

Condominium Deposit Protection Insurance Policy

COVERAGE COMMENCEMENT DATE	
POLICY NUMBER	
INSURED	
MUNICIPAL ADDRESS OF NEW UNIT	
LEGAL DESCRIPTION OF NEW UNIT	
RESIDENTIAL BUILDER	
OPERATING AS	Arabella
RESIDENTIAL BUILDER CONTACT INFORMATION	Townhomes - Schedule
PREMIUM	

This Policy is to be read and interpreted as a whole and represents the entire contract between The New Home Warranty Insurance (Canada) Corporation and the Insured.

This Policy is in accordance with the *Condominium Property Act*, RSA 2000, c. C-22, as amended, and its Regulations, and shall be considered as a Certificate under section 69 of the Regulations of the Act.

This Policy contains a clause which may limit the amount payable.

This Policy provides Deposit Protection Insurance for a condominium containing units that are attached to one or more other self-contained dwelling units in a registered Condominium Plan.

Coverage Period: Coverage commences upon payment of initial deposit under the Agreement and expires upon the start of the Protection Period.

Maximum Coverage Limit: The limit of liability of the Warranty Provider under the Condominium Deposit Protection Insurance Policy is the lesser of: Fifty Thousand (\$50,000.00) Dollars OR One Million Five Hundred Thousand (\$1,500,00.00) Dollars, divided by the number of New Units within the Condominium Plan that have been

enrolled by NHWICC, unless a greater amount has been negotiated in advance between the Warranty Provider, Residential Builder and Insured, and a separate Endorsement will be applied as Excess Deposit Coverage.

TERMS & CONDITIONS

A. DEFINITIONS

In this Policy, the following terms have the following meanings:

- (a) “Act” means the *Condominium Property Act*, RSA 2000, c. C-22, as amended, and its Regulations;
- (b) “Agreement” means a Fixed Price Purchase Contract between the Residential Builder and the Insured with respect to the construction of the New Unit that is an arm’s length transaction;
- (c) “Claim” means a request for coverage by the Insured under this Policy arising out of a Residential Builder Default;
- (d) “Condominium Plan” means a building or land designated as a unit or part of a unit or divided into 2 or more units by the registration of a condominium plan under the Act;
- (e) “Default” means the Residential Builder fails to fulfill its obligations under the Agreement as a result of financial circumstances including, but not limited to, insolvency, having made an assignment in bankruptcy, or an order being made by a court of competent jurisdiction declaring the Residential Builder to be bankrupt;
- (f) “Deposit Protection Insurance” means insurance against the loss of all deposit monies paid pursuant to the Agreement, by the Insured to the Residential Builder, and the limit of liability of the Warranty Provider is the lesser of: Fifty Thousand (\$50,000.00) Dollars OR One Million Five Hundred Thousand (\$1,500,00.00) Dollars divided by the number of New Units within the Condominium Plan that have been enrolled by NHWICC, unless a greater amount has been negotiated in advance between the Warranty Provider, Residential Builder and Insured, and a separate Endorsement will be applied as Excess Deposit Coverage;
- (g) “Designated Trust Account” means a trust account maintained by the Prescribed Trustee in a financial institution in Alberta;
- (h) “Fixed Price Purchase Contract” means an arm’s length Agreement between the Residential Builder and the Insured for the construction of a self-contained dwelling unit for a pre-negotiated fixed price not

subject to any adjustment except as set out in such Agreement and agreed to as to any additional amount prior to Default;

- (i) “New Unit” means a residential space that is situated within a building and described as a unit in a condominium plan by reference to floors, walls and ceilings within the building;
- (i) “Prescribed Trustee” means a lawyer in good standing with the Law Society of Alberta and is approved to operate a Designated Trust Account, as prescribed in the Act;
- (j) “Program Provider” means NHWICC is authorized to operate a Purchaser’s Protection Program, as approved by the Minister under section 14(10) of the Act;
- (k) “Protection Period” means in the case of a New Unit, other than the common property or common facilities in a building, beginning on the earlier of:
 - (A) the date the New Unit is first occupied; and
 - (B) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the New Unit;
- (l) “Purchaser’s Protection Program” means a plan, agreement, scheme or arrangement that meets the requirements of section 67 of the Act;
- (m) “Residential Builder” means a person who engages in, arranges for or manages all or substantially all of the construction or reconstruction of a New Home, or agrees to do any of those things, and includes a general contractor, but does not include an Owner Builder;
- (n) “The New Home Warranty Insurance (Canada) Corporation” means NHWICC;
- (o) “Warranty Provider” means The New Home Warranty Insurance (Canada) Corporation.

B. DEPOSIT PROTECTION INSURANCE

Any amounts paid under this Policy shall be the lesser of the deposits received by the Residential Builder from the Insured and the Maximum Coverage Limit.

In the event of Default, the Warranty Provider agrees to indemnify the Insured, subject to the terms, conditions and exclusions of this Policy, and the Insured may submit a Claim only for those deposit payments actually paid by the Insured to the Residential Builder, pursuant to the Agreement, and deposited into a Designated Trust Account with the Prescribed Trustee.

Upon receipt of a Claim, the Warranty Provider shall, as soon as reasonable, make attempt to contact the Insured to arrange for an investigation and/or evaluation of the Claim.

If following evaluation of the Claim, the Warranty Provider determines there is no coverage, the Warranty Provider shall notify the Insured in writing, setting out the reasons for the decision.

Upon receiving the documentation required under section D, and subject to section F, and subject to sections E., F. and G., the Warranty Provider will review and assess the Claim and determine the amount payable, if any, to the Insured. The Warranty Provider will make all reasonable efforts to avoid delays in responding to a Claim and investigation of the Claim, having regard to some circumstances, including a Residential Builder bankruptcy, can cause delay. If the Warranty Provider determines that payment will be made pursuant to a Claim, the Warranty Provider shall advise the Insured of its determination of the Claim in writing and provide payment to the Insured in the amount the Warranty Provider has determined payable for the Claim.

In the event the Warranty Provider has determined that payment will be made, a deductible fee in the amount of 1% of the total Claim amount will be deducted from the total amount payable to the Insured. The Insured will complete and execute a release in favour of the Warranty Provider in a form provided by, or to the satisfaction of, the Warranty Provider. The Warranty Provider will issue payment to the Insured upon receipt of such release executed by the Insured in favour of the Warranty Provider.

Once the Claim is paid:

- (a) if any amount remains available of the Maximum Coverage Limit for Deposit Protection Insurance ; and
- (b) the Insured incurs reasonable legal fees directly related to the Claim as determined by the Warranty Provider;

then the Warranty Provider may apply the available remaining amount of the Maximum Coverage Limit for Deposit Protection Insurance directly to the reasonable legal fees incurred and shall indemnify the Insured in respect of such fees up to a maximum of \$5,000.00.

C. PURCHASER'S PROTECTION PROGRAM

Subject to the confirmation of Deposit Protection Insurance, NHWICC certifies:

- (a) it is a Program Provider of a plan, agreement, scheme or arrangement approved by the Minister;
- (b) its address is 30, 301 Springborough Boulevard S.E., Calgary, Alberta, T3H 0N9;

- (c) the Residential Builder, the New Unit and the Condominium Plan are enrolled by NHWICC;
- (d) benefits under the Maximum Coverage Limit take effect upon the date NHWICC receives written confirmation from the Residential Builder and Prescribed Trustee of the initial deposit paid to the Residential Builder by the Insured and confirmation the deposits have been placed into a Designated Trust Account with the Prescribed Trustee;
- (e) upon confirmation of paragraph C.(d) above, benefits under the Coverage Period take effect upon payment of the initial deposit under the Agreement and expires upon the start of the Protection Period.

D. INSURED OBLIGATIONS

When making a Claim under this Policy, the Insured must submit the following to the Warranty Provider:

- (a) the Agreement and any other documentation relating to the construction of the New Home as required by the Warranty Provider from time to time;
- (b) proof of deposit payment(s) made to the Residential Builder by the Insured with respect to the Agreement;
- (c) confirmation from the Prescribed Trustee that all deposits were placed in the Designated Trust Account as required by the Act;
- (d) a duly completed Claim form to be provided by the Warranty Provider to the Insured; and
- (e) any additional documentation as required by the Warranty Provider from time to time.

All of the foregoing Claim documentation must be received by the Warranty Provider before the start of the Protection Period. The obligations of the Warranty Provider cease upon expiry of the Coverage Period unless proper notice is given to the Warranty Provider by the Insured prior to the expiry.

E. GENERAL

The Insured shall:

- (a) adhere to all timelines outlined in this Policy; and
- (b) provide to the Warranty Provider information and documentation that the Insured has available or has the ability to access, that the Warranty Provider requests, in order to investigate a Claim.

All notices of a Claim under this Policy must be delivered to the Warranty Provider, in writing, prior to the expiry of the insurance coverage and comply with the requirements set out in this section.

Any notice given by the Insured to the Residential Builder is not effective notice to the Warranty Provider.

The Warranty Provider shall be subrogated, with respect to any payment made under the Policy coverage, to all the rights of recovery of the Insured against any person who may be responsible for a Default and may bring action in the name of the Insured to enforce those rights. The Insured shall cooperate with the Warranty Provider and do whatever is necessary to secure and exercise those rights.

F. LIMITS AND EXCLUSIONS

Only one Claim will be paid under this Policy, after which this Policy is of no force or effect.

Other than payment to the Insured under the coverage as set out in section B, the Warranty Provider is not liable for any damages, losses, costs, or expenses otherwise suffered by the Insured due to or in connection with Default, howsoever caused.

Coverage under this Policy is **only** available to the Insured where the Residential Builder and the Insured have entered into a Fixed Price Purchase Contract.

Coverage under this Policy does not provide indemnity for non-monetary consideration provided by the Insured to the Residential Builder.

Claims arising out of a contractual dispute under the Fixed Price Purchase Contract between the Insured, Residential Builder and Prescribed Trustee are not covered by this Policy.

Every action or proceeding against the Warranty Provider for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

G. TRANSFER OF DEPOSIT PROTECTION INSURANCE COVERAGE AND ASSIGNMENT

This Policy is transferable in accordance with section I.

This Policy shall not be assigned by the Insured, or the Residential Builder, to any other New Unit, without the prior written consent of the Warranty Provider, which may not be unreasonably or arbitrarily withheld.

This Policy may be assigned by the Warranty Provider. If a receiver is appointed by any creditor or court of competent jurisdiction to operate, oversee, or administer the business of the Residential Builder, and the New

Unit is available for completion by an alternate Residential Builder, this Policy may, at the option of NHWICC, be assigned to the alternate Residential Builder.

If a receiver is appointed by any creditor or court of competent jurisdiction to operate, oversee, or administer the business of the Residential Builder, the Warranty Provider shall have no obligation under this Policy to complete the New Home while the receiver determines if it will complete the New Home or while the receiver, whether or not through a process in a court of competent jurisdiction, seeks to sell or assign the Agreement to an alternate Residential Builder.

Notwithstanding anything in the Agreement, if an alternate Residential Builder acceptable to the Warranty Provider, is willing and able to complete the New Home pursuant to the Agreement, the Insured must permit the alternate Residential Builder to assume the Agreement and comply with all obligations contained therein as if the alternate Residential Builder was the original Residential Builder.

Whether or not it is disclosed to a subsequent Insured by the current Insured and notwithstanding any other provision of this Policy, prior actions or obligations of the Insured shall be binding upon any subsequent Insured and, in particular, any previous acts, omissions, defaults, or agreements of any kind made by the Insured with the Residential Builder or the Warranty Provider shall be binding upon any subsequent Insured.

H. POLICY TERMINATION

The Warranty Provider may only terminate this Policy upon proof that the refundable portion of the deposit has been returned to the Insured or alternatively, has been returned to the trust account for the benefit of the Insured. 15 days' written or electronic notice shall be given to the Residential Builder, the Prescribed Trustee and the Insured by registered mail or electronically, or 5 days written notice personally delivered. Notwithstanding anything contained herein, the 15-day period starts to run on the day the notice is sent by mail or electronically, or notification of it is delivered to the Residential Builder's, the Prescribed Trustee's and Insured's postal addresses.

I. NOTICE

Unless indicated otherwise in this Policy, any notice which may be or is required to be given under this Policy must be given in writing and may be delivered in person, sent by mail postage prepaid or by courier, or delivered electronically either by electronic communication or to the Homeowner Portal and shall be addressed:

If to the Insured:

Attention: Unit Owner

Email:

Facsimile:

If to the Warranty Provider: The New Home Warranty Insurance (Canada) Corporation
 301, 30 Springborough Boulevard SW
 Calgary, Alberta, T3H 0N9
 Attention: Contact Centre
 Email: contactcentre@nhwicc.com
 Facsimile: (403) 253-5062
 Homeowner Portal Address: www.anhwp.com/homeowner

Any notice shall be conclusively deemed to have been given or made on the day upon which such notice is delivered, or if mailed, then on the third business day following the date of the mailing as the case may be, provided that in the case of interruption in the ordinary postal service, any notice given hereunder shall be delivered and not mailed. The parties shall give notice in writing of any change of municipal address or email address, and from and after the giving of such notice, the municipal address or email address therein specified shall be deemed to be the municipal address or email address of the parties for the giving of notices hereunder.

Any notice given by the Insured to the Residential Builder is not effective notice to the Warranty Provider.

J. IN CASE OF DISAGREEMENT

In the event of disagreement as to whether Default exists, the nature and extent of the Default or the amount of loss, those questions must be determined using the applicable dispute resolution process set out in section 519 of the *Insurance Act*, whether or not the Insured's right to recover under this Condominium Deposit Protection Insurance Policy is disputed, and independently of all other questions.

There is no right to a dispute resolution process under this condition until:

- (a) a specific demand is made for it in writing; and
- (b) the proof of loss has been delivered to the Warranty Provider.

K. INSURED CONSENT TO DISCLOSURE OF PERSONAL INFORMATION

The collection, use and disclosure of personal information is controlled and protected provincially by the *Personal Information Protection Act* and federally by the *Personal Information Protection and Electronic Documents Act*. NHWICC and the Residential Builder respect all rights regarding protection of personal information.

If the New Unit has been assigned to a receiver or a new Residential Builder in the event of bankruptcy or solvency before the expiration of the Coverage Period, NHWICC is authorized by the Insured to release personal information, to the extent reasonably required by NHWICC, to the receiver or the new Residential Builder of the New Unit.

A copy of NHWICC's Privacy Policy can be found at www.nhwicc.com/contact/privacy-policy.

SAMPLE