Major Brands Distributing Company, Inc., as to Parcel 1
Montana Commerce, LLC, as to interest in Parcel 2

B. The estate or interest in the land hereinafter described or referred to covered by this Guarantee is: FEE SIMPLE

C. The Land referred to in the Guarantee is situated in the State of MT, County of Flathead and is described as follows:

Parcel 1

Lot 5A as shown on Ashley Business Park, Lot 5 , Revisited, according to the map or plat thereof on file and of record in the office of the county clerk and recorder of Flathead County, Montana

Parcel 2

Lot 1A as shown on Ashley Business Park, Lot 5 , Revisited, according to the map or plat thereof on file and of record in the office of the county clerk and recorder of Flathead County, Montana

D. According to the public records, the following documents purport to affect the described land:

1. County road rights-of-way not shown by the Public Records, including, but not limited to any right of the Public and the County of Flathead to use and occupy those certain roads and trails as depicted on County Surveyor's maps on file in the office of the County Surveyor of Flathead County.
2. All minerals in or under said land including but not limited to metals, oil, gas, coal, stone and mineral rights, mining rights and easement rights or other matters relating thereto, whether expressed or implied.
3. General Taxes for the year 2018 are paid
Parcel No.: [29-0006385](#)
4. General Taxes for the year 2018 are paid
Parcel No.: [29-0097515](#)
5. Taxes, including any assessments collected therewith, for the year 2019 which are a lien not yet due and payable.
6. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: State of Montana
Purpose: An easement and right of way for the construction of a State Highway over, across, covering and embracing the above described parcel of land
Recorded: May 24, 1932
[Book: 211, Page: 50](#)
7. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Assignment of Royalty
Recorded: October 23, 1940
[Book: 243, Page: 3](#) AND recorded November 27, 1940 in [Book: 243, Page: 30](#)
AND recorded May 4, 1942 in [Book: 243, Page: 533](#)
8. An easement for the purpose shown below and rights incidental thereto as set forth in document:
Granted To: Pacific Power & Light Company
Purpose: Public Utilities
Recorded: September 20, 1983
Instrument No.: 83-17420 in [Book: 782, Page: 874](#)
9. An easement for the purpose shown below and rights incidental thereto as set forth in document:
Granted To: Pacific Power & Light Company
Purpose: Public Utilities
Recorded: October 21, 1988
Instrument No.: [8829511310](#)
10. Easements, reservations, restrictions, notes and/or dedications as shown on the official plat of Ashley Business Park.
11. Certificate of Private Roadways as specified on the plat of Ashley Business Park.
12. Terms and provisions of State of Montana, Department of Environmental Quality, Certificate of Subdivision Plat Approval, recorded with Ashley Business Park, recorded Instrument No. [199426312050](#), of Official Records.

13. Easements, reservations, notes and/or dedications as shown on the official plat of Amended Subdivision Plat of Lots 3 and 5 of Ashley Business Park and Amended Plat of the Amended Plat of Lot 4 of Ashley Business Park Subdivision.
 14. An easement for the purpose shown below and rights incidental thereto as reserved in a document:
Purpose: Reservation of a private road approach of said highway project
Recorded: March 10, 2000
Instrument No.: [200007010100](#)
Affects: Parcel 2
 15. An easement for the purpose shown below and rights incidental thereto as set forth in document:
Granted To: The Montana Power Company
Purpose: Public Utilities
Recorded: January 9, 2002
Instrument No.: [200200909530](#)
 16. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Judgment and final order of condemnation
Recorded: December 11, 2003
Instrument No.: [200334608040](#)
 17. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Resolution No. 4901
Recorded: December 15, 2004
Instrument No.: [200435009400](#)
 18. Easements reservations and dedications, as shown on record of Certificate of Survey No. [16501](#).
Recorded: January 18, 2005
Instrument No.: 200501811020
 19. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Petition to Annex and Notice of Withdrawal from Rural Fire District
Recorded: February 27, 2006
Instrument No.: [200605813530](#)
 20. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Grant of Conditional Use
Recorded: February 27, 2006
Instrument No.: [200605813550](#)
- Amendment of Grant of Conditional Use
Recorded: January 10, 2007
Instrument No. : [200701013300](#)

21. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Subdivision Correction Affidavit
Recorded: December 17, 2008
Instrument No.: [2008-00033766](#)
22. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Resolution No. 5335
Recorded: February 10, 2009
Instrument No.: [2009-00003515](#)
23. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Petition to Annex and Notice of Withdrawal from Rural Fire District
Recorded: February 10, 2009
Instrument No.: [2009-00003516](#)
24. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Ordinance No. 1654
Recorded: October 6, 2010
Instrument No.: [2010-00023022](#)
25. Easements reservations and dedications, as shown on record of Certificate of Survey No. [19434](#).
Recorded: November 28, 2012
Instrument No.: 201200028375
26. Easements, reservations, notes and/or dedications as shown on the official plat of Ashley Business Park, Lot 5 , Revisited.
27. Easements, restrictions, reservations, encroachments, limited access to US Highway 93, notes and/or dedications and all matters as shown on the ALTA/ACSM Land Title Survey By Sands Surveying dated October 23, 2012, as Job No. 392501 for Siderius Family Ltd. Partnership, Josephine R. Siderius Living Trust, Patricia E. Sanders, Ramond E. Siderius, Jolynn Yenne and Linda L. Siderius.

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.

Countersigned:



Authorized Officer or Agent