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# **INDEMNITY AGREEMENT**

This indemnification (hereafter "Indemnification" or "Agreement" or "Indemnity Agreement") is made and given by the undersigned, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, individually, and on behalf of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ referred to herein as "Indemnitor" (whether one or more) for the benefit of First National Title Insurance Company and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (individually and collectively referred to hereafter as “Company"). Indemnitor agrees that as to those transactions, present and future, that are covered by this agreement, the obligations of the Indemnitor herein may continue at a time when Indemnitor no longer has any direct financial or ownership interest in the land herein referred to, based upon the statutory period within which valid mechanic’s liens may be filed.

1. Indemnitor has or will have interest in certain works of improvement which have been or will be commenced upon land described as follows:

Indemnitor has requested the issuance by First National Title Insurance Company from time to time of policies of title insurance, endorsements, commitments, binders and guarantees (“Title Policy”) covering the land and insuring against loss which may be sustained by reason of mechanic’s liens, claims of liens, or actions to enforce any such liens, without showing those claims, liens and actions as exceptions to title; or insuring holders or mortgages or deeds of trust against loss by reason of the priority of any such mechanic’s liens over the insured mortgages or deeds of trust. Indemnitor understands and agrees that the Company will make full disclosure of all claims, liens, and actions to the proposed insured.

1. As used in this agreement, the term “land” shall include all real estate, real property interests and improvements which by law constitute real property in which the Indemnitor is now, or may hereafter become, the owner of the estate or interest insured, contractor for the work performed, or legally responsible for the payment of liens. Indemnitor understands that no specific reference to this agreement in any Title Policy shall be necessary or is contemplated and that it shall automatically apply to any Title Policy which come within its terms.
2. To induce First National Title Insurance Company to issue a Title Policy in the manner hereinabove mentioned, Indemnitor promises and agrees to hold harmless, protect and indemnify First National Title Insurance Company, its agents and assigns, from and against any and all liabilities (whether or not First National Title Insurance Company, its agents or assigns, have suffered actual loss), losses, damages, expenses and charges, including but not limited to attorneys’ fees and expenses of litigation for which the parties of any of them may or might become liable or sustain arising out of or in any way connected with any policy of title insurance, any endorsement, any binders or any agreements insuring against or guaranteeing against liens arising from unpaid bills for labor, services, or materials furnished to the above described property or an part thereof.
3. Indemnitor understands and agrees that First National Title Insurance Company’s issuance of such title assurance in the manner desired by Indemnitor may make it necessary for the Company to issue additional other title assurance covering the land, without showing such mechanic’s liens or actions. Therefore, it is understood and agreed that the obligations of the Indemnitor hereunder shall not be limited to the Title Policy initially issued on the land or potions thereof during the time when the Indemnitor has a direct financial or ownership interest therein, but shall also apply to the Title Policy subsequently issued on the same land, or portions hereof; and it is specifically understood by the Indemnitor that the Company will be relying upon this agreement as a continuing guarantee of the performance of Indemnitor’s obligation with respect to the land in issuing any such further Title Policy.
4. A. In the event that any mechanic’s lien, liens, or claims thereof (“liens”) arising out of such work or improvements shall be filed against the land, or any action shall be commenced to foreclose such lien, Indemnitor agrees, within twenty (20) days of such filing to:
5. Cause a release of the lien to be filed in the appropriate records Office; or
6. Cause to be filed with respect to any such lien a bond or bonds conforming to applicable state statutes; or
7. Deposit with the Company or its nominee an amount equal to one and one-half (1 ½) times the amount claimed including attorney’s fees, interest and costs, and execute such escrow agreement as shall be designated by the Company.
8. Take such other action as shall be agreed to by the Company

B. Should Indemnitor fail to comply with subparagraphs (a), (b) or (c) as set forth above, First National Title Insurance Company is authorized by Indemnitor, but not obligated, to advance and pay such amounts as the Company shall in its absolute, subjective discretion, determine to be necessary to procure release of such lien, or take such other action which shall otherwise be necessary for the protection of the Company; and the Insured Indemnitor agrees upon demand to reimburse the Company for all amounts so advanced, together with the maximum rate of interest allowable by law.

C. To the extent that the Company shall put out any sum of money on account of this agreement, First National Title Insurance Company shall have the right of subrogation against the Indemnitor and his rights in the property; and further, as an additional remedy, First National Title Insurance Company shall have a lien on the property for any sum of money paid by the Company pursuant to this agreement. This lien shall be subordinate in priority only to those liens of record in the county where the real property is located at the time the Company records its statement of lien. The Company shall have the right to bid on the property at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same. A suit to recover a money judgment on any sums of money paid the Company on account of this agreement may be maintainable without foreclosure or waiving the lien securing the same.

1. It is specifically understood and agreed by Indemnitor that, once such title assurance obligations have been undertaken by the Company, no cancellation by Indemnitor shall be effective so long as the Company has any continuing obligation under such Title Policy affecting the land.
2. Indemnitor understands that, as a continuing guarantee, as well as a direct indemnification, Indemnitor authorizes First National Title Insurance Company without notice of demand, and without affecting the Indemnitor’s liability hereunder, from time to time, (a) to renew, compromise, extend, accelerate or otherwise change the time or terms of payment of any obligation which shall be so guaranteed hereunder; (b) to take security for the payment of this agreement and to exchange, enforce, waive and release any such security; (c) to apply such security and direct the order of manner of sale thereof as the Company may in its discretion determine; and (d) release or substitute and one or more of the Indemnitors (if more than one hereunder). In addition, Indemnitor waives any right to require the Company (a) to proceed against any person; (b) to proceed against or exhaust any security held by or for the Company or (c) to pursue any other remedy whatsoever. Indemnitor specifically waives all presentments, demand for performance, notice of non-performance, and notice of acceptance of this guarantee and indemnity.
3. Indemnitor hereby agrees that the Company shall have and is granted the right, at any reasonable time, to examine the books, accounts, and records of Indemnitor, pertaining to such works or improvement.
4. In the event any provision of this agreement shall be held invalid or unenforceable by any court having jurisdiction, such provision shall be deemed severable and shall not affect the validity of any other provisions or the balance hereof.
5. The failure of the Company from time to time to demand the performance of any act which it might require of Indemnitor hereunder shall not be construed as a waiver of the right to enforce such performance at a later time upon appropriate demand.
6. A. In the event of suit regarding any of the terms of this Agreement or performance or non-performance thereof, the parties agree that venue shall be in the Circuit Court in the county where the real property is located and that court shall have original jurisdiction for trial. The laws of the State of Virginia shall govern any suit. By signature hereto Indemnitor appoints the Clerk of the Court as his agent to receive service of process and further consents to jurisdiction of the Court over him.

B. In the event of any action to enforce the terms of this Agreement, the parties hereto authorize and agree that the Court in its discretion may award reasonable attorney’s fees to the party prevailing therein and that attorney’s fees and other costs of collection shall be added to the amount of any lien claimed by First National Title Insurance Company.

1. Indemnitor understand and agrees that the Company is not obligated to issue any Title Policy at any time, although requested to do so by Indemnitor, the Company may exercise its own discretion as to the issuance of any Title Policy now or in the future. However, once the Company has issued title assurance, Indemnitor agrees that such assurance will be in specific reliance upon this indemnification and guarantee given by the Indemnitor, and Indemnitor shall be obligated whether or not Indemnitor has specifically requested the issuance of the Title Policy.
2. All written notices permitted or required to be given under this agreement may be personally delivered to each of the parties thereto, or mailed to each party by Registered United States Mail or Certified United States Mail, and shall be considered duly mailed when addressed with postage prepaid as follows:

To First National Title Insurance Company: 2400 Dallas Parkway, Suite 200 Plano, TX 75093

To Indemnitor:

Either party may by written notice to the other, as aforesaid, change the address to which notices are to be sent.

1. A. The Parties acknowledge that First National Title Insurance Company may be asked to provide Title Policy pursuant to this Agreement wherein legal title to the subject real property and improvements may be vested in a corporation, partnership, joint venture or other form of ownership other than individuals. It is the intention of the parties hereto that any person signing this Agreement individually and not in a representative capacity shall be unconditionally and personally bound by the terms hereof and subject to full personal recourse against such individual.

B. The obligations hereunder are joint and several and unconditional and shall continue whether or not the undersigned titleholders or individuals have any interest in the entity which presently owns the real property, or in the real property itself, at the time a claim hereunder may be made by the Company.

1. This Agreement, consisting of four (4) typewritten pages including this page shall benefit and bind the parties hereto and their respective successors, assigns and, in the case of individual Indemnitors, their heirs and personal representatives. This Agreement may not be amended or modified without the written Endorsement of First National Title Insurance Company.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

Titleholder:

By:

Title:

Guarantor(s):

By:

Title:

General Contractor:

By:

Title: