



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

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Réservé à l'administrateur

GUARANTEE CONTRACT – BUILDING NOT 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-23-05-2006-02.

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

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 not held in divided co-ownership by the beneficiary and which is exclusively :

- a detached, semi-detached or row-type single-family dwelling;
- a multifamily building, from a duplex to a quintuplex; or,
- a multifamily building comprising more than five (5) dwelling units and held by a non-profit organisation or a cooperative;

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 building: the act whereby the beneficiary declares that he accepts the building which is ready to be used for its intended purpose and which indicates any work to be completed or corrected.

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

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 BENEFICIARY FOR THE FOLLOWING:

2.1 In the case of a contract of sale

- either the down payments made by the beneficiary; or,
- the completion of work, where the beneficiary holds the ownership titles and where an agreement to that effect is entered into with the manager.

2.2 In the case of a contract of enterprise

- either the down payments made by the beneficiary subject to the condition that there not be unjust enrichment on his behalf; or,
- 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

- where the beneficiary is unable to declare acceptance of the building on the date agreed upon with the contractor, unless the down payments are reimbursed; or
- where the beneficiary is unable to declare acceptance of the building on the date agreed upon with the contractor owing to the need to allow the manager to complete the building.

3. WHERE THE CONTRACTOR FAILS TO MEET HIS LEGAL OR CONTRACTUAL OBLIGATIONS

AFTER THE ACCEPTANCE OF THE BUILDING AND SUBJECT TO CLAUSE 5 WITH RESPECT TO THE LIMITS OF THE GUARANTEE, THE MANAGER WARRANTS THE BENEFICIARY FOR THE FOLLOWING:

3.1 Completion of work

The manager shall complete the work related to the building, notice of which is given in writing at the time of acceptance of the building or, as long as the beneficiary has not moved in, within three (3) days following acceptance.

3.2 Poor workmanship

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

The manager shall repair poor workmanship as described in sections 2113 and 2120 of the Civil Code of Québec that exists but is non apparent at the moment of acceptance and which is discovered within one (1) year following the acceptance of the building, 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 the building, 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 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 a gradual defect or loss, from the 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 damage 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 accepted practice or 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 a down payment shall be limited to:

- a) \$39,000.00 per address in the case of a detached, semi-detached or row-type single-family dwelling;
- b) \$39,000.00 per building in the case of a multi-family building.

5.2 Relocation of beneficiary and moving and storage of his property in the case of a detached, semi-detached or row-type single-family dwelling

The guarantee provided in the case of a detached, semi-detached or row-type single-family dwelling with respect to 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 \$ 5,500.00 representing:

- a) reimbursement of the reasonable actual costs incurred for moving and storage;
- b) 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 Relocation of beneficiary and moving and storage of his property in the case of a multi-family building

The guarantee provided in the case of a multi-family building with respect to 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 \$ 5,500.00 representing:

- a) reimbursement of the reasonable actual costs incurred for moving and storage;
- b) reimbursement of the reasonable actual costs for relocation, including meals and accommodations, 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

5.4 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, per address, to the amounts stated in the contract of enterprise or the contract of sale without in any case exceeding \$ 260,000.00.

5.5 Completion of work and repair of defects and poor workmanship, for a multi-family building

The guarantee 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 amount stated in the contract of enterprise or the contract of sale;
- b) an amount equal to \$ 130,000.00 multiplied by the number of units contained in the building without in any case exceeding \$ 1,900,000.00.

5.6 Coverage of the obligation to provide water supply for a detached, semi-detached or row type single-family dwelling

The coverage of the obligation to provide water supply appropriate in quality and quantity, where it is impossible to effect repairs, is limited per address to the damages suffered by the beneficiary without however exceeding the lesser of the two amounts set out in paragraph 5.4. 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.

5.7 Coverage of the obligation to provide water supply with respect to a multi-family building

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 5.5. 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.

5.8 Building without a beneficiary upon the completion of work

The guarantee applies to a building that has no beneficiary at the end of work, provided that acceptance of the building occurs within twenty-four (24) months after the 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 building does not apply, however, if the beneficiary and the contractor agree that the building 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 building, 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 building takes place after the completion of work.

6.2 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, prior to acceptance of the building, inspect it jointly with the beneficiary, and where applicable in the presence of a person of the beneficiary's choice, 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.

7.2 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.

7.3 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)