



## GUARANTEE AND POSTPONEMENT OF CLAIM

This agreement made as of \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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

**AND:** \_\_\_\_\_ (the "Bank")

### WHEREAS:

(hereinafter called, and if more than one, collectively called the "Borrower") has applied to the Bank for a loan for the purpose of assisting with financing the purchase, building or improvement of residential premises on Nisga'a Village Lands of the Nisga'a Village of \_\_\_\_\_ (the "Property") in the amount of \$ \_\_\_\_\_ (the "Loan");

- A. The Bank agreed to make the Loan to the Borrower on the terms and conditions set out in the attached agreement (the "Loan Agreement") and on the condition that the Loan be guaranteed by the Guarantor,
- B. The Nisga'a Lisims Government Executive (the "Executive") has, by Resolution 2002/157, adopted September 25, 2002, agreed to have the Nisga'a Nation provide this Guarantee and Postponement of Claim (the "Nisga'a Nation Guarantee");
- C. As security for the Nisga'a Nation Guarantee, the Borrower is granting a mortgage of its Nisga'a Village entitlement for the property to the Guarantor (the "Mortgage");

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the Guarantor hereby agrees with the Bank as follows:

1. The Guarantor guarantees payment on demand to the Bank of all debts and liabilities, including interest thereon, present or future, at any time owing by the Borrower to the Bank or remaining unpaid by the Borrower to the Bank, heretofore or hereafter incurred or arising under, pursuant to or by virtue of the Loan Agreement and any renewals, restatements, replacements or amendments thereof, and whether the Borrower be bound alone or with another or others (such debts and liabilities being hereunder called the "Liabilities"); together with interest on the Liabilities from the date of demand for payment at the Prime Interest Rate of the Bank in effect from time to time, as well after as before default and judgement.

For the purpose hereof (where applicable), Prime Interest Rate means the annual rate of interest announced from time to time by the Bank as a reference rate then in effect for determining interest from rates on Canadian dollar commercial loans in Canada.

All capitalized terms used and not defined herein shall have the meanings given to them in the Loan Agreement



## GUARANTEE AND POSTPONEMENT OF CLAIM

2. Subject to section 5, without giving notice to or obtaining the consent or concurrence of the Guarantor, the Bank may:
- (a) grant any time, indulgences, waivers or extensions of time for payment or performance of any of the Liabilities;
  - (b) grant any renewals for extensions of the Loan, with or without a change in the rate of interest or in any other terms or conditions of the Loan and whether by express agreement signed by the Borrower or otherwise (including without limitation by way of an automatic renewal or extension);
  - (c) change the Interest Rate, either during the initial term thereof or in subsequent extension or renewal term, whether by way of increase, decrease, change in the reference rate by which such rate is calculated or determined, change from fixed rate to a variable rate or from a variable to a fixed rate, or otherwise;
  - (d) shorten or lengthen the amortization period of the Loan;
  - (e) otherwise amend, supplement, modify, vary, or otherwise change any of the terms or conditions of the Loan in any manner whatever;
  - (f) release or discharge any security (including without limitation any guarantee) for the Loan;
  - (g) advance additional principal amounts to the Borrower pursuant to any provisions of the Loan Agreement that permits the Borrower to borrow such additional principal amounts from the Bank;
  - (h) add any unpaid balance of accrued interest to the principal amount of the Loan pursuant to any provisions of the Loan Agreement, even if the added amount will cause the outstanding principal amounts to exceed the Principal Sum;
  - (i) permit the Borrower to prepay the Loan in whole or in part or to skip one or more schedule instalments of principal and interest or to pay more than one such scheduled instalment on a scheduled payment date under the Loan Agreement, whether pursuant to a provision of the Loan Agreement that permits such prepayment, skipping or multiple payments or otherwise;
  - (j) release any subsequent legal or beneficial owner of the Borrower's property from any liability for the Liabilities or refrain from requiring any such owner to assume any such liability;

and none of the foregoing actions shall in any way lessen, limit or otherwise affect the obligations or liability of the Guarantor under this Nisga'a Nation Guarantee, regardless of whether any such action has the effect of amending or varying the Loan Agreement or increasing, expanding or otherwise altering the nature, effect, term, extent or scope of the



### GUARANTEE AND POSTPONEMENT OF CLAIM

Liabilities. The Liabilities and the liability of the Guarantor hereunder shall extend to and include the obligations of the Borrower under the Loan Agreement as so amended, renewed, extended or varied and the Liabilities as so increased, expanded or altered without further action on the part of the Bank or the consent or concurrence of the Guarantor; and for greater certainty and without limiting the foregoing, if the Interest Rate is increased on the otherwise altered, the Liabilities and the liability of the Guarantor hereunder shall extend to and include the obligation of the Borrower to pay interest at such increased or altered rate.

3. Subject to section 5, the obligations of the Guarantor hereunder shall be unaffected by:
- (a) any lack or limitation of status or power, disability, incapacity, death, dissolution or other circumstances relating to the Borrower or the Guarantor or any other party;
  - (b) any irregularity, defect, unenforceability or invalidity in respect of the Loan or any indebtedness, liability or other obligation of the Borrower or any other party;
  - (c) any releases or discharge of the Liabilities except by reason of their irrevocable payment and satisfaction in full;
  - (d) any judgement obtained against the Borrower, or the taking, enforcing, exercising or realizing on, or refusing or neglecting to take, enforce, exercise or realize on, or negligence in taking, enforcing, exercising or realizing on, any security (including without limitation any money on deposit and any guarantee) or any right or remedy, from or against the Borrower or any other party or their respective assets or releasing or discharging, or failing, refusing or neglecting to maintain, protect, renew or perfect, any security (including without limitation any money on deposit or any guarantee) or any right or remedy;
  - (e) any change in the name, control, objects, business, assets, capital structure, or constitution of the Guarantor or any change in the membership of the Guarantor;
  - (f) any law, regulation or decree now or hereafter in effect which might in any manner affect any of the terms or provisions of the Loan Agreement or this Nisga'a Nation Guarantee or the Borrower or the Guarantor;
  - (g) any failure on the part of the Bank to perfect, maintain or enforce its rights whether date to its default, negligence or otherwise on the part of the Bank with respect to the Loan or any security granted to the Bank relating to the Loan; and
  - (h) any other circumstances whatsoever (with or without notice to or the knowledge of the Guarantor) which may or might in any manner or to any extent vary the risk of the Guarantor hereunder, or might otherwise constitute a legal or equitable discharge of a surety or guarantor;



## GUARANTEE AND POSTPONEMENT OF CLAIM

it being the purpose and intent of the Guarantor that the liabilities and obligations of the Guarantor under this Nisga'a Nation Guarantee shall be absolute and unconditional under any and all circumstances.

4. The Bank may, with the written consent of the Guarantor, amend the terms of the Loan Agreement or release the Borrower or a co-covenantor or guarantor from any of their obligations under the Loan Agreement.
5. The Bank will not demand payment from the Guarantor under this Nisga'a Nation Guarantee, unless and until:
  - (a) the Bank has considered and approved the Borrower's application for the Loan based upon the Bank's standard lending criteria for granting residential mortgages, modified as the parties may reasonably agree;
  - (b) if the Loan is to finance the building of or improvements to residential premises on the Property, the Bank has made advances from time to time in accordance with the Bank's standard practice for construction or building mortgages or other practices agreed to in writing between the parties;
  - (c) if the Borrower has not paid an amount required to be paid under the provisions of the Loan Agreement or failed to perform any other obligation under the Loan Agreement, the Bank has followed the following procedure:
    - (i) approximately 14 days after default, or such other time as is reasonable in the circumstances, forward a letter to the Borrower, with a copy to the Guarantor, requesting that the Borrower remedy the default;
    - (ii) if the Bank has not forwarded a letter to the Borrower within the time period set out in section 5(c)(i), the Bank subsequently forwards the letter to the Borrower;
    - (iii) within 30 days of performance under section (c)(i) or (ii) contact, or attempt to contact, the Borrower by telephone to discuss the default and the Borrower's plans to remedy the default;
    - (iv) within 90 days of performance under section 5(c)(i) or (ii) continue to contact, or attempt to contact, the Borrower by telephone to discuss and attempt to remedy the default;
    - (v) approximately 90 days after performance under section 5(c)(i) or (ii), forward a letter to the Borrower, with a copy to the Guarantor, demanding that the Borrower remedy the default; and



### GUARANTEE AND POSTPONEMENT OF CLAIM

- (vi) permit the Guarantor 30 days from the date of the letter in section 5(c)(v) to contact the Borrower to attempt to have the Borrower remedy the default; and
  - (d) the Bank has provided to the Nisga'a Nation written notice of default by the Borrower.
- 6. All indebtedness and liability, present and future of the Borrower to the Guarantor in respect of the Loan are hereby assigned to the Bank and postponed to the Liabilities, and all monies received by the Guarantor in respect thereof shall be received in trust for the Bank and forthwith upon receipt shall be paid over to the Bank, the whole without in any way limiting or lessening the liability of the Guarantor under this Nisga'a Nation Guarantee. This assignment and postponement is independent of this Nisga'a Nation Guarantee and shall remain in full effect notwithstanding that the liability of the Guarantor under this Nisga'a Nation Guarantee may be extinct.
- 7. This Nisga'a Nation Guarantee shall not be considered as wholly or partially satisfied by the payment to liquidation at any time or times of any sum or sums of money for the time being due or remaining unpaid to the Bank, and all payments received by the Bank from the Borrower or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of the Guarantor to claim in reduction of the liability under this Nisga'a Nation Guarantee the benefit of any such dividends, compositions, proceeds or payments or any securities held by the Bank or proceeds thereof, and the Guarantor shall have no right to be subrogated in any rights of the Bank until the Bank shall have received payment in full of the Liabilities.
- 8. If any monies or amounts expressed to be owing or payable under the Nisga'a Nation Guarantee by the Guarantor are not recoverable from the Guarantor on the footing of a guarantee for any reason whatever, such monies or amounts may be recovered from the Guarantor as a primary obligor and principal debtor in respect of such monies or amounts regardless of whether such monies or amounts are recoverable from the Borrower or would be payable by the Borrower to the Bank. For greater certainty but without restricting the generality of the foregoing, if the Bank is prevented or restricted from exercising its rights or remedies with respect to any of the Liabilities including without limitation the right of acceleration, the right to be paid interest at the rate of rates agreed to by the Borrower in respect of the Liabilities or the right to enforce or exercise any other right or remedy with respect to the Liabilities, the Guarantor agrees to pay the amount that would otherwise have been due and payable had the bank been permitted to exercise such rights and remedies in accordance with the terms agreed to between the Borrower and the Bank. Provided however that the foregoing characterization of the liability of the Guarantor as that of a primary obligor and principal debtor is not intended and shall not be interpreted to confer on the Guarantor any right, benefit or advantage that the Guarantor would not otherwise have in the absence of such characterization.
- 9. No suit based on this Nisga'a Nation Guarantee shall be instituted until demand for payment has been made and such demand or any notice or other communication required



## GUARANTEE AND POSTPONEMENT OF CLAIM

or desired to be given or made to the Guarantor shall be deemed to have been effectually given or made, provided that it is in writing and delivered by registered mail, or by telegram, or by telex, or by fax, or delivered in person to the following address or to any other address of the Guarantor as directed in writing by the Guarantor to the Bank from time to time:

### **Delivery and Mailing Address:**

P.O. Box 231  
2000 Lisims Drive  
New Aiyansh, BC  
V0J 1A0

Attention: Secretary-Treasurer

With a copy to: Director of Finance

10. When demand for payment has been made, the Guarantor shall also be liable to the Bank for all reasonable legal costs (on a solicitor and own client basis) incurred by or on behalf of the Bank resulting from any action instituted on the basis of this Nisga'a Nation Guarantee. All payments shall be made to the Bank at its branch at \_\_\_\_\_ or to any other branch or agency of the Bank as directed in writing by the Bank from time to time.
11. The Guarantor shall indemnify and save harmless the Bank from and against all losses, damages, and reasonable costs and expenses which the Bank may sustain, incur or become liable for by reason of:
  - (a) the failure, for any reason whatever, of the Borrower to pay any amounts expressed to be payable pursuant to the provisions of the Loan Agreement, regardless of whether the Borrower's obligation to pay such amounts is valid or enforceable against the Borrower;
  - (b) the failure, for any reason whatever of the Borrower to perform any other obligation under the Loan Agreement; or
  - (c) any act, action or proceeding of or by the Bank for or in connection with the recovery of such amounts or the performance of such obligations.
12. The Guarantor shall be bound by any account settled between the Bank and the Borrower, and if no such account has been so settled immediately before demand for payment under this Nisga'a Nation Guarantee any account stated by the Bank shall be accepted by the Guarantor as conclusive evidence of the amount which at the date of the account so stated is due by the Borrower to the Bank or remains unpaid by the Borrower to the Bank.



### GUARANTEE AND POSTPONEMENT OF CLAIM

13. The Guarantor acknowledges that the Bank has approved the Loan as a personal loan and not as a loan secured by way of charge or mortgage, and subject to section 5, the Bank has no obligation to verify any covenant or undertaking given by the Borrower or any information, including without limitation, in respect of any housing purchase, building, improvement, occupation or use by the Borrower and has not and will not take any security in land or property and will not be responsible to see that the monies advanced under the Loan Agreement are received by the Borrower or used by the Borrower for the purposes set out in the Loan Agreement and the Guarantor further acknowledges that it is liable under the Nisga'a Nation Guarantee notwithstanding any non-receipt of the monies by the Borrower or any failure to use the monies for such purposes.
14. The Nisga'a Nation Guarantee shall extend to and enure to the benefit of the Bank and its successors and assigns. The Guarantor cannot assign this Nisga'a Nation Guarantee. Every reference herein to the "Guarantor", is a reference to and shall be construed as including the Guarantor and its successors to and upon all of whom this Nisga'a Nation Guarantee shall extend and be binding. Without limiting the generality of the foregoing this Nisga'a Nation Guarantee shall extend to and be binding upon all successors of the Guarantor formed as a result of any division of the Guarantor into different groups or merger of the Guarantor into other groups for whatever reason.
15. The Guarantor shall from time to time execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the Bank may require to effectively carry out or better evidence or perfect the full intent and meaning of this Nisga'a Nation Guarantee.
16. The Nisga'a Nation Guarantee is in addition to and not in substitution for any other guarantee, by whomsoever given, at any time held by the Bank and any present or future obligation to the Bank incurred or arising otherwise than under a guarantee, or the Guarantor or of any other obligant, whether bound with or apart from the Borrower; excepting any guarantee surrendered for cancellation on delivery of this Nisga'a Nation Guarantee.
17. Notwithstanding any provisions to the contrary contained herein, this is a guarantee and not an indemnity of the liabilities of the Customer to the Bank for the purposes of the *Nisga'a Financial Administration Act*. Accordingly, any such contrary provisions are deemed to be inapplicable to the extent they would constitute the undersigned to be an indemnitor rather than a guarantor.
18. The undersigned hereby represents and warrants that this guarantee is given in the name of the Nisga'a Nation as permitted by, and in accordance with, the *Nisga'a Financial Administration Act*, and the *Nisga'a Temporary Housing Security Act*.
19. The Guarantor represents and warrants to the Bank that it has the legal capacity under all applicable statutes and laws and any bylaws or other agreements or documents binding on the Guarantor to guarantee the Liabilities and to enter into this Nisga'a Nation Guarantee.





## GUARANTEE AND POSTPONEMENT OF CLAIM

20. This Nisga'a Nation Guarantee constitutes a continuing obligation of the Guarantor notwithstanding and subsequent changes to the members of the executive of the Guarantor.
21. The Guarantor represents and warrants to the Bank that the undersigned duly authorized signing officers of the executive of the Guarantor have the authority to execute this Nisga'a Nation Guarantee on the Guarantor's behalf.
22. The Nisga'a Nation Guarantee shall be a continuing guarantee and shall cover the Liabilities, and it shall apply to and secure any ultimate balance due or remaining unpaid to the Bank. The obligations of the Guarantor under this Nisga'a Nation Guarantee shall continue to be effective or shall be reinstated as the case may be, if at any time any payment which would have otherwise reduced the obligations of the Guarantor under this Nisga'a Nation Guarantee (whether such payment shall have been made by or on behalf of the Borrower or the Guarantor) is rescinded, or is reclaimed from the Bank, upon the insolvency, bankruptcy, liquidation, dissolution or reorganization of the Borrower or the Guarantor, or for any other reason.
23. This Nisga'a Nation Guarantee covers all agreements between the parties hereto relative to this Nisga'a Nation Guarantee and none of the parties shall be bound by any representation or promise made by any person relative thereto which is not embodied hereto.
24. Possession of this instrument by the Bank shall be conclusive evidence against the undersigned that this instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any conditions precedent or subsequent had been complied with.
25. This Nisga'a Nation Guarantee shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The Guarantor irrevocably submits to the courts of that jurisdiction in any action or proceeding arising out of or relating to this Nisga'a Nation Guarantee, and irrevocably agrees that all such actions or proceedings may be heard and determined in such courts, and irrevocably waives, to the fullest extent possible, the defence of an inconvenient forum. The Guarantor agrees that a judgement or order in any such action or proceeding maybe enforced in other jurisdictions in any manner provided by law. Provided, however, that the Bank may serve legal process in any manner permitted by law or may bring an action or proceeding against the Guarantor or the property or assets of the Guarantor in the courts of any other jurisdiction.
26. If any provision of this Nisga'a Nation Guarantee or any document delivered in connection with this Nisga'a Nation Guarantee is partially or completely invalid or unenforceable, the invalidity or unenforceability on that provisions shall not affect the validity or enforceability of any other provision of this Nisga'a Nation Guarantee, all of which shall be construed and enforced as if that invalid or unenforceable provision were





**GUARANTEE AND POSTPONEMENT OF CLAIM**

omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provisions validity or enforceability in any other jurisdiction.

- 27. The Guarantor has expressly requested that this Agreement and all related documents, including notices, be drawn up in the English language. A la demande express de la caution, ce contract et tout document s'y rattachant one été rédigés en langue anglaise.
- 28. The Guarantor hereby acknowledges receipt of a copy of this Nisga'a Nation Guarantee.

IN WITNESS WHEREOF this Nisga'a Nation Guarantee has been executed by the parties as of the day and year first above written.

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

Witness: \_\_\_\_\_

Per: \_\_\_\_\_

Secretary – Treasurer

ROYAL BANK OF CANADA

Per: \_\_\_\_\_

Per: \_\_\_\_\_