



THE
NEW HOME
WARRANTY
INSURANCE (CANADA)
CORPORATION

This Agreement and Indemnity is made effective the ____ day of _____, 20_____.

MADE BY:

GENERATION HOMES LTD.

(the "Indemnitor")

FOR THE BENEFIT OF:

THE NEW HOME WARRANTY INSURANCE (CANADA) CORPORATION

(the "NHWIC")

GEOTECHNICAL AGREEMENT AND INDEMNITY

WHEREAS the Indemnitor intends on constructing a condominium project on those lands in the Province of Alberta described as follows:

Parcel Identifier: **023-857-692**
Legal description: **Parcel B (KL96073) Block Q District Lot 216 Kootenay District Plan 1013**
Municipal Address: **606 10th Ave Invermere, British Columbia**

(the lands and building being collectively referred to as the "Condominium Project");

AND WHEREAS the Indemnitor has made application for enrolment of the Condominium Project with the NHWIC such that, if granted, the NHWIC's warranty protections shall apply to the Condominium Project;

AND WHEREAS a condition of the NHWIC granting enrolment for the Condominium Project is, among other things, the execution and delivery of this Agreement and Indemnity by the Indemnitor;

AND WHEREAS the Indemnitor, as inducement to the NHWIC, has agreed to execute and deliver this Agreement and Indemnity.

NOW THEREFORE IN CONSIDERATION of the premises and other good and valuable consideration, the Indemnitor covenants and agrees with the NHWIC as follows:

1. **Release of Liability and Assumption of Risk**

The Indemnitor hereby understands, acknowledges and assumes responsibility for all risks associated with the NHWIC's decision to not conduct a geotechnical investigation for the Condominium Project.

The Indemnitor agrees not to assert, directly or indirectly, and waives and releases the NHWIC from all claims that the Indemnitor has or may have in the future against the NHWIC, its directors, officers, employees, independent contractors, for any and all liabilities for any loss, damage,

expense, injury, action, right of action or claims (including under a home warranty insurance policy) arising from the NHWIC's decision to not conduct a geotechnical investigation for the Condominium Project.

2. **Indemnity**

The Indemnitor hereby indemnifies, releases, and holds harmless the NHWIC from and against any and all claims (including those under a home warranty insurance policy), demands, injuries, costs, damages, actions, liabilities, litigation expenses (including legal fees and disbursements on a solicitor and client full indemnity basis), liability damage awards, arbitration awards or costs, arbitration award judgments or recourse of any nature or kind whatsoever paid or imposed upon, incurred or suffered by, or asserted against the NHWIC (the "Claims"), from time to time, arising from, in consequence of, or in any way relating directly or indirectly to the NHWIC's failure to conduct a geotechnical investigation for the Condominium Project or to the geotechnical condition of the Condominium Project.

3. **Survival**

This indemnity is absolute and unconditional. The liability of the Indemnitor under this Indemnity shall be direct, immediate, unconditional, unlimited and absolute and shall not be released, discharged, mitigated, impaired or limited by:

- (a) any waiver by the NHWIC of or failure of the NHWIC to enforce any of the terms, covenants and conditions contained herein; or
- (b) any extension of time, indulgences or modifications which the NHWIC extends or makes with the Indemnitor in respect of the performance of any of the obligations of the Indemnitor.

4. **Recourse**

This Agreement and Indemnity shall not be subject to any non-recourse or other limitation of liability provisions. The Indemnitor agrees that the NHWIC shall have full and unrestricted recourse to the Indemnitor for all Claims and acknowledges that its obligations under this Agreement and Indemnity are not limited by any provision within any relevant document restricting recourse or otherwise limiting the liability of the Indemnitor.

5. **Payment**

The amount of all Claims shall be reimbursable to the NHWIC by the Indemnitor as incurred without any requirement to wait for the ultimate outcome of any litigation, action, or other proceeding. The Indemnitor shall pay any and all such amounts to the NHWIC as incurred within ten (10) days after written notice from the NHWIC itemizing the amount of all Claims as of the date of such notice. If the NHWIC shall recover any of such amounts paid by the Indemnitor to the NHWIC, the NHWIC shall reimburse the Indemnitor to the extent of any such sum recovered.

Payment by the NHWIC of any Claims shall not be a condition precedent to the obligations of the Indemnitor under this Agreement and Indemnity.

6. **Notices**

Any notice which the NHWIC desires to give to the Indemnitor shall be sufficiently given if:

- (a) personally delivered to the party to whom it is intended; or
- (b) mailed by prepaid registered mail, addressed to the Indemnitor at 4091 Johnston Rd, Invermere, British Columbia V0A 1K4 or to such other address or number as the Indemnifier may from time to time direct in writing.

Any notice delivered as aforesaid shall be deemed to have been received on the date of delivery, any notice mailed shall be deemed to have been received seventy-two (72) hours after the date it is postmarked. If normal mail is interrupted by strike, slow-down, force majeure or other course after the notice has been sent, the notice will not be deemed to be received until actually received. In the event normal mail service is impaired at the time of sending the notice, then personal delivery only shall be effective.

7. **Indemnitor's Acknowledgment**

The Indemnitor acknowledges that the Indemnitor had the opportunity to be represented by a solicitor and the Indemnitor further acknowledges having read this Agreement and Indemnity and having had the opportunity to have the contents explained to them by their own solicitor. The only defence to this Agreement and Indemnity shall be the payment in full, after demand by the NHWIC, without set-off, deduction, compensation or abatement of the amounts from time to time notified by the NHWIC to be due pursuant to paragraph 6 hereof. The Indemnitor waives each and every other defence to any claim on this Agreement and Indemnity. There are no implied conditions, terms or agreements relating to this Agreement and Indemnity. This Agreement and Indemnity cannot be amended and no collateral agreement can be created which relates to this Agreement and Indemnity unless it is in writing, executed by the NHWIC **under seal** and expressly refers to this Agreement and Indemnity and specifically provides that it is a modification hereof. This Agreement and Indemnity covers all agreements between the parties hereto relative to the subject matter hereof and none of the parties shall be bound by any representation or promise made by any person relative thereto which is not embodied herein. The Indemnitor acknowledges that the NHWIC in deciding to grant enrolment and warranty protection with respect to the Condominium Project, has relied on the fact that this Agreement and Indemnity shall be enforceable in accordance with its express written terms.

8. **Governing Law**

This Agreement and Indemnity shall in all respects be governed by and construed in accordance with the laws of Alberta and the laws of Canada applicable therein.

9. **Non-Waiver**

The failure of any party to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy shall not constitute a waiver thereof nor give rise to any estoppel against such party, nor excuse any of the parties from their obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Agreement and Indemnity is subject to enforcement at law and/or equity, including actions for damages and/or specific performance. Time is of the essence hereof.

10. **Enurement**

This Agreement and Indemnity shall be binding on the Indemnitor and his heirs, executors, administrators, successors and assigns and it shall enure to the benefit of the NHWIC and its successors and assigns.

11. **Arbitration**

If any dispute arises between the Indemnitor and the NHWIC with respect to any matter in relation to this Agreement and Indemnity, the dispute shall be settled through arbitration in accordance with the arbitration procedures adopted by the NHWIC. It is expressly agreed that the arbitration shall be final and binding on the Indemnitor and the NHWIC.

12. **Security**

The Indemnitor acknowledges that the NHWIC is at liberty to review and request security in the NHWIC's sole discretion from time to time.

IN WITNESS WHEREOF the Indemnitor has executed this Agreement and Indemnity effective the day and year first noted above.

GENERATION HOMES LTD.

Per: _____
Name:
Title:

(C/S)

Per: _____
Name:
Title: