STG Indemnity Agreement

INDEMNITY AGREEMENT 1

This indemnification is made and given by:

referred to herein as "Indemnitor" (whether one or more) for the benefit of Stewart Title Guaranty Company and
(individually and collectively referred to hereafter as "Title Company"). Indemnitor agrees that as to those transactions, present and future, that are covered by this agreement, the obligations of the Indemnitor may hereunder continue at a time when Indemnitor no longer has any direct financial or ownership interest in the land herein referred to.

1. Indemnitor has or will have an interest (as owner, contractor, investor, or otherwise) in certain works of improvement which have been or will be commenced upon land (the "land") or described as follows:

Because of its interest in the land and improvements, Indemnitor desires the issuance by Title Company from time to time of policies of title insurance, endorsements, commitments, binders and guarantees ("title insurance") covering said land and insuring against loss which may be sustained by reason of mechanic's liens, claims of liens, or actions to enforce said liens, without showing (or insuring against) said claims, liens and actions as exceptions to title; or insuring holders of mortgages or deeds of trust against loss by reason of the priority of any such mechanic's liens over said mortgages or deed of trust. Indemnitor understands and agrees that Title Company may make disclosure of said claims, liens and actions to the proposed insured.

2. 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 or investor in the estate or interest insured, contractor for the work performed, or legally responsible for the payment of said liens. Indemnitor understands that no specific reference to this agreement in any title insurance shall be necessary or is contemplated and that it shall automatically apply to any title insurance which come within its terms.

3. To induce Title Company to issue title insurance in the manner hereinabove mentioned, Indemnitor promises and agrees to hold harmless, protect and indemnify Title Company from and against any and all liabilities, (whether or not Title Company has suffered actual loss), losses, damage, expenses and charges, including, but not limited to, attorney's fees and expenses of litigation, for which Title Company 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 and/or materials furnished to the land or any part thereof.

4. Indemnitor understands and agrees that Title Company's issuance of such title insurance in the manner desired by Indemnitor may make it necessary for Title Company to issue additional other title insurance covering the land, insuring against or 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 insurance initially issued on the land or portions thereof during the time when the Indemnitor has a direct financial or ownership interest therein, but shall also apply to title insurance subsequently issued on the land, or portions thereof; and it is specifically understood by the Indemnitor that Title Company will be relying upon this agreement as a continuing guarantee of the performance of Indemnitor's obligations with respect to the land in issuing any such further title insurance.
5. A. In the event that any mechanic’s lien, liens or claims thereof (“liens”) rising out of such work of improvement shall be filed against the land, or any action shall be commenced to foreclose such a lien, Indemnitor agrees, within twenty (20) days of such filing to:

(a) Cause a release of the lien to be filed in the appropriate official records office; or

(b) Cause to be recorded with respect to any such lien a bond or bonds conforming to applicable state statutes; or

(c) Deposit with Title Company an amount equal to one and one-half (1 1/2) times the amount claimed, including attorney’s fees, interest and costs.

B. Should Indemnitor fail to comply with subparagraphs (a), (b), or (c) as set forth above, Title Company is authorized by Indemnitor, but is not obligated, to advance and pay such amounts as Title 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 reasonable for the protection of any of its insureds. Indemnitor agrees upon demand to reimburse Title Company for all amounts so advanced, together with the maximum rate of interest allowable by law.

C. To the extent that Title Company shall expend any sum of money on account of this agreement, Title Company shall have the right of subrogation against the Indemnitor and Indemnitor’s rights in the land; and further as an additional remedy, Title Company shall have a lien on the interest, if any, of Indemnitor in the land for any sum of money paid by Title Company on account of this agreement. This lien shall be subordinate in priority only to those liens of record in the county or parish where the land is located at the time Title Company records its statement of lien. Title Company shall have the right to bid on the land 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 by Title Company on account of this agreement shall be maintainable without foreclosing or waiving the lien securing the same.

D. Indemnitor hereby subordinates any lien, claim, right or privilege that Indemnitor or those claiming by, through, or under Indemnitor, may have in the land now or in the future for labor, material or services furnished or to be furnished for the benefit of the land to any mortgage, Deed of Trust, or other encumbrance of any insured under any title insurance policy issued by Title Company.

E. Indemnitor acknowledges the title matters listed on Exhibit B are outstanding or are claimed to be outstanding. In connection with the title matters, Indemnitor hereby deposits with Title Company the sum of _______________. All funds deposited with Title Company shall be deposited in a separate and segregated interest-bearing account maintained by Title Company in _______________. Interest earned shall be added to the escrow fund and disbursed in accordance with the provisions of this paragraph. The aforesaid deposit and all interest earned thereon are referred to hereinafter as the “fund.” Title Company is hereby given a lien and security interest in the Fund to secure performance of this Agreement.

Should indemnitor fail or refuse to pay Title Company any sums due Title Company hereunder after having received notice of such failure or refusal, Title Company shall be entitled to reimburse itself from the fund in an amount equal to an such sums.

6. It is specifically understood and agreed by Indemnitor that once such title insurance obligations have been undertaken by Title Company, no cancellation by Indemnitor can be effective as long as Title Company has any continuing obligation under such title insurance affecting said land.
7. Indemnitor understands that, as a continuing guarantee, as well as a direct indemnification, Indemnitor authorizes Title Company without notice or 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 Title Company may in its discretion determine; and (d) release or substitute any one or more of the Indemnitors (if more than one hereunder). In addition, Indemnitor waives any right to require Title Company (a) to proceed against any person; (b) to proceed against or exhaust any security held by Title Company or (c) to pursue any other remedy whatsoever. Indemnitor specifically waives all presentments, demands for performance, notices or non-performance, and notice of acceptance of this guarantee and indemnity.

8. Indemnitor hereby agrees that Title 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 improvements.

9. 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 effect the validity of any other provisions or the balance hereof.

10. The failure of Title 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.

11. 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 appropriate courts in the county, parish, or state where the land is located. The laws of the State of the site of the land shall govern any suit. By signature hereto Indemnitor appoints the Clerk of said Court as the Indemnitor's agent to receive service of process and, further consents to jurisdiction of said Court over the Indemnitor.

B. In the event of any action to enforce the terms of this agreement, the parties hereto authorize and agree that the Court shall award reasonable attorneys' fees to the party prevailing therein and that attorney's fees and any other costs of collection shall be added to the amount of any lien claimed by Title Company.

12. Indemnitor understands and agrees that Title Company is not obligated to issue any title insurance at any time, although requested to do so by Indemnitor, and may exercise its own discretion as to the issuance of any title insurance now or in the future. However, once Title Company has issued title insurance, Indemnitor agrees that such title insurance 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 said title insurance.

13. 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 Title Company: Stewart Title Guaranty Company
P.O. Box 2029
Houston, Texas 77252
Attention: Mr. Malcolm Morris
with copy to

Stewart Title Guaranty Company
1980 Post Oak Boulevard
Houston, Texas 77056
Attention: Mr. Stewart Morris, Jr.

To Indemnitor: ____________________________

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

14. A. The parties acknowledge that Title Company may be asked to provide title insurance pursuant to this Agreement wherein legal title to the subject land 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 hereof that any person signing this Agreement individually and not in a representative capacity shall be unconditionally and personally bound by the terms hereof with full personal recourse against such individual.

B. Where any one or more of Indemnitors are corporations or partnerships or joint ventures it is not necessary for Title Company to inquire into the authority or powers of Indemnitors or the officers, directors, partners or agents acting or purporting to act on their behalf.

C. 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 land or in the land itself at the time a claim hereunder may be made by Title Company.

15. This Agreement, consisting of six (6) 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 thereof by Title Company and Indemnitor.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective this _____ day of _________, 20____.

Indemnitor: ____________________________

by: ____________________________

its: ____________________________

Indemnitor: ____________________________

by: ____________________________
Sworn to and subscribed before me the undersigned authority on this the ___ day of ________, 20__ by ____________.

Notary Public in and for the State of _____

ACKNOWLEDGMENT

STATE OF ______________________}

COUNTY OF ____________________}

This instrument was acknowledged before me on _______________________, 20___, by ____________________.

[NOTARY SEAL]

____________________________________
Notary Public, State of _________________

ACKNOWLEDGMENT

STATE OF ______________________}

COUNTY OF ____________________}

This instrument was acknowledged before me on _______________________, 20___, by ____________________.

[NOTARY SEAL]

____________________________________
Notary Public, State of _________________