### APPEAL PACKET FORM

(Chapter 2.88.050 of Napa County Code)

Please submit original plus two (2) copies of the entire Appeal Packet, including this form.

<table>
<thead>
<tr>
<th>TO BE COMPLETED BY APPELLANT</th>
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<tbody>
<tr>
<td>Appellant’s Name: MARTIN S. CHECOV and TIMOTHY J. BAUSE</td>
</tr>
<tr>
<td>Telephone #: (707) 942-1093</td>
</tr>
<tr>
<td>E-Mail Address: <a href="mailto:mchecov@omm.com">mchecov@omm.com</a>; <a href="mailto:tbause@aol.com">tbause@aol.com</a></td>
</tr>
<tr>
<td>Mailing Address: 2031 Diamond Mtn. Rd, Calistoga, CA 94515</td>
</tr>
<tr>
<td>Status of Appellant’s Interest in Property: adjacent property owner and owner of driveway easement parcel</td>
</tr>
<tr>
<td>Action Being Appealed: Approval of use permit, exception to Road and Street Standards, Mitigated Negative Declaration</td>
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<tr>
<td>Permitee Name: Hard Six Winery</td>
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<tr>
<td>Permitee Address: 1755 Diamond Mtn. Rd, Calistoga, CA 94515</td>
</tr>
<tr>
<td>Permit Number: P16-00333-UP and P19-00315-UP</td>
</tr>
<tr>
<td>Date of Decision: Oct. 16, 2019</td>
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<tr>
<td>Nature of Permit or Decision: Approval of use permit, exception to Road and Street Standards, Mitigated Negative Declaration</td>
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<tr>
<td>Reason for Appeal (Be Specific - If the basis of the appeal will be, in whole or in part, that there was a prejudicial abuse of discretion on the part of the approving authority, that there was a lack of a fair and impartial hearing, or that no facts were presented to the approving authority that support the decision, factual or legal basis for such grounds of appeal must be expressly stated or they are waived. (attach additional sheet if necessary): Violation of CEQA, Napa County Code, Napa General Plan and Winery Definition Ordinance as fully set forth in APPEAL PACKET - ADDITIONAL SHEETS (7pp) attached hereto</td>
</tr>
<tr>
<td>Project Site Address/Location: 1755 Diamond Mtn. Rd, Calistoga, CA 94515</td>
</tr>
<tr>
<td>Assessor’s Parcel No.: 020-100-014</td>
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If the decision appealed from involves real property, the Appellant must also submit the original and two copies of 1) Title Insurance Report and 2) Assessor’s Map Book Pages pursuant to County Code Section 2.88.050(B).

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**Signature of Appellant**

<table>
<thead>
<tr>
<th>Date</th>
<th>Print Name</th>
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<tr>
<td>November 13, 2019</td>
<td>MARTIN S. CHECOV TIMOTHY J. BAUSE</td>
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**TO BE COMPLETED BY CLERK OF THE BOARD**

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**Received by:**

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</table>
Appellants’ Names and Contact Information:

Martin S. Checov
Timothy J. Bause
2031 Diamond Mountain Road (South Fork)
Calistoga, CA 94515
(707) 942-1093
mchecov@omm.com
tbause@aol.com

Reasons for Appeal:

INTRODUCTION

The Planning Commission committed a prejudicial abuse of discretion when it approved Hard Six Winery’s use permit applications #P16-00333-UP and P19-00315-UP (the “Project”), approved an exception to the Napa County Road and Street Standards (“RSS”), and adopted a Mitigated Negative Declaration (“MND”) for the Project.

The principal reasons for this appeal are that the Planning Commission erroneously concluded that the Project would not adversely affect the public health, safety, and welfare of the County; and that substantial evidence before the Planning Commission shows that the Project could have a number of potentially significant adverse impacts on the environment including, but not limited to, biological resources and public safety. Accordingly, and as a matter of law, the Planning Commission failed to comply with the California Environmental Quality Act, Pub. Res. Code § 21000, et seq. (“CEQA”), in adopting the MND and approving the Project without first requiring the preparation of an environmental impact report (“EIR”). Accordingly, and in light of the substantial evidence produced by diverse opponents of the Project (collectively, “Opponents”), the Board of Supervisors (“BOS” or “Board”), in exercising its independent judgment in determining whether the decision was correct, must reverse the Planning Commission and remand the Project for further proceedings or, in the alternative, deny the Project outright.1 Moreover, good cause exists for a de novo review and presentation of additional evidence that could not have been submitted at the time of the October 16, 2019 hearing and decision.

PROJECT BACKGROUND

The Hard Six project is proposed on a 53.04-acre parcel (APN 020-100-014), more than 2.2 miles up

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1 As legal and factual bases of this Appeal, Appellants incorporate by reference all materials submitted to the Planning Commission orally and in writing, including but not limited to the letter from Appellants dated October 15, 2019; the peer review report from Huffman-Broadway Group dated October 9, 2019; the letter from the California Department of Fish and Wildlife dated October 10, 2019; and the letter from George Caloyannidis dated October 12, 2019.
Diamond Mountain Road on land designated Agriculture, Watershed, and Open Space ("AWOS") and zoned Agricultural Watershed ("AW").

The Project proposes a 20,000 gallons per year wine production facility, 7,135 square feet of caves; a total of 6,249 visitors per year; water storage tanks; access road improvements; and an expended septic system. The Project will consume 1,127,314 gallons of water per year and will require importation via truck of 87.6% of the grapes necessary for its production. Diamond Mountain Road can only be accessed via Highway 29. The South Fork is a dead-end road with no other viable outlet in the event of an emergency. Diamond Mountain Road has numerous branches, splitting off onto several other roads, including Pachetetau Road, Sharp Road, Diamond Mountain Road-South Fork, and Diamond Mountain Road-North Fork. There are dozens of homes and vineyards sharing this road. All individuals traveling to homes and vineyards on Diamond Mountain Road must use the single entrance and exit point at the intersection of Diamond Mountain Road and Highway 29.

DISCUSSION—FACTUAL AND LEGAL GROUNDS FOR APPEAL

A. Standard of Review

Pursuant to Napa County Code ("NCC") § 2.88.070, "[a]ny appeal of a decision of the approving authority for which a notice of appeal has been filed in the manner required by this chapter shall be heard by the board unless withdrawn pursuant to the Section 2.88.060." Moreover, § 2.88.090 of the NCC requires the BOS to "exercise its independent judgment in determining whether the decision appealed was correct," and "[u]pon a showing of good cause, the chair of the board may authorize a de novo review and/or the presentation of additional evidence which could not have been presented at the time of the decision appealed from."

Here, good cause exists for a de novo review because, as will be shown below, the Planning Commission ignored virtually all of the substantial evidence presented by Opponents pertaining to the public safety, environmental, and other adverse impacts that the Project is likely to create, and in so doing violated numerous provisions of the NCC, the WDO, and the General Plan in approving the Project. Moreover, the Applicant presented new testimony in rebuttal at the hearing with Opponents receiving no opportunity to produce a response. The Project has been the subject of a single public hearing on October 16, 2019, and the staff report for the Project was posted to the County’s website one week prior to that hearing date (October 10, 2019). PG&E initiated a public power safety shut off from October 9-12 in the Calistoga area, which complicated the public’s ability to review and respond to the posted materials. Following the hearing, yet another out-of-control fire and evacuation action in the region underscored the County’s need for heightened attention to environmental and safety considerations presented by developments of this nature in mountainous, forested terrain. Thus, good cause exists for a de novo review and the presentation of additional evidence which could not have been presented prior to the Planning Commission’s decision to approve the Project.

2 Appellants recognize that Sharp Road eventually connects to Petrified Forest Road. However, that road’s topography and narrowness make it unsafe as a viable egress from the area, and it has been closed to vehicular traffic for many years, with only the efforts of the Diamond Mountain FireSafe Council bringing about a serious prospect of its being opened as a viable emergency egress route in the future.

2
B. The Grant of a Use Permit to Hard Six Winery Will Adversely Affect the Public Health, Safety and Welfare of the County and its Communities.

Under NCC § 18.124.070(C), the Planning Commission “shall make” a written finding that “[t]he grant of the use permit, as conditioned will not adversely affect the public health, safety or welfare of the county.” While the Planning Commission purported to make an finding that the grant of the Hard Six use permit, “as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa,” that finding places the Project site in a vacuum, with the Planning Commission expressly disregarding the fact that the Project lies on a remote mountaintop—located at the end of 2.2 miles of a steep (approximately 1000 feet in elevation gain) and narrow (primarily one lane), dilapidated mountain road that is frequently strewn with forest debris—and is burdened by innumerable existing dangerous conditions that, if the Project is approved in its current form, will exacerbate and thus adversely affect the environment, public health, safety and welfare of the County of Napa, its residents and any visitors to the facility. The adverse environmental, health, safety and welfare impacts of this Project must be viewed not just from a blinkered, narrow focus on the Project site, but from a wider perspective that includes, at the very least, other residents and property owners on Diamond Mountain Road (or roads accessed by Diamond Mountain Road), as well as any and all current and future users and visitors of Diamond Mountain Road (or roads accessed by Diamond Mountain Road), as all such individuals are within the “County of Napa,” the contextual analysis that is required under NCC § 18.124.070(C).

Several Opponents of the Hard Six project produced evidence in the form of letters and presentations at the Planning Commission hearing on the Project demonstrating that Diamond Mountain Road, under existing conditions, is unusually hazardous, even treacherous at points, and that the approval of the Project as proposed would dramatically exacerbate those conditions, unquestionably resulting in adverse impacts on the health, safety and welfare of the “County of Napa.” The Staff Report confirms that the proposed project site, along with the residences and properties of numerous neighbors, are located in a “Very High Fire Hazard Severity Zone.” Mr. Caloyannidis’ October 12th letter and enclosed photographs illustrate the sharp turns and difficult maneuvers required to scale the higher reaches of Diamond Mountain Road via which the Project would be accessed. The Applicant responded to such concerns by proposing to substitute shuttle buses for events, but larger transports are precisely the types of vehicles that will have the most difficulty navigating Diamond Mountain Road, and are calculated to create obstructions for fire equipment and evacuation access during emergencies (including the fire crises that historically coincide with the timing of the harvest and crush activities during which the Project proposes to host the largest events and numbers of visitors).

In light of all of the above-outlined existing road condition, fire, and safety issues on Diamond Mountain Road (and roads accessed by Diamond Mountain Road), Hard Six’s addition of car trips, bus trips, and truck trips to import grapes on Diamond Mountain Road will not only cause further deterioration of the already perilous physical condition of the road, but will also lead to more accidents, incidents, fires and other public safety issues, especially when the Project seeks to attract 6,249 annual visitors who will be imbibing alcohol and tackling the twists and turns of Diamond Mountain Road.

In summary, the County has systematically failed to consider the health, safety and welfare impacts of the Hard Six Project on the Diamond Mountain community and visitors of Diamond Mountain Road, all of whom are clearly within the “County of Napa.” Such a flagrant omission is in direct violation of NCC § 18.124.070(C).

3 Appellants’ property is not merely adjacent to the Project site but, in addition: (1) the driveway, from which the Planning Commission granted an exemption from RSS requirements, crosses more than 100 feet of Appellants’ land pursuant to an easement referred to in the record; and (2) Diamond Mountain Road—South Fork dead-ends at their front door, where visitors missing the hair-pin turn into the Project’s driveway will have no alternative to turn around—all imposing a unique risk burden on their property.
C. The Project is Inappropriately Scaled Relative to Its Remote Mountaintop Location.

The Winery Definition Ordinance ("WDO") and the 2010 WDO Amendment seek to ensure the protection of not only agricultural interests, but also the public’s safety and welfare by placing reasonable limitations on the size and scope of both production facilities and marketing programs. Of critical importance to the Project is Napa County Resolution No. 2010-48 to the 2010 WDO (Interpretive Resolution to Ordinance No. 1340), Exhibit A, Section III, which is titled “The Appropriate Intensity of Marketing Programs” (jointly referred to as the “2010 WDO”). It declares that:

> To ensure that the intensity of winery activities is appropriately scaled, the County considers the remoteness of the location and the amount of wine to be produced at a facility when reviewing use permit proposals, and endeavors to ensure a direct relationship between access constraints and on-site marketing and visitation programs (emphasis added).

Opponents of the Hard Six project have furnished the County with evidence that the proposed Project site, which is 2.2 miles and almost a thousand feet in elevation up Diamond Mountain Road, is not only as remote and rural a backwoods location that could be conceived within Napa County, but also suffers from severe and potentially life-threatening access constraints. In combination, these indisputable facts mandate that the County significantly reduce both the volume of wine to be produced at the facility and the on-site marketing and visitation program to a size that is suitable for the remote location.

The Planning Commission erred in abdicating its obligation under the WDO to ensure that the Project is appropriately scaled to the remote and rural location in which it is being proposed. The comparative analysis employed by both the County and the Applicant ignore that many of the cited comparisons with production facilities licensed for more than 10,000 gallons are a mile or more closer to Highway 29, and require less than half the climb up the height of the Mountain.

Taking into consideration the size and scope of the production and marketing activities of the wineries on Diamond Mountain Road, the striking commonality among them is that they are rationally and sensitively scaled—based on either their parcel size or their location on dead-end roads, or both. Given that the Project is being proposed for the dead-end South Fork of Diamond Mountain Road, the same standards and considerations must be applied to Hard Six.

Another factor critical to determining the appropriate volume of wine to be produced at the remote Project location is that only 12.4% of the proposed production will be derived from on-site grapes, requiring an unprecedented magnitude of vehicular transport to the site dwarfing that of the other approved high-elevation Diamond Mountain wineries (which naturally focus on estate production and have never floated a destination custom-crush business plan like that of the Project).

More specifically, as referenced above, NCC § 18.124.070(C) requires the County to find that “[t]he grant of the use permit, as conditioned will not adversely affect the public health, safety or welfare of the county.” As it relates specifically to the Project’s size, and the non-contiguous vineyards relied upon to reach that size, the larger the Project’s permitted production and marketing, the greater the chances are that the public health, safety and welfare will be endangered as result of more car, truck, and other
equipment (or even pedestrian) traffic on Diamond Mountain Road. It was incumbent on the Planning Commission to consider the risks inherent in such a remote site and only grant a permit scaled and tailored to the location; the Board should correct the Planning Commission’s failure to do so.

D. The Project is Inconsistent with the Napa County General Plan.

The Planning Commission adopted the staff’s recommended finding that the Project is consistent with the Napa County General Plan. However, while this finding recites several specific General Plan provisions, it is almost devoid of even the flimsiest analysis of how those provisions apply to the Project’s impacts on public safety.

The first goal of the Safety section of the General Plan provides that “[s]afety considerations will be part of the County’s education, outreach, planning, and operations in order to reduce loss of life, injuries, damage to property, and economic and social dislocation resulting from fire, flood, geologic, and other hazards.” Goal SAF-1. Reinforcing this mandate, Goal SAF-3 declares that it is the “goal of Napa County to effectively manage forests and watersheds, and to protect homes and businesses from fire and wildfire and minimize potential losses of life and property.” Accordingly, Policy SAF-16 requires that “development in high wildland fire hazard areas shall be designed to minimize hazards to life and property.” Policy SAF-20 mandates that “[a]ll new development shall comply with established fire safety standards” and consider the “[a]bility for a safe and efficient fire department response ... [t]raffic flow and ingress/egress for residents and emergency vehicles” and “[p]otential impacts to emergency services and fire department response.” Policy SAF-38 requires the “County to achieve the goals, objective, and actions of the [Napa Operational Area Hazard Mitigation Plan (NOAHMP)], including ... [p]romoting a fire safer community ... [and] [m]inimizing the risk of wildfire at the urban interface.”

Opponents of the Project have provided incontrovertible evidence outlining the existing fire danger on Diamond Mountain Road, especially because it is a dead-end road, which will hamper rescue and escape efforts. The Project is located approximately 2.2 miles up a dead-end road in a “Very High Fire Hazard Severity Zone,” the most hazardous category of rating established by CalFire. Mr. Caloyannidis’ October 12th letter documents how vehicles can become “stuck” on Diamond Mountain Road. The Project will introduce some 6,249 visitors per year, which vastly increases the chances of individuals unfamiliar with the area starting a fire or failing to understand how to safely evacuate in the event of a fire. This is completely contrary to the safety goals of the General Plan.4

For all of the reasons stated above, the Planning Commission violated several provisions of the Napa County Code, the WDO (and the 2010 Amendment), and the General Plan when it approved the Project.

E. Approval of the Project without First Preparing an EIR Violates CEQA

It is well settled that CEQA establishes a “low threshold” for initial preparation of an environmental impact report (“EIR”), especially when presented with conflicting assertions concerning the possible effects of a proposed project. Pocket Protectors v. City of Sacramento, 124 Cal.App.4th 903, 928 (2005). CEQA provides that a lead agency may issue a negative declaration and avoid preparing an EIR only when “[t]here is no substantial evidence, in light of the whole record before the lead agency, that

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4 Symptomatic of the short shrift given by the Planning Commission to its obligation to conduct “outreach” to the community, the record reflects no consultation whatever with the local Diamond Mountain FireSafe Council, a vital organization carrying the charter to improve fire safety, prevention, escape and response in the face of steadily mounting peril in this zone.
the Project may have a significant effect on the environment,” or when all potentially significant impacts of a project will be avoided or reduced to insignificance. Pub. Res. Code § 21080(c); see also CEQA Guidelines 15070(b).8. The CEQA Guidelines provide that substantial evidence “include[s] facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” CEQA Guidelines § 15384(b). The courts will set aside a mitigated negative declaration if its conclusions are not based on substantial evidence in the record. Ssandstrom v. County of Mendocino, 202 Cal.App.3d 296,311 (1988). In addition, “[w]hen assessing whether an EIR is required ... the local agency is required to compare the newly authorized land use with the actually existing conditions; comparison of potential impacts ... with potential impacts under the existing general plan is insufficient.” Christward Ministry v. Superior Court, 184 Cal. App. 3d 180,190 (1986) (emphasis added); accord, City of Antioch v. City Council, 187 Cal. App. 3d 1325, 1332 (1986) (determining that “conformity with the general plan for the area ... does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects”).

The CEQA Guidelines, 14 Cal. Code Regs. § 15000 et seq., (“CEQA Guidelines”) dictate that an initial study must provide the factual basis, with analysis included, for making the determination that no significant impact will result from the project. CEQA Guidelines § 15063(d)(3). An agency must prepare an EIR whenever it is presented with a “fair argument” that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not significant. No Oil, Inc. v. City of Los Angeles, 13 Cal.3d 68, 75 (1974); Friends of B St. v. City of Hayward, 106 Cal.App.3d 988, 1002 (1980) (emphasis added); Guidelines § 15064(f)(1); see also Pub. Res. Code § 21151. Critically, where there are, as here, conflicting opinions in the record regarding the significance of an impact, California courts embrace “a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.” Stanislaus Audubon Soc’y v. County of Stanislaus, 33 Cal.App.4th 144, 150-51 (1995). For purposes of CEQA, “substantial evidence” is defined as including: “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” 14 Cal.Code.Regs. § 15064(f)(5). Thus, under the CEQA statute and regulations, if there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the lead agency “shall treat the effect as significant and shall prepare an EIR.” Id. at § 15064(g).

With regard to the Hard Six Project, Opponents produced substantial evidence demonstrating that there is at the very least a “fair argument” that the Project may have substantial environmental effects on biological resources on the delicate ecology of this mountaintop site. Appellants commissioned and submitted a peer review prepared by a professional biologist citing several potentially significant adverse impacts resulting from the Project. See Huffman-Broadway Group letter dated October 9, 2019. Potentially significant impacts to biological resources were also documented by the California Department of Fish and Wildlife in its October 10th letter. The Planning Commission ignored these expert opinions, and neither the Planning Commission nor county staff provided a response to rebut the conclusions offered in the letters.

CONCLUSION

For the reasons set forth above, the Planning Commission’s adoption of the MND for the Project should be overturned. The Board of Supervisors should grant a de novo review of the Project, and either deny the Project application outright, or remand the Project to the Planning Commission with direction to staff to retain the appropriate qualified experts to conduct an impartial EIR consistent with CEQA requirements, and further require the Project to comply with the Napa County Code, the WDO, and the General Plan as fully elaborated above. Most compellingly, the 2010 WDO Amendment counsels that
careful analysis be conducted in situations where a winery project is to be located in a remote area with access constraints. This Project is the archetype for the kind of development contemplated by the 2010 WDO Amendment—for this reason alone, the Project should have been rejected in its current form at the outset, and following its fatally defective approval by the Planning Commission, must now be sent back to the drawing board.

[Signatures]
GUARANTEE NUMBER
5022800-0001503e

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND THE CONDITIONS AND STIPULATIONS OF THIS GUARANTEE,

FIRST AMERICAN TITLE INSURANCE COMPANY
a Nebraska corporation, herein called the Company

GUARANTEES

the Assured named in Schedule A against actual monetary loss or damage not exceeding the liability 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, First American Title Insurance Company has caused its corporate name to be hereunto affixed by its authorized officers as of Date of Guarantee shown in Schedule A.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

For Reference:

File #: P-366671

Issued By:

Placer Title Company
5 Financial Plaza, #205
Napa, CA 94558

This jacket was created electronically and constitutes an original document
Property Owner’s Notice Guarantee
SCHEDULE A

Order No.: P-365671
Guarantee No.: 5022800-0001503e
Date of Guarantee: October 14, 2019 at 8:00AM
Amount of Liability: $1,000.00
Premium: $500.00

1. Name of Assured:
County of Napa

2. ASSURANCES:
   a. According to the last equalized Assessment Roll ("Assessment Roll") in the office of as of the
      Date of Guarantee
      i. The persons listed below as "Assessed Owner" are shown on the Assessment Roll as owning
         real property with 1000 feet of the land identified on the Assessment Roll as Assessor’s
         Parcel Number(s): 020-100-014-000
      ii. The Assessor’s Parcel Number and any addresses shown below are as shown on the
          Assessment Roll.

Issued By:
Placer Title Company
5 Financial Plaza
Napa, CA 94558
Agent ID: 5416462

[Signature]
Authorized Countersignature
PRIVACY POLICY NOTICE

Purpose Of This Notice

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

Montana Title and Escrow Company
National Closing Solutions, Inc.
National Closing Solutions of Alabama, LLC
National Closing Solutions of Maryland, Inc.
Texas National Title

Placer Title Company
Placer Title Insurance Agency of Utah
Premier Title Agency
North Idaho Title Insurance Company
Wyoming Title and Escrow Company

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you, such as an application or other forms.
- Information about your transactions we secure from our files, or from our affiliates or others.
- Information we receive from a consumer reporting agency.
- Information we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

- Financial service providers such as companies engaged in banking, consumer finances, securities and insurance.
- Nonfinancial companies such as envelope stuffers and other fulfillment service providers.

We do not disclose any nonpublic personal information about you with anyone for any purpose that is not specifically permitted by law.

We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal 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 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 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 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.
1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:

(a) Defects, liens, encumbrances, adverse claims or other matters affecting the 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, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.

(b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) 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 the assurances provided.

(c) The identity of any party shown or referred to in Schedule A.

(d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:

(a) Defects, liens, encumbrances, adverse claims or other matters affecting the 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, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.

(b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) 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 the assurances provided.

(c) The identity of any party shown or referred to in Schedule A.

(d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

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. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case 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 prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. 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.

4. 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 3 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 4(a) the Company shall have the right 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, an Assured shall secure to the Company the right to so prosecute or provide for the 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.

5. Proof of Loss or Damage.
In addition to and after the notices required under Section 2 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 ninety (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.

6. 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 said 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 4, 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 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 4.

7. 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 From Coverage of This Guarantee.

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 or in Part 2;
(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 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 any defect, lien or encumbrance assured against by this Guarantee.

8. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter
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.

9. Reduction of Liability or Termination of Liability.
All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

(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 thirty (30) days thereafter.

11. 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 Assured 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.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title 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 $2,000,000 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 $2,000,000 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.

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.

13. 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.

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 the Company at First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Claims.NIC@firstam.com Phone: 888-632-1642 Fax: 877-804-7606
NOTE: This Map Was Prepared For Assessment Purposes Only. No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.