



## DEPOSIT PROTECTION

**The Alberta New Home Warranty Program** (hereinafter called the “Program”) undertakes to and agrees with the Purchaser(s) (hereinafter called the “Purchaser”) named in the Purchase Agreement or Construction Agreement to which this Certificate is appended (hereinafter called the “Agreement”) that, subject to the limits, conditions and exclusions set out below, if payment(s) paid by the Purchaser to the Builder become legally refundable and the Purchaser is unable to collect from the Builder, the Program will pay the Purchaser’s actual loss.

### 1. CONDITIONS

- (a) In this Deposit Protection a “Deposit” is defined as only money (Canadian dollars) paid by the Purchaser to the Builder as a deposit for the purchase of the Home under the Agreement. Only the initial Deposit and Deposit confirming removal or satisfaction of conditions, as described and indicated in the Agreement and the Deposit Protection Receipt are covered. Things such as real or personal property, trade in property of any kind, work, materials or services provided by the Purchaser, rentals, payments for use and occupancy, or any setoffs whatsoever in favour of the Purchaser are not considered Deposits.
- (b) The Builder must be a Registered Builder Member of the Program at the time the Deposit is made by the Purchaser and it is the responsibility of the Purchaser to ensure that the Builder is a Registered Builder Member of the Program.
- (c) The Purchaser shall:
  - (i) claim against the Program for repayment of a Deposit within one (1) year from the date of the Agreement;
  - (ii) at the request of the Program, assign to the Program any security position, judgment, the Agreement, caveat or equity security held under the Agreement or any contract with the Builder in the event of refund of a Deposit;
  - (iii) comply with all of the obligations, terms, covenants and conditions imposed upon them under the Agreement or this Deposit Protection; and
  - (iv) ensure that the Program’s copy of the Deposit Protection Receipt is mailed or delivered to the Program within three (3) days of the date that the Deposit Protection Receipt is signed by the Builder and the Purchaser.
- (d) A separate Deposit Protection Receipt must be issued for each Deposit paid by the Purchaser to the Builder.

### 2. LIMITS AND EXCLUSIONS

- (a) No claim may be made where the Purchaser has defaulted in any of the obligations under the Deposit Protection Receipt, the Agreement or mortgage financing for the Home.
- (b) No claim may be made by the Purchaser after the expiration of a period of one (1) year from the date of the Agreement.
- (c) The Deposit Protection ends when all conditions are released on the Agreement, and thereafter the terms and conditions of the Program’s Builder Performance Protection apply.
- (d) The limit of liability of the Program, for all Deposit Protection Receipts issued pursuant to the Agreement, is to refund the lesser of: the actual loss to the Purchaser for deposit(s) made to the Builder; or 20% of the Total Price of the Home, including Land, under the Agreement to a maximum of One Hundred Thousand (\$100,000.00) Dollars.

### 3. ARBITRATION

If any dispute arises between the Builder and the Purchaser or between the Program and the Purchaser with respect to any matter in relation to this Deposit Protection, the dispute shall be settled by binding arbitration by a single arbitrator in accordance with the Rules adopted by the Program. It is expressly agreed that the arbitration by a single arbitrator shall be final and binding on the parties.

(H) **5. TERMS OF PAYMENT**  
Purchaser agrees to pay to the Builder the Total Price with interest at the rate of \_\_\_\_\_ per cent (%) per annum on any part of the Total Price which is not paid when due as follows:

- (I) (a) \$ \_\_\_\_\_ Deposit (as defined in the Deposit Protection as printed on page 2 of this Agreement) payment upon the signing of this Agreement
- (b) \$ \_\_\_\_\_ Deposit payment upon the removal or satisfaction of the Conditions in Clause 24
- (J) (c) \$ \_\_\_\_\_ On completion and inspection of \_\_\_\_\_
- (d) \$ \_\_\_\_\_ On completion and inspection of \_\_\_\_\_
- (e) \$ \_\_\_\_\_ On completion and inspection of \_\_\_\_\_
- (K) (f) \$ \_\_\_\_\_ By the assumption of a mortgage subject to the conditions of Clause 6 in this Agreement
- (L) (g) \$ \_\_\_\_\_ By a new mortgage to be arranged by and at the expense of the Purchaser
- (M) (h) \$ \_\_\_\_\_ Being the balance of the price and interest, if any, on the completion and possession of the Home and Land, whichever occurs first
- (i) \$ \_\_\_\_\_ TOTAL PRICE (Equals Clause 4)

(N) **6. TITLE AND MORTGAGE**  
The Builder agrees that title to the Land, upon transfer to the Purchaser, shall be free and clear of all encumbrances with the exception of those encumbrances, charges and interests which are for the benefit of the Land and intended to run with the Land, and any mortgage which may have been placed by the Builder and is assumed by the Purchaser as part of the Total Price, or alternatively any mortgage which the Purchaser may be placing on the Land for the purpose of payment of a portion of the Total Price. In the event that separate title to the Land has not yet been created by way of legal subdivision, the Purchaser acknowledges and agrees that the title to the Land will be subject, after subdivision, to those encumbrances, charges and interest which are for the benefit of the Land and intended to run with the Land, and which will be encumbrances, charges and interests which are normally associated with subdivision of land, and the Builder represents that such encumbrances, charges or interests will not affect marketability of title in any material manner. The parties agree that the advance of funds by the Purchaser for the stages of completion referred to in Clause 5(c), (d) and (e) above shall be subject to the approval and inspection of the Mortgagee, if applicable, and written notice to the Purchaser by the Builder.

The advance of money under the new mortgage in Clause 5(g) above shall not be considered due and payable to the Builder until the completion and inspection of the construction stages under Clauses 5(c), (d) or (e) above. Any mortgage advances to the Builder which may be required for consideration and transfer of the Land to the Purchaser shall not be considered as money due and payable until the time of transfer of the Land. All remaining money to be advanced under the new mortgage shall not be due and payable until full or substantial completion and inspection of the Home by the Purchaser subject to Clause 18 and any holdback requirements of the mortgagee.

The Parties agree that notwithstanding that the title to the Land has been transferred to the Purchaser, the Purchaser acknowledges and agrees that the Builder shall be entitled to register an unpaid vendor's lien caveat against the Land as security for payment of the Total Price of the Home and Land, which shall constitute a mortgage, charge and encumbrance against the Land. The Builder agrees to postpone this caveat in favour of a new first mortgage by the Purchaser subject to the Purchaser meeting all of the conditions referred to above.

The Builder agrees that if part of the monies payable are coming from the proceeds of a new first mortgage by the Purchaser the Builder shall provide a registerable transfer of title to the Purchaser, providing all conditions below are met:

- (a) The Builder is supplied with and approves a copy of the mortgage commitment;
- (b) The Builder is advised by its solicitor that the Purchaser has executed any and all required documents and has delivered any and all information required by the Mortgagee in ample time to permit the mortgage money to be advanced in full on or before the date of possession;
- (c) The Purchaser has executed and delivered to the Builder an irrevocable direction in writing addressed to the Mortgagee that the mortgage proceeds be paid to the Builder;
- (d) The Purchaser has executed such other documents as may be required in the circumstances to ensure that the mortgage proceeds are, in fact, paid to the Builder.

If any of the above conditions are not met, then the Purchaser shall pay to the Builder on the date of possession, all of the Total Price with no allowance for the mortgage proceeds and the Purchaser shall do such interim financing as may be required to give effect to this Agreement. If the Builder agrees to permit the Purchaser to take possession of the Land, as a tenant at will only, while any of the Total Price remains unpaid, such amount outstanding shall bear interest at the rate stated in Clause 5 until paid.

In the event the Purchaser does not obtain title prior to the date of possession, but files a caveat against the Land or the Builder or anyone holding the Land under an Agreement with the Builder, then the Purchaser undertakes and agrees that an unconditional postponement of any such Purchaser's caveat will be granted on the request of the Builder in favour of any vendor's lien caveat to be filed by the Builder subsequently or, if required by a mortgage lender for the purpose of making mortgage advances.

**7. PRE-POSSESSION OR OCCUPANCY INSPECTION**  
The Builder shall provide a notice in writing to the Purchaser at least 35 days in advance, advising that on a date to be specified in the notice, the Home will be ready for possession and that an inspection shall take place on the date specified. The Purchaser shall make an inspection of the Home on the date specified together with a representative of the Builder at which time any deficiencies or defects will be noted in writing on a Certificate of Possession. The Purchaser shall take possession forthwith and the taking of possession will be deemed to conclusively prove the Home is complete and in full compliance with this Agreement except as to matters noted at the time of the inspection.

The Purchaser acknowledges that if the Builder issues a certificate of substantial performance under the Builders' Lien Act of Alberta, the Builder is required to post the certificate on the Home, in a conspicuous place. The Purchaser agrees that on or after taking possession of the Home this certificate will not be disturbed and will remain in place until the expiration of the time set out in the certificate.

(O) **8. ADJUSTMENTS**  
It is agreed that all payables normally arising out of the construction and completion of the Home and Land shall be paid by the Builder up to the date upon which the Purchaser takes possession unless otherwise stated in this Clause. In particular, the Builder agrees that it will pay all utility connections, course of construction and liability insurance, building permits, surveys, realty taxes, and utilities up to the date of possession excepting the following which are to be paid by the Purchaser, namely:

\_\_\_\_\_  
\_\_\_\_\_

(P) Effective on the date of possession, the Purchaser agrees that all payables shall be paid by them thereafter. The Purchaser has prepaid \$ \_\_\_\_\_.