



# Guarantee

## CLTA Guarantee Form No. 28 - Condition of Title

ISSUED BY

**First American Title Insurance Company**

GUARANTEE NUMBER

**5026900-1529205**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE.

### **FIRST AMERICAN TITLE INSURANCE COMPANY**

a Nebraska corporation, herein called the Company

### **GUARANTEES**

against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A

#### ***First American Title Insurance Company***

Dennis J. Gilmore  
President

Jeffrey S. Robinson  
Secretary

By:

Authorized Countersignature

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## EXCLUSIONS FROM COVERAGE

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims or other matters against the title to any property beyond the lines of the Land.
- (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or, (2) that result in no loss to the Assured.
- (c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
- (d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
- (e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
- (f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
- (g) (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 under (1), (2) or (3) are shown by the Public Records.

## GUARANTEE CONDITIONS

### 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 Schedule A, or on a supplemental writing executed by the Company.
- b. "Land": the Land described or referred to in Schedule A, 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, 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": those records established under California 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 of Guarantee": the Date of Guarantee set forth in Schedule A.
- f. "Amount of Liability": the Amount of Liability as stated in Schedule A.

### 2. Notice of Claim to be Given by Assured.

The Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under 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 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 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 Paragraph 4 (b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A 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 the 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 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

## GUARANTEE CONDITIONS (Continued)

the Company, the 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 correctness of the assurances set forth in Schedule A to prevent or reduce loss or damage to 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.

- a. In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
- b. 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 paragraph 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 reasonable 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 together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

- b. To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
- c. To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.

### 7. Limitation Liability.

- a. 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 Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.
- b. If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien, or encumbrance or cures 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.
- c. 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.
- d. The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

### 8. 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 under this Guarantee pro tanto.

### 9. 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, the loss or damage shall be payable within thirty (30) days thereafter.

## GUARANTEE CONDITIONS (Continued)

### 10. 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.

### 11. Arbitration.

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. 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 to any other controversy or claim arising out of the transaction giving rise to this Guarantee. 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. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

### 12. 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.

### 13. Severability.

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

### 14. Choice of Law; Forum.

- a. Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guarantees of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- b. Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

### 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 the Company at **First American Title Insurance Company, Attn: Claims National Intake Center, 5 First American Way, Santa Ana, California 92707. Phone: 888-632-1642 (claims.nic@firstam.com).**



# Schedule A

## CLTA Guarantee Form No. 28 - Condition of Title

ISSUED BY

**First American Title Insurance Company**

GUARANTEE NUMBER

**5026900-1529205**

File No.: 1529205

Guarantee No. 1529205

Amount of Liability: \$

Date of Guarantee: September 16, 2019 at 7:30 A.M. Fee: \$

1. Name of Assured:

Vaughn-Roth Land Brokers

2. The estate or interest in the Land which is covered by this Guarantee is:

Fee Simple

3. The Land referred to in this Guarantee is described as follows:

Real property in the, County of Dickinson, State of Kansas, described as follows:

Beginning at the Southeast corner of the Northeast Quarter of Section 2, Township 16 South, Range 3 East of the 6th P.M., Dickinson County, Kansas, and running thence North on the Section line 83.0 rods; Thence in a straight line in a Southwesterly direction to a point on the West line of the Northeast Quarter, said point being 77.0 rods North of the Southwest corner of said Northeast Quarter;

Thence South 77.0 rods to the Southwest corner of the said Northeast Quarter;

Thence East along the South line of said Northeast Quarter to the place of beginning, EXCEPT a tract conveyed to the Missouri Pacific Railway in a Warranty Deed dated January 15, 1931, and recorded in Deed Book 97, Page 225, in the Office of the Register of Deeds, Dickinson County, Kansas,

Also 9.57 acres off the Southwest corner of the North Half of the Northeast Quarter of Section 2, Township 16 South, Range 3 East of the 6th P.M., Dickinson County, Kansas, being that portion lying South and West of the former right-of-way of the Missouri Pacific Railway Co.,

Also, 31 Lots on the North side of the Street called Broadway in Henquenet's Subdivision of the Southeast Quarter of Section 2, Township Sixteen (16) South, Range 3 East of the 6th P.M., Dickinson County, Kansas, said Lots being numbered as follows: 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110, 112, 114;

Also, all that part of the East Half of the Southeast Quarter of said Section 2, lying North of Broadway Street, in Henquenet's Subdivision of the Southeast Quarter of Section 2;

Also, beginning at a point on the West line of the Northeast Quarter of said Section 2, said point being 77.0 rods North of the Southwest corner of said Northeast Quarter;  
Thence North 3.0 rods;

Thence East 80.0 rods;  
Thence in a straight line in a Southwesterly direction to the Point of Beginning.  
Also Old right-of-way of the Missouri Pacific Railway in the said Quarter;

Also, EXCEPT a tract of land conveyed to the City of Hope, Kansas, by Warranty Deed recorded in Deed Book 117, Page 254, covering a tract of land in the East Half of Section 2, Township 16, South, Range 3 East of the 6th P.M., Dickinson County, Kansas, more particularly described as follows:  
Beginning at a point 2,039.0 feet East of the Center  $\frac{1}{4}$  corner of said Section 2;  
Thence N  $0^{\circ}28'$  W, 219.5 feet;  
Thence N  $89^{\circ}32'$  E, 300.0 feet;  
Thence S  $0^{\circ}28'$  E, 400.0 feet;  
Thence S  $89^{\circ}32'$  W, 300.0 feet;  
Thence N  $0^{\circ}28'$  W, 180.5 feet, more or less to the Point of Beginning.

Also EXCEPT a tract of land in the East Half of Section 2, Township 16 South, Range 3 East of the 6th P.M, Dickinson County, Kansas, more particularly described as follows:  
Beginning at a point 2,039.0 feet East of the Center Quarter corner of said Section 2;  
Thence N  $0^{\circ}28'$  W, 219.5 feet;  
Thence N  $89^{\circ}32'$  E, 198.0 feet;  
Thence N  $55^{\circ}45'$  W, 526.0 feet;  
Thence N  $87^{\circ}58'$  W, 404.0 feet;  
Thence S  $21^{\circ}55'$  W, 773.0 feet;  
Thence N  $89^{\circ}42'$  E, 932.2 feet;  
Thence N  $0^{\circ}28'$  W, 180.5 feet, more or less, to the Point of Beginning,  
Conveyed to the City of Hope, Kansas, in a Warranty Deed dated October 28, 1976, and recorded in Deed Book 186, Page 167, in the Office of the Register of Deeds, Dickinson County, Kansas.

That part of the Northeast Quarter ( $NE\frac{1}{4}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of Section Two (2), Township Sixteen (16) South, Range Three (3) East of the 6th P.M., Dickinson County, Kansas, lying North of the North right-of-way line of the Missouri Pacific Railroad, subject to Highway K-4 right-of-way, County road right-of-way, and pipeline easement, and EXCEPT that part Deeded to The Secretary of Transportation of the State of Kansas in Warranty Deed recorded in Deed Book 201, Page 283,  
AND

Part of the Northeast Quarter ( $NE\frac{1}{4}$ ) of Section Two (2), Township Sixteen (16) South, Range Three (3) East of the 6th P.M., Dickinson County, Kansas, described as follows: Commencing at the Northeast corner of said Section 2, thence South  $0^{\circ}$  East, 1252.54 feet to a point 3.0 rods North of the Southeast corner of the North Half ( $N\frac{1}{2}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of said Section 2, thence South  $87^{\circ}42'20''$  West toward a point 3 rods South of the Southwest corner of said North Half ( $N\frac{1}{2}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ), a distance of 375.55 feet to the South right-of-way line of the Missouri Pacific Railroad and the Point of Beginning of the tract herein described; thence continuing on the same bearing 1,316.40 feet to a point established by A. C. Romig, County Surveyor, on November 22, 1897; thence North  $46^{\circ}47'30''$  West along the approximate center of the abandoned Missouri Pacific Railroad, 842.00 feet to the corner post on the South right-of-way line of the existing Missouri Pacific Railroad and 340.50 feet East of the West line of said North Half ( $N\frac{1}{2}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ); thence Southeasterly along the South right-of-way line of the Missouri Pacific Railroad, 1,999.00 feet to the Point of Beginning.

APN: 251020000003000

4. ASSURANCES:

According to the Public Records as of the Date of Guarantee,

a. Title to the estate or interest in the Land is vested in:

Fee Simple

- b. Title to the estate or interest is subject to defects, liens, or encumbrances shown in Schedule B which are not necessarily shown in the order of their priority.



## Schedule B

### CLTA Guarantee Form No. 28 - Condition of Title

ISSUED BY

**First American Title Insurance Company**

GUARANTEE NUMBER

**5026900-1529205**

File No.: 1529205

1. Taxes for the fiscal year 2018.

First Installment:	\$908.44, PAID
Penalty:	\$0.00
Second Installment:	\$908.44, PAID
Penalty:	\$
Property I.D. No.:	251020000003000

FOR INFORMATIONAL PURPOSES ONLY:

According to the records, the address to legal description stated herein is:

Paint Rd / Hwy 4  
Hope, Kansas 67451

2. Existing roads and highways.

3. Rights-of-way for railroads, switch tracks, spur tracks, railway facilities, and other related easements, if any, on and across the Land.

4. Subject to the railway right of way and other related easements, if any, on and across the Land.

5. Title to that portion of the Land, if any, lying within the railroad right of way.

6. Title to that portion of the property acquired for Highway purposes in condemnation proceedings styled In the Matter of the Condemnation of Land for State Highway Purposes, Case No.45403 in the District Court of Dickinson County, Kansas.

7. Title to that portion of the property conveyed to State of Kansas by Deed dated January 15, 1985 and recorded March 5, 1985, in Deed Book 201, Page 283, for highway purposes.

8. An easement for pipe line for the transportation and distribution of oil or gas, recorded July 31, 1928 as Misc Book 95, Page 384 of Official Records.

In Favor of:	The Kansas Pipe Line and Gas Company
Affects:	subject property

NOTE: The above easement was assigned to The Kansas Power and Light Company in document recorded February 1, 1932 in Misc Book 101, Page 198 of Official Records.



9. An easement for pipe line for the transportation and distribution of oil or gas, recorded February 1, 1932 as Misc Book 95, Page 506 of Official Records.

In Favor of: The Kansas Pipe Line and Gas Company  
Affects: subject property

NOTE: The above easement was assigned to The Kansas Power and Light Company in document recorded February 1, 1932 in Misc Book 101, Page 198 of Official Records.

10. An easement for pipe line for the transportation and distribution of oil or gas, recorded July 9, 1941 as Misc Book 109, Page 220 of Official Records.

In Favor of: The Kansas Power and Light Company  
Affects: subject property

NOTE: The above easement was assigned to ONE Gas, Inc. in document recorded August 4, 2017 in Book Z300, Page 112 of Official Records.

11. An easement for pipe line for the transportation and distribution of oil or gas, recorded June 16, 1992 as Misc Book 221, Page 683 of Official Records.

In Favor of: The Kansas Power and Light Company  
Affects: subject property

NOTE: The above easement was assigned to Oneok, Inc. in document recorded February 2, 1998 in Misc Book 238, Page 11 of Official Records.

NOTE: The above easement was assigned to ONE Gas, Inc. in document recorded May 8, 2015 in Book Z293, Page 133 of Official Records.

12. A lease dated June 15, 2017, executed by Walker Feedlot, Inc. as lessor and Diamond Vista Wind Project, LLC as lessee, recorded July 13, 2017 as Book Z299, Page 676 of Official Records.

13. A mortgage to secure an original principal indebtedness of \_\_\_\_\_ and any other amounts or obligations secured thereby, recorded June 26, 2008 as Mortgage Book 307, Page 902 of Official Records.

Dated: April 16, 2008  
Mortgagor: The Bennington State Bank  
Mortgagee: Walker Feedlot, Inc.

A document recorded April 13, 2018 as Book Z302, Page 301 of Official Records provides that the lien or charge of the Deed of Trust/Mortgage was subordinated to the Memorandum of Wind Energy Lease recorded July 3, 2017 as Book Z299, Page 676 of Official Records.