

ATTORNEYS' TITLE GUARANTY FUND, INC.

**INDEMNITY AGREEMENT**  
**(Construction – Mechanics' Liens)**

Escrow No.:

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, hereinafter (collectively if more than one) referred to as "Indemnitor," and ATTORNEYS' TITLE GUARANTY FUND, INC., hereinafter referred to as "ATG."

1. This Agreement concerns that certain real property, or any interest therein, hereinafter referred to as "the Property," in the County of \_\_\_\_\_, State of \_\_\_\_\_, described as:

and as further described in Schedule A of ATG Commitment No.: \_\_\_\_\_.

2. It is hereby declared that certain improvements have been or will be commenced upon the Property.
3. Indemnitor, regardless of its interest in or relationship to the Property, has an interest in the issuance of, and desires ATG from time to time to issue, its policy or policies of title insurance insuring the Property as being free of construction/mechanics' liens arising out of the improvements, and insuring ATG's Insureds against loss by reason of any such construction/mechanics' liens.
4. ATG is willing to consider the issuance of such policy or policies of title insurance insuring against loss by reason of construction/mechanics' liens or the possibility of such liens being recorded and affecting the Property; however, ATG shall determine whether to issue each policy based on reliance on the covenants, conditions, representations, and warranties of Indemnitor herein made, and upon a determination by ATG that each and every covenant to be performed by Indemnitor has, as a condition precedent to such issuance, been performed.

IN CONSIDERATION OF ATG's ISSUANCE of each policy of title insurance ATG shall decide to issue, insuring against loss by reason of construction/mechanics' liens or the possibility that such liens affecting the Property may be recorded, Indemnitor agrees as follows:

5. Indemnitor hereby agrees that all costs, charges, expenses, and/or obligations for labor, materials, and/or services for or in connection with all such improvements shall be paid before the respective times for filing construction/mechanics' liens arising out of such improvements.

6. In the event that any construction/mechanics' lien or liens are filed against the Property, Indemnitor shall, within twenty (20) days of such filing:
  - a. Cause a release of the construction/mechanics' lien or liens to be filed of record in the county Recorder's Office; or
  - b. Cause to be recorded with respect to any construction/mechanics' lien or liens a bond or bonds freeing the Property from the effect of the construction/mechanics' lien or liens. Indemnitor agrees to hold ATG harmless and provide a legal defense for any and all liability to any and all policyholders that result or could result from any bond being declared invalid or ineffective by a judicial process or from any attempt to establish such invalidity or ineffectiveness; or
  - c. Deposit with ATG an amount sufficient, in ATG's absolute subjective opinion, to protect ATG or its Insureds against such construction/mechanics' lien or liens, which amount ATG shall specify; or
  - d. Take action with respect to the construction/mechanics' lien or liens as ATG shall, in its absolute subjective discretion, authorize Indemnitor in writing to undertake, provided that any such authority shall not be a waiver by ATG to require, at any time, Indemnitor to comply with any one of subparagraphs a, b, or c herein above within five (5) days of ATG's written revocation of authority to undertake all action pursuant to this subparagraph d and demand for compliance with said subparagraphs a, b, or c.

Should Indemnitor fail to comply with subparagraphs a, b, c, or d as set forth above, ATG is authorized by Indemnitor, but not obligated, to advance and pay such amounts as ATG shall, in its absolute subjective discretion, determine to be necessary to procure release of such construction/mechanics' lien or liens, or take such other action that shall otherwise be necessary for the protection of ATG and its Insureds.

7. In the event that any action is filed at law or in equity relating to any construction/mechanics' lien or liens that affect the Property, for foreclosure thereof or otherwise, Indemnitor hereby agrees to:
  - a. Notify ATG in writing of such an action that it shall, by any means whatsoever, become aware of within three (3) days of acquisition of its knowledge of the action; and
  - b. Cause such action to be defended in a timely manner by counsel who will protect ATG and any Insured of ATG to which ATG may have possible liability as a result of issuance of a policy or policies of title insurance pursuant to this Agreement. Provided, however, that notwithstanding Indemnitor's compliance with this paragraph 7, ATG may, at any time, demand in addition to such performance, at ATG's sole subjective option, that Indemnitor also comply with subparagraphs 6a, 6b, or 6c.

In case Indemnitor fails within twenty (20) days of the service upon Indemnitor of a complaint in any such action to cause to be delivered to ATG a written representation by Indemnitor's counsel to the effect that such counsel has accepted the defense of such action, and will undertake any and all steps necessary to protect ATG and its Insured, ATG shall have the right, but not the obligation, to take or do any act in connection with the litigation that, in its absolute subjective discretion, may be necessary or desirable in order to protect its interest under this Agreement, or the interests of its Insured.

8. Indemnitor shall, concurrently herewith, submit to ATG an audited financial statement, on a form of financial statement consistent with generally accepted accounting principles if no audited statement is available and if ATG elects to accept an unaudited statement from Indemnitor, which statement shall accurately represent the financial condition of Indemnitor. Indemnitor further agrees to amend such statement upon the occurrence of any event that would alter or in any respect change said financial condition by reducing the net worth, result in a reduction in liquidity, or other similar manner that would be material to ATG's decision to continue issuing policies in reliance on the financial condition and this Agreement. In the event more than one person is Indemnitor, each such person shall comply with this paragraph. Any misstatement of such condition, or failure to submit an amendment, as to the Indemnitor so misstating, or omitting to submit an amendment, shall constitute actual fraud against ATG such that any obligation incurred by ATG under this Indemnity shall not be dischargeable in any insolvency proceedings, whether involuntary or voluntary, and further, shall constitute actual fraud against ATG for any and all other purposes.
9. Notwithstanding any other recourse available to ATG under this Agreement, or otherwise at law or in equity, Indemnitor (and each of them jointly and severally if more than one) hereby agrees to hold and save ATG harmless, and to protect and indemnify ATG from and against any and all liabilities or claims of liability, losses, costs, charges, expenses, and damages of any kind or character whatsoever, including reasonable attorneys' fees incurred or sustained by ATG, by reason of or arising out of any construction/mechanics' lien or liens or claims to such lien or liens that ATG may sustain or incur in any other action at law or in equity under any theory of recovery as a result of the existence of a claim of right to a construction/mechanics' lien or liens affecting the property.

10. Indemnitor agrees that any monies advanced by ATG pursuant to the Agreement, or by ATG's exercise of any rights hereunder given, shall be repaid by Indemnitor to ATG, with interest thereon at nine percent per annum.
11. Indemnitor further agrees that any monies or other security deposited with ATG may, without any demand or notice to Indemnitor whatsoever, be used by ATG to discharge any liability for which ATG is indemnified hereunder, including, but not limited to, using any portion, up to the whole thereof, of any monies or security to obtain release of such construction/mechanics' lien or liens as may be recorded or to obtain a bond such as will remove the effect of such lien or liens against the Property.
12. Where, in ATG's absolute subjective opinion, all matters for which ATG is indemnified hereunder are resolved in such a manner that ATG can have no further construction/mechanics' lien liability under its policy or policies, ATG may, at ATG's sole option, return or order such monies or security as may have been deposited by Indemnitor hereunder to Indemnitor. No return of such security shall be construed as a termination of Indemnitor's duties hereunder or of this Agreement.
13. Indemnitor recognizes and acknowledges that any default or failure by Indemnitor to perform as agreed herein would give ATG the right to exercise any and all remedies available at law or in equity including, but not limited to, injunctive relief, specific performance, and damages for breach of the terms hereof.
14. General Conditions
  - a. The terms in this Agreement shall have the following meaning unless the context requires otherwise:
    - (1) The term "Property" shall refer to that certain property or an interest therein as set out above, and include any and all portions thereof.
    - (2) The term "policy" shall refer to and include a policy or policies of title insurance and/or endorsements thereto.
  - b. Where more than one person is included as Indemnitor, the obligation undertaken by Indemnitor shall be joint and several.
  - c. The singular number shall include the plural number throughout this Agreement.
  - d. This Agreement shall inure to the benefit of and bind the personal representatives, successors, and assigns of the parties hereto.
  - e. This Agreement shall be interpreted in accordance with the laws of the State in which the property is located, and Indemnitor hereby agrees to submit itself to the jurisdiction of ATG's choosing, and to make no objection to venue therein, should any action in law or equity be necessary to enforce or interpret this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, Indemnitor further agrees to reimburse ATG for any costs, reasonable attorney's fees, and/or necessary disbursements for such action, in addition to any other relief to which ATG may be entitled.
  - f. The failure of ATG to demand of Indemnitor the performance of any act hereunder shall not be construed as a waiver of ATG's right to demand, at any subsequent time, such performance.
  - g. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
  - h. This Agreement contains the entire Agreement of the parties, and shall not be modified except by an instrument in writing executed by all of the parties hereto.
15. NOTWITHSTANDING ANY POSSIBLE DIFFERENCE IN THE PARITY OF THE PARTIES HERETO, IT IS UNDERSTOOD BY INDEMNITOR THAT ATG IS UNDERTAKING A RISK SIGNIFICANTLY GREATER THAN THAT UNDERTAKEN IN THE NORMAL COURSE OF PROVIDING TITLE INSURANCE POLICIES AND RELATED SERVICES BY ENTERING INTO THIS AGREEMENT AND ISSUING POLICIES OF TITLE INSURANCE IN RELIANCE HEREON. THEREFORE, INDEMNITOR HEREBY DECLARES ITS WILLINGNESS TO ENTER INTO THIS AGREEMENT AND INDUCE ATG TO ENTER INTO THIS AGREEMENT, REALIZING THAT INDEMNITOR'S BEST INTEREST, IN THE OPINION OF INDEMNITOR, IS BEING BEST SERVED THEREBY.

**INDEMNITOR: CONTRACTOR(S)**

ENTITIES (including corporations, partnerships, and trustees)

INDIVIDUALS (including partners and trust beneficiaries)

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**INDEMNITOR: OWNER(S)**

ENTITIES (including corporations, partnerships, and trustees)

INDIVIDUALS (including partners and trust beneficiaries)

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**ACCEPTED**

ATTORNEYS' TITLE GUARANTY FUND, INC.

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Title