

# CONTRACTS

Builders Association of Minnesota



## Remodeling Agreement

PART OF THE BENEFIT OF BAM MEMBERSHIP IS ACCESS TO HIGH QUALITY CONTRACT TEMPLATES. DRAFTED BY ATTORNEYS THAT SPECIALIZE IN RESIDENTIAL CONSTRUCTION, AND UPDATED WHEN THE LAW CHANGES, THESE CONTRACTS ARE AVAILABLE IN BOTH WORD AND PDF FORMAT.

WORTH OVER \$10,000, THIS MEMBER BENEFIT SAVES YOU BOTH TIME AND MONEY WHILE PROTECTING YOU AND YOUR BUSINESS.

SINCE 1974, BAM REPRESENTS YOU AND YOUR BUSINESS AT THE STATE'S CAPITOL, BEFORE REGULATORY AGENCIES AND THE COURTS BECAUSE INDUSTRY UNITY AND DOING BUSINESS WITH MEMBERS IS GOOD BUSINESS®.

[BAMN.ORG](http://BAMN.ORG)

**The Builders Association of Minnesota, its local associations, and Fredrikson & Byron, P.A. disclaim any liability resulting from the use of these sample forms, and remind you that no single form is appropriate for all circumstances. If you have a question about these forms, or any legal issue regarding construction contracting or any other matter dealt with in these forms, seek competent legal advice before using these forms. Legal requirements constantly change. As a result, you must consult with your professional advisors to update your contracts and procedures to reflect those changes.**

**These forms are protected by United States copyright laws and may not be used, reproduced, distributed, modified, or displayed except as set forth in this paragraph. Subject to the provisions of the preceding paragraph, members of the Builders Association of Minnesota and its local associations are hereby granted the limited, nonexclusive, nontransferable, license to reproduce, modify and use these forms solely for the purpose of construction contracting. Any other reproduction, distribution, modification, or commercial use of these forms is strictly prohibited.**

# HOME REMODELING CONTRACT

This Home Remodeling Contract (“**Agreement**”) is entered into between \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (“**Owner**,” whether one or more) and \_\_\_\_\_  
\_\_\_\_\_ Minnesota License Number \_\_\_\_\_ (“**Builder**”) effective  
as of the date this Agreement is accepted by Builder (the “**Effective Date**”).

1. **Information regarding Owner and Builder:**

Owner’s Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

Best email contact: \_\_\_\_\_

Builder’s Address: \_\_\_\_\_

Builder’s Phone: \_\_\_\_\_

Builder’s Email: \_\_\_\_\_

2. **Ownership of the Land and Existing Home.** Owner owns the land located at \_\_\_\_\_, in the City of \_\_\_\_\_ (“**City**”), \_\_\_\_\_ County, Minnesota \_\_\_\_\_ (the “**Land**”) and the existing home thereon (the “**Home**”). The Land and the Home are sometimes collectively referred to in this Agreement as the “**Property**.”

3. **Improvements.** Builder agrees to perform the improvements to the Land and/or the Home (the “**Improvements**”) materially in accordance with:

- (a) The “**Drawings**” referenced in attached **Exhibit A**;
- (b) The “**Specifications**” referenced in attached **Exhibit B**;

The Drawings and Specifications shall be collectively referred to in this Agreement as the “**Plans**.” If anything in this Agreement conflicts with the Plans, the Plans shall control.

4. **Contract Price.** The “**Contract Price**” for the Improvements shall be \_\_\_\_\_ (\$ \_\_\_\_\_) and shall be paid by Owner as follows:

*[If there will be an initial payment, check 1.]*

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

\_\_\_ **1. Initial Payment by Owner Before the Improvements Begin:** \$ \_\_\_\_\_ shall be paid when Owner signs this Agreement. The initial payment shall be paid directly to Builder and may be combined with Builder's general funds for use by Builder.

*[If there will be payments made during the Improvements, select 2., but not 3. If there will be only one final payment upon completion of the Improvements, select 3., but not 2.]*

\_\_\_ **2. Payments During the Improvements:**

*[If Owner is obtaining construction financing, check a., and do not check b.]*

\_\_\_ **a. Construction Financing; Disbursement Agreement.** Payments to Builder shall be made in accordance with the attached Disbursement Agreement.

*[If Owner is paying directly from Owner's funds, check b., and do not check a.]*

\_\_\_ **b. Payments from Owner's Funds.**

*[Select (i) or (ii):]*

___ <b>i. Milestone Payments.</b>	<b>Amount to be Paid</b>
(a) _____	\$ _____
(b) _____	\$ _____
(c) _____	\$ _____
(d) _____	\$ _____
(e) Construction Closing	See "Construction Closing" below

\_\_\_ **ii. Periodic Payments by Owner.** Periodic Payments for portions of the Improvements then completed may be requested by Builder not more often than once during any *[select one]*:

\_\_\_ two week period    \_\_\_ one month period    \_\_\_ \_\_\_\_\_ period

*[If there will be only one final payment upon completion, select 3, but not 2.]*

\_\_\_ **3. Payments Only Upon Substantial Completion of the Improvements.** The balance of the Contract Price shall be paid in one payment at the Construction Closing defined in paragraph \_\_\_ below by cashier's check or wired funds.

5. **Adjustments to Contract Price.**

(a) Builder will not be required to make any changes to the Plans unless the change is approved by Builder. Builder will indicate its approval of a change in a "**Change Order**" which will be signed by Builder and Owner. (If there is more than one Owner, the signature on any Owner will be binding on all Owners.) When

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

reasonably possible, Change Orders shall not only describe the change, but also describe the effect of the change on the Contract Price. If Owner signs a Change Order that does not incorporate a price, the price of the change shall later be established by mutual agreement, or in the absence of such agreement, Owner shall pay all costs incurred by the Builder as a result of the change plus \_\_\_\_\_ percent (\_\_\_%).

- (b) It is not practical to make some changes once the Plans have been approved or construction has begun. Owner should not assume that any change, especially changes involving structural items, will be approved by Builder. **Selections made by Owner will not be considered final unless a change is approved by Builder in a written Change Order.**
- (c) If the Plans provide for allowances, and the cost of allowance items selected by Owner exceeds the allowance for that item, the Contract Price shall be increased to include the amount by which the allowance is exceeded.
- (d) If there are unexpected or unanticipated costs that are reasonably beyond Builder’s control (such as unanticipated conditions in the Property, or adverse weather conditions), the Contract Price shall be adjusted to cover the unexpected or unanticipated costs.
- (e) The current economy and how the building industry manufactures and controls inventory may lead to price fluctuations that cannot be anticipated by Builder or Owner. The Contract Price has been calculated based on current prices for the materials included in Drawings and Specifications. Builder agrees to use its best efforts to obtain the lowest possible prices from available building material suppliers, but should there be an increase in the prices of such materials purchased after execution of this Agreement, the Contract Price shall be increased to include such cost increase.
- (f) The Contract price shall be good for \_\_\_\_\_ days after the date this Agreement is signed. If, by that date: (i) Owner has not released any contingencies for Owner’s benefit; or (ii) Owner has not authorized Builder to commence work on the Improvements, Owner agrees that Builder may increase the Contract Price to cover increases in the cost of labor, material, or equipment.

6. **Important Matters Relating to Construction of the Improvements.** The parties agree to the following provisions regarding construction of the Improvements:

- (a) Builder will apply for a building permit for the Improvements within as follows (check one):

\_\_\_\_\_ Within \_\_\_\_\_ ( ) business days after receiving Owner’s written authority to proceed with the Improvements.

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

---

(b) Builder will begin work on the Improvements as follows (check one):

\_\_\_\_\_ Within \_\_\_\_\_ days after the building permit is issued.

\_\_\_\_\_ On a date to be mutually agreed upon between Builder and Owner.

(c) Substantial Completion of the Improvements is expected to occur on or about \_\_\_\_\_. Owner acknowledges, however, that this date is only an estimate, and is subject to change due to many factors including, but not limited to: (i) changes in the Plans requested by Owner; (ii) delays in receiving materials specified in the Plans; (iii) delays resulting from war, acts of God or adverse weather conditions; (iii) delays caused by shortages of labor, materials or equipment; (iv) delays caused by the failure of Owner to make timely selections of items to be selected by Owner; (v) delays due to defaults of Owner, including suspension of work by Contractor if Owner fails to make any payment in the time and manner provided for in this Agreement; and (vi) other causes reasonably beyond Builder's control.

(d) Owner agrees to cooperate with Builder regarding selections and decisions which must be made by Owner before items can be ordered by Builder. If Owner fails to make any selection by the time the benchmark event is achieved, Builder will have the right to complete construction of the Improvements with such selections as Builder considers suitable. If Builder elects to provide with additional time to make its selections, this may result in significant delays in completing the Improvements.

(e) If any of the Owner's selections become unavailable, Builder may require Owner to make new selections. In addition, Builder has reserved the right to change and/or substitute items, techniques and/or materials of approximately equivalent value in the construction of the Improvements in lieu of the exact items described in the Drawings described in **Exhibit A** or the Specifications described in **Exhibit B**. Builder agrees to consult with Owner, however, before substituting any materials determined by Owner's selection.

(f) Builder has the right to stop construction of the Improvements if Owner fails to make any progress payment at the time or in the manner required by this Agreement or otherwise defaults under this Agreement. Builder need not resume construction until Owner has brought all payments current and cured any other defaults of Owner under this Agreement. The anticipated date of completion shall be extended for the period of the delay caused by Owner's non-payment or default.

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

- (g) If Builder discovers conditions or defects in the Property which affect the performance of the Improvements, including, but not limited to hazardous substances, asbestos, lead-based paint, code violations, or if Builder encounters other circumstances that are reasonably beyond Builder's control (collectively, "**Unexpected Conditions**"), Owner agrees to be responsible for the Unexpected Conditions, and all costs associated with remedying the Unexpected Conditions, plus \_\_\_\_\_ percent (\_\_\_\_\_% ) to cover: (i) Builder's overhead, and (ii) Builder's standard profit margin. Builder may require Owner to deposit an amount sufficient to cover the cost of remedying the Unexpected Conditions before Builder will be obligated to start work to remedy the Unexpected Condition in question, and work on the Improvements may be suspended until the Unexpected Conditions are remedied.

7. **Builder's Representations and Warranties.** Builder makes the following representations and warranties to Owner:

- (a) Builder is licensed to perform residential construction in Minnesota.
- (b) Builder warrants that so long as Builder receives all payments provided for in this Agreement, at the Closing, Builder shall cause all labor, materials, machinery, fixtures or tools furnished in connection with Builder's construction of the Improvements to be paid in full.
- (c) Minnesota Statutes Chapter 327A provides certain statutory warranties for residential construction in the State of Minnesota and requires that residential contractors include the warranties in any construction contract. The Minnesota Statutes Chapter 327A warranties (the "**Statutory Warranties**") are attached as Exhibit C and incorporated herein. The Owner and Builder agree that the coverages, exclusions and remedies in the Statutory Warranties shall be the exclusive warranties and remedies for claims relating to the physical condition of the Improvements.
- (d) Before entering into this Agreement, Builder provided to Owner written performance guidelines for the services to be provided by Builder (the "**Performance Guidelines**"). A copy of the Performance Guidelines is attached as Exhibit D and incorporated herein. Builder agrees that it shall comply with the Performance Guidelines.

8. **Covenants and Acknowledgments By Owner.** Owner makes the following covenants and acknowledgments to Builder:

- (a) **OWNER ACKNOWLEDGES RECEIVING THE PERFORMANCE GUIDELINES AND THE MINNESOTA STATUTORY WARRANTIES COPIES OF WHICH ARE ATTACHED AND INCORPORATED HEREIN (COLLECTIVELY REFERRED TO HEREIN AS THE "WARRANTY"). OWNER ACKNOWLEDGES THAT OWNER'S SOLE AND EXCLUSIVE**

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**REMEDIES AGAINST BUILDER AFTER CLOSING SHALL BE AS SET FORTH IN THE WARRANTY. BUILDER HEREBY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANSHIP AND FITNESS FOR A PARTICULAR PURPOSE. BUILDER'S LIABILITY UNDER THE WARRANTY OR THIS AGREEMENT OR ARISING IN ANY WAY OUT OF THE CONSTRUCTION, DELIVERY, SALE OR CONDITION OF THE PROPERTY SHALL BE LIMITED TO THE REPAIR OF THE PROPERTY IN ACCORDANCE WITH THE WARRANTY. IN NO EVENT SHALL BUILDER BE LIABLE HEREUNDER FOR ANY SPECIAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING.**

- (b) Owner has fully disclosed the existence of any private covenants binding on the Land which might affect Builder's construction of the Improvements.
- (c) Owner does not know of any: (i) wells or individual sewage treatment systems on the Land; (ii) hazardous materials in the Home or on the Land; or (iii) the presence of asbestos containing materials in the Home or on the Land.
- (d) If applicable to the Improvements, Owner warrants that the soil conditions on the Property sufficient to permit the performance of the Improvements without the need to perform any work not specified in the Plans, including correction of any soil condition, addition of any soil or fill material, the performance of special, additional, or different excavation or foundation work. Owner acknowledges that these items shall be considered an Unexpected Condition and that the cost of remedying the Adverse Condition will be Owner's responsibility as provided in paragraph 5(i).
- (e) Owner acknowledges that Builder is not responsible for problems which arise because of the existence of defects in the existing structure or systems in the Home which are not caused by the Improvements.
- (f) Owner acknowledges that no officer, employee, agent, broker or other representative of Builder has any authority to extend any warranty to Owner except the warranties set forth in writing in this Agreement.
- (g) Owner waives all rights against Builder, under any legal theory and whenever arising, based in whole or part on: (i) conditions not warranted in writing in this Agreement; or (ii) for damages excluded by this Agreement or by any warranty referenced in writing in this Agreement. This paragraph may not be modified by any method (including, without limitation, oral representation or course of

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_



conduct) other than a written agreement signed by an officer of Builder, and Owner understands that no other party is or will be authorized to sign that agreement.

(h) Owner agrees that the selection, direction and supervision of the working forces, including but not limited to subcontractors, rests exclusively with Builder. Owner agrees not to interfere with or issue any instructions to work forces, or contract for additional work except with Builder's written consent, and then only in such manner as will not interfere with Builder's completion of the Improvements. Builder does not warrant any work or materials performed or supplied by Owner or Owner's separate contractors or suppliers. Owner agrees to look only to Owner's separate contractors or suppliers for any warranty. No separate contractor or supplier of Owner shall be permitted on the Property unless first approved by Builder and then only upon receipt by Builder of certificates of insurance from Owner's separate contractors in such amount and providing such coverages as required by Builder.

(i) The provisions of this paragraph shall survive the Construction Closing.

9. **Construction Sites are Dangerous.** There are inherent physical dangers of being present in the areas of the Home in which the Improvements are being performed. Owner agrees that it will ensure that children under Owner's care do not enter the portions of the Home in which the Improvements are being performed, and if Owner or others enter the areas affected by performance of the Improvements Owner agrees to assume all risks, whether latent, patent, or otherwise, and agrees that any and all injury or loss was proximately caused by such access, because such injury or damage could not have occurred but for Owner entering, or failing to keep others from entering, the portions of the Home in which the Improvements are being performed. Further, Owner shall hold Builder harmless and shall indemnify Builder from any and all claims, liabilities, cost, expense or causes of action resulting from Owner and/or Owner's family or guests entering such areas, with said indemnity to include reimbursement of all attorneys' fees incurred by Builder.

10. **Pre-Construction Closing Inspection.** Upon Substantial Completion of the Improvements as defined below, Builder shall notify Owner to make an appointment with Builder to inspect the Improvements within five (5) days during Builder's normal business hours. Owner agrees to sign Builder's form of inspection report (the "**Inspection Report**") following that inspection, and to list thereon all items of work which the parties mutually agree are incomplete or require correction (the "**Punch List Items**"). Builder shall complete or correct the Punch List Items within a reasonable time after the Construction Closing, subject to the factors stated in paragraph 6(c) above and other circumstances reasonably beyond the control of Builder. **Important: Builder will not escrow funds at the Construction Closing for Punch List Items. If Owner is obtaining financing in connection with the Improvements, Owner shall notify its lender of Builder's escrow policy.**

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

11. **Construction Closing.**

- (a) **Important:** Any estimated date for completion of construction of the Improvements is a good faith estimate only. Construction delays are common in the building industry and often are outside the control of Builder. Any estimated completion date is an approximation only, and not a guarantee.
- (b) The date on which the final installment of the Contract Price is to be paid (the “**Construction Closing**”) shall occur on a date within \_\_\_\_\_ days of notice to Owner of Substantial Completion of the Improvements. Substantial Completion shall be defined as issuance of a certificate of occupancy by the building inspection department of the City. If the City does not issue a certificate of occupancy in connection with projects of a nature such as performance of the Improvements, Substantial Completion shall be the date when the portion of the Home affected by the Improvements could be used for its intended purpose, even if Punch List items remain to be corrected. The Payment of the balance of the Contract Price shall be made at the Construction Closing. If Owner fails to pay the balance of the Contract Price at the Construction Closing, then, in addition to any other rights or remedies Builder may have under this Agreement, Owner will pay Builder the sum of \$\_\_\_\_\_ per day, as liquidated damages and not as a penalty, for each day payment of the balance of the Contract Price is delayed due to Owner’s fault.
- (c) So long as Owner pays Builder the balance of the Contract Price at the Construction Closing, Builder will deliver a final lien waiver evidencing final payment for all labor, materials and equipment.

12. **Insurance.**

- (a) Builder shall maintain Workers’ Compensation and commercial general liability insurance with limits required under Minnesota law. Builder shall also maintain a policy of builder’s risk insurance covering the value of the Improvements. If requested by Owner, Builder will provide Owner with a certificate evidencing that Builder is maintaining the required insurance.
- (b) Owner shall maintain homeowner’s insurance, public liability and fire and casualty coverage on the Home and Improvements. Owner shall solely be responsible for providing insurance on Owner’s possessions and improvements provided by Owner and/or its separate contractors. Upon request by Builder, Owner shall provide certificates or other proof of insurance to Builder.

13. **Default.** If Builder or Owner is in default under this Agreement, the other party shall have the rights and remedies as follows:

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

(a) Any controversy or claim arising out of or relating to the payment of the Contract Price shall not be subject to arbitration.

(b) Subject to the provisions of Subparagraph (a), any controversy or claim arising out of or relating to this Agreement, the construction of the Improvements, or any matter related to claims of breach of agreement, fraud, misrepresentation, warranty and/or negligence, shall be settled by negotiation between the parties, or if a party concludes that further negotiation will be non-productive, as follows: **[Initial One]**

\_\_\_\_ (i) by binding arbitration in accordance with the procedures set forth in the attached Arbitration Agreement. The provisions of this Section shall survive the Construction Closing.

\_\_\_\_ (ii) by litigation in Minnesota District Court where the Property is located.

(c) Notwithstanding the provisions of Subparagraph (b), Builder expressly reserves all rights and remedies under Minnesota's Mechanic Lien Law, Chapter 514 of Minnesota Statutes, and may take any action as may be necessary or desirable to preserve Builder's mechanic's lien rights, before, during, or after commencement of any process to resolve a dispute.

14. **Notice.** All notices and demands herein required shall be in writing and shall be deemed sufficient if made by personal delivery, United States regular mail, certified, registered mail or by facsimile with original to follow by regular mail, to Builder at the address listed in **Section 1** of this Agreement, and to Owner at either: (i) the home address listed in **Section 1** of this Agreement; or (ii) at the address of Owner's legal counsel, if any. Notices mailed as set forth above shall be deemed received two (2) business days after the day of mailing thereof, postage prepaid by certified or registered mail, return receipt requested.

15. **Builder's Right To Terminate.** In addition to Builder's right to terminate this Agreement in connection with a default by Owner in paying any portion of the Contract Price, Builder shall have the right to terminate this Agreement if: (i) Builder is unable to obtain all necessary governmental and other approvals and permits needed in connection with the performance of the Improvements; (ii) if Owner suspends the project for more than \_\_\_\_\_ days, or for reasons beyond Builder's control, the Improvements cannot be completed within a reasonable time; (iii) the cost of materials or labor increase by more than \_\_\_% before work begins; (iv) Builder is unable, for any reason, to perform the Improvements; or (v) Builder reasonably concludes that Owner is not cooperating in connection with the performance of the Improvement or Owner is being unreasonable; provided, however, that before terminating this Agreement for the reasons specified in this clause, Builder will provide Owner with notice and \_\_\_ days within which to remedy the situation to Builder's reasonable satisfaction.

16. **Rights Reserved By Builder.** If Builder is unable to obtain certain materials required by the Plans, Builder shall have the right to substitute other materials or brand names of substantially similar or better quality, utility or color for those described in the Plans. Builder

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

reserves the right to make any changes in construction as may be required, in the exercise of Builder's reasonable judgment, by material shortages or such other causes or emergency situations reasonably beyond Builder's control. All dimensions shown in the Plans will be accurate within normal construction tolerances. Builder specifically reserves the right to: (i) make changes in the Plans as deemed appropriate by Builder to accommodate design improvements, structural and mechanical elements, site engineering, utility requirements, and to comply with requirements of applicable laws, ordinances, regulations and codes; (ii) substitute materials similar in pattern, design and quality to those in the Plans; and (iii) make minor relocations of mechanical, electrical, and plumbing lines, devices and equipment.

17. **Important Health Notice.** The following notice is required to be given pursuant to Minnesota law:

**SOME OF THE BUILDING MATERIALS USED IN THE HOME (OR THESE BUILDING MATERIALS) EMIT FORMALDEHYDE. EYE, NOSE, AND THROAT IRRITATION, HEADACHE, NAUSEA AND A VARIETY OF ASTHMA-LIKE SYMPTOMS, INCLUDING SHORTNESS OF BREATH, HAVE BEEN REPORTED AS A RESULT OF FORMALDEHYDE EXPOSURE. ELDERLY PERSONS AND YOUNG CHILDREN, AS WELL AS ANYONE WITH A HISTORY OF ASTHMA, ALLERGIES, OR LUNG PROBLEMS, MAY BE AT GREATER RISK. RESEARCH IS CONTINUING ON THE POSSIBLE LONG-TERM EFFECTS OF EXPOSURE TO FORMALDEHYDE.**

**REDUCED VENTILATION MAY ALLOW FORMALDEHYDE AND OTHER CONTAMINANTS TO ACCUMULATE IN THE INDOOR AIR. HIGH INDOOR TEMPERATURES AND HUMIDITY RAISE FORMALDEHYDE LEVELS. WHEN A HOME IS TO BE LOCATED IN AREAS SUBJECT TO EXTREME SUMMER TEMPERATURES, AN AIR-CONDITIONING SYSTEM CAN BE USED TO CONTROL INDOOR TEMPERATURE LEVELS. OTHER MEANS OF CONTROLLED MECHANICAL VENTILATION CAN BE USED TO REDUCE LEVELS OF FORMALDEHYDE AND OTHER INDOOR AIR CONTAMINANTS.**

**IF YOU HAVE ANY QUESTIONS REGARDING THE HEALTH EFFECTS OF FORMALDEHYDE, CONSULT YOUR DOCTOR OR LOCAL HEALTH DEPARTMENT.**

18. **Radon, Electromagnetic Fields and Other Environmental Conditions.** Builder does not have special information about radon, formaldehyde or electromagnetic fields on the Property; the measurement or reduction of radon, formaldehyde, or electromagnetic fields; or any other environmental condition or hazard on the Property (collectively, "**Environmental Conditions**"). Except as specifically provided herein, Builder makes no warranty or representation of any kind, express or implied, regarding: (i) the presence or absence of Environmental Conditions; (ii) the effectiveness of any architectural or engineering activities for

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

reducing the presence of Environmental Conditions; or (iii) the presence or absence of any Environmental Conditions.

19. **Mold Disclosure and Waiver.** Mold occurs naturally and is nearly everywhere. It is important to minimize the amount of certain kinds of mold in a home for health reasons. Builder will construct the home in a manner intended to minimize mold growth during construction. After construction, it is the responsibility of the Owner to maintain the home in a manner that controls the growth of mold.

Owner agrees that Builder will not be responsible for the existence of mold mildew, or other indoor air quality issues in the home or for damage caused by these matters, including adverse health effects, injury to persons, or damage to property, loss of use or loss of value, except to the extent directly caused by Builder's failure to conform to applicable building standards, and then only to the extent that Builder does not correct any non-conformance with applicable building standards within thirty (30) days of written notice from the Owner, or such longer period as may be reasonable under all of the facts and circumstances. Under no circumstances will Builder be liable if the adverse effects of mold, mildew, or other indoor air quality issues could have been controlled by the Owner's exercise of good air quality management practices, or for incidental or consequential damages. **Owner acknowledges that Builder has not made, and hereby waives, any and all implied warranties relating to mold, mildew, or other indoor air quality issues, including without limitation, the implied warranty of habitability and the implied warranty of fitness for a particular purpose. The only warranties given by Builder are those set forth in paragraph 6(c) above. Owner waives all claims against Builder arising because of the existence of mold, mildew, or other indoor air quality issues.**

20. **Cosmetic Finishes.** Some of the attractive characteristics of stained wood, stone, ceramic tile, and pre-cast concrete are the variations in grains and colors. The finished color and texture of stained wood may vary considerably even when the wood type is the same. Stone will vary significantly from piece to piece, and from the original sample. Builder makes no representations or warranties regarding the finished color, uniformity, or grain of the stone, ceramic tile, pre-cast concrete and stained wood within the Property. Carpet seams may vary in location depending on room size and orientation. Builder will locate seams where most appropriate. Seams may be visible in some types of carpet, particularly Berber.

21. **Mechanic's Lien Notice.** Builder is required under Minnesota Law to provide the following notice:

**“(a) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THEIR CONTRIBUTIONS.**

**(b) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR**

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.”**

**OWNER’S INITIALS:** \_\_\_\_\_

22. **Trees, Shrubs & Vegetation.** Owner acknowledges that trees, shrubs and other vegetation on the land may have to be removed in connection with performance of the Improvements or may be affected by soil compaction and other activity around the construction site. Owner agrees to hold Builder harmless from any and all loss or damages to trees, shrubs, and vegetation.

23. **Exhibits.** The exhibits attached to this Agreement shall be considered to be a part of this Agreement.

24. **Toilet and Lavatory.** Sanitary facilities at the job site **[Select one]**:

\_\_\_\_\_ Builder will arrange for a portable, self contained toilet on the job site at Owner’s expense.

\_\_\_\_\_ Owner shall make a toilet and lavatory in the house available to Builder and keep it supplied with soap and paper products. The location of the toilet and lavatory is \_\_\_\_\_.

25. **Compliance with EPA’s Lead-Based Paint Renovation, Repair and Painting Program.** Builder shall fully comply with all requirements of the United States Environmental Protection Agency’s Lead-Based Paint and Renovation, Repair, and Painting Program, codified at 40 Code of Federal Regulations Part 745, Subpart E, and any amendments, substitutions, or revisions then in effect that regulate the Improvements (the “**EPA Regulations**”).

Owner acknowledges that Builder has provided Owner with the informational pamphlet, as required in EPA Regulations, prior to the start of the Improvements at the Home address provided in Section 2 herein.

Owner’s Signature: \_\_\_\_\_

Owner’s Signature: \_\_\_\_\_

If the Home is not occupied by the Owner, the adult occupant(s) of the Home hereby acknowledges that Builder has provided all such adult occupant(s) with the informational pamphlet, as required in EPA Regulations, prior to the start of the Improvements at the Home address provided in Section 2 herein.

Adult Occupant’s Signature: \_\_\_\_\_

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

Adult Occupant's Signature: \_\_\_\_\_

Compliance with the EPA Regulations shall be considered to be part of this Agreement and failure to comply with the EPA Regulations shall constitute a default under this Agreement.

26. **Miscellaneous.** Time is of the essence. The invalidity, illegality or unenforceability of any provision, restriction, condition, reservation or any other part of this Agreement, in its entirety or as applied to particular circumstances, shall not impair or affect in any manner the validity, legality, enforceability or effect as otherwise applied to the remainder of this Agreement. This Agreement shall be governed by the laws of the State of Minnesota. Owner shall pay attorneys' fees actually incurred by Builder if Owner breaches its obligations under this Agreement. This Agreement shall not be assigned by Owner except with Builder's prior written consent. This Agreement may be assigned by Builder without prior written consent of Owner. This Agreement may be amended only by a written instrument signed by the parties. The captions and headings are for convenience only and do not define or limit the scope or intent of this Agreement. This Agreement sets forth the entire understanding of the parties. Builder will not be bound by any representations or agreements not expressly contained as a written part of this Agreement, including its exhibits and addenda. Any number of counterparts of this Agreement may be executed and each such executed counterpart shall be deemed an original, but all such counterparts together shall constitute one Agreement. By signing below, Owner acknowledges receipt of a copy of this Contract.

27. **Optional Provisions.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**This Is A Legally Binding Document. If You Desire Legal Advice, Please Consult A Lawyer.**

In witness to their agreement, the parties have signed this Agreement effective as of the later of the dates set forth below.

**BUILDER:**

**OWNER:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

Minnesota License Number \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**EXHIBIT A**

**(Drawings)**

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_



**EXHIBIT B**  
**(Specifications)**

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**EXHIBIT C**

**(“Minnesota Statutory Warranties”)**

**CHAPTER  
327A**

**HOUSING; STATUTORY WARRANTIES**

327A.01	DEFINITIONS.	327A.051	HOME WARRANTY DISPUTE RESOLUTION
327A.02	STATUTORY WARRANTIES.	327A.06	OTHER WARRANTIES.
327A.03	EXCLUSIONS.	327A.07	VARIATIONS.
327A.04	WAIVER AND MODIFICATION LIMITED.	327A.08	LIMITATIONS.
327A.05	REMEDIES.		

**327A.01 DEFINITIONS.**

**Subdivision 1. Scope.**

As used in sections [327A.01](#) to [327A.07](#), the terms in this section shall have the meanings assigned to them.

**Subd. 2. Building standards.**

"Building standards" means the materials and installation standards of the State Building Code, adopted by the commissioner of labor and industry pursuant to sections [326B.101](#) to [326B.194](#), in effect at the time of the construction or remodeling.

**Subd. 3. Dwelling.**

"Dwelling" means a new building, not previously occupied, constructed for the purpose of habitation; but does not include appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the dwelling, landscaping, fences, nonpermanent construction materials, off-site improvements, and all other similar items.

**Subd. 4. Initial vendee.**

"Initial vendee" means a person who first contracts to purchase a dwelling from a vendor for the purpose of habitation and not for resale in the ordinary course of trade.

**Subd. 5. Major construction defect.**

"Major construction defect" means actual damage to the load-bearing portion of the dwelling or the home improvement, including damage due to subsidence, expansion or lateral movement of the soil, which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling or the home improvement for residential purposes. "Major construction defect" does not include damage due to movement of the soil caused by flood, earthquake or other natural disaster.

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**Subd. 6. Vendee.**

"Vendee" means any purchaser of a dwelling and includes the initial vendee and any subsequent purchasers.

**Subd. 7. Vendor.**

"Vendor" means any person, firm, or corporation that constructs dwellings, including the construction of dwellings on land owned by vendees. Vendor does not include a subcontractor or material supplier involved in the construction of a dwelling.

**Subd. 8. Warranty date.**

"Warranty date" means the date from and after which the statutory warranties provided in section 327A.02 shall be effective, and is the earliest of:

- (a) the date of the initial vendee's first occupancy of the dwelling; or
- (b) the date on which the initial vendee takes legal or equitable title in the dwelling.

In the case of a home improvement, the warranty date is the date on which the home improvement work was completed.

**Subd. 9. Home improvement.**

"Home improvement" means the repairing, remodeling, altering, converting or modernizing of, or adding to a residential building. For the purpose of this definition, residential building does not include appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the building, landscaping, fences, nonpermanent construction materials, off-site improvements, and all other similar items.

**Subd. 10. Home improvement contractor.**

"Home improvement contractor" means a person who is engaged in the business of home improvement either full time or part time, and who holds out to the public as having knowledge or skill peculiar to the business of home improvement.

**Subd. 11. Owner.**

"Owner" means any person who owns a residential building on which home improvement work is performed, and includes any subsequent owner of the residential building.

**Subd. 12. Inspection.**

"Inspection" means a visual or invasive examination of the alleged property damage.

**History:**

*1977 c 65 s 1; 1981 c 119 s 1-5; 1986 c 444; 2001 c 207 s 8; 1Sp2003 c 8 art 1 s 12; 2007 c 140 art 4 s 61; art 12 s 12; art 13 s 4; 2010 c 343 s 4,5*

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**327A.02 STATUTORY WARRANTIES.**

**Subdivision 1. Warranties by vendors.**

In every sale of a completed dwelling, and in every contract for the sale of a dwelling to be completed, the vendor shall warrant to the vendee that:

(a) during the one-year period from and after the warranty date the dwelling shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards;

(b) during the two-year period from and after the warranty date, the dwelling shall be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems due to noncompliance with building standards; and

(c) during the ten-year period from and after the warranty date, the dwelling shall be free from major construction defects due to noncompliance with building standards.

**Subd. 2. Warranties to survive passage of title.**

The statutory warranties provided in this section shall survive the passing of legal or equitable title in the dwelling to the vendee.

**Subd. 2a. Remedies unaffected by corporate dissolution.**

The statutory warranties provided in this section are not affected by the dissolution of a vendor or home improvement contractor that is a corporation or limited liability company.

**Subd. 3. Home improvement warranties.**

(a) In a sale or in a contract for the sale of home improvement work involving major structural changes or additions to a residential building, the home improvement contractor shall warrant to the owner that:

(1) during the one-year period from and after the warranty date the home improvement shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards; and

(2) during the ten-year period from and after the warranty date the home improvement shall be free from major construction defects due to noncompliance with building standards.

(b) In a sale or in a contract for the sale of home improvement work involving the installation of plumbing, electrical, heating or cooling systems, the home improvement contractor shall warrant to the owner that, during the two-year period from and after the warranty date, the home improvement shall be free from defects caused by the faulty installation of the system or systems due to noncompliance with building standards.

(c) In a sale or in a contract for the sale of any home improvement work not covered by paragraph (a) or (b), the home improvement contractor shall warrant to the owner that, during the one-year period from and after the warranty date, the home improvement shall be free from

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

defects caused by faulty workmanship or defective materials due to noncompliance with building standards.

**Subd. 4. Response from vendor or home improvement contractor to notice of claim; right to inspect.**

(a) The vendee or owner must allow an inspection for purposes of the preparation of an offer to repair the alleged loss or damage under subdivision 5. The inspection must be performed by the vendor or home improvement contractor within 30 days of the notification under section 327A.03, clause (a). Any damage to property caused as a result of an inspection must be promptly repaired by the inspecting party to restore the property to its preinspected condition.

(b) The applicable statute of limitations and statute of repose for an action based on breach of a warranty imposed by this section, or any other action in contract, tort, or other law for any injury to real or personal property or bodily injury or wrongful death arising out of the alleged loss or damage, is tolled from the date the written notice provided by the vendee or owner is postmarked, or if not sent through the mail, received by the vendor or home improvement contractor until the latest of the following:

(1) the date of completion of the home warranty dispute resolution process under section 327A.051; or

(2) 180 days.

(c) Upon completion of repairs as described in an offer to repair, the vendor must provide the vendee with a list of the repairs made and a notice that the vendee may have a right to pursue a warranty claim under this chapter. Provision of this statement is not an admission of liability. Compliance with this subdivision does not affect any rights of the vendee under this chapter.

**Subd. 5. Right to repair; agreement.**

(a) Within 15 days of completion of the inspection required by subdivision 4, the vendor or home improvement contractor must provide to the vendee or owner a written offer to repair. The offer to repair must include, at a minimum:

(1) the scope of the proposed repair work; and

(2) the proposed date on which the repair work would begin and the estimated date of completion.

(b) This subdivision does not prevent the vendee or owner from obtaining the information in paragraph (a) from another contractor or from negotiating with the vendor or home improvement contractor for a different scope of work.

(c) If the parties agree to a scope of work, the vendor or home improvement contractor must perform the repair work in accordance with the offer to repair. If the parties do not agree to a

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

scope of work, the vendee or owner must submit the matter to the homeowner warranty dispute resolution process under section 327A.051.

(d) Upon completion of repairs described in an offer to repair, the vendor or home improvement contractor must provide the vendee or owner with a written notice that the scope of the work agreed upon has been completed.

**Subd. 6. Failure to perform inspection or repair.**

If the vendor or home improvement contractor fails to perform an inspection under subdivision 4 or fails to make an offer to repair or perform agreed upon repairs under subdivision 5, the vendee or owner may commence an action.

**Subd. 7. Processes required before commencement of action.**

Except as provided in subdivision 6, a cause of action for which the statute of limitations or statute of repose is tolled under subdivision 4, paragraph (b), must not be commenced in district court until the earlier of:

- (1) the completion of the home warranty dispute resolution process under section 327A.051;
- or
- (2) 60 days after the written offer of repair is provided to the vendee or owner.

**History:**

1977 c 65 s 2; 1981 c 119 s 6; 2001 c 207 s 9,10; 2006 c 202 s 5,6; 2010 c 343 s 6-9

**327A.03 EXCLUSIONS.**

The liability of the vendor or the home improvement contractor under sections 327A.01 to 327A.07 is limited to the specific items set forth in sections 327A.01 to 327A.07 and does not extend to the following:

- (a) loss or damage not reported by the vendee or the owner to the vendor or the home improvement contractor in writing within six months after the vendee or the owner discovers or should have discovered the loss or damage; unless the vendee or owner establishes that the vendor or home improvement contractor had actual notice of the loss or damage;
- (b) loss or damage caused by defects in design, installation, or materials which the vendee or the owner supplied, installed, or directed to be installed;
- (c) secondary loss or damage such as personal injury or property damage;
- (d) loss or damage from normal wear and tear;
- (e) loss or damage from normal shrinkage caused by drying of the dwelling or the home improvement within tolerances of building standards;

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

(f) loss or damage from dampness and condensation due to insufficient ventilation after occupancy;

(g) loss or damage from negligence, improper maintenance or alteration of the dwelling or the home improvement by parties other than the vendor or the home improvement contractor;

(h) loss or damage from changes in grading of the ground around the dwelling or the home improvement by parties other than the vendor or the home improvement contractor;

(i) landscaping or insect loss or damage;

(j) loss or damage from failure to maintain the dwelling or the home improvement in good repair;

(k) loss or damage which the vendee or the owner, whenever feasible, has not taken timely action to minimize;

(l) loss or damage which occurs after the dwelling or the home improvement is no longer used primarily as a residence;

(m) accidental loss or damage usually described as acts of God, including, but not limited to: fire, explosion, smoke, water escape, windstorm, hail or lightning, falling trees, aircraft and vehicles, flood, and earthquake, except when the loss or damage is caused by failure to comply with building standards;

(n) loss or damage from soil movement which is compensated by legislation or covered by insurance;

(o) loss or damage due to soil conditions where construction is done upon lands owned by the vendee or the owner and obtained by the vendee or owner from a source independent of the vendor or the home improvement contractor;

(p) in the case of home improvement work, loss or damage due to defects in the existing structure and systems not caused by the home improvement.

**History:**

*1977 c 65 s 3; 1981 c 119 s 7; 1986 c 444; 2010 c 343 s 10*

**327A.04 WAIVER AND MODIFICATION LIMITED.**

**Subdivision 1. Waiver.**

Except as provided in subdivisions 2 and 3, the provisions of sections 327A.01 to 327A.08 cannot be waived or modified by contract or otherwise. Any agreement which purports to waive or modify the provisions of sections 327A.01 to 327A.08, except as provided in subdivisions 2 and 3 of this section, shall be void.

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**Subd. 2.Modification.**

At any time after a contract for the sale of a dwelling is entered into by and between a vendor and a vendee or a contract for home improvement work is entered into by and between a home improvement contractor and an owner, any of the warranties provided for in section 327A.02 may be excluded or modified only by a written instrument, printed in boldface type of a minimum size of ten points, which is signed by the vendee or the owner and which sets forth in detail the warranty involved, the consent of the vendee or the owner, and the terms of the new agreement contained in the writing. No exclusion or modification shall be effective unless the vendor or the home improvement contractor provides substitute express warranties offering substantially the same protections to the vendee or the owner as the statutory warranties set forth in section 327A.02. Any modification or exclusion agreed to by vendee and vendor or the owner and home improvement contractor pursuant to this subdivision shall not require the approval of the commissioner of labor and industry pursuant to section 327A.07.

**Subd. 3.Exception.**

If a major construction defect is discovered prior to the sale of a dwelling, the warranty set forth in section 327A.02, subdivision 1, clause (c) may be waived for the defect identified in the waiver instrument, after full oral disclosure of the specific defect, by an instrument which sets forth in detail: the specific defect; the difference between the value of the dwelling without the defect and the value of the dwelling with the defect, as determined and attested to by an independent appraiser, contractor, insurance adjuster, engineer or any other similarly knowledgeable person selected by the vendee; the price reduction; the date the construction was completed; the legal description of the dwelling; the consent of the vendee to the waiver; and the signatures of the vendee, the vendor, and two witnesses.

A single waiver agreed to pursuant to this subdivision may not apply to more than one major construction defect in a dwelling.

The waiver shall not be effective unless recorded with the county recorder or registrar of titles who shall file the waiver for record.

**History:**

1977 c 65 s 4; 1981 c 119 s 8; 2005 c 4 s 61; 2008 c 337 s 59; 2009 c 91 s 1

**327A.05 REMEDIES.**

**Subdivision 1.New home warranties.**

Upon breach of any warranty imposed by section 327A.02, subdivision 1, the vendee shall have a cause of action against the vendor for damages arising out of the breach, or for specific performance. Damages shall be limited to:

- (a) the amount necessary to remedy the defect or breach; or

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_



(b) the difference between the value of the dwelling without the defect and the value of the dwelling with the defect.

**Subd. 2. Home improvement warranty.**

Upon breach of any warranty imposed by section 327A.02, subdivision 3, the owner shall have a cause of action against the home improvement contractor for damages arising out of the breach, or for specific performance. Damages shall be limited to the amount necessary to remedy the defect or breach.

**History:**

1977 c 65 s 5; 1981 c 119 s 9

**327A.051 HOME WARRANTY DISPUTE RESOLUTION.**

**Subdivision 1. Panel of neutrals.**

(a) The commissioner of labor and industry shall maintain a list of persons who consent to serve as qualified neutrals for purposes of this section. The commissioner shall establish application requirements and qualifications for qualified neutrals, taking into consideration the education, experience, and training of the applicant, potential conflicts of interest, and that the purpose of the process is to assist parties in determining an agreeable scope of repair or other resolution of their dispute.

(b) As a condition of being included on the panel of neutrals identified in this section, the commissioner of labor and industry may charge each qualified neutral a fee of \$200 per year for the administration of the home warranty dispute resolution process.

**Subd. 2. Dispute resolution process.**

(a) The home warranty dispute resolution process required by this section is commenced by written application to the commissioner. A request must include the complete current address and full name of the contact person for each participating party.

(b) Within ten days of receiving a written request, the commissioner shall provide each party with a written list of three qualified neutrals randomly selected from the panel of neutrals established under subdivision 1. The commissioner shall also provide complete contact information for each qualified neutral.

(c) Within five business days after receipt of the list from the commissioner, the parties shall mutually select one of the three qualified neutrals identified by the commissioner to serve as the qualified neutral for their dispute. If the parties cannot mutually agree on a neutral, the vendor or home improvement contractor shall strike one of the neutrals from the list, the vendee or owner shall subsequently strike one of the remaining neutrals from the list, and the remaining neutral shall serve as the qualified neutral for the dispute resolution process. The parties shall notify the selected qualified neutral and the commissioner of the selection.

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**Subd. 3. Neutral evaluation; fee.**

(a) The qualified neutral selected by the parties shall convene, and each party shall attend, an in-person conference of the parties. The qualified neutral shall select the date for the conference after consulting the parties. The conference must occur no later than 30 days after the neutral's selection, except by mutual agreement of the parties. In addition, the neutral shall collect from each party an administrative fee of \$25 and shall submit those fees to the commissioner no later than ten days after the completion of the conference.

(b) At least seven days before the conference, each party must provide the qualified neutral and the other party with all information and documentation necessary to understanding the dispute, or the alleged loss or damages.

(c) After reviewing the information and documentation provided by the parties and after consulting with the parties at the conference, the neutral shall issue to the parties a nonbinding, written determination, which must include, to the extent possible, findings and recommendations on the scope and amount of repairs necessary, if any. The qualified neutral shall mail the determination to each party within ten days after the conference.

(d) The parties shall share the expense of the qualified neutral's billed time equally, unless otherwise agreed. The neutral's billed time for evaluation of documents, meeting with the parties, and issuing a written determination must not exceed six hours, unless agreed to in writing by both parties. The neutral must identify the neutral's hourly rate to the parties.

**Subd. 4. Alternative process.**

If both parties agree, the parties may designate an alternative dispute resolution process in lieu of participating in the home warranty dispute resolution process established by this section. If the parties agree to an alternative dispute resolution process, they shall provide written notice of the agreement and a description of the selected process to the commissioner as soon as practicable, but no later than the date the parties are required to select a neutral under subdivision 2.

**Subd. 5. Effect on future proceedings.**

(a) The written determination issued by the qualified neutral and all communications relating to the home warranty dispute resolution process, except those between any party and the commissioner, are deemed confidential settlement communications pursuant to Rule 408 of the Minnesota Rules of Evidence.

(b) No party may use the written offer of repair provided by a vendor or home improvement contractor, a counteroffer to repair, or a written determination issued by the qualified neutral as evidence of liability in subsequent litigation between the parties. The qualified neutral may not be called to testify regarding the dispute resolution proceedings.

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

(c) Any amount paid by a party for the services of a qualified neutral under this section is deemed a taxable cost of the prevailing party in a subsequent litigation involving the same subject matter.

**Subd. 6. Noncompliance with timelines; effect.**

Failure to strictly comply with the timelines in this section shall not be grounds for dismissal of any claim brought under section 327A.05, provided that the parties establish good faith effort in complying with this section.

**History:**

2010 c 343 s 11

**327A.06 OTHER WARRANTIES.**

The warranties provided for in section 327A.02 shall be in addition to all other warranties imposed by law or agreement. The remedies provided in section 327A.05 shall not be construed as limiting the remedies in any action not predicated upon breach of the statutory warranties imposed by section 327A.02.

**History:**

1977 c 65 s 6; 2009 c 91 s 2

**327A.07 VARIATIONS.**

The commissioner of labor and industry may approve pursuant to sections 14.05 to 14.28, variations from the provisions of sections 327A.02 and 327A.03 if the warranty program of the vendor or the home improvement contractor requesting the variation offers at least substantially the same protections to the vendee or owner as provided by the warranties set forth in section 327A.02.

**History:**

1977 c 65 s 7; 1981 c 119 s 10; 1982 c 424 s 130; 1995 c 233 art 2 s 56; 2008 c 337 s 60; 2009 c 91 s 3

**327A.08 LIMITATIONS.**

Notwithstanding any other provision of sections 327A.01 to 327A.08:

(a) the terms of the home improvement warranties required by sections 327A.01 to 327A.08 commence upon completion of the home improvement and the term shall not be required to be renewed or extended if the home improvement contractor performs additional improvements required by warranty;

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

(b) the home improvement warranties required by sections 327A.01 to 327A.08 shall not include products or materials installed that are already covered by implied or written warranty; and

(c) the warranties required by sections 327A.01 to 327A.08 must be set forth as written warranty instruments and must be included as part of the construction contract. The warranties and the exclusions under section 327A.03, the right to inspect and offer to repair under section 327A.02, subdivisions 4 and 5, and the home warranty dispute resolution process under section 327A.051 must be conveyed in writing to the owner. Failure to comply with this paragraph is a violation of section 326B.84.

(d) If the warranties required by sections 327A.01 to 327A.08 are not provided to the owner in writing as required by paragraph (c), they are implied statutory warranties that have the same effect as if the vendor or home improvement contractor had complied with paragraph (c).

(e) The owner's right under this section to receive the written warranty required under this section may not be waived or modified by contract or otherwise. Any agreement that purports to waive or modify the right to the written warranty required under this section is void.

(f) This section does not limit the ability of the vendor or home improvement contractor and the owner to enter into the agreements permitted under section 327A.04, subdivisions 2 and 3.

**History:**

1981 c 119 s 11; 1997 c 7 art 1 s 126; 2009 c 91 s 4; 2010 c 343 s 12

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**EXHIBIT D**  
**(“Performance Guidelines”)**

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**ARBITRATION AGREEMENT**

This Arbitration Agreement is entered into effective \_\_\_\_\_, 20\_\_ between \_\_\_\_\_

\_\_\_\_\_ (“**Owner**,” whether one or more) and \_\_\_\_\_,  
Minnesota Builders License # \_\_\_\_\_ (“**Builder**”).

**RECITALS**

A. The parties wish to enter into a document entitled “*Home Remodeling Contract*” (the “**Remodeling Contract**”) pursuant to which Builder would agree to perform certain “**Improvements**” on “**Land**” owned by Owner, all as described in the Construction Agreement.

B. As a condition of entering into the Remodeling Contract, the parties have agreed that certain disputes, if they arise, will be resolved through negotiation and, if the parties do not resolve the matter by negotiation, arbitration.

**PROVISIONS**

In consideration of the mutual covenants contained herein, the parties’ agreement to enter into the Remodeling Contract, and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Negotiation of Disputes.** Any controversy or claim arising out of or relating to the Improvements, the Improvement Agreement or the physical condition of Owner’s property, including claims of breach of contract, fraud, misrepresentation, warranty and/or negligence, shall be settled by negotiation between the parties; provided, however, that if either party concludes after attempting to resolve a dispute through negotiation that further negotiation is not likely to lead to a successful resolution of the dispute, that party may require that the dispute be resolved through binding arbitration in accordance with the procedures set forth in **Section 2**. Notwithstanding the provisions of this paragraph, any controversy or claim arising out of or relating to the payment of the Contract Price shall not be subject to negotiation or arbitration, and Builder reserves all rights and remedies which Builder has under Minnesota law including, but not limited to, the right to file a mechanic’s lien and to foreclose the mechanic’s lien.

2. **Demand for Arbitration and Joinder.** If a party elects to commence arbitration after concluding that further negotiations will be unlikely to lead to a resolution of the dispute, that party (the “**Claimant**”) shall submit a written notice to the other party (the “**Respondent**”) by certified mail, return receipt requested (the “**Demand**”), demanding binding arbitration. The Demand shall specifically describe each element comprising the claim. The parties agree that they may be joined as an additional party to an arbitration involving the same property or project. If more than one arbitration is begun and any party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator(s)

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

selected in the first commenced of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that (those) arbitrator(s).

3. **Arbitrator.** The dispute shall be decided by a single arbitrator unless the Claimant in the Demand, or by the Respondent by written response to the Claimant made within five (5) business days after receipt of the Demand, requests that a three-arbitrator panel be used in lieu of a single arbitrator. The arbitrator(s) shall be a retired state or federal judge or an attorney who has practiced in the areas of real estate and/or construction for at least ten (10) years listed as an Arbitrator on the Minnesota Statewide ADR-Rule 114 Neutrals Roster published in the Minnesota State Court Administrator's Office. Within ten (10) days of receipt of the Demand, the Respondent shall forward to the Claimant the names of at least five (5) potential arbitrators. The Claimant shall select, within ten (10) days after receipt of the list of potential arbitrators, the arbitrator or three arbitrator panel from the list provided by the Respondent. If an arbitrator is not able to serve, the Claimant shall select, from the list provided by the Respondent, another arbitrator within ten (10) days after any resignation, disability, inability, or other failure of an arbitrator to serve as arbitrator.

4. **Allocation of Fee of the Arbitrator or Panel of Arbitrators.** The cost of the arbitration, including without limitation the arbitrator or arbitrators' compensation and expenses, shall be borne by the party whom the arbitrator determines has not prevailed in such proceeding, or shall be borne equally by the parties if the arbitrator determines that neither party has prevailed. The arbitrator may require the parties to advance the potential cost of the arbitration.

5. **Arbitration Procedure.** The arbitrator(s) shall conduct a pre-arbitration telephone conference with the parties. No party may have direct communication with the arbitrator(s) without the presence of the other party. The parties shall have the right to conduct and enforce pre-hearing discovery in accordance with the current Minnesota Rules of Civil Procedure. Any disputes regarding discovery shall be decided by the arbitrator(s). Each party may present evidence, including documents or testimony by witnesses and experts. The arbitration shall be held within sixty (60) days of the arbitrators' acceptance of the appointment. The arbitrator(s) shall select the date for the arbitration in consultation with the parties and shall provide at least fourteen (14) days' notice of the hearing. The arbitration hearing shall take place at the Property, or in such other location within the county where Owner's property is located as the parties may mutually agree or the arbitrator(s) shall order. Either party may be represented by an attorney at the hearing provided that the party gives at least ten (10) days' notice to the arbitrator(s) and to the other party.

6. **Award.** The arbitrator(s) shall have the authority to award any remedy or relief that a Minnesota court could order including, without limitation, specific performance of any obligation created under this Agreement; provided, however, that under no circumstances shall Builder be responsible for any consequential or incidental damages. Judgment on the award may be entered in District Court for the county in which the Property is located, or in any other court having jurisdiction. The arbitrator(s) shall apply the laws of the State of Minnesota in resolving the matter submitted to arbitration.

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_

7. **Survival.** In case of any conflict or inconsistency between the terms of this Agreement and the Remodeling Contract, the terms of this Agreement shall control. The provisions of this Agreement shall survive the completion of the Improvements or any termination of the Improvement Agreement.

**This Is A Legally Binding Document. If You Desire Legal Advice, Please Consult A Lawyer.**

In witness to their agreement, the parties have signed this Agreement effective as of the later of the dates set forth below.

**BUILDER:**

**OWNER:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

6954906\_4.DOC

**Initials**  
**Owner** \_\_\_\_\_  
**Builder** \_\_\_\_\_