



## INDEMNITY AGREEMENT

This indemnity agreement (hereinafter referred to as the “**Agreement**”) is entered into and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

BY AND FROM:

**Whistler 2020 Development Corporation (Builder Number: 210043)**

(hereinafter collectively referred to as the “**Builder**”)

AND BY AND FROM:

**Whistler 2020 Development Corporation**

**Resort Municipality of Whistler**

(each hereinafter individually referred to as an “**Indemnitor**” or as the “**Indemnitor**”, and collectively referred to as the “**Indemnitors**”)

TO AND IN FAVOUR OF

**THE GUARANTEE COMPANY OF NORTH AMERICA**

(hereinafter referred to as the “**Warranty Provider**”)

**WHEREAS:**

- A. The Builder, in its own name, or as a partner, co-tenant or joint venturer with others, is the builder of new homes in the province of British Columbia;
- B. The Builder is required to obtain home warranty insurance policies (hereinafter referred to as “**Warranty Policies**”) for such homes under the British Columbia Homeowners Protection Act or the regulations thereunder, as amended from time to time (hereinafter referred to as the “**Act**”);
- C. The Builder has requested the Warranty Provider provide for one or more Warranty Policies for such homes; and
- D. The Warranty Provider has agreed to issue Warranty Policies upon certain terms and conditions, one of which is the execution and delivery of this Agreement by the Builder and each of the Indemnitors (the Builder and each of the Indemnitors are hereinafter collectively referred to as the “**Undersigned**”) as part of the consideration for (i) the issuance by the Warranty Provider of any Warranty Policies hereafter, or (ii) Warranty Policies which may have been issued by the Warranty Provider in reliance upon a representation by the Undersigned that this Agreement would be executed, or (iii) for the Warranty Provider amending, modifying, continuing, renewing, extending or refraining from canceling any of the Warranty Policies.

NOW THEREFORE THESE PRESENTS WITNESS that for good and valuable consideration and the sum of two dollars (\$2.00) lawful money of Canada paid by the Warranty Provider to each of the Undersigned, the receipt and sufficiency of which is hereby acknowledged by each party hereto, each of the Undersigned hereby confirms the veracity and accuracy of the foregoing recitals and:

- 1. Agrees to pay to the Warranty Provider the premium (and any renewal thereof, if applicable) for the Warranty Policies issued or intended to be issued by the Warranty Provider, in advance of such issuance, as well as any and all administrative fees for the provision of services in connection with the Warranty Policies;
- 2. Unconditionally and irrevocably agrees to indemnify, defend, protect and hold harmless the Warranty Provider from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses of whatever kind or nature, including fees and disbursements of adjusters, agents, consultants and solicitors, which the Warranty Provider shall or may at any time suffer or incur in connection with (or arising

out of) the Warranty Policies issued by the Warranty Provider from time to time, and/or any or all of the following:

- a. the failure of the Undersigned to fully perform or comply with the terms and provisions of this Agreement, and any other agreement(s) heretofore or hereafter entered into between the Builder and the Warranty Provider in connection with Warranty Policies, as well as the terms and conditions of the Warranty Policies, including any extensions thereof and/or any alterations or modifications with respect thereto;
  - b. the enforcement by the Warranty Provider of any covenant(s) or obligation(s) of any or all of the Undersigned arising under this Agreement, and/or any covenant(s) or obligation(s) of the Builder arising under any other agreement(s) heretofore or hereafter entered into between the Builder and the Warranty Provider in connection with Warranty Policies;
  - c. the bankruptcy or insolvency of any of the Undersigned, or any assignment made for the benefit of any of the Undersigned's creditors, or the taking of any benefit of (or the initiation of any proceedings under) any statute relating to bankrupt or insolvent debtors by (or in respect of) any of the Undersigned [including without limitation the Bankruptcy and Insolvency Act (Canada) and the Companies' Creditors Arrangement Act (Canada)], or any appointment of a receiver (or a receiver/manager) under any debt or security instrument against (or with respect to) any of the Undersigned, or any receiving order made against (or with respect to) any of the Undersigned; and/or
  - d. the failure of the Builder to perform and fulfil its obligations arising under the Act;
3. Acknowledges and agrees that the Warranty Provider shall have the sole right and unfettered discretion to pay, settle or compromise any loss, cost, expense, fee, liability, claim, demand, judgment or charge made under (or in connection with) the Warranty Policies, without any obligation whatsoever on the part of the Warranty Provider to divide, allocate or apportion any such loss, cost, expense, fee, liability, claim, demand, judgment or charge equally, proportionately or in any other manner amongst the Undersigned (as each of the Undersigned hereby specifically waives the benefit of division, and confirms that their respective obligations to the Warranty Provider is joint and several), and without any obligation whatsoever on the part of the Warranty Provider to notify any of the Undersigned with respect to any such payment, settlement or compromise, or to obtain the consent or approval of any of the Undersigned to same, and any such payment, settlement or compromise shall be binding upon each of the Undersigned, on the express understanding that any settlement or compromise hereafter made by the Warranty Provider with any one or more of the Undersigned (including the release of any one or more of the Undersigned), without notice or reference to (or without the concurrence of) any of the other parties hereto, shall not affect, restrict, limit or negate the liability of any of the other parties hereto, and such last-mentioned parties hereby expressly waive the right to consent to any such settlement or compromise, as well as the right to be discharged and released by reason of any of the foregoing;
4. Agrees that the Warranty Provider may, without notice to (and without the consent of any of the Indemnitors), make any settlement with the Builder (and/or with any other party or parties whomsoever) without releasing or diminishing the liabilities or obligations of any of the Indemnitors to the Warranty Provider arising under this Agreement;
5. Agrees that the liabilities and obligations of the Undersigned under this Agreement may only be released or diminished by a written document executed by the Warranty Provider;
6. Acknowledges, intends and agrees that this is a continuing Agreement that is valid and enforceable whether or not any agreement between the Builder and Warranty Provider exists as at the date of the execution of this Agreement, and that this Agreement shall remain in full force and effect and shall continue to bind each of the Undersigned even if any or all of the Undersigned never had (or no longer continue to have) any direct or indirect interest in the Builder;

7. As security for any and all obligations of the Undersigned to the Warranty Provider, each of the Undersigned hereby grants to the Warranty Provider a security interest in its present and after-acquired personal property including all present and after-acquired Accounts, Money, Chattel Paper, Goods (other than consumer goods), Intangibles, Inventory, Documents of Title, Instruments, Securities, Investment Property, Crops and Licences, and all Proceeds therefrom (as such terms are defined in the British Columbia *Personal Property Security Act*), including a floating charge against each Undersigned's right, title and interest in and to all of its presently owned or after-acquired real, immovable and leasehold property and interests therein;
8. Agrees to provide to the Warranty Provider all information that the Warranty Provider may request, from time to time, related to the financial position and corporate ownership structure of any or all of the Undersigned. Each of the Undersigned authorizes the Warranty Provider to procure and utilize from time to time credit information in respect of the Undersigned and agrees not to institute or pursue any action, claim or proceeding in respect of any damages incurred by the Undersigned as a consequence thereof. In the case that the Undersigned is a corporate entity, the Undersigned shall agree to maintain good standing with the British Columbia registry of companies, or similar governmental authority, and shall provide the Warranty Provider with annual financial statements as soon as available, but in any event within 90 days after the end of each fiscal year of the Undersigned;
9. Agrees that this Agreement is in addition to and supplemental to, but expressly not in lieu of, all other indemnities, guarantees or securities posted or held in connection with the Builder's obligations, or which may hereafter be held or taken by the Warranty Provider as required in its sole discretion;
10. Agrees that in the case where more than one person is liable to the Warranty Provider in respect of the obligations or liabilities of the Builder (in whole or in part), whether under this Agreement, or otherwise, their obligations to the Warranty Provider shall be joint and several, unless otherwise agreed to in writing by the Warranty Provider by amendment to this Agreement, and the Warranty Provider may, without notice to (and without the consent of) the Undersigned, do any one or more of the following acts or things, without releasing or diminishing the liabilities or obligations of the Undersigned to the Warranty Provider arising under this Agreement:
  - a. provide a release of the liabilities and obligations of any of the Undersigned to the Warranty Provider in respect of the obligations or liabilities of the Builder;
  - b. change the nature of the obligations and liabilities of the Builder to the Warranty Provider;
  - c. extend or renew the obligations of the Builder to the Warranty Provider;
  - d. release any security held by the Warranty Provider in connection with the Builder's obligations and liabilities; or
  - e. grant any indulgences, extensions of time and/or waiver of default to or for the benefit of the Builder, or any Indemnitor;
11. Agrees that the Warranty Provider shall not be obliged to proceed against the Builder before proceeding to enforce the obligations of any or all of the Indemnitors under this Agreement, it being expressly understood that the Warranty Provider need not pursue or exhaust its rights, remedies, or recourse against (or in respect of) the Builder and/or any guarantees, indemnities or securities posted in connection with the Builder's obligations, prior to the Warranty Provider proceeding against the Indemnitors;
12. Waives any defense arising by reason of any incapacity, disability and/or lack of power (or limitation with respect to the status or power) of the Builder (or of the directors, officers, partners or agents of the Builder) or any irregularity, defect or informality in the entering into or execution of any agreement between the Warranty Provider and the Builder, or any defense of the Builder (including, without limitation, the defense that the Builder may not be a legal entity), or any defense arising by reason of the release, reduction or cessation (from any cause or source whatsoever) of the liabilities or obligations owing to the Warranty Provider by the Builder in whole or in part;

13. Agrees that the liabilities and obligations of the Undersigned under this Agreement shall not be released or diminished by reason of the death, loss of capacity or bankruptcy of the Builder, nor by reason of any change in the officers, directors, shareholders, co-tenants or joint venture members or partners of the Builder, nor by reason of any amendment, alteration or modification of the Act or the regulations promulgated under the Act, until such time as the entire outstanding indebtedness and/or liabilities of the Builder to the Warranty Provider have been fully paid and/or satisfied;
14. Agrees that the liabilities and obligations of the Undersigned arising under this Agreement shall terminate only when the entire outstanding indebtedness and/or liabilities of the Builder to the Warranty Provider, or of the Warranty Provider to third parties, have been fully repaid and/or satisfied, and where the Warranty Provider has paid out monies in respect of the Builder's failure to perform the Builder's obligations, the Undersigned shall forthwith reimburse the Warranty Provider, by way of a certified cheque, for an amount equal to the aggregate of:
  - a. the amount paid out by the Warranty Provider (the "**Amount**") in respect of the Builder's failure to perform the Builder's obligations, or in respect of anything done or omitted to be done by the Builder, including all legal fees and disbursements (on a solicitor and his/her own client scale) incurred by the Warranty Provider to enforce any of the obligations of the Undersigned hereunder; and
  - b. interest accruing on the Amount, at the rate of eighteen (18%) per cent per annum, calculated semi-annually and accruing from and after the respective date(s) that any Amount is so due or owing to the Warranty Provider, to and until the date that all such Amounts (together with all interest accrued thereon as aforesaid) have been fully paid or remitted to the Warranty Provider, on the express understanding that the Warranty Provider's claim for such interest shall not merge in any judgment obtained against any of the Undersigned, and that any such judgment shall bear interest at the aforementioned rate until full payment is made to the Warranty Provider;
15. Agrees that there are no representations, warranties, collateral agreements or conditions with respect to this Agreement (or which may have induced any of the Undersigned to execute this Agreement), or affecting the liabilities or obligations of the Undersigned to the Warranty Provider arising under this Agreement, other than as expressly set forth herein;
16. Agrees that this Agreement shall be construed in accordance with and be governed by the laws of the Province of British Columbia and that the Undersigned will attorn to the jurisdiction of the courts of the Province of British Columbia and that any legal proceeding in respect of this Agreement shall be tried at Vancouver (or at such other venue as is proposed by the Warranty Provider in any application or originating process initiated by the Warranty Provider in respect of this Agreement);
17. Agrees that this Agreement shall extend and enure to the benefit of the successors and assigns of the Warranty Provider, including as a result of mergers, acquisitions of portfolios or otherwise, and this Agreement shall be binding upon each of the Undersigned and the respective heirs, estate trustees, legal representatives, successors and assigns of each of the Undersigned;
18. Acknowledges and agrees that any notice under this Agreement may be given to the Undersigned at their place of residence if a person, or to their records office if a corporation;
19. Acknowledges having received INDEPENDENT LEGAL ADVICE with respect to this Agreement and confirms having read and understood the terms and provisions hereof before having executed this Agreement, and further confirms that no other agreement or understanding exists which in any way could lessen or modify the obligations set forth herein;
20. Agrees that the Undersigned shall not enforce any rights of contribution or indemnity against the Builder or the Builder's assets and undertakings until all of such Builder's obligations under this Agreement or any agreement in connection with the Warranty Policies have been satisfied in full;

21. Acknowledges and agrees that all present and future debts, obligations and liabilities of the Builder to any or all of the Indemnitors are hereby postponed and subordinated to and in favour of the present and future debts, obligations and liabilities of the Builder to the Warranty Provider;
22. Agrees that it will co-operate with the Warranty Provider in respect of any claim made or proceeding taken against the Warranty Provider in respect of any Warranty Policy issued by the Warranty Provider;
23. Acknowledges and agrees that this Agreement will remain in full force and effect even if one or more of the Undersigned designated herein, or one or more of the witnesses have not signed the present agreement or their signatures have been adjudged invalid;
24. Agrees that words imparting singular meaning shall include the plural and vice versa; and
25. Agrees that this Agreement may be executed in one or more counterparts, either in original, telecopy or email PDF form, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

SIGNED AND DELIVERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.

In the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Whistler 2020 Development Corporation  
(Builder of Record and Indemnitor)

\_\_\_\_\_  
(Print Name – Witness)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Resort Municipality of Whistler  
(Indemnitor)

\_\_\_\_\_  
(Print Name – Witness)

\_\_\_\_\_  
(Print Name)