

CONTRACTS

Builders Association of Minnesota



2015 Contract Cost Plus

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

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.

STANDARD CONSTRUCTION CONTRACT
(Cost plus a fee)

This 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. Owner owns the land located at _____, in the
City of _____ (the “**City**”), _____ County, Minnesota _____ (the
“**Land**”). The Land is legally described on attached **Exhibit A**. The Land and the
Improvements referenced in **Section 3** will sometimes be collectively referred to as the
“**Property**.”

3. Improvements. Builder agrees to build on the Land a new home (the “**Home**”) together
with certain related improvements (the Home and related improvements being collectively
referred to as the “**Improvements**”) materially in accordance with:

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

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. Contract Price. The Contract Price for the Improvements (the
“**Contract Price**”) shall be an amount equal to the sum of: (i) the costs incurred by Builder in
constructing the Improvements (the “**Cost of the Work**”); and (ii) a fee of _____
percent (___%) of the Cost of the Work (“**Builder’s Fee**”).

For purposes of this Agreement, the Cost of the Work shall include all costs incurred by Builder in constructing the Improvements, including:

- (a) Wages of construction workers directly employed by Builder to construct the Improvements, including welfare, unemployment compensation, social security and other benefits payable to such workers;
- (b) Costs of materials and equipment incorporated or to be incorporated in the completed construction, including costs of transportation;
- (c) Payments due from Builder to subcontractors providing labor, material or equipment in connection with the Improvements pursuant to the requirements of such subcontracts;
- (d) Costs of all materials, temporary facilities, equipment and tools not customarily owned by the construction workers and that are provided by Builder at the site and materially consumed in connection with the construction of the Improvements;
- (e) Reasonable rental costs for necessary temporary facilities, machinery, equipment and hand tools used at the site of the Improvements, whether rented from Builder or others. Rates and quantities of equipment rented shall not exceed the rates customarily charged in connection with similar projects in the community;
- (f) The portion of premiums for insurance allocable to this Agreement;
- (g) Costs of removal of debris from the site of the Improvements;
- (h) Sales, use and similar tax on materials, equipment or otherwise attributable to this Agreement or to the Improvements, as well as charges for permits, and royalties and license fees;
- (i) Charges for tests and inspections;
- (j) The cost of any deposits lost for causes for which Builder is not at fault;
- (k) Legal, mediation and arbitration costs, as well as costs for document reproduction and similar document preparation expenses;
- (l) Costs of repairing or correcting work on the Improvements where the need for repairs or correction does not arise because of the fault of Builder; and
- (m) Other costs typically included as costs of the work in connection with projects in the community for which the builder is compensated on the basis of the cost of the work plus a fee.

5. **Applications for Payment.** The Contract Price shall be paid by Owner based upon written applications for payment (each an “**Application for Payment**”) made no more than one time per calendar month. Each Application for Payment shall: (i) be in writing; (ii) be in a reasonable form acceptable to Owner and Builder; (iii) explain in reasonable detail the basis for the amount requested in the Application for Payment, including attaching supporting invoices from applicable subcontractors and suppliers; and (iv) be certified as true and correct by an authorized officer of Builder. Owner shall pay each Application for Payment within ____ business days of receipt.

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

(a) Builder shall apply for a building permit for the Home and other Improvements within ____ (_____) business days after removal of all Contingencies described below.

(b) Builder will begin work on the Improvements on the following date (check one):
_____ within _____ days after the building permit is issued;

(c) Builder agrees to diligently endeavor to substantially complete the Home within _____ months (_____) days from the date of the foundation is completed. 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 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 Agreement or 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. Owner agrees that the schedule for completing the Improvements represents Builder’s good faith estimate, and Builder will not be liable to Owner for delays in completion of construction of the Improvements or Closing, for any reason.

(d) Owner agrees to cooperate with Builder regarding selections and decisions which must be made by Owner before items can be ordered by Builder. It is understood that Builder will furnish a list to Owner with the selections to be made together with the time by which the selections must be made. 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, or the items exhibited in any model or promotional material, without prior approval of Owner. Builder agrees to consult with Owner, however, before substituting any materials controlled by Owner's selection.

- (f) 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 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, Owner shall pay all costs incurred by the Builder as a result of the change plus _____ percent (___%).
- (g) Although this Agreement provides for Owner to request changes to the Improvements, which will become part of the Improvements if approved by Builder, it is not practical to make some changes once the Plans have been approved, the location of the Home on the Land has been selected, and/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.**
- (h) 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, and 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.

7. **Contingencies.** The parties obligations under this Agreement are subject to the following conditions [Initial all conditions which apply; any condition not initialed shall not be a part of this Agreement]:

_____ **Confirmation of Soil Conditions.** Owner providing a report from a soils engineer acceptable to Builder confirming that the soils on the portion of the Land on which the Home and other Improvements are to be constructed are sufficient to permit those Improvements to be constructed in the manner described in the Plans, without the need to perform soil correction that is not otherwise specified in the Plans.

The cost for fill, soil compaction, hauling away excess dirt, and additional labor and/or materials necessary by reason of deficiencies of soil conditions requiring extra footings, reinforcing, piers, piling or concrete block shall be paid by the Owner in addition to the Contract Price.

_____ **City Approval.** This Agreement is contingent upon Owner securing, on or prior to _____, 20___, the approvals of the City required in order to construct the Improvements in accordance with the Plans.

_____ **Architectural Review.** This Agreement is contingent upon Owner completing any architectural review procedure under existing covenants and obtaining such approvals as may be required in order for the Improvements to be built in accordance with the Plans, on or prior to _____, 20___.

(collectively, the “**Contingencies**”). Owner shall bear the cost of fulfilling the Contingencies. Should any of these Contingencies not be met, either party may terminate this Agreement by written notice to the other party, and Owner shall pay Builder (i) the Cost of the Work incurred through the date of the termination and any other costs or cancellation penalties incurred by Builder arising out of such termination and (ii) Builder’s Fee on the foregoing.

8. **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 D** 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 E** and incorporated herein. Builder agrees that it shall comply with the Performance Guidelines.

9. **Representations and Acknowledgments By Owner.** Owner makes the following acknowledgments to and agreements with 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 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 wells, individual sewage treatment systems, or hazardous materials on the Land.
- (d) Owner acknowledges that Builder does not warrant any work or materials performed or supplied by Owner or Owner's separate contractors or suppliers, and Owner agrees to look only to Owner's separate contractors or suppliers for any warranty regarding those items.
- (e) 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.
- (f) 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 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.
- (g) Owner acknowledges that model homes and promotional material are for purposes of illustration only, and that certain items shown in the model homes or promotional material are standard and some are optional and/or decorative, and some items are no longer offered, or are not available. The Improvements will be

built in accordance with the Plans and will not be exactly the same as any model or as shown in any promotional material. Owner acknowledges that Owner will receive only the specific Improvements described in the Plans.

- (h) Owner acknowledges that any floor plans, sketches or sales drawings shown to Owner are for display and illustrative purposes only, and are not included in the sale of the Improvements. Any models, site plans, position drawings, sales displays or brochure drawings of the Property or any project of which the Property forms a part are artists' conceptions for illustration and display purposes only, and are subject to change without notice. Such models, promotional material, displays or brochure drawings are not a part of this Agreement and shall not constitute a warranty by Builder regarding the Improvements or the present or future condition of the surrounding property or a commitment by Builder to perform any work not expressly described in this Agreement.
- (i) Owner hereby acknowledges that Builder has made no representations and has no obligation to Owner with respect to: (i) elevations and/or property types or landscaping of neighboring properties or buildings; (ii) location, position and visibility of utility lines, pipes, poles, boxes, fixtures, equipment, or other similar facilities; or (iii) use or prospective use of properties other than the Land, notwithstanding any models, plats, site plans, promotional materials, or other illustrative material.
- (j) Owner acknowledges that Owner has been advised of its right to review, prior to signing this Agreement, the applicable master plans and general plans for the area around the Property, including maps showing planned land use, roads and highways, and the location and nature of proposed parks, open space, and other public facilities. Owner is aware that the applicable master plan or general plan for the City is available at the City's offices. Owner further acknowledges that no employee, representative or agent of Builder has the authority to explain or make any representation or warranty regarding the intent or meaning of any such plan, and Owner acknowledges that Owner has not relied on any representation or communication by Builder or Builder's employees, representatives or agents pertaining to the applicable plan or the likelihood of any particular development or redevelopment of any other properties. By signing this Agreement Owner acknowledges that Owner has the opportunity to review the applicable plans, including any amendments, at the City offices when and if Owner chooses to do so, and that Owner will either review those plans or will be deemed to have waived the right to review those plans. Owner further understands that to stay informed of future changes and land use plans, Owner should consult the City.
- (k) 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 agreement 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 by Owner's separate contractors or suppliers. Owner agrees to look only to Owner's separate contractors or suppliers for any warranty in connection with said work. No separate contractors 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.

- (l) The provisions of this paragraph shall survive the Closing.

10. **Pre-Construction Closing Inspection.** Upon substantial completion of the Improvements, Builder shall notify Owner to make an appointment with Builder or its representatives 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**"). Punch List Items may include, but shall not be limited to, completion of specified landscaping, exterior concrete, driveways, final grading and exterior painting, as well as interior touch-ups and minor corrections. Builder shall finish the Punch List Items as soon as weather and other conditions permit. If Owner does not appear for such inspection on the date mutually agreed upon between Builder and Owner, then Builder or its representatives may, but shall not be obligated to, prepare the Inspection Report on behalf of Builder and Owner and the Inspection Report shall be binding on Owner. Builder shall complete or correct the Punch List Items within a reasonable time after or before the Construction Closing, subject to the conditions stated in paragraph 6(c) above, and other circumstances reasonably beyond the control of Builder. Owner will permit Builder and its agents access to the Property at reasonable times after the Construction Closing to correct Punch List Items. **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.**

11. **Access To The Property Before the Construction Closing.** There are inherent physical dangers of being present on a construction site. Owner will ensure that no family member or guest of Owner one who is not an adult will not enter onto the construction site, prior to the Construction Closing, under any circumstances. Owner agrees that Owner expressly and without entitlement assumes all risks, whether latent, patent, or otherwise, and that any and all injury or loss was proximately caused by such access, because such injury or damage could not have occurred but for such breach. 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 visiting the construction site, with said indemnity to include reimbursement of all attorneys' fees incurred by Builder.

12. **Construction Closing.**

- (a) **Important: Prior to written notification of the Construction Closing: (i) any estimated date for completion of construction of the Improvements is a good faith estimate only; (ii) construction delays are commonplace in the building industry and often are outside the control of Builder; and (iii) any estimated**

completion date or closing 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 ten (10) days of notice to Owner that the Home has been substantially completed as evidenced by delivery of a certificate of occupancy by the building inspection department of the City. 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, including any delay caused by Owner’s lender.
- (c) The Construction Closing will proceed on the scheduled date even if some items are not appropriately completed, as long as the Property is ready for occupancy as evidenced by the issuance of a certificate of occupancy by the City.
- (d) So long as Owner pays the balance of the Agreement Price at the Construction Closing, Builder will deliver to Owner at the Construction Closing a final lien waiver evidencing final payment for all labor, materials and equipment.

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

- (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. **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.

15. **Brokerage and Agency.** If either Owner and/or Builder have entered into an agreement with a separate consultant, advisor, or real estate broker which requires the payment of a commission in connection with this Agreement or the construction of the Improvements, the party who entered into the agreement with the real estate broker shall pay the real estate broker and indemnify and hold the other party to this Agreement harmless from any and all claims from the real estate broker.

16. **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 aforesaid shall be deemed received two (2) business days after the day of mailing thereof, postage prepaid by certified or registered mail, return receipt requested.

17. **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 in connection with the development or construction of the Improvements or, if the Property is a part of a larger project, the balance of the project of which the Property is a part; (ii) unsatisfactory soil conditions are discovered that affect construction of any of the Improvements; (iii) for reasons beyond Builder's control, the Improvements cannot be completed as scheduled or within a reasonable time thereafter or in any event within one year of the date of this Agreement; (iv) Builder is unable, for any reason, to build the Improvements; or (v) Owner persistently fails to cooperate with Builder.

18. **Destruction.** If, prior to the Construction Closing, all or a material portion of the Improvements is destroyed or damaged by fire or other casualty, Builder shall have the sole option of (i) terminating this Agreement and refunding all sums paid by Buyer or (ii) adjusting the date of substantial completion and completing the Improvements. In either event, Builder

shall be solely entitled to retain the proceeds of the builder's risk or other insurance proceeds received as a result of the casualty.

19. **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 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, public and private 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; (iii) locate, at Builder's discretion, mechanical systems such as any sump pump, heating and air conditioning equipment, and plumbing, electrical lines, telecommunications facilities, and similar lines, devices and equipment; and (iv) remove trees, shrubs and other vegetation as Builder deems advisable. Builder may also make minor changes in room dimensions, the positioning of walls, the location of wall switches, thermostats, chases, ducts, registers, returns, plumbing, electrical fixtures and outlets, decks, basement and garage service doors, during the construction process. **Except as provided above, Builder agrees, that although there may be some modifications to the Property from the Plans, the Improvements will not substantially vary from the Plans.** Owner also grants Builder the right to take photographs of the Property and to use the photographs in Builder's promotions.

20. **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.

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

22. **Mold Disclosure.** Mold spores occurs naturally and is nearly everywhere. The presence of high levels of moisture is necessary to grow otherwise dormant mold spores. Builder will construct the home in a manner intended to minimize mold growth during construction. After construction, it is the responsibility of the homeowner 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 in the home or for damage caused by mold, 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 could have been controlled by the owner’s exercise of good mold 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, 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 the written warranty given by Builder, and the statutory warranties provided by Minnesota law. Owner waives all claims against Builder arising because of the existence of mold.

23. **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 Improvements. 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.

24. **Final Rough Grade.** The Improvements include a final rough grading of the Land. Owner acknowledges that the final rough grading to be completed by Builder does not include the addition of any black dirt or any soil improvements, unless it is specified in the Plans or otherwise called for in this Agreement, Owner further acknowledges that raking and other work may be required before the soil will be suitable for seeding, sodding or other landscaping. The final rough grade to be completed by Builder shall be only in those portions of the Land disturbed by construction of the Improvements.

25. **Landscaping.** Unless otherwise specified in the Plans, no landscaping, including, but not limited to final grading, sodding, seeding, or the planting of trees, shrubs, or other vegetation is included in the Agreement Price or is otherwise a part of this Agreement.

26. **Mechanic Lien Notice.** Owner 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 AGREEMENT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM 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: _____

27. **Possession And Occupancy.** Owner shall be entitled to possession of the Property from and after the Construction Closing, but not before. It is understood and agreed that Owner shall not have the right to occupy the Property or store any belongings in the Property prior to completion of the Construction Closing, unless agreed upon both owner and builder.

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

29. **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 Agreement.

30. **Optional Provisions.** (none unless specified) _____

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:

Minnesota Builder's Lic. # _____

By: _____

Its: _____

Dated this ____ day of _____, 20__

Dated this ____ day of _____, 20__

EXHIBIT A

(Legal Description of the Land)

EXHIBIT B

(Drawings)

Initials
Owner _____
Builder _____

EXHIBIT C
(“Specifications”)

Initials
Owner _____
Builder _____

EXHIBIT D

(“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

327A.02 STATUTORY WARRANTIES.

Initials
Owner _____
Builder _____

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

Initials
Owner _____
Builder _____

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

Initials
Owner _____
Builder _____

(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;

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

Initials
Owner _____
Builder _____

(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.

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

Initials
Owner _____
Builder _____

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
- (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.

Initials
Owner _____
Builder _____

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.

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

Initials

Owner _____

Builder _____

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.

(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.

Initials
Owner _____
Builder _____

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;

(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

Initials
Owner _____
Builder _____

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 E
(“Performance Guidelines”)

Initials
Owner _____
Builder _____

ARBITRATION AGREEMENT

This Arbitration Agreement is entered into effective _____, 20__
between _____ (“**Owner**,” whether one or more) and _____, (“**Builder**”)
Minnesota Builder’s Lic. # _____.

RECITALS

A. The parties wish to enter into a document entitled “*Standard Construction Contract (Cost plus a fee)*” (the “**Construction Agreement**”) pursuant to which Builder would agree to construct a Home and other “**Improvements**” on “**Land**” owned by Owner, all as described in the Construction Agreement.

B. As a condition of entering into the Construction Agreement, the parties have agreed that certain disputes, if they arise, will be resolved through negotiation and, if desirable, arbitration.

PROVISIONS

In consideration of the mutual covenants contained herein, the parties’ agreement to enter into the Construction Agreement, 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 Construction Agreement or the physical condition of the Property, including claims of breach of agreement, 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 Agreement 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 cancel the Construction Agreement using the procedures described in Section 559.21 of the Minnesota Statutes and, if such cancellation is successful, to retain the Down Payment as liquidated damages.

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) selected in the first commenced of such proceedings shall determine whether, in the interests of

Initials
Owner _____
Builder _____

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 the 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 Construction Agreement, the terms of this Agreement shall control. The provisions of this Agreement shall survive the Construction Closing pursuant to the Construction Agreement or any termination of that 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:

Minnesota Builder's Lic. # _____

By: _____

Its: _____

Dated this ____ day of _____, 20__ Dated this ____ day of _____, 20__

52388162_1.DOC

Initials
Owner _____
Builder _____