



LA GARANTIE DES BÂTIMENTS RÉSIDENTIELS NEUFS DE L'APCHQ INC.

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Réservé à l'administrateur

GUARANTEE CONTRACT – BUILDING HELD IN DIVIDED CO-OWNERSHIP

The contents of this contract were approved by the Régie du bâtiment du Québec on May 23, 2006, by decision number RBQ-DPD-23-05-2006-01.

SECTION A - DÉFINITIONS

In this guarantee contract unless the context otherwise requires, the following words and expressions mean:

Beneficiary: a natural or legal person, a partnership, an association, a non-profit organization or a cooperative which enters into one of the following with a contractor:

- a) a contract for the purchase or the construction of a new residential building;
- b) a contract for the purchase of a new residential building acquired by the contractor from a trustee, a municipality or a hypothecary lender.

In the case of the common portions of a building held in divided co-ownership, the beneficiary is the syndicate of co-owners.

Building: the building itself, including the installations and equipment necessary for its use, specifically, the artesian well, connections with municipal or government services, the septic tank and its absorption field and the subsoil drain.

Building professional: an architect, an engineer or a technologist who is a member of a professional order and is trained in the field of engineering or construction.

Contractor: a person who holds a general contractor's license that authorises him to carry out or to have carried out in whole or in part, for a beneficiary, construction work for a new residential building covered by the present guarantee and who is accredited with the manager.

Guarantee or «Guarantee plan»: plan that complies with the standards and criteria established under the regulation, as defined herein, and approved by the Régie du bâtiment du Québec.

«La Garantie des bâtiments résidentiels neufs de l'APCHQ Inc.» or the manager: a private corporation authorised by the Régie du bâtiment du Québec under section 81 of the Building Act (R.S.Q., c. B-1.1) to administer a guarantee plan.

Regulation: the Regulation respecting the guarantee plan for new residential buildings (L.R.Q., c. B-1.1, r. 0.2) enacted pursuant to the Building act, by Order in Council 841-98 dated June 17, 1998, as amended from time to time.

SECTION B - THE MANAGER'S UNDERTAKINGS

Where the contractor fails to meet its legal and contractual obligations, the manager, within the limits and subject to the conditions described in the present contract, guarantees the beneficiary that it will carry out said obligations where they flow from a contract entered into for the sale or construction of a new building intended for primarily residential purposes and held in divided co-ownership by the beneficiary and which is either :

- a) a detached, semi-detached or row-type single-family dwelling; or,
- b) a multifamily building of combustible construction or a multifamily building of non-combustible construction comprising no more than four (4) private portions stacked one above the other;

For the purposes of this guarantee contract, the terms "combustible construction" and "non-combustible construction" have the meaning given to them in the Building Code – Québec as it applies to the building.

The intended use of a building is established on the date the contract of sale or of construction is entered into by the contractor and the beneficiary, and is deemed to remain such for the term of the guarantee. The guarantee applies to the building in its entirety.

COVERAGE OF THE GUARANTEE

1. DEFINITIONS

For the purposes of this sub-section, unless the context indicates otherwise, the following words mean:

Acceptance of the common portions: act – a copy of which is sent to each known beneficiary, to the syndicate and to the contractor – whereby a building professional chosen by the syndicate of co-owners declares the date of the end of work on those portions, subject to minor work indicated by the building professional as remaining to be completed. Acceptance of the common portions shall occur following receipt of a notice of end of work sent by the contractor to each known beneficiary and to the syndicate of co-owners.

For the purposes of this sub-section, acceptance of the common portions is deemed to have taken place not later than 6 months after the receipt of the notice of end of work, if the following conditions are met:

- 1° the work is completed;
- 2° the syndicate is formed and is no longer under the control of the contractor;
- 3° the notice of the end of work sent to the syndicate by the contractor informed the syndicate of the end of work and of its obligations with respect to acceptance; and
- 4° six (6) months have elapsed since the receipt by the syndicate of the notice of end of work and the latter, without reason, did not accept the common portions.

Acceptance of the private portion: act whereby the beneficiary declares that he accepts the private portion which is ready to be used for its intended purpose and on which some work is to be completed or corrected, where applicable.

Common portions: those forming part of the building and listed in the act constituting the co-ownership or, in the absence of specific provisions in said act, those listed in article 1044 of the Civil Code of Québec.

Completion of work: completion of the work related to the building and provided for in the original contract entered into between the beneficiary and the contractor, and completion of the additional work agreed to in writing between the parties.

End of work on the common portions: date on which all the contractor's work agreed upon in writing with the beneficiary and pertaining to the common portions is completed and the building is ready to be used for its intended purpose.

End of work on the private portion: date on which all the contractor's work agreed upon in writing with the beneficiary and pertaining to his private portion is completed or, at the latest, the date of the end of work on the common portions.

2. WHERE THE CONTRACTOR FAILS TO MEET HIS LEGAL OR CONTRACTUAL OBLIGATIONS PRIOR TO THE ACCEPTANCE OF THE BUILDING AND SUBJECT TO CLAUSE 5 WITH RESPECT TO THE LIMITS OF THE GUARANTEE, THE MANAGER WARRANTS THE FOLLOWING:

2.1 In the case of a contract of sale:

- a) either the reimbursement of the down payments made by the beneficiary; or,
- b) the completion of work where the beneficiary holds title to the property and an agreement to that effect is entered into with the manager.

2.2 In the case of a contract of enterprise:

- a) either the reimbursement of the down payments made by the beneficiary subject to the condition that there not be unjust enrichment on his behalf; or
- b) the completion of work where an agreement to that effect is entered into with the manager.

2.3 Reimbursement to the beneficiary of his relocation, moving and storage expenses:

- a) where the beneficiary is unable to take delivery of the building at the date agreed to with the contractor unless the down payments are reimbursed.
- b) where the beneficiary is unable to take delivery of the building at the date agreed to with the contractor owing to the need to allow the manager to complete the work on the building.

3. WHERE THE CONTRACTOR FAILS TO MEET HIS LEGAL OR CONTRACTUAL OBLIGATIONS AFTER ACCEPTANCE OF THE PRIVATE PORTION OR OF THE COMMON PORTIONS, AND SUBJECT TO CLAUSE 5 WITH RESPECT TO THE LIMITS OF THE GUARANTEE, THE MANAGER WARRANTS THE FOLLOWING:

3.1 Completion of work: The manager shall complete the work, notice of which is given in writing:

- (a) by the beneficiary, at the time of acceptance of the private portion, or so long as the beneficiary has not moved in, within 3 days following acceptance; and
- (b) by the building professional, at the time of acceptance of the common portions.

3.2 Poor workmanship: The manager shall repair apparent defects and poor workmanship, as described in section 2111 of the Civil Code of Québec, notice of which is given in writing by the beneficiary at the time of acceptance or, as long as the beneficiary has not moved in, within three (3) days following acceptance.

The manager shall repair poor workmanship that exists but is non-apparent at the moment of acceptance and that is discovered within one (1) year following the acceptance, of which notice is given in writing to the contractor and the manager within a reasonable time which shall not exceed six (6) months from the discovery of the poor workmanship.

3.3 Latent defects: The manager shall repair latent defects as described in sections 1726 or 2103 of the Civil Code of Québec that are discovered within three (3) years following the acceptance, of which notice is given in writing to the contractor and the manager within a reasonable time which shall not exceed six (6) months from the discovery, as defined in article 1739 of the Civil Code of Québec, of the latent defects.

3.4 Major defects: The manager shall repair major defects as described in section 2118 of the Civil Code of Québec which appear within five (5) years following the date when work is completed, of the common portions or, when there are no common portions forming part of the building, of the private portion and of which notice is given in writing to the contractor and the manager within a reasonable time which shall not exceed six (6) months from the discovery or the occurrence of the defect or, in the case of gradual defects or losses, from their first manifestation.

4. EXCLUSIONS FROM THE GUARANTEE

The following are excluded from the guarantee:

- 4.1** repairs to defects in the materials and equipment supplied and installed by the beneficiary;
- 4.2** repairs made necessary by normal behaviour of materials, such as cracks or shrinkage;
- 4.3** repairs made necessary by a fault of the beneficiary, such as inadequate maintenance or misuse of the building, as well as by alterations, deletions or additions made by the beneficiary;
- 4.4** deterioration brought about by normal wear and tear;
- 4.5** the obligation to relocate, move or store the beneficiary's property and repairs made necessary following an event of force majeure, such as an earthquake, a flood, exceptional climatic conditions, a strike or a lock-out;
- 4.6** compensation for damages resulting from the contractor's extra-contractual civil liability;
- 4.7** compensation for damage resulting from contaminated soil, including replacement of the soil itself;
- 4.8** the obligation of a public utility to supply the building with natural gas or electricity;
- 4.9** parking areas or storage rooms located outside the building containing the dwelling units, and any works located outside the building such as swimming pools, earthwork, sidewalks, driveways or surface water drainage systems;
- 4.10** promises of a vendor concerning costs for use or energy consumption of appliances, systems or equipment included in the construction of a building; and,
- 4.11** claims from the persons who contributed to the construction of the building.

However, the exclusions set out in paragraphs 4.2 and 4.5 do not apply if the contractor failed to comply with a standard in force that applies to the building.

5. LIMITS OF THE GUARANTEE

5.1 Reimbursement of down payments: The guarantee provided to the beneficiary for the reimbursement of down payments is limited to \$ 39,000.00 per fraction mentioned in the declaration of co-ownership.

5.2 Relocation of beneficiary and moving and storage of his property: The guarantee provided with respect to the relocation or for the moving or storage of the beneficiary's property, upon presentation of receipts and subject to the condition that there not be unjust enrichment on the part of the beneficiary, is limited to \$ 5,500.00 per fraction mentioned in the declaration of co-ownership, representing:

- a) the reimbursement of the reasonable actual costs incurred for moving and storage;
- b) the reimbursement of reasonable actual costs incurred for relocation, including meals and accommodation, without exceeding, on a daily basis:
 - for one (1) person: \$ 85.00
 - for two (2) persons: \$ 110.00
 - for three (3) persons: \$ 140.00
 - for four (4) persons or more: \$ 170.00

5.3 Completion of work and repair of defects and poor workmanship, for a detached, semi-detached or row-type single-family dwelling: The guarantee provided for completion of work and repair of defects and poor workmanship in the case of a detached, semi-detached or row-type single-family dwelling is limited to the amount stated in the contract of enterprise or the contract of sale without in any case exceeding \$ 260,000.00 per housing unit and \$ 2,600,000.00 for all of the housing units mentioned in the declaration of co-ownership as long as the units include common portions that form part of the building.

5.4 Completion of work and repair of defects and poor workmanship, for a multi-family building: The coverage provided for completion of work and repair of defects and poor workmanship in the case of a multi-family building is limited to the lesser of the following amounts:

- a) the total purchase price of the fractions contained in the building or the total amount mentioned in the contract of enterprise;
- b) an amount equal to \$ 130,000.00 multiplied by the number of private portions contained in the building without in any case exceeding \$ 2,600,000.00 per building.

5.5 Coverage of the obligation to provide water supply: The coverage of the obligation to provide water supply appropriate in quality and quantity, where it is impossible to effect repairs, is limited to the damages suffered by the beneficiary without however exceeding the lesser of the two amounts set out in paragraph 5.3. The coverage applies in the case of a contract of enterprise provided that said obligation is stipulated in the contract entered into by the beneficiary and the contractor.

5.6 Private portion with no beneficiary at the end of work: The guarantee applies to a private portion that has no beneficiary at the end of work on the common portions, provided that acceptance of the private portion occurs within twenty-four (24) months after such end of work.

The guarantee pertaining to faulty design, construction or production of the work, or to the unfavourable nature of the ground within the meaning of article 2118 of the Civil Code of Québec is nevertheless limited to the remaining term of the guarantee.

The guarantee for completion after acceptance of the private portion does not apply, however, if the beneficiary and the contractor agree that the private portion is sold in the state of completion it has attained at the date of the contract.

6. BENEFICIARY'S OBLIGATIONS

- 6.1** The beneficiary shall, prior to acceptance of his private portion, inspect it jointly with the contractor in order to complete the itemised checklist provided by the manager and approved by the Régie du bâtiment du Québec. The beneficiary may be assisted by a person of his choice. The inspection shall be deferred where the acceptance of the private portion takes place after the end of work on the common portions.
- 6.2** The common portions covered by this guarantee must be inspected prior to their acceptance. Said inspection shall be carried out jointly by the contractor, the building professional chosen by the syndicate of co-owners and the latter's representative, on the basis of an itemized checklist provided by the manager and approved by the Régie du bâtiment du Québec.
- 6.3** In cases where the manager intervenes to complete or to correct the work on a building, the beneficiary shall cause his financial institution to withhold, or to pay in trust to a lawyer, a notary or the manager, any amount still owing for final payment of the work which is to be carried out by the manager to complete or correct the work covered by the original contract or the additional work provided for in any written agreement entered into with the contractor;

7. CONTRACTOR'S OBLIGATIONS

- 7.1** The contractor shall give notice of the end of work on the common portions to each known beneficiary and to the syndicate of co-owners. The contractor shall also give notice of the date of such end of work to the manager and to any future purchaser at the time of conclusion of the contract.
- 7.2** The contractor shall, prior to acceptance of each private portion, inspect it jointly with the beneficiary in order to complete the itemised checklist provided by the manager and approved by the Régie du bâtiment du Québec. The contractor shall give a duly completed copy thereof to the beneficiary. The inspection shall be deferred where the acceptance of the private portion takes place after the completion of work on the common portions.
- 7.3** The contractor shall, prior to acceptance of the common portions, effect an inspection thereof jointly with the beneficiary, the building professional chosen by the syndicate and the latter's representative, in order to complete the itemised checklist provided by the manager and approved by the Régie du bâtiment du Québec. The contractor shall give a duly completed copy thereof to the building professional, to the syndicate, to each known beneficiary, to each future purchaser at the time of conclusion of the contract, and upon demand, to the manager.
- 7.4** Where end of work occurs while there is no known beneficiary, the contractor shall give notice of the end of work to the manager, and shall notify the future purchaser of the date of the end of work, upon entering into the contract with such purchaser.
- 7.5** Where applicable, the contractor shall take all necessary measures to ensure the preservation of the building, or reimburse the beneficiary where the latter was forced to take such measures urgently.

SECTION C - IMPLEMENTATION OF THE GUARANTEE

In order for the present guarantee to apply, the parties shall respect the following procedures:

1. CLAIM PROCEDURE

- 1.1** The following procedure applies to any claim under the guarantee set out in paragraph 2 of section B:

Claim for late delivery

1.1.1 not later than within ninety (90) days following acceptance of the building, the beneficiary shall send to the contractor, by registered mail, a claim for reimbursement of expenses related to relocation, moving and storage of the beneficiary's property, along with vouchers. If the claim is not settled within fifteen (15) days after it has been sent, the beneficiary shall notify the manager in writing, and the manager shall decide the claim within fifteen (15) days following receipt of the notice.

Claim with respect to guarantee prior to acceptance

1.1.2 For the implementation of the down payment guarantee or the guarantee of completion before acceptance, the beneficiary shall send the claim in writing to the contractor, and a copy of the claim to the manager. The procedure set out in paragraphs 1.2.2 to 1.2.6 of this section applies to such claim with the necessary modifications. The beneficiary shall pay to the manager a file-opening fee of \$ 100, which will be reimbursed to the beneficiary only in the event that a decision is rendered in his favour, in whole or in part, or if an agreement is reached between the parties concerned.

- 1.2** The following procedure applies to any claim under the guarantee set out in paragraph 3 of section B:

Claim with respect to guarantee after acceptance

1.2.1 Within the one (1), three (3) or five (5) year guarantee period, as the case may be, the beneficiary shall provide written notice to the contractor as to the construction defect that has been found and send a copy of said notice to the manager in order to interrupt prescription.

1.2.2 At least fifteen (15) days after sending the notice, the beneficiary shall provide written notice to the manager if he is dissatisfied with the intervention of the contractor or if the contractor has failed to intervene; he shall pay to the manager a file-opening fee of \$ 100,00 which shall be reimbursed to the beneficiary only in the event that a decision is rendered in his favour, in whole or in part, or if an agreement is reached between the parties concerned.

1.2.3 Within fifteen (15) days of receiving the notice provided for in paragraph 1.2.2, the manager shall request that the contractor intervene and inform the manager, within fifteen (15) days as to the measures he intends to take to remedy the situation concerning which the beneficiary has given notice.

1.2.4 Within fifteen (15) days following the expiry of the time period granted to the contractor under paragraph 1.2.3, the manager shall proceed with an inspection on the premises.

1.2.5 Within twenty (20) days following the inspection, the manager shall produce a detailed written report stating whether or not the matter has been settled and shall send a copy thereof by registered mail to the parties concerned. If the claim has not been settled, the manager shall decide on the claim and order, as applicable, the contractor to reimburse the beneficiary the cost of necessary and urgent conservatory repairs or to complete or correct the work within the period the manager indicates as agreed upon with the beneficiary.

1.2.6 Where the contractor fails to reimburse the beneficiary or to complete or correct the work and there is no recourse to mediation or the manager's decision is not contested in arbitration by one of the parties, the manager shall, within fifteen (15) days after the expiry of the period agreed upon with the beneficiary under paragraph 1.2.5, make the reimbursement or take charge of completing or correcting the work, agree to a time period for doing so with the beneficiary and undertake, if applicable, the preparation of corrective specifications and a call for tenders, choose contractors and supervise the work.

1.3 Any decision by the manager on a claim made by a beneficiary shall be in writing, contain reasons therefor, and mention: that it is a decision of the manager, the names of the beneficiary and the contractor, the address of the building concerned, the date of each inspection, if any, the date of the decision, the remedies and time limits prescribed by the regulation, and the names and addresses of the arbitration bodies authorised by the Régie du bâtiment du Québec as well as those of the Ministère du travail so that the list of accredited mediators may be obtained.

2. RECOURSES

2.1 Arbitration and Mediation Procedures

2.1.1 In the event a beneficiary or a contractor is dissatisfied with a decision of La Garantie des bâtiments résidentiels neufs de l'APCHQ inc., such party shall, in order for the guarantee to apply, submit the dispute to arbitration, unless the beneficiary and the contractor agree to submit the dispute to a mediator to settle the dispute.

2.1.2 The request for arbitration must be submitted to an arbitration organisation duly authorised by the Régie du bâtiment du Québec, within thirty (30) days from the receipt by registered mail of the manager's decision or, as the case may be, of the opinion of the mediator noting the partial or total failure of the mediation efforts.

2.1.3 The request for mediation must be submitted within thirty (30) days from the receipt by registered mail of the manager's decision, to a mediator chosen by the beneficiary and the contractor from a list prepared by the department of Labour.

2.2 Mediation

2.2.1 Where the beneficiary and the contractor decide to submit the dispute to mediation, the manager may take part.

2.2.2 Any agreement that settles the dispute in whole or in part shall be set down in writing, signed by the mediator, the beneficiary and the manager and shall be binding upon them and the manager. Where the manager takes part in the mediation, the agreement shall also be approved by it in order for it to be bound thereby.

2.2.3 The costs of the mediation are shared equally by the beneficiary and the contractor unless they agree otherwise. However, where the manager takes part in the mediation it shall assume one third of the costs.

2.3 Arbitration

2.3.1 Where the beneficiary or the contractor decides to submit a dispute to arbitration, the beneficiary, the contractor and the manager are bound by the arbitration ruling as soon as it is made by the arbitrator.

2.3.2 The arbitration ruling is final and not subject to appeal.

2.3.3 The costs of the arbitration are borne equally by the manager and the contractor when the contractor is the plaintiff.

2.3.4 When the beneficiary is the plaintiff, the costs are borne by the manager, unless the beneficiary fails to win on any of the aspects of his claim, in which case the arbitrator shall be responsible for the apportionment of costs.

2.3.5 The arbitrator shall rule, where necessary, as to the reasonable expenses or relevant expert reports that the manager shall reimburse to the plaintiff who wins his case in whole or in part.

2.3.6 Expenses incurred by the beneficiary, the contractor and the manager for the holding of the arbitration are to be borne by each of them.

2.4 Where the manager compensates a beneficiary pursuant to the present section, he is subrogated in the rights of the beneficiary up to an amount equal to the sums it has paid.

2.5 Failure by the beneficiary to file a claim or implement the guarantee in a timely fashion cannot be held against the beneficiary if the contractor or manager fails to perform the obligations set out in paragraph 7 of section B, in paragraphs 1.1 to 1.3 of this section, and paragraphs 1, 2 and 5 of section D, unless the contractor or manager shows that such failure had no incidence on the failure to file a claim in a timely fashion or that the time for filing a claim or implementing a guarantee has been expired for more than one (1) year.

3. TRANSFER OF THE GUARANTEE

This guarantee inures to the benefit of any subsequent owner for the unexpired portion of its term.

SECTION D - RULES PERTAINING TO THE GUARANTEE CONTRACT

1. The contractor shall give the beneficiary a copy of the guarantee contract, signed by the beneficiary and bearing the contractor's signature on the last page of the copies following all stipulations. The contractor shall send a copy thereof to the manager.
2. The beneficiary is required to execute his obligations set forth in the contract entered into with the contractor only from the time he is in possession of a signed copy of the guarantee contract.
3. The guarantee plan being obligatory, the beneficiary cannot, by special agreement, renounce the rights conferred on him by the regulation.
4. The manager shall, upon receipt of a building registration application or as soon as a beneficiary is known, send to the beneficiary the explanatory documents prepared by the Régie du bâtiment du Québec on the application of the regulation.
5. Any clause of this guarantee contract that is irreconcilable with the regulation is void.
6. In case of discrepancy between the text of these presents and that of the regulation, the regulation shall have precedence.

LANGUAGE

This Agreement has been drawn up in the English language, at the request of the parties. Cette convention a été rédigée en langue anglaise à la demande des parties.

Contractor (Corporate name or trade name)

Name: _____ Accreditation #: **0** - _____

Address: _____

City: _____ Postal code: _____

Licensed by the Régie du bâtiment du Québec N° RBQ _____ - _____

Beneficiary(ies)

Beneficiary(ies)' name(s): _____

Address: _____

City: _____ Postal code: _____

Address of building (under construction)

Address: _____

City: _____ Postal code: _____

Lot/subdivision number: _____

SIGNATURES

The contractor states that he has given the beneficiary a copy of the «**Guarantee contract**».

The beneficiary states that he has read and understands the «**Guarantee contract**».

Contractor's section

Completed and signed in _____, on the _____

Name: _____ Signature : **X** _____
(in printed letters)

Beneficiary's section

Completed and signed in _____, on the _____

Name: _____ Signature : **X** _____
(in printed letters)

Name: _____ Signature : **X** _____
(in printed letters)