



ORT ML 9.23

INDEMNITY AGREEMENT
AGAINST MECHANIC'S LIENS
(Secured)

File Number: _____

This Indemnity ("Indemnity") is dated _____, 20_____, and is between _____, a _____ (individually or collectively, the "Indemnitor"), and Old Republic National Title Insurance Company, a Florida corporation ("Company"), and is entered into in connection with the Indemnitor's request that Company issue its Title Policy(s) without an exception in Schedule B of the Title Policy for Construction Liens arising from the Construction or proposed Construction to occur on the Land, Title Commitment File # _____.

As used in this Indemnity, the following terms shall have the following meanings:

Construction Liens include, but are not limited to, any lien or right to a lien against the Land for services, labor, or material heretofore or hereafter furnished, imposed either in law or equity, which attach to or are alleged to attach to the Land as a result of Construction.

Construction includes any, and all work, labor, services, construction, alteration, maintenance, repair, and/or placement or segregation of materials, or other work performed pursuant to

- a. any agreement or contract; or
b. that certain contract entered into on _____, 20_____ by and between _____ and _____

where a claim or allegation may be made that the construction lien arising from the payment obligation for the services or work so performed has priority or takes precedence over the estate or interest insured under the Title Policy.

Land refers to that certain real estate in _____ City/County, Virginia, described in the Title Commitment referenced herein.

Title Policy is Company's policy or policies issued in connection with the Land as

- a. Commitment No. _____ for _____ (name of agency), or
b. Title Policy No(s). _____

For good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. Indemnity. To induce Company to issue its Title Policy without an exception for Construction Liens, the undersigned Indemnitor(s), jointly and severally, for themselves, heirs, personal representatives, and assigns agree to pay, protect, defend, indemnify, hold and save harmless Company from and against any and all liabilities, claims, obligations, losses, costs, charges, expenses, causes of action, suits, demands, judgments, and damages of any kind or character whatsoever, including, but not limited to, actual attorneys' fees and costs (including appellate fees and costs) incurred or sustained by Company, and actual attorneys' fees awarded against Company, directly or indirectly, by reason of, relating to, or arising under Company's issuance of its Title Policy and any subsequent title insurance

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policy without such an exception and relating to the obligations of the Indemnitor, or in any other action at law or in equity under any theory of recovery as a result of the obligations of the Indemnitor. To avoid any doubt, it is the intent of the parties that all loss, cost, or expense relating to the obligations of the Indemnitor hereunder will be borne by the Indemnitor, and not by Company.

2. **Indemnitor's Obligation to Cure.** If a Construction Lien shall be filed against the Land with respect to any Construction on the Land by or for the benefit of the undersigned, or any action shall be commenced to foreclose such a Construction Lien, the Indemnitor shall, within twenty (20) days of the earlier of such filing or commencement, as applicable, in form and manner satisfactory to Company:

- (i) Cause a release of the Construction Lien to be filed in the appropriate official records office; or
- (ii) Cause to be recorded with respect to any such Construction Lien a bond or bonds conforming to applicable state statutes and sufficient to release the Construction Lien from the Land; or
- (iii) Deposit with Company an amount determined by Company, in its sole discretion, which would equal the amount claimed, plus a reasonable estimate of attorney's fees, interest and costs that would be incurred by Company to remove or resolve such Construction Lien; or
- (iv) Take such other action as shall be agreed to by Company, in its reasonable discretion.

Should the Indemnitor fail to comply with subparagraphs (i), (ii), (iii) or (iv) as set forth above, Company is authorized by the Indemnitor, but is not obligated, to advance and pay such amounts as Company shall, in its sole discretion, determine to be appropriate to procure release of such Construction Lien and the Indemnitor agrees upon demand to reimburse Company for all amounts advanced or expended, together with the maximum rate of interest allowable by law.

3. **Security.** To secure the Indemnitor's obligations under this Indemnity, the Indemnitor has deposited or will deposit with Company the sum of \$ _____ ("Deposit"). Company will deposit the Deposit into an account with a bank to be designated by Company. Subject to the obligations of the Indemnitor under Section 3, the Indemnitor agrees that Company, when in its sole determination determines that the interest of the Insured under any Title Policy issued in connection with the Land, is at risk due to the presence or attempted or threatened enforcement of a Construction Lien against the Land, may, without any demand or notice to the Indemnitor whatsoever, use the Deposit to discharge any liability for which Company is indemnified hereunder, including but not limited to, using any portion, up to the whole thereof, of the Deposit to obtain release of Construction Liens on the Land or to obtain a bond effective to remove the Construction Liens against the Land. If Company uses the Deposit as provided in this Section, the Indemnitor agrees upon demand to reimburse Company for all amounts advanced or expended, together with the maximum rate of interest allowable by law, to replenish the Deposit. Where, in Company's sole discretion, all matters for which Company is indemnified hereunder are resolved in such a manner that Company can have no further liability for Construction Liens under its Title Policy, Company may, at Company's sole option, return or order the return of the Deposit to the Indemnitor; provided, however, the return of the Deposit to the Indemnitor shall not be construed as a termination of the Indemnitor's duties hereunder or of this Indemnity.

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4. **Determination of Coverage.** Any determination of coverage by Company shall be conclusive evidence that the matter is within the Title Policy coverage that is the subject of this Indemnity. Additionally, Company shall have the right, in its sole discretion, to determine for itself and the undersigned whether any claim, demand or suit brought against the title to the Land, or the estate or interest insured under the Title Policy, shall be paid, compromised, settled, tried, defended, or appealed, and its determination shall be final, binding, and conclusive upon the undersigned. The liability of the Indemnitor under this Indemnity is direct and primary and is not conditioned or contingent on prior pursuit of any remedies by Company. The Indemnitor shall be liable and shall promptly pay to Company all costs, expenses and attorneys' fees incurred by Company in enforcing any of its rights hereunder. Company shall also have the right to select counsel of its choice to defend or prosecute any action on behalf of Company or its insured(s) under the Title Policy.

5. **Estoppel.** The Indemnitor represents that it is in Indemnitor's best interest to enter into this Indemnity and by doing so it is the intent of the Indemnitor to induce Company to issue a Title Policy without a Schedule B exception for Construction Liens. The Indemnitor acknowledges that Company will not issue policy of title insurance without an exception for Construction Liens unless it receives this Indemnity. The Indemnitor agrees that the Company is undertaking a risk significantly greater than that undertaken in the normal course of providing title insurance policies and related services. The Indemnitor also agrees that the Company is entering into this Indemnity and issuing policies of title insurance in reliance on this Indemnity.

6. **Continuing Obligations.** The Indemnitor's liability under this Indemnity shall remain in full force and effect until the Construction has been completed and any Construction Lien risk resulting from such Construction has terminated in accordance with applicable law. The Indemnitor understands and agrees that Company's issuance of a Title Policy without a Schedule B exception for Construction Liens may make it necessary or appropriate for Company, in its sole discretion and without notice to the Indemnitor, to issue other title policies insuring the Land without an exception for Construction Liens. Thus, until such time as the Indemnitor's obligations created by this Indemnity have terminated as provided herein, the Indemnitor agrees that its obligations under this Indemnity are continuing and shall not be limited to the Title Policy but shall also apply to all future title insurance policies issued on the Land without an exception for Construction Liens.

7. **Financial Condition of Indemnitor.** If no mechanic's lien agent is appointed, the Indemnitor shall, concurrently herewith, submit to Company, financial statements in a form acceptable in the Company's sole discretion. The Indemnitor represents, warrants, and attests that all financial statements or other financial information provided to Company have been provided with the specific intent to induce Company into issuing its Title Policy without an exception for Construction Liens. The Indemnitor further represents, warrants, and attests that such financial statements or other financial information represent a true and correct statement of the Indemnitor's financial condition as of the date(s) stated therein. The Indemnitor acknowledges and agrees that any misstatement of such financial condition shall constitute actual fraud for all purposes, including, but not limited to, the non-dischargeability of the Indemnitor's obligations incurred under this Indemnity in either a voluntary or involuntary insolvency proceeding.

8. **No Commitment.** The Indemnitor acknowledges that acceptance of this Indemnity by Company is not, and shall not, be deemed to create an obligation, or continuing obligation, on Company to issue a Title Policy for the Land. Company has no obligation or duty to the Indemnitor, a lender, the property owner, or any other person to accept this Indemnity or, in the future, to issue a Title Policy for the Land solely by reason of this Indemnity.

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9. **Liability of Successors.** This Indemnity shall be binding on the Indemnitor and each of them, their heirs, assigns and legal successors and shall inure to the benefit of Company, its successors, and assigns, including without limitation any other insurer involved in reinsuring in any manner any liabilities of Company under any Title Policy to which this Indemnity relates and any agent that issued the Title Policy.

10. **Costs of Enforcement.** If this Indemnity is given to an attorney or collection agency for collection or enforcement, or if suit is brought for collection or enforcement, or if it is collected or enforced through probate, bankruptcy, or other judicial proceeding, in addition to other amounts due, the Indemnitor agrees to pay Company all costs of collection and enforcement, including reasonable attorney's fees and court costs incurred by Company.

11. **Governing Law.** This Indemnity will be governed by, and interpreted and construed in accordance with, the laws of the Commonwealth of Virginia without regard to its conflict of laws provisions. In the event this Indemnity is breached, any, and all disputes, controversies or claims must be resolved in a court of competent jurisdiction located in the Commonwealth of Virginia.

12. **Waiver.** The failure by Company to take any action or assert any right under this Indemnity will not be deemed to be a waiver of that right in the event of the continuation or repetition of the circumstances giving rise to that right.

13. **Complete Agreement and Amendment.** This Indemnity constitutes the entire agreement regarding the subject matter hereof and supersedes any prior agreements, understandings, or representations with respect thereto. This Indemnity may not be amended or modified, or its requirements waived, except by a writing signed by both parties.

14. **Severability.** If any term or provision of this Indemnity shall be found to be illegal or otherwise unenforceable, the same shall not invalidate the whole of this Indemnity, but such term or provision shall be deemed modified to the extent necessary by the adjudication to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. **Counterparts.** This agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Indemnity, either in person or by their duly authorized officers or agents, as applicable, as of each respective date set forth below.

The Indemnitor:

Print Name: _____

Title: _____

Dated: _____

File Number: _____

_____, Individually
_____, Dated

_____, Individually
_____, Dated

City/County of _____
Commonwealth of Virginia

The Mechanic's Lien Indemnity Agreement was executed, subscribed, and sworn to by
_____, before me this _____ day of _____, 20 _____.

Notary Public
My Commission expires: _____

City/County of _____
Commonwealth of Virginia

The Mechanic's Lien Indemnity Agreement was executed, subscribed, and sworn to by
_____, before me this _____ day of _____, 20 _____.

Notary Public
My Commission expires: _____