



## BRITISH COLUMBIA BUILDER AGREEMENT

This agreement (the "**Builder Agreement**") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 between:

**The Guarantee Company of North America,**  
a federally regulated insurance company

-and-

**Whistler 2020 Development Corporation** (the "**Builder**")

4325 Blackcomb Way, Whistler, BC, V8E 0X5

Builder No.: 210043

-and administered by-

**WBI Home Warranty Ltd.,**

in its capacity as Administrator of Home Warranty Insurance provided to the Builder by the Warranty Provider

**WHEREAS** the Builder is licensed as a Residential Builder under the Act, or has applied to be licensed as a Residential Builder under the Act;

**AND WHEREAS** the Builder has applied to the Warranty Provider to provide Home Warranty Insurance in respect of a New Home or New Homes constructed or to be constructed by or on behalf of the Builder in the province of British Columbia;

**AND WHEREAS** the Warranty Provider has agreed, subject to the conditions outlined in this Builder Agreement, the Terms and Conditions Letter, the Indemnity Agreement and any other agreements between the Builder and the Warranty Provider, to provide evidence of acceptance for Home Warranty Insurance in respect of a New Home or New Homes constructed or to be constructed by or on behalf of the Builder in the province of British Columbia;

**AND WHEREAS** the Warranty Provider has appointed WBI Home Warranty Ltd. to act as Administrator of Home Warranty Insurance provided by the Warranty Provider to the Builder pursuant to this Builder Agreement;

**IN CONSIDERATION** of the premises, covenants and agreements set forth in this Builder Agreement, and the sum of two dollars of lawful money of Canada now paid by each of the parties hereto to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the parties hereby confirm the veracity of the foregoing recitals, and hereby further covenant and agree, to and with each other, as follows:

### 1. Definitions

In this Builder Agreement the following expressions shall have the following meanings:

- a) "**Act**" means the British Columbia Homeowner Protection Act and the regulations enacted thereunder, both as amended from time to time;
- b) "**Administrator**" means WBI Home Warranty Ltd., authorized by the Warranty Provider to act as its agent and as administrator with respect to this Builder Agreement and Home Warranty Insurance provided by the Warranty Provider in British Columbia;
- c) "**Administration Fee**" means any fee invoiced by the Administrator to the Builder in connection with the administration of this Builder Agreement, including Registration fees, Registration Renewal Fees, inspection fees, Claims handling fees, complaint handling fees, technical assessment fees, miscellaneous fees, and any other fees as required from time to time by the Administrator. Such fees are payable to the Administrator by the Builder for administrative services provided for the Builder, and such fees are not paid to the Administrator in its capacity as agent for the Warranty Provider;
- d) "**BC Housing**" means the British Columbia Housing Management Commission, continued under section 10 (1) (b) of the *Ministry of Lands, Parks and Housing Act*;

- e) **"Building Standards"** means all applicable building codes, bylaws and environmental laws with respect to the construction of new homes in British Columbia;
- f) **"Certificate of Possession Form"** means the two-part document, including the pre-delivery inspection form, issued by the Administrator evidencing the Warranty Commencement Date of the Home Warranty Coverage;
- g) **"Claim"** means written notice by an Owner (or on behalf of an Owner) to the Warranty Provider of the discovery of a Defect prior to the expiry of the applicable Home Warranty Insurance coverage;
- h) **"Defect"** means any design or construction that is contrary to the building code or that requires repair or replacement due to the negligence of the Builder or person for whom the Builder is responsible at law, and shall specifically include "Defects In Building Envelope" and "Structural Defects" as those terms are defined in the Act;
- i) **"Defects in Building Envelope"** has the same meaning as defined in the Act;
- j) **"Government"** means any municipal, provincial or federal governing authority or agent thereof having applicable jurisdiction with respect to the construction of new homes;
- k) **"Home Warranty Insurance"** has the same meaning as defined in the Act, unless a Warranty Policy issued pursuant to this Builder Agreement provides Home Warranty Insurance coverage in excess of the requirements of the Act, in which case such excess coverage is included in this definition;
- l) **"Indemnity Agreement"** means the indemnity agreement entered into by the Builder and the other parties identified in the Terms and Conditions Letter for the benefit of the Warranty Provider;
- m) **"New Home Registration Form"** has the meaning set out in Section 3.2;
- n) **"New Home"** has the same meaning as defined in the Act;
- o) **"Owner"** has the same meaning as defined in the Act;
- p) **"Premium"** means the Home Warranty Insurance premium required to be paid to the Warranty Provider by the Builder for each New Home constructed or to be constructed by the Builder that has been Registered by the Warranty Provider in British Columbia;
- q) **"Register", "Registered" and "Registration"** means the issuance by the Warranty Provider of evidence of acceptance of Home Warranty Insurance in respect of a New Home or New Homes constructed, being constructed or to be constructed by the Builder in British Columbia;
- r) **"Renewal Date"** means each annual anniversary of the Builder Agreement, unless amended to an alternate date by WBI Home Warranty Ltd.;
- s) **"Renewal Fee"** means the annual fee payable to and for the sole benefit of the Administrator by the Builder on or before the Renewal Date;
- t) **"Structural Defect"** has the same meaning as defined in the Act;
- u) **"Residential Builder"** has the same meaning as defined in the Act;
- v) **"Terms and Conditions Letter"** means the letter issued by the Warranty Provider and agreed to by the Builder outlining terms and conditions on which the Warranty Provider will make available Home Warranty Insurance for Owners of New Homes constructed by the Builder in British Columbia;
- w) **"Warranty Commencement Date"** means the effective date of coverage of any Home Warranty Insurance or any Warranty Policy;
- x) **"Warranty Policy"** means a limited policy of Home Warranty Insurance issued to an Owner by the Warranty Provider pursuant to this Builder Agreement;
- y) **"Warranty Provider"** means The Guarantee Company of North America.

## 2. Representations

The Builder represents and warrants to the Warranty Provider as follows:

- a) all the information set forth in all documents, applications and agreements furnished by the Builder to BC Housing and to the Warranty Provider is true, correct and complete in all material respects;
- b) the Builder has full capacity, power and authority to enter into this Builder Agreement;
- c) the Builder holds all necessary licenses and permits required to carry on the business of constructing and/or selling homes in the Province of British Columbia;
- d) if a corporation, the Builder is in good standing under the laws of the Province of British Columbia;
- e) the person executing and delivering this Builder Agreement on behalf of the Builder has been duly authorized to do so.

## 3. Builder and Warranty Provider Obligations

### 3.1 Construction and Sale of New Homes

The Builder acknowledges that a condition of receiving and renewing a license as a Residential Builder under the Act requires the Builder to register each New Home for Home Warranty Insurance provided by an authorized warranty provider prior to constructing each New Home, or taking over the construction of each New Home, and to neither sell nor offer to sell a New

Home unless the New Home is covered by Home Warranty Insurance provided by an authorized warranty provider. The Builder agrees to act in accordance with this condition.

### 3.2 Registration of New Homes

- a) Prior to commencing construction of a New Home, or prior to taking over construction of a New Home, or prior to selling or offering to sell a New Home, the Builder shall apply to the Warranty Provider for Registration of such New Home by submitting to the Warranty Provider a completed New Home Registration Form, or other such form as may be prescribed by the Warranty Provider from time to time, and providing such other information as the Warranty Provider may require;
- b) For each New Home to be Registered pursuant to this Builder Agreement, the Builder shall promptly submit or have already submitted to the Warranty Provider:
  - i. the New Home Registration Form;
  - ii. the executed Terms and Conditions Letter;
  - iii. the executed Builder Agreement;
  - iv. the executed Indemnity Agreement;
  - v. an executed copy of any other agreement required by the Warranty Provider;
  - vi. the Warranty Provider's Premium for the Registration of each New Home;
  - vii. the Administration Fee(s) invoiced by the Administrator;
  - viii. the plans and specifications for the New Home(s), copies of all contracts with respect to the construction of the New Home(s), and any architect, engineering, consultant or product manufacturer reports, warranties, maintenance or repair documentation, as may be required by the Warranty Provider in connection with the New Home(s);
  - ix. any collateral required by the Warranty Provider as security for the Builder's obligations under this Builder Agreement, the Indemnity Agreement, the Terms & Conditions Letter or any other agreement in connection with the Registration of New Home(s) or the provision of Home Warranty Insurance by the Warranty Provider for the New Home(s) constructed by the Builder;
  - x. any additional information, documents, financial information, marketing or promotional information or material relating to the Builder or the Builder's New Home(s) that is required by the Warranty Provider;
- c) Following Registration of each New Home, the Builder shall notify the Warranty Provider of any change in information or conditions related to such New Home, including change in ownership, change in address, change in legal description, construction of the New Home, completion of the New Home, or any other matter which could affect the eligibility for Registration of a New Home pursuant to this Builder Agreement;
- d) If the Builder fails to Register any eligible New Home as required, the Warranty Provider, in addition to any other rights it may have under this Builder Agreement, may take (but is not required to take) any action it deems necessary to ensure such Registration and the Builder shall indemnify the Warranty Provider with respect to all costs and charges associated therewith and be liable to the Warranty Provider for any Claim, loss, cost or expense incurred in connection with such Registration and subsequent issuance of a Warranty Policy;
- e) If a disagreement arises regarding the application by the Builder for Home Warranty Insurance for any New Home, the determination made by the Warranty Provider shall be final and binding;
- f) If the Builder does not commence construction of a New Home within 24 months of its Registration date, the Warranty Provider may, at its sole discretion, terminate the Registration of any and all New Homes;
- g) If the Registration of a New Home is terminated by the Warranty Provider for any reason, the Warranty Provider may refund the Premium, or part thereof, for such New Home, and the Administrator shall be entitled to retain any Administration Fee or other fee charged to the Builder in respect of such New Home.

### 3.3 Inspections

- a) The Warranty Provider shall be entitled to make inspections of any New Home during and following its construction, as deemed necessary by the Warranty Provider, to confirm that the New Home is being built, at a minimum, according to the Building Standards and is free of Defects. The Builder grants to the Administrator and the Warranty Provider, and their representatives, uninterrupted access to each New Home at all reasonable times during construction;
- b) The Builder shall upon request promptly provide the Warranty Provider with any information it may require pertaining to the construction of each New Home, including but not limited to copies of all inspection reports, architect and engineering reports, product manufacturer instructions, notices and reports, and professional certifications of architects, engineers or other consultants. The Warranty Provider, acting reasonably, reserves the right to examine, audit, and reject any product, manufacturer, architect, engineer, consultant or their reports. Any fees and charges charged by the Administrator in conducting such examination or audit shall be promptly paid by the Builder;
- c) The Warranty Provider shall use its best efforts to advise the Builder of any Defects observed during an inspection. The Builder shall promptly remedy such Defects prior to the Warranty Commencement Date of the New Home. Failure by

the Warranty Provider to observe a Defect or notify the Builder of a Defect does not relieve the Builder of the obligation to remedy such Defect or indemnify the Warranty Provider for losses and expenses incurred in connection with such Defect under the Warranty Policy;

- d) If the Builder does not, in the Warranty Provider's reasonable opinion, construct a New Home in accordance with the Building Standards, the Warranty Provider may terminate the Registration of the New Home and refuse to issue a Warranty Policy in respect of the New Home, provided that such termination of the Registration precedes the Warranty Commencement Date of the New Home;
- e) The Builder acknowledges that the Administration Fees charged by the Administrator may include a limited number of inspections per New Home. In the event the Administrator deems it necessary or advisable to conduct additional inspections of a New Home, the Administrator may charge the Builder additional inspection fees as established by the Administrator from time to time.

### **3.4 Notification of Warranty Commencement**

- a) On or prior to the Warranty Commencement Date of any Home Warranty Insurance, the Builder shall, together with the Owner of the New Home, perform an inspection of the New Home and shall list any items of work that remain to be completed as at that date or any Defects that have not been remedied;
- b) On or prior to the Warranty Commencement Date, the Builder shall provide the Certificate of Possession Form to the Owner of each New Home. Together with the Owner of each New Home, the Builder shall complete and execute the Certificate of Possession Form setting forth the name of the Owner and the Builder, the Warranty Commencement Date of the Warranty Policy, and, if applicable, any Defects in materials and labour accepted or identified by the Owner. The Builder shall provide a copy of the completed and executed Certificate of Possession Form to the Owner and submit a copy to the Warranty Provider;
- c) The Builder shall, if requested by the Warranty Provider, provide the Warranty Provider with a copy of the as-built drawings, letters of assurance or other certifications provided to any municipal, provincial or federal governing authority or any other information required with respect to each New Home;
- d) If the Builder fails to complete, execute and deliver to the Owner of the New Home and to the Warranty Provider the Certificate of Possession Form, the Builder hereby authorizes the Warranty Provider to prepare and deliver the Warranty Policy to the Owner of the New Home and the Builder hereby appoints the Warranty Provider as its agent to do so. The Warranty Provider is hereby authorized to contact the necessary regulatory bodies, the Owner and any other person to obtain the information required to determine the Warranty Commencement Date. The Builder hereby indemnifies the Warranty Provider for all losses, damages, costs and charges the Warranty Provider may incur in acting in accordance with this section, and the Builder agrees that this Builder Agreement, the Indemnity Agreement, the Terms and Conditions Letter, and all other agreements with the Warranty Provider apply to New Homes in which the Warranty Provider has acted in accordance with this section.

### **3.5 Warranty**

Upon receipt from the Builder of a duly completed and executed Certificate of Possession Form, and so long as the Builder is not in default under this Builder Agreement, the Indemnity Agreement, the Terms and Conditions Letter, or any other agreement with the Warranty Provider, the Warranty Provider shall deliver to the Owner of the New Home (or strata corporation or co-operative in the case of the common property or elements of a strata or co-operative project) an appropriate Warranty Policy. The Warranty Policy shall be effective as of the Warranty Commencement Date.

### **3.6 Builder Obligation to Repair or Replace Defects**

- a) The Builder covenants, at its own expense and without cost to an Owner, to forthwith remedy any Defect in any New Home with respect to which Claim has been made by an Owner, or on behalf of an Owner, against the Warranty Provider pursuant to the Warranty Policy issued by it, or pursuant to the Act, where such Claim arises out of the negligence of the Builder or a party for whom the Builder is responsible at law;
- b) In addition to Section 3.6 a), the Builder hereby covenants with the Warranty Provider to promptly repair or replace, at the Builder's expense and without cost to an Owner, the following:
  - i. any Defect in materials or labour, and any violation of the Building Code, for which Claim was made by or on behalf of an Owner within the 12 months following the Warranty Commencement Date of a New Home and within the 15 months following the Warranty Commencement Date for common property;
  - ii. any Defect in materials and labour supplied for the electrical, plumbing, heating, ventilation, and air conditioning delivery and distribution systems for which Claim was made by or on behalf of an Owner within the 24 months following the Warranty Commencement Date;

- iii. any Defect in materials and labour supplied for the exterior cladding, caulking, windows and doors that may lead to detachment or material damage to the New Home for which Claim was made by or on behalf of an Owner within the 24 months following the Warranty Commencement Date;
- iv. any violation of the Building Code for which Claim was made by or on behalf of an Owner within the 24 months following the Warranty Commencement Date;
- v. any Defects in Building Envelope for which Claim was made by or on behalf of an Owner within the 5 years following the Warranty Commencement Date;
- vi. any Structural Defect for which Claim was made by or on behalf of an Owner within the 5 years following the Warranty Commencement Date;
- vii. any Structural Defect for which Claim was made by or on behalf of an Owner between 5 years following the Warranty Commencement Date and the expiration of the Structural Defect coverage under the Warranty Policy, if:
  - i) such claim for Structural Defect is related to, or is a result of, a prior claim for Structural Defect, regardless of whether the Builder responded to such prior claim and whether such prior claim was accepted by the Warranty Provider for coverage under the Warranty Policy; or
  - ii) the investigation of such Structural Defect claim reveals gross negligence by the Builder or by a party for whom the Builder is responsible at law;
- c) In the event the Warranty Provider receives a Claim from or on behalf of the Owner of a New Home constructed by the Builder for which the Warranty Provider has issued a Warranty Policy, the Warranty Provider will review the Claim and provide notice of the Claim to the Builder;
- d) The Builder must commence the repair or replacement of the Defect within such reasonable time as is determined by the Warranty Provider. If the Builder does not remedy the Defect in accordance with the requirements of the Warranty Policy and the Act within the time period specified by the Warranty Provider, the Builder shall be in default of this Builder Agreement and the Warranty Provider shall be entitled, at its discretion, to engage another contractor to remedy the Defect by carrying out such repairs or replacement;
- e) If the Builder receives a notice of Claim from or on behalf of an Owner of a New Home and believes there is no Defect, the Builder is to notify in writing the Owner and the Warranty Provider within 30 days of the receipt of the notice of Claim of its reasons for disputing the alleged Defect. If there is a disagreement between the Builder and the Owner in respect of an alleged Defect, the Warranty Provider shall make a final determination as to whether the Claim is valid and is insured under the terms of the Warranty Policy. If the Claim is determined by the Warranty Provider to be valid and insured under the terms of the Warranty Policy and the Builder does not perform the required repairs or replacement to remedy the Defect, the Warranty Provider may intervene and make any and all repairs or replacements as determined necessary by the Warranty Provider to remedy the Defect and charge to the Builder any losses, interest, costs and expenses incurred in connection with remedying such Defect, together with any Administration Fee charged by the Administrator in connection with such Defect. At the Warranty Provider's discretion, the Builder's status may be suspended by the Warranty Provider, and the Builder may not be allowed to Register any New Homes until the Warranty Provider has been indemnified for all costs, losses, expenses and interest incurred, including Claims expenses and Claims handling fees incurred by the Administrator and the Warranty Provider.

### 3.7 Indemnity

- a) The Builder agrees to indemnify and hold the Warranty Provider harmless (among other things) in accordance with the terms and conditions of the Indemnity Agreement;
- b) The Indemnity Agreement shall limit the Builder's obligations under the Indemnity Agreement for Structural Defects to those Structural Defect Claims made by or on behalf of an Owner against a Warranty Policy within five (5) years of the Warranty Commencement Date, unless:
  - i. such Claim for Structural Defect is related to, or is a result of, a prior Claim for Structural Defect, regardless of whether the Builder responded to such prior Claim and whether such prior Claim was accepted by the Warranty Provider for coverage under the Warranty Policy; or
  - ii. the investigation of such Structural Defect Claim reveals gross negligence by the Builder or by a party for whom the Builder is responsible at law;
 in which case said limitation of the Builder's obligations under the Indemnity Agreement shall not apply.
- c) The Builder acknowledges that the Warranty Provider may require additional parties to execute the Indemnity Agreement.

### **3.8 Security**

- a) The Warranty Provider may from time to time require that the Builder provide the Warranty Provider with a letter of credit, cash deposit and/or other form of collateral as security for the performance of the Builder's obligations to the Warranty Provider and the Administrator under this Builder Agreement, the Terms and Conditions Letter, the Indemnity Agreement, and any other agreement between the Builder and the Warranty Provider;
- b) Upon the satisfaction by the Builder of all of the Builder's obligations to the Warranty Provider and the Administrator under this Builder Agreement, the Terms and Conditions Letter, the Indemnity Agreement and any other agreement between the Builder and the Warranty Provider, the Warranty Provider may release any security provided to the Warranty Provider by or on behalf of the Builder. Any interest proceeds earned by the security held by the Warranty Provider shall be for the sole benefit of the Warranty Provider;
- c) Each letter of credit which the Builder is required to provide to the Warranty Provider shall be issued by a financial institution duly authorized to issue letters of credit in Canada acceptable to the Warranty Provider, in its sole discretion. The form and substance of the letter of credit shall be acceptable to the Warranty Provider, in its sole discretion. Other forms of security provided by the Builder to the Warranty Provider shall be acceptable to the Warranty Provider in type, form and substance, in its sole discretion;
- d) The Warranty Provider will from time to time update its underwriting of the Builder and, if the Warranty Provider determines there is any adverse change in or material increase to the Warranty Provider's risk, the Warranty Provider shall have the right to require additional security as collateral for the Builder's obligations to the Warranty Provider and the Administrator under this Builder Agreement, the Terms and Conditions Letter, the Indemnity Agreement, and any other agreement between the Builder and the Warranty Provider.

### **3.9 Premiums**

The Builder shall promptly make payment of the Warranty Provider's Premium for each New Home Registered by the Warranty Provider. The Premium for each New Home shall be deemed fully earned by the Warranty Provider upon the issuance of the Warranty Policy and is non-refundable. Prior to the issuance of the Warranty Policy, the Warranty Provider may (at its discretion) return some or all of the Premium to the Builder in the event the Registration of the New Home is terminated.

### **3.10 Administration Fees**

The Builder shall promptly make payment to the Administrator of any Administration Fee invoiced to the Builder by the Administrator. Administration Fees are compensation paid by the Builder to the Administrator for administering this Builder Agreement, and are not a payment to the Warranty Provider, or a payment to the Administrator in its capacity as agent for the Warranty Provider, or a payment for Home Warranty Insurance. Each Administration Fee is deemed fully earned as of the date of the Administrator's invoice and is non-refundable.

### **3.11 Assignment of Rights against Others**

The Builder shall preserve all rights, claims and causes of action that it may have against consultants, design professionals, manufacturers, suppliers, contractors, subcontractors and others in respect of any Defects in any New Home, and, to the extent permitted by law, the Builder hereby assigns, transfers and sets over the same to the Warranty Provider to enable the Warranty Provider to enforce and prosecute such rights, claims and causes of action as fully and effectually as the same could be prosecuted and enforced by the Builder. The Builder shall, at the request and expense of the Warranty Provider, execute and deliver such assignments and other instruments and take additional actions including the institution of legal proceedings in its name as the Warranty Provider may reasonably require in order to give effect to the foregoing. The Builder shall not release any contractor, sub-contractor, supplier, consultant, design professional, manufacturer or other party from any cause of action that the Builder may have against all or any of them in respect to any matter for which the Warranty Provider may have a liability under a Warranty Policy or in any way prejudice the subrogation rights of the Warranty Provider against same.

## **4. Builder Covenants**

The Builder covenants and agrees that:

- a) During the term of this Builder Agreement, the Builder shall maintain its Residential Builder license as required under the Act and hereby authorizes the Warranty Provider to obtain from BC Housing all available information as required with respect to the Builder;
- b) Prior to the Renewal Date the Builder shall provide to the Warranty Provider, if so requested, updated information and documents pertaining to the Builder's current financial position;
- c) The Builder shall, as may be requested by the Warranty Provider from time to time, furnish the Warranty Provider with copies of purchase agreements, construction contracts, marketing or promotional materials and other documents used by the Builder with respect to any New Home;

- d) The Builder shall carry on and conduct its business in a proper, efficient and businesslike manner and, in accordance with good business practice, shall keep or cause to be kept proper books and records in respect of the construction and sale of New Homes and, for any purpose arising out of this Builder Agreement, shall allow the duly authorized representatives of the Warranty Provider free access to, and provide copies of, such books and records during normal business hours;
- e) The Builder shall not misrepresent to the public or any municipal, provincial or federal governing authority the status of the Warranty Provider's willingness to Register New Homes and to issue Warranty Policies for New Homes constructed by the Builder;
- f) The Builder shall promptly pay all Premiums, fees, costs and charges levied or incurred by the Warranty Provider, and the Builder shall promptly pay all Administration Fees invoiced by the Administrator, including any Claim handling fees and technical assessment fees charged by the Administrator;
- g) The Builder shall at all times:
  - i. construct each New Home, including each Dwelling Unit and any associated common property, in accordance with the Building Standards and the standards of an experienced and prudent professional Residential Builder operating in similar circumstances; and
  - ii. conduct such site and environmental investigations and retain such architects, engineers and consultants as may be necessary to determine the adequacy and appropriateness of the soil, environmental conditions, building envelope and all other matters affecting the design and construction of each New Home;
- h) The Builder shall promptly notify the Warranty Provider, in writing, of any material Defects in Building Envelope or Structural Defect, or any repairs or alterations to any New Home, that occur prior to the Warranty Commencement Date of the New Home;
- i) The Builder agrees that all repairs or replacement of Defects as required under a Warranty Policy shall be warranted against Defect for the period of time required by the Act, but not less than one (1) full year from the date of completion of the repairs or replacement or the expiry date of the applicable Home Warranty Insurance coverage, whichever is later;
- j) The Builder shall provide the Owner, in writing, with all necessary warranties, instructions, documents, information, requirements and procedures, including those which are available from any manufacturer, pertaining to the proper care, repair, and maintenance of the New Home, its components, and its operating systems, and copies of such information shall be provided to the Warranty Provider upon request;
- k) Should the Builder terminate its contract with, or make a change of, the general contractor, a major subcontractor, the architect, a consultant or an engineer during the construction of a New Home, the Builder shall promptly advise the Warranty Provider in writing of such termination or change;
- l) The Builder shall maintain and provide to the Warranty Provider (if requested) copies of all insurance policies or surety bonds for itself and its designers, general contractor and sub-contractors, and other consultants in a form, for a duration and in an amount determined by the Warranty Provider;
- m) The Builder shall continue to disclose to the Warranty Provider on an ongoing basis all information and circumstances which may impair the Builder's ability to sell and construct New Homes or carry out after sales service or remedy Defects while the Warranty Policy is in force;
- n) Upon request, the Builder will participate with the Warranty Provider in any mediation between the Warranty Provider and an Owner pursuant to the terms of a Warranty Policy.

## **5. Default and Termination**

### **5.1 Default by the Builder**

The Builder shall be in default of this Builder Agreement if:

- a) The Builder does not remedy the Defect in accordance with the Act and the Warranty Policy within the reasonable time period specified in writing by the Warranty Provider;
- b) The Builder breaches or fails to observe or carry out any obligation, agreement, covenant or condition of this Builder Agreement, the Terms and Conditions Letter, the Indemnity Agreement, and any other agreement between the Builder and the Warranty Provider and does not remedy that breach within the time required under such agreement, or if no such time has been specified, within a reasonable time as determined solely by the Warranty Provider;
- c) The Builder fails to submit to the Warranty Provider any Certificate of Possession Form as required;
- d) The Builder fails to pay the Warranty Provider any Premium, or fails to pay the Administrator any Administration Fee, as required;
- e) The Builder fails to participate in and cooperate with the Warranty Provider in any mediation pursuant to the terms of a Warranty Policy;
- f) The Builder ceases to carry on business or abandons the construction of any New Home without sufficient cause, in the opinion of the Warranty Provider;
- g) A material adverse change occurs in the financial position of the Builder or any party to the Indemnity Agreement;
- h) The Builder fails to comply with any Building Standard;

- i) The Builder is insolvent, wound up, liquidated or dissolved or a petition in bankruptcy is filed against the Builder; or if the Builder makes, or intends to make, a proposal for the general benefit of creditors or commits any act of bankruptcy; or if a receiver and/or manager is appointed by any party with respect to the Builder or over the Builder's assets; or if any creditor or security holder of the Builder takes possession of any property of the Builder or levies an execution or distress or other process against the Builder which in the opinion of the Warranty Provider forms a substantial part of the Builder's assets or adversely affects the construction of New Homes by the Builder;
- j) The Builder fails to pay the Warranty Provider any and all amounts due under the Terms and Conditions Letter, this Builder Agreement, the Indemnity Agreement or any other agreement;
- k) The Builder fails to provide the Warranty Provider any collateral security required under this Builder Agreement, the Terms and Conditions Letter, the Indemnity Agreement, or any other agreement;
- l) The Builder fails to provide any documentation or records as required by this Builder Agreement; or
- m) The Builder fails, within fourteen (14) days of a change in control of the Builder, to obtain the consent of the Warranty Provider to such change in control.

## **5.2 Assignment of Claims; Subrogation**

The Builder hereby assigns to the Warranty Provider, effective upon the day preceding the bankruptcy, liquidation, winding up or insolvency of the Builder, or upon the default of the Builder under this Builder Agreement or the Indemnity Agreement, whichever occurs first, any and all causes of action the Builder has against its subcontractors and suppliers with respect to a Defect in workmanship and materials, a failure to comply with the Building Standards, any Defects in Building Envelope or Structural Defects occurring in a New Home, and the Warranty Provider shall be entitled to exercise all rights of recovery of the Builder against such subcontractors or suppliers, and may bring an action in the name of the Builder in order to enforce such right of recovery.

## **5.3 Remedies upon Default by Builder**

- a) Upon the occurrence of a default by the Builder under this Builder Agreement that the Builder fails to remedy to the satisfaction of the Warranty Provider (in its sole discretion), the Warranty Provider may exercise any one or more of the following remedies:
  - i. terminate the Warranty Provider's Registration of any and all of the Builder's New Home(s), provided that the Warranty Policy has not been issued for such New Home(s);
  - ii. refuse to Register any additional New Home for the Builder;
  - iii. terminate this Builder Agreement and, at the Warranty Provider's option, terminate the Registration of any of the Builder's New Home(s), provided that the Warranty Policy has not been issued for such New Home(s); or
  - iv. take legal proceedings against the Builder, including the enforcement of any right under the Terms and Conditions Letter, this Builder Agreement, the Indemnity Agreement, any other agreement, and the enforcement of security provided to the Warranty Provider by the Builder;
- b) The rights and remedies of the Warranty Provider set out herein are cumulative and may be exercised together, or independently of, other rights and remedies available to the Warranty Provider at law or in equity.

## **5.4 Effects of Warranty Provider Exercising Any of its Remedies**

If the Warranty Provider exercises any of its remedies upon the occurrence of a default by the Builder under this Builder Agreement:

- a) All documentation, identification, or other materials furnished to the Builder by the Warranty Provider or the Administrator shall forthwith be returned to the Warranty Provider;
- b) The Builder shall not in any way represent itself as a Builder that is entitled to Register New Homes with the Warranty Provider, and shall not advertise or display any material indicating or implying an ongoing business relationship with the Warranty Provider, and shall immediately return all materials bearing the Warranty Provider's logos to the Warranty Provider, and shall promptly notify in writing every purchaser of a New Home for which a Certificate of Possession Form has not been completed that the Builder has breached its agreement with the Warranty Provider for Home Warranty Insurance and that the Warranty Provider has the right to terminate the Registration of each such New Home;
- c) The Builder acknowledges that the Warranty Provider is required to forthwith notify BC Housing of the Builder's default under this Builder Agreement, and the Builder hereby consents to such notification by the Warranty Provider and consents to the Warranty Provider providing notification of such default to any other party whom the Warranty Provider considers may be affected by the Builder's default;
- d) The Warranty Provider shall continue to perform all of its obligations under all Warranty Policies issued by the Warranty Provider for New Homes constructed by the Builder.



## **6. Conditions**

### **6.1 Term of Agreement**

This Builder Agreement shall, subject to its terms, remain in full force and effect continuously from its acceptance date, until the non-Renewal Date or termination, whichever is earlier.

### **6.2 Effect of Non-Renewal or Termination by Warranty Provider**

If the Warranty Provider for any reason elects not to renew this Builder Agreement upon the Renewal Date or terminates this Builder Agreement, the Builder agrees that such non-renewal or termination shall not affect the liability of the Builder to the Warranty Provider under this Builder Agreement, or under the Terms and Conditions Letter, the Indemnity Agreement, or any other agreement, in respect of any Warranty Policy which has been issued by or on behalf of the Warranty Provider prior to such non-renewal or termination or which the Warranty Provider may be obligated to issue after such non-renewal or termination. All obligations of the Builder pursuant to this Builder Agreement, including those pertaining to a New Home with respect to which the Warranty Provider has issued a Warranty Policy or will issue a Warranty Policy, shall survive expiry or termination of this Builder Agreement.

### **6.3 Assignment and Change in Control**

This Builder Agreement, the Terms and Conditions Letter, the Indemnity Agreement, any other agreement between the Builder and the Warranty Provider, all Warranty Policies and any benefits, obligations or privileges of the Builder, may not be assigned, transferred or otherwise given or extended to anyone by the Builder without the written consent of the Warranty Provider.

### **6.4 Notice**

Any notice required or permitted to be given hereunder shall be in writing and will be sufficiently given if served personally or if sent by registered mail addressed to the Builder at its address as either shown on the face of this Builder Agreement or at such other address as the Builder has provided to the Warranty Provider. Any notice so mailed shall conclusively be deemed to have been given on the seventh day after the day of mailing. Any party may change its address or facsimile number by giving written notice of the change to the other parties. Failure of the Builder to give such notice will not void any of its obligations under this Builder Agreement.

### **6.5 Extended Meanings**

Words importing the singular number include the plural and vice versa.

### **6.6 Headings**

The headings used in the body of this Builder Agreement shall form part of this Builder Agreement and are intended to assist in explaining its meaning and object. The headings are not merely for convenience of reference.

### **6.7 Governing Law**

This Builder Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

### **6.8 Time of the Essence**

Time shall be of the essence in this Builder Agreement.

### **6.9 Enurement**

This Builder Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto. If the Builder is a corporation no amalgamated company resulting from the amalgamation of the Builder with any other corporation shall have the benefit of this Builder Agreement without the written consent of the Warranty Provider.

### **6.10 Unenforceable Provisions**

If any provision of this Builder Agreement shall be invalid or unenforceable, the remainder of the provisions of this Builder Agreement shall not be affected thereby and each and every provision of this Builder Agreement shall be enforced to the fullest extent permitted by law.

### **6.11 Entire Agreement**

This Builder Agreement is the entire agreement between the parties and there are no representations, warranties, agreements or contracts except as set forth herein.

**6.12 Authority of WBI Home Warranty Ltd. as Agent of Warranty Provider**

The Administrator is hereby authorized by the Warranty Provider to implement and give effect to all obligations and rights of the Warranty Provider created by this Builder Agreement, and it is hereby expressly agreed by the Warranty Provider and the Builder that the Administrator has the authority to act as agent of the Warranty Provider in implementing and giving effect to the terms and conditions of this Builder Agreement, including signing this Builder Agreement, the administration of Claims and all other matters pursuant to Home Warranty Insurance on behalf of the Warranty Provider.

**6.13 Counterparts, Electronic Execution and Transmission**

Each of the parties hereto acknowledges and agrees that this Builder Agreement may be executed by any or all of the undersigned parties hereto via telefax transmission, or by e-mail and/or in counterparts, and that the execution of a telefaxed or scanned and e-mailed version of this agreement by any or all of the undersigned parties hereto shall have the same force and effect as if same were originally executed. Each counterpart shall be deemed to be an original, but all such separate counterparts shall together constitute one and the same instrument. Moreover, a photocopy, a telefaxed copy or a scanned/e-mailed copy of this executed agreement, either in counterparts, or in one document reflecting the signatures of (and execution by) all of the undersigned parties hereto, may be relied upon to the same extent as if it were an original executed version.

IN WITNESS WHEREOF the parties hereto have executed this Builder Agreement.

**THE GUARANTEE COMPANY OF NORTH AMERICA**

Per:

\_\_\_\_\_  
Gordon Houston, Attorney-In-Fact

**WBI HOME WARRANTY LTD., in its capacity as Administrator**

Per:

\_\_\_\_\_  
Gordon Houston, Executive Vice President

(authorized signatory for WBI Home Warranty Ltd.)

**Whistler 2020 Development Corporation**

Per:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Print Name