



## INDEMNITY AGREEMENT

THIS AGREEMENT made as of the            day of            20            ,

**BETWEEN:**

**NISGA'A NATION**, as represented by Nisga'a Lisims Government Executive  
(the "Nisga'a Nation")

**AND:**

**OF THE FIRST PART**

of

(the "Borrower")

**OF THE SECOND PART**

**WHEREAS:**

- A.            is the holder of the Nisga'a Village Entitlement;
- B.    The Borrower has entered into the Loan Agreement with the Bank, under which the Bank has agreed to provide the Loan to the Borrower to finance the purchase, building or improvement of residential premises at the Property, if the Nisga'a Nation enters into the Nisga'a Nation Guarantee in respect of the Loan, with the Bank;
- C.    The Nisga'a Nation is willing to enter into the Nisga'a Nation Guarantee with the Bank, if the Borrower enters into this agreement with the Nisga'a Nation among other things, to provide collateral security to, and indemnify, the Nisga'a Nation as provided in this Agreement.

NOW THEREFORE in consideration of the premises, and the covenants and agreements set out below, the Parties agree as follows:

**Definitions**

1.    In this Agreement:

"Additional Security" means any instrument or document referred to in paragraph 2(h) executed by the Borrower and delivered to the Nisga'a Nation;

"Bank" means Royal Bank of Canada, its successors and assigns;

"Borrower's indebtedness" means all payments made, and all costs and expenses (including legal costs on a solicitor and own client basis) incurred, by the Nisga'a Nation:



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- (a) under or in respect of the Nisga'a Nation Guarantee,
- (b) in remedying any default of the Borrower under this Agreement, the Loan Agreement, the Collateral Mortgage or Additional Security, or
- (c) in enforcing this Agreement, the Collateral Mortgage or Additional Security;

“Charge” means a charge as defined in the *Nisga'a Land Title Act*;

“Collateral Mortgage” means a mortgage of the Nisga'a Village Entitlement granted by and in a form registrable in the Nisga'a Land Title Office and acceptable to the Nisga'a Nation;

“Fixtures” means

- (a) all fixtures and growing things in, on, under or in relation to the Property, and
- (b) all real or personal property whatsoever (whether affixed, mobile or stationary) which is now or later attached to or placed, installed or erected in, on or under the Property, including without limitation: all structures, additions, improvements, fences, plant, machinery, motors, furnaces, boilers, pressure vessels, oil and gas burners, stokers, blowers, water heaters, tanks, electric light fixtures, sprinklers, gas pipes, wiring, radiators, shutters, awnings, fixed mirrors, window blinds, wall to-wall floor coverings, screen and storm doors and windows, aerials, television antennae, satellite dishes, refrigerators, stoves, air conditioning, ventilating, plumbing, electrical, lighting, cooling, heating, cooking and refrigeration equipment, computers, telecommunication systems, security systems, elevators, central vacuum system, and all apparatus and equipment appurtenant to the Property;

“Instrument of Transfer” means an instrument in the form of a general instrument under section 123 of the *Nisga'a Land Title Act* transferring the Nisga'a Village Entitlement to the Nisga'a Nation and registrable in the Nisga'a Land Title Office and acceptable to the Nisga'a Nation;

“Loan” means any loan made to the Borrower by the Bank under the Loan Agreement;

“Loan Agreement” means that Loan Agreement between the Bank and the Borrower which a copy is attached as Schedule A to this agreement;

“*Nisga'a Land Title Act*” means the *Nisga'a Land Title Act* enacted by Wilp Si'ayuukhl Nisga'a on May 11, 2000;

“Nisga'a Land Title Office” means the Nisga'a land title office established under section 2 of the *Nisga'a Land Title Act*;

“Nisga'a Nation Guarantee” means a Guarantee And Postponement Of Claim Agreement in



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the form attached as Schedule B to this Agreement;

“Nisga’a Village Entitlement” means the Nisga’a Village entitlement as defined in the Nisga’a Village Entitlement Act enacted by Wilp Si’ ayuukhl Nisga’a on May 11, 2000, held by \_\_\_\_\_ and registered under the Nisga’a Land Title Act in respect of the Property, as evidenced in that Nisga’a Land Title Office Title Search Print attached to this Agreement as Schedule C;

“Parties” means the parties to this Agreement and “Party” means any of them;

“Person” includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

“Prime Rate” means the floating annual prime interest rate established from time to time by the main branch of the Bank in Vancouver, British Columbia, as the reference rate it will use to determine rates of interest payable to the Bank by borrowers of Canadian dollar loans in Canada and designated by the Bank as its prime rate,

“Property” means the land described as:

together with all buildings now or later placed, installed or erected on any such land and all Fixtures.

### **Borrower’s covenants**

#### 2. The Borrower:

- (a) will insure, and keep insured during the term of this Agreement, at its expense alone and with one or more companies satisfactory to the Nisga’a Nation, all buildings and Fixtures now or later forming part of the Property against “All Risks”, including all perils customarily insured against by prudent owners of similar buildings and Fixtures within north-west British Columbia, to the extent of 100% of their full replacement cost, under a policy of insurance that includes the Nisga’a Nation as an additional named insured and provides that the Nisga’a Nation is the first loss payee, and that is otherwise acceptable to the Nisga’a Nation, PROVIDED however that satisfaction by the Borrower of all covenants on its part to insure set out in a Collateral Mortgage referred to in paragraph (d) registered in the Nisga’a Land Title Office will be deemed to fully satisfy the covenants of the Borrowers to insure set out above in this paragraph (a);



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- (b) will observe and perform all covenants to be observed or performed by the Borrower under the Loan Agreement, the Collateral Mortgage and Additional Security,
- (c) on demand by the Nisga'a Nation, will immediately pay in full to the Nisga'a Nation at its address under section 19(3) the Borrower's Indebtedness together with interest at Prime Rate plus 3% *per annum* as well after as before judgment and with interest on overdue interest at the same rate,
- (d) on demand by the Nisga'a Nation, will immediately execute and deliver a Collateral Mortgage to the Nisga'a Nation as collateral security for payment by the Borrower as provided in paragraph (c), and consents to registration of any such Collateral Mortgage in the Nisga'a Land Title Office;
- (e) will not do, omit or permit anything whereby the Nisga'a Village Entitlement or the Property becomes, or may become, subject to:
  - (i) before a Collateral Mortgage is registered in the Nisga'a Land Title Office, any Charge, encumbrance or lien whatsoever, and
  - (ii) after a Collateral Mortgage is registered in the Nisga'a Land Title Office, any Charge, encumbrance or lien in priority to the Collateral Mortgage
- (f) on demand by the Nisga'a Nation, will immediately execute and deliver an Instrument of Transfer to the Nisga'a Nation as collateral security for payment by the Borrower as provided in paragraph (c), and consents to registration of any such Instrument of Transfer in the Nisga'a Land Title Office,
- (g) unless and until the Instrument of Transfer referred to in paragraph (f) is returned to the Borrower under section 3(c), will not execute any other transfer in respect of the Nisga'a Village Entitlement, and
- (h) without limiting section 11, will do all acts and things and make, execute and deliver all such written instruments and documents as in the opinion of the Nisga'a Nation may be from time to time required to provide further security to the Nisga'a Nation for the fulfilment of the covenants to be observed or performed by the Borrower under this Agreement, including, on demand by the Nisga'a Nation, executing a further agreement to amend and replace this Agreement.

### **Nisga'a Nation covenants**

#### 3. This Nisga'a Nation

- (a) will forthwith after the Borrower fulfils its covenants under section 2(a), (d) and (f), execute the Nisga'a Nation Guarantee and deliver it to the Bank,



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- (b) will not register the Instrument of Transfer referred to in section 2(f) in the Nisga'a Land Title Office unless the Borrower has defaulted in its covenant under paragraph 2(c) to pay the Nisga'a Nation, and
- (c) will return the Instrument of Transfer referred to in section 2(f) to the Borrower upon repayment of the Loan, and any Borrower Indebtedness, in full, PROVIDED that the Instrument of Transfer has not been registered in the Nisga'a Land Title Office, and the Borrower is not then in default of any covenant on its part to be observed or performed, under this Agreement.

### Remedies of the Nisga'a Nation

- 4. (a) If the Borrower is in default under this Agreement, the Nisga'a Nation may
  - (i) remedy the Borrower's default under this Agreement, the Loan Agreement, the Collateral Mortgage or Additional Security,
  - (ii) demand payment of the Borrower's Indebtedness under paragraph 2(c),
  - (iii) avail itself of any or all of its remedies under the Collateral Mortgage,
  - (iv) register the Instrument of Transfer referred to in section 2(f) in the Nisga'a Land Title Office, or
  - (v) take any judicial proceedings available to it in respect of this Agreement, the Loan Agreement, the Collateral Mortgage or Additional Security.
- (b) Immediately upon registration of an Instrument of Transfer referred to in section 2(f) in the Nisga'a Land Title Office, the Nisga'a Village Entitlement will become the property of the Nisga'a Nation absolutely and the Borrower will cease to have any right, title, claim, demand, estate or interest in or to the Nisga'a Village Entitlement or the Property.
- (c) The Nisga'a Nation may pursue its rights and remedies under this Agreement, the Collateral Mortgage or Additional Security, or conferred by statute or common law, concurrently or successively at its option and in such order as it, in its sole discretion, may determine.

### Nisga'a Nation records *prima facie* evidence

- 5. The records maintained by the Nisga'a Nation as to:
  - (a) the date and amount of the Borrowers Indebtedness,



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- (b) interest on the Borrower's Indebtedness at Prime Rate plus 3% *per annum* as well after as before judgement and with interest on overdue interest at the same rate; and
- (c) the amount of any payment by the Borrower of any amount referred to in paragraph (a) and (b),

will continue *prima facie* evidence of such dates and amounts.

### Judgment

- 6. The taking of a judgement on any covenant under this Agreement will not operate as a merger of the covenant or affect the right of the Nisga'a Nation to the exercise its rights under any other security, including the Collateral Mortgage or Additional Security.

### Indemnity

- 7. The Borrower will indemnify and save harmless the Nisga'a Nation, Nisga'a Lisims Government, and their respective members, officers, employees and agents, from and against any and all actions, losses, claims, damages, liabilities, costs, charges and expenses (including all legal costs as between solicitor and his own client) in any way arising out of or related to any breach, violation or non-performance of any covenant on the part of the Borrower to be observed or performed under this Agreement.

### Amendments

- 8. Any amendment to this Agreement must be in writing and executed by the Parties.

### No Implied Waiver

- 9. (a) No term or condition of this Agreement, or performance by a Party of an covenant under this Agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.
- (b) No written waiver of a term or condition of this Agreement, or performance by a Party of an covenant under this Agreement, or of default by a Party of a covenant under this Agreement, will be deemed to be a waiver of any other covenant, or of any subsequent default.



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### Delay

10. The Nisga'a Nation may grant extensions of time or other indulgences, delay enforcing any of its rights under this Agreement, the Collateral Mortgage or Additional Security, as the Nisga'a Nation may see fit without affecting any of the Nisga'a Nation's rights or remedies under this Agreement, the Collateral Mortgage or Additional Security, or the Borrower's liability to pay the Borrower's Indebtedness.

### Further Assurances

11. The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.

### Time of Essence

12. Time will be of the essence of this Agreement.

### Severability

13. If any part of this Agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion.

### Interpretation

14. (a) In this agreement
- (i) unless it is otherwise clear from the context, "including" means "including, but not limited to", and "includes" means "includes, but is not limited to",
  - (ii) "covenants" includes covenants, agreements, terms, conditions, provisos, representations and warranties;
  - (iii) headings and subheadings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement,
  - (iv) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it,
  - (v) a reference to an agreement that is included as a schedule to this Agreement includes every amendment to it and every agreement made in substitution for it or in replacement of it,



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- (vi) unless it is otherwise clear from the context, a reference to Schedule means a Schedule to this Agreement,
  - (vii) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular, and
  - (viii) unless it is otherwise clear from the contract, the use of the masculine includes feminine and the use of the feminine includes the masculine.
- (b) For great certainty, this Agreement is an “Indemnity Agreement” as defined in, and for the purposes of, the Collateral Mortgage.

### Counterparts

15. This Agreement may be executed in two or more counterparts and each counterpart when executed and delivered will have the same force and effect as an original instrument and as if all Parties had executed and delivered the same instrument.

### Joint and Several

16. If two or more Persons execute this Agreement as the Borrower, the covenants on the part of the Borrower under this Agreement will be and be deemed to be joint and several covenants and bind those Persons jointly and severally.

### Assignment

17. (a) The Borrower may not assign this Agreement, either in whole or in part, unless agreed to in advance in writing by the Nisga’a Nation.
- (b) For greater certainty, the Nisga’a Nation may assign this Agreement, either in whole or in part, to any Person.

### Enurement

18. This Agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

### Notice

19. (a) Unless otherwise provided, a notice, document, demand, request, approval, authorization, consent or other communication (each a “communication”) required or permitted





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to be given or made under this Agreement must be in writing and may be given or made in one or more of the following ways:

- (i) delivered personally or by courier;
  - (ii) transmitted by facsimile transmission; or
  - (iii) mailed by prepaid registered post in Canada.
- (b) A communication will be considered to have been given or made, and received:
- (i) if delivered personally or by courier, at the start of business on the next business day after the business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
  - (ii) if sent by facsimile transmission and if the sender receives confirmation of the transmission at the start of the business on the next business day on which it was transmitted; or
  - (iii) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

- (c) A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

**For: Nisga'a Nation**  
Attention: Secretary – Treasurer  
P.O. Box 231  
New Aiyansh, British Columbia  
V0J 1A0

With a copy to: Director of Finance

Fax Number: (250) 633-2367

**For: The Borrower**  
Attention:

- (d) A Party may change its address or facsimile number under subsection (3) by giving a notice of the change to the other Party in the manner set out above.



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IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

EXECUTED by Edmond Wright, Secretary- )  
Treasurer, or behalf of the NISGA'A )  
NATION, as represented by the Nisga'a Lisims )  
Government Executive, in the presence of: )

NISGA'A NATION, as represented by )  
the Nisga'a Lisims Government )  
Executive )

\_\_\_\_\_)  
Signature )

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

\_\_\_\_\_)  
Address )

\_\_\_\_\_)  
Occupation )

\_\_\_\_\_)  
Edmond Wright, Secretary-Treasurer )

EXECUTED by \_\_\_\_\_ in the presence of: )

\_\_\_\_\_)  
Signature )

\_\_\_\_\_)  
, Borrower )

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

\_\_\_\_\_)  
Address: )

\_\_\_\_\_)  
Occupation )



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