

# CONTRACTS

**Builders Association of Minnesota**



## **Standard Construction Contract with Land Purchase Agreement**

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**STANDARD CONSTRUCTION CONTRACT  
(WITH LAND SALE)**

This Agreement is entered into between \_\_\_\_\_ (“**Buyer,**”  
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 Buyer and Builder.**

Buyer’s Home Address: \_\_\_\_\_

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

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

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

Builder’s Address: \_\_\_\_\_

Builder’s Phone: \_\_\_\_\_

Builder’s Email: \_\_\_\_\_

**2. Sale of the Property.** Builder agrees to sell to Buyer, and Buyer agrees to purchase from Builder, the land located at \_\_\_\_\_, in the City of \_\_\_\_\_ (the “**City**”), \_\_\_\_\_ County, Minnesota (the “**Land**”), together with and subject to all easements, covenants, conditions, restrictions, and other rights of record (collectively, the “**Property Rights**”). The Land is legally described on attached **Exhibit A**. The Land, Property Rights and the Improvements described in **Section 3** below shall 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**
- (c) The “**Allowance Items**” referenced in attached **Exhibit D**

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

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

4. **Contract Price.** The Contract Price for the Property shall be \_\_\_\_\_  
\_\_\_\_\_ (\$ \_\_\_\_\_) and shall be paid by  
Buyer as follows:

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

\_\_\_ **1. Initial Payment by Buyer Before the Improvements Begin:** \$ \_\_\_\_\_  
shall be paid when Buyer 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 Buyer 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 Buyer is paying directly from Buyer's funds, check b., and do not check a.]*

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

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

<b>i. Milestone Payments.</b>	<b>Amount to be Paid</b>
(a) Footings, foundation, and waterproofing (prior to backfill)	\$ _____
(b) Framing completed and roof completed	\$ _____
(c) Structure closed to weather (doors and windows installed)	\$ _____
(d) Siding and exterior trim completed	\$ _____
(e) Electrical inspection completed	\$ _____
(f) Insulation inspection completed	\$ _____
(g) Plumbing and mechanical inspection completed	\$ _____
(h) Construction Closing (See "the Construction Closing" \$ _____ below).	

\_\_\_ **ii. Periodic Payments by Buyer.** 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.]*

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

\_\_\_ 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. The Construction Closing shall occur within ten (10) days of substantial completion of the Improvements, as evidenced by the issuance of a certificate of occupancy for the Home by the building inspector for the City or County.

**Note:** Builder reserves the right to adjust the Purchase Price if Buyer's Contingencies are not removed by \_\_\_\_\_, 200\_.

5. **Title.** At the Construction Closing, Builder shall convey the Property to Buyer by a warranty deed, which shall be subject to the following "**Permitted Exceptions:**"

- (a) Building and zoning laws, codes, and ordinances, and state and federal regulations;
- (b) Covenants, conditions, reservations and restrictions relating to use or improvement of the Property without effective forfeiture provisions, if any;
- (c) The reservation of any minerals or mineral rights by the State of Minnesota, if any;
- (d) Easements for utilities and drainage, streets, roads, highways and alleys;
- (e) Any acts done or suffered by Buyer or anyone claiming by, through or under Buyer;
- (f) Liens, encumbrances, and other matters of title over which the title insurance company issuing the title Commitment (the "**Title Insurer**") is willing to insure without cost to Buyer.
- (g) Others: (None unless specified.)

If Buyer is a husband and wife, title to the Property will be conveyed to both as joint tenants with right of survivorship, and not as tenants in common, unless Buyer gives Builder written notice ten (10) business days or more before the Construction Closing.

6. **Examination Of Title.**

**A. Abstract and Examination of Title.** To demonstrate that Builder's title is good and marketable of record, within a reasonable time after acceptance of this Agreement, Builder shall furnish Buyer with an Abstract of Title [see B., below] or a Registered Property Abstract certified to date including proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and pending special assessments. Buyer shall have ten business days after receipt of the Abstract of Title or

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**Builder** \_\_\_\_\_

Registered Property Abstract either to examine the title and provide Builder with written Title Objections or, at Buyer's own expense, to make an application for a title insurance policy and notify Builder of the application. Buyer shall have ten business days after receipt of the Commitment for Title Insurance to provide Builder with a copy of the Commitment and written Title Objections. Buyer shall be deemed to have waived any Title Objections not made within the ten day period above.

For the purposes of this Agreement, an "Objection to Title" or "Title Objection" is some title matter which fails to pass a title examination based upon Minnesota law and the Minnesota Title Standards promulgated by the Real Property Section of the Minnesota State Bar Association thereby rendering the title unmarketable and is a title matter which requires a remedial response by the Builder prior to or at the Construction Closing.

An "Exception to Title" or "Title Exception" is some title matter which passes a title examination based upon Minnesota law and the Minnesota Title Standards; is generally regarded by title examiners as not rendering the title unmarketable and, which, because of its nature, is generally disclosed by title examiners to the recipient of the title opinion or title insurance commitment.

**B. Abstract Lost or Unavailable: Title Insurance by Builder.** If Builder is unable to find the Abstract of Title or if Builder did not receive an Abstract of Title when Builder purchased the Property, then, to demonstrate that Builder's title is insurable for marketability and subject to only those matters disclosed at Paragraph 5., above, within a reasonable time after acceptance of this Agreement, Builder shall furnish Buyer with a Commitment for Title Insurance including proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and pending special assessments.

Buyer shall have ten (10) business days after receipt of the Commitment for Title Insurance to provide Builder with written Title Objections. Buyer shall be deemed to have waived any Title Objections not made within this ten-day period.

7. **Title Correction.** If Buyer provides Builder with proper and timely written objections to the marketability of title, Builder shall have the option to attempt to make title marketable, in which case Builder shall have one hundred twenty (120) days to attempt to cure Buyer's objections. If Builder is not able to make title marketable within that time, or if Builder elects not to attempt to make title marketable, either party may terminate this Agreement, in which case all payments received by Builder from Buyer shall be refunded to Buyer. If this Agreement is terminated, Buyer agrees to sign a Limited Warranty Deed for the Property to Builder.

As an alternative to making title good and marketable of record, Builder may, within the 120-day title correction period, make a written, dated offer to Buyer to obtain title insurance for Buyer with insuring provisions acceptable to Buyer (and, if applicable, Buyer's lender), as follows:

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

- Builder may procure, at Builder’s expense, an owner’s policy of title insurance, from an insurer registered and licensed to do business in Minnesota and acceptable to Buyer, specifically insuring over the Title Objections; or,
- If the Title Objections are stated in a title insurance commitment which Buyer has obtained, Builder may provide the insurer with such documents and escrows as are necessary to allow the insurer to specifically insure over the Title Objections and agree to pay all of the insurer’s charges for issuing the owner’s policy to Buyer.

8. **Buyer’s Contingencies.** Buyer’s obligation to proceed with the purchase of the Property is subject to the following conditions **[Initial all conditions which apply; any condition not initialed shall not be part of this agreement]:**

\_\_\_\_\_ **Financing.** This Agreement is contingent upon Buyer securing, within thirty (30) days of the Effective Date, a mortgage commitment valid through the Construction Closing for \$\_\_\_\_\_ at market interest rates and at market points or origination fees (the “**Mortgage Commitment**”). Buyer shall pay the usual and customary charges imposed by the lending institution including but not limited to credit and appraisal fees. The Mortgage Commitment shall be firm and unconditional.

Buyer shall make application for such financing with \_\_\_\_\_ (the “**Lender**”) within five (5) days of the Effective Date. Buyer agrees to diligently pursue obtaining the Mortgage Commitment by cooperating fully with the Lender and by providing accurate disclosures and promptly providing additional information and documentation upon request of the Lender. Buyer agrees that this contingency for obtaining a Mortgage Commitment will be deemed fulfilled, and Buyer will be required to complete the purchase of the Property, if Buyer qualifies for a mortgage as described in this Section and chooses not to accept it. If Buyer is unable to obtain the Mortgage Commitment, Buyer shall notify Builder in writing within thirty (30) days after the Effective Date of this Agreement. If Buyer provides Builder with timely notice that Buyer has been unable to obtain the Mortgage Commitment, Builder may, at Builder’s option, within thirty (30) days after receiving that notice, secure a written Mortgage Commitment from a lending institution for a loan to Buyer on the terms specified in this Section, in which case Buyer agrees to promptly furnish all requested credit information and sign all customary papers relating to the application, processing, and the Construction Closing of the financing. If Buyer provides Builder with timely notice and Builder does not elect to provide, or is unable to secure, the alternative Mortgage Commitment described in this Section, this Agreement shall be null and void and the Initial Payment shall be returned to Buyer in exchange for a Termination Agreement to be provided by Builder and signed by both parties. Any action Builder may take in order to obtain a Mortgage Commitment for Buyer shall be solely as an accommodation to Buyer, and not as agent for Buyer or any lender. Builder will not be liable for a lender’s refusal to provide Buyer with a Mortgage

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

Commitment or to make a loan or for any change in interest rates or other loan terms. Buyer shall notify Builder within the thirty (30) day period whether Buyer has obtained a mortgage commitment. If Buyer gives notice that it has obtained a Mortgage Commitment, the contingency set forth in this Section shall be deemed waived. Failure to provide the required written notice will be conclusively deemed to mean that Buyer has secured a Mortgage Commitment or that Buyer has elected to purchase the Property without mortgage financing.

\_\_\_\_\_ **Sale of Buyer's Existing Home.** If this paragraph is initialed, this Agreement is subject to a contingency relating to the sale of Buyer's existing home located at \_\_\_\_\_

\_\_\_\_\_. Buyer agrees to list Buyer's residence within five (5) days after the Effective Date with an MLS Realtor®. Buyer acknowledges that Builder will not start construction of the Improvements until this contingency is removed.

If this contingency is not removed by Buyer within forty-eight (48) hours after receipt by Buyer or Buyer's agent of Builder's written demand for removal, Builder shall have the right to cancel this Agreement. If Builder cancels this Agreement, the Initial Payment made by Buyer shall be refunded to Buyer, except for costs incurred by Builder in connection with preparation of the Plans or providing Buyer and/or Buyer's lender with the Commitment. All such costs shall be deducted from the Initial Payment paid by Buyer and any balance remaining shall be refunded to Buyer in exchange for a limited warranty deed signed by Buyer and/or a Termination Agreement provided by Builder and signed by both parties. Buyer may remove this contingency only by providing Builder with a complete and accurate copy of a non-contingent purchase agreement for the sale of Buyer's existing home or other proof, acceptable to Builder in Builder's sole discretion, that Buyer is financially capable of purchasing the Property without the sale of the Buyer's existing home.

9. **Builder's Contingency.** If this Section is initialed by Builder, Builder's obligation to proceed with the sale of the Property to Buyer is subject to the following condition:

\_\_\_\_\_ **Contingency Regarding Sale of the Property.** Buyer acknowledges that Builder has previously entered into an agreement for the sale of the Property (the "**Prior Purchase Agreement**") with another purchaser (the "**Prior Purchaser**") whose obligation to purchase the Property is contingent upon the sale of the Prior Purchaser's home. Buyer agrees that this Agreement is contingent upon Builder obtaining a termination of the Prior Purchase Agreement from the Prior Purchaser. Within five (5) days after the Effective Date, Builder will provide the Prior Purchaser with written notice that: (i) Builder has entered into this Agreement, subject to the termination of the Prior Purchase Agreement; (ii) that the Prior Purchaser has seventy-two (72) hours to remove the contingency for the sale of Prior Purchaser's home and provide Builder with evidence satisfactory to Builder of Prior Purchaser's ability to complete the purchase of the Property or

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_



Builder will cancel its agreement with the Prior Purchaser. Builder will notify Buyer (by phone initially with a follow-up letter) by \_\_\_\_\_ as to whether or not Builder has obtained a termination of the Prior Purchase Agreement. If Builder does not contact Buyer within that time, this Agreement will terminate, the obligations of Builder and Buyer hereunder shall be considered null and void and the Initial Payment from Buyer shall be returned to Buyer in exchange for a Termination Agreement provided by Builder and signed by both parties.

**10. 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 above.
  
- (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. Buyer 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 Buyer; (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 Buyer to make timely selections of items to be selected by Buyer; (v) delays due to defaults of Buyer, including suspension of work by Agreement or if Buyer fails to make any payment in the time and manner provided for in this Agreement; and (vi) other causes reasonably beyond Builder's control. Buyer agrees that the schedule for completing the Improvements represents Builder's good faith estimate, and Builder will not be liable to Buyer for delays in completion of construction of the Improvements or the Construction Closing, for any reason.
  
- (d) Buyer agrees to cooperate with Builder regarding selections and decisions which must be made by Buyer before items can be ordered by Builder. It is understood that Builder will furnish a list to Buyer with the selections to be made together with the time by which the selections must be made. If Buyer 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.

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

- (e) If any of the Buyer's selections become unavailable, Builder may require Buyer 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 Buyer. Builder agrees to consult with Buyer, however, before substituting any materials controlled by Buyer'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 Buyer. (If there is more than one Buyer, the signature on any Buyer will be binding on all Buyers.) When reasonably possible, Change Orders shall not only describe the change, but also describe the effect of the change on the Contract Price. If Buyer 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, Buyer shall pay all costs incurred by the Builder as a result of the change plus \_\_\_\_\_ percent (\_\_\_%).
- (g) Although this Agreement provides for Buyer 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. Buyer should not assume that any change, especially changes involving structural items, will be approved by Builder. **Selections made by Buyer will not be considered final unless a change is approved by Builder in a written Change Order.**
- (h) If the Plans provide for allowances, and the cost of allowance items selected by Buyer exceeds the allowance for that item, the Contract Price shall be increased to include the amount by which the allowance is exceeded.
- (i) The current economy and how the building industry manufactures and controls inventory may lead to price fluctuations that cannot be anticipated by Builder or Buyer. The Contract Price has been calculated based on current prices for the materials included in the Plans. 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.
- (j) Builder has the right to stop construction of the Improvements if Buyer 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 Buyer has brought all payments current and cured any other

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

defaults of Buyer under this Agreement. The anticipated date of completion shall be extended for the period of the delay caused by Buyer's non-payment or default.

11. **Builder's Representations and Warranties.** Builder makes the following representations and warranties to Buyer:

- (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 Construction 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 E and incorporated herein. The Buyer 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 Buyer written performance guidelines for the services to be provided by Builder (the "**Performance Guidelines**"). A copy of the Performance Guidelines is attached as Exhibit F and incorporated herein. Builder agrees that it shall comply with the Performance Guidelines.

12. **Acknowledgments By Buyer.** Buyer makes the following acknowledgments to and agreements with Builder:

- (a) **BUYER 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"). BUYER ACKNOWLEDGES THAT BUYER'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**

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**Builder** \_\_\_\_\_

**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) Builder does not warrant any work or materials performed or supplied by Buyer or Buyer's separate contractors or suppliers, and Buyer agrees to look only to Buyer's separate contractors or suppliers for any warranty regarding those items.
- (c) No officer, employee, agent, broker or other representative of Builder has any authority to extend any warranty to Buyer except the warranties set forth in writing in this Agreement.
- (d) Buyer waives all rights against Builder, under any legal theory and whenever arising, based in whole or part on conditions not warranted in writing in this Agreement, or for damages excluded by this Agreement or any warranty not 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 Buyer understands that no other party is or will be authorized to sign that agreement.
- (e) Buyer 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 Property 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. Buyer acknowledges that Buyer will receive only the specific Improvements described in the Plans. Without limiting the generality of the foregoing, none of the furnishings or finishes in any model or promotional material, including but not limited to landscaping, decorator features or non-standard items or finishes are included in the sale of the Property.
- (f) Buyer acknowledges that any floor plans, sketches or sales drawings shown to Buyer are for display and illustrative purposes only, and are not included in the sale of the Property unless contained in the Plans. Any models, site plans, Property location, 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. For specific information consult the Plans.

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

- (g) Buyer hereby acknowledges that Builder has made no representations and has no obligation to Buyer 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 property outside the Property, notwithstanding any models, plats, site plans, promotional materials, or other illustrative material.
- (h) Buyer acknowledges that Buyer 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 subject property, including maps showing planned land use, roads and highways, and the location and nature of proposed parks, open space, and other public facilities. Buyer is aware that the applicable master plan or general plan for the City is available at the City's offices. Buyer 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 Buyer acknowledges that Buyer 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 land outside of the Property. By signing this Agreement Buyer acknowledges that Buyer has the opportunity to review the applicable plans, including any amendments, at the City offices when and if Buyer chooses to do so, and that Buyer will either review those plans or will be deemed to have waived the right to review those plans. Buyer further understands that to stay informed of future changes and land use plans, Buyer should consult the City.
- (i) Buyer agrees that the selection, direction and supervision of the working forces, including but not limited to subcontractors, rests exclusively with Builder. Buyer 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 Buyer or by Buyer's separate contractors or suppliers. Buyer agrees to look only to Buyer's separate contractors or suppliers for any warranty in connection with said work. No separate contractor or supplier of Buyer shall be permitted on the Property unless first approved by Builder and then only upon receipt by Builder of certificates of insurance from Buyer's separate contractors in such amount and providing such coverages as required by Builder.
- (j) The provisions of this paragraph shall survive the Construction Closing.

13. **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

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

requested by Buyer, Builder will provide Buyer with a certificate evidencing that Builder is maintaining the required insurance.

- (b) Buyer shall maintain homeowner's insurance, public liability and fire and casualty coverage on the Home and Improvements. Buyer shall solely be responsible for providing insurance on Buyer's possessions and improvements provided by Buyer and/or its separate contractors. Upon request by Builder, Buyer shall provide certificates or other proof of insurance to Builder.

14. **Pre-Construction Closing Inspection.** Prior to the Construction Closing and upon substantial completion of the Home, Builder shall notify Buyer to make an appointment with Builder or its representative to inspect the Home and other Improvements within five (5) days during Builder's normal business hours. Buyer 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 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 Buyer does not appear for such inspection on the date mutually agreed upon between Builder and Buyer, then Builder or its representative may, but shall not be obligated to, prepare the Inspection Report on behalf of Builder and Buyer and the Inspection Report shall be binding on Buyer. Builder shall complete or correct the Punch List Items within a reasonable time after the Construction Closing, subject to the conditions stated in paragraph 10(c) above, and other circumstances reasonably beyond the control of Builder. Buyer 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. Buyer shall notify its Lender of Builder's escrow policy.**

15. **Access To The Property Before The Construction Closing.** There are inherent physical dangers of being present on a construction site. Buyer agrees that Buyer will not enter onto the construction site prior to the Construction Closing unless accompanied by a representative designated by Builder. Appointments to visit the site are available during Builder's normal business hours. If Buyer breaches these covenants, Buyer agrees that Buyer expressly and without entitlement assumed 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, Buyer shall hold Builder harmless and shall indemnify Builder from any and all claims, liabilities, cost, expense or causes of action resulting from Buyer and/or Buyer's family or guests visiting the construction site, with said indemnity to include reimbursement of all attorneys' fees incurred by Builder.

16. **The Construction Closing.**

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

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**outside the control of Builder; and (iii) any estimated completion date or the Construction 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 Buyer that the Home has been substantially completed as evidenced by delivery of a certificate of occupancy by the building inspection department of the City or County. Payment of the balance of the Contract Price shall be made at the Construction Closing. If Buyer 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 Contract, Buyer 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 Buyer’s fault, including any delay caused by Buyer’s lender.
- (c) The Construction Closing will proceed on the scheduled date even if some Punch List Items are not completed as long as the Property has been substantially completed and a certificate of occupancy has been issued by the City.
- (d) Builder agrees to pay the state deed tax required in connection with the sale of the Property. Builder shall pay for the cost of preparing the Commitment, obtaining a special assessment search for the Property and other charges customarily charged to Builders by title insurance companies. Buyer shall pay the premium for any Buyer’s or lender’s title insurance policy, and such other charges customarily charged to Buyer of residential property in Minnesota, including any charge for recording the deed to the Property. Buyer shall pay all charges, costs and expenses relating to the Buyer’s mortgage financing, if any, including any mortgage registration tax, fee to record the mortgage, and fee of the Title Insurer in connection with the loan the Construction Closing.
- (e) At the Construction Closing, Builder shall deliver a recordable warranty deed, a standard form of seller’s affidavit, a bill of sale for any personal property Buyer is purchasing from Builder under this Agreement, a certificate of real estate value, and a certificate of occupancy issued by the City. If not previously provided to Buyer, Builder shall deliver the Commitment, in the amount of the Purchase Price, showing Builder as the Buyer of the Property, subject only to the Permitted Exceptions. At the Construction Closing, Builder may require the Title Insurer to use a portion of the Purchase Price paid by Buyer to obtain a release of the Property from any mortgage on the Property.
- (f) Builder is responsible for the real estate taxes payable in connection with the Property for years preceding the year in which the Construction Closing occurs. Buyer is responsible for any deferred real estate taxes which are required to be paid upon the sale of the Property.

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

- (g) Builder is responsible for its share of the real estate taxes payable for the Property in the year of the Construction Closing that is allocable to the period prior to the Construction Closing. Buyer is responsible for the real estate taxes for the Property in the year of the Construction Closing that is allocable to the period after the Construction Closing. If the Property has not been accorded the status of a separate tax parcel for the year in which the Construction Closing takes place, Builder will compute the share allocated to the Property and notify Buyer as to the share of those real estate taxes for which Buyer is responsible.
- (h) Buyer acknowledges that: (i) the Property presently is classified as non-homestead property for real estate tax purposes; and (ii) Builder has not made any representation concerning the amount of real estate taxes or special assessments that will be payable in the future.
- (i) Special assessments against the Property will be allocated between the parties in the manner described in the paragraph below that is initialed by the parties:
- (i) The portion of special assessments certified to the current year's taxes (initial one of the following):
- \_\_\_\_\_ Buyer agrees to assume the portion of any special assessments that are certified to the current year's taxes.
- \_\_\_\_\_ Builder agrees to pay all special assessments that are certified to the current year's taxes.
- (ii) Levied special assessments (initial one of the following):
- \_\_\_\_\_ Buyer agrees to assume all special assessments that are levied against the Property as of the Date of the Construction Closing.
- \_\_\_\_\_ Builder agrees to pay all special assessments that are levied against the Property as of the Date of the Construction Closing.
- (iii) Pending special assessments (initial one of the following):
- \_\_\_\_\_ Buyer agrees to assume all special assessments that are pending against the Property as of the Date of the Construction Closing.
- \_\_\_\_\_ Builder agrees to provide for payment of all special assessments that are pending against the Property as of the Date of the Construction Closing in a manner mutually acceptable to Builder and the Title Insurer.

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_



- (i) Buyer shall deliver the balance of the Contract Price, an insurance certificate if required by Buyer's Lender, and any other documents Buyer's Lender may reasonably require as a condition to the Construction Closing.
- (j) Buyer acknowledges receipt and acceptance of all covenants, conditions, restrictions and easements affecting the Property.

17. **Remedies.** 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 this Agreement, shall be settled by negotiation between the parties, or if either party concludes that further negotiation will be non-productive, as follows:

**A. Buyer's Remedies.** Buyer's remedies for Builder's default prior to the Construction Closing, are as follows:

- (1) Cancel this Agreement pursuant to Minnesota Statute 559.21, in which case all earnest money and other sums paid to Builder shall be refunded to Buyer; or
- (2) Seek specific performance in district court, which action must be commenced within six months after such right of action arises.

After the Construction Closing, Buyer's remedies shall be as provided in Minnesota Statutes Chapter 327A.

**B. Builder's Remedies.** If Buyer defaults in the performance of any of Buyer's obligations herein, Builder may elect any of the following remedies:

- (1) Whenever Buyer has failed to fulfill a condition after the date specified for fulfillment in this Agreement, such failure shall cancel this Agreement and Builder shall be entitled to serve notice of cancellation of this Agreement as provided by Minnesota Statute 559.217 subd. 4, and retain all payments made hereunder as liquidated damages and recover attorneys' fees and costs as allowed by statute. The parties intend that any note given pursuant to this Agreement is a down payment note, and may be presented for payment notwithstanding cancellation;
- (2) Sue in district court: to cancel or terminate this Agreement; to seek damages from Buyer; or, to seek both judicial cancellation or termination of this Agreement and damages from Buyer; or,
- (3) Seek specific performance in district court, which action must be commenced within six months after such right of action arises.

18. **Brokerage and Agency.** If either Buyer and/or Builder have entered into an agreement with a real estate broker which requires the payment of a commission in connection with this transaction, the party who entered into the contract with the real estate broker shall pay the real

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

estate broker and indemnify and hold the other party to this Agreement harmless from any and all claims from the real estate broker.

19. **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 Buyer at either: (i) the home address listed in **Section 1** of this Agreement; or (ii) at the address of Buyer'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.

20. **Builder's Right To Terminate.** In addition to Builder's right to terminate this Agreement in connection with a default by Buyer in paying any portion of the Purchase 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 Property or, if the Property is a part of a larger project, the balance of the project of which the Property is a part; (ii) soil conditions are unsuitable for construction of any of the Improvements; (iii) Builder is unable to deliver marketable title to the Property; or (vi) Builder is unable, for any reason, to build the Improvements.

21. **Damage to the Property Prior to The Construction Closing.** Until the Construction Closing, all risk of loss is on the Builder. If, prior to the Construction Closing, all or a material portion of the Improvements is destroyed or damaged by fire or other casualty, Builder, at its sole option, may cancel this Agreement by written notice to Buyer, and Builder shall refund to Buyer all sums paid by Buyer to Builder under this Agreement. Buyer shall execute and deliver to Builder a limited warranty deed for the Property in exchange for the refund. If Builder does not elect to terminate this Agreement in the manner provided for in this Section, and Builder certifies to Buyer in writing that Builder will repair the damage to the Improvements, then Buyer shall not be relieved of its obligations under this Agreement.

22. **Rights Reserved By Builder.** If Builder is unable to obtain certain materials required by the Plans and Specifications, 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 and Specifications. 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 and Specifications 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 in the Property, 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 and Specifications; (iii) locate at Builder's discretion, mechanical systems such as the sump pump, heating and air conditioning equipment, and all 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

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

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. Buyer also grants Builder the right to take photographs of the Property and to use the photographs in Builder's promotions.

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

**SOME OF THE BUILDING MATERIALS USED IN THIS 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.**

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

24. **Radon Disclosure.** The following notice is required to be given pursuant to Minnesota law:

**“RADON WARNING STATEMENT**

The Minnesota Department of Health strongly recommends that ALL homebuyers have an indoor radon test performed prior to purchase or taking occupancy, and recommends having the radon levels mitigated if elevated radon concentrations are found. Elevated radon concentrations can easily be reduced by a qualified, certified, or licensed, if applicable, radon mitigator.

Every buyer of any interest in residential real property is notified that the property may present exposure to dangerous levels of indoor radon gas that may place the occupants at risk of developing radon-induced lung cancer. Radon, a Class A human carcinogen, is the leading cause of lung cancer in nonsmokers and the second leading cause overall. The seller of any interest in residential real property is required to provide the buyer with any information on radon test results of the dwelling.”

**A. Radon Concentrations.** *[Check only one box, either (1) or (2).]*

(1) Builder does have knowledge of radon concentrations in the Home

(2) Builder does not have knowledge of radon concentrations in the Home.

*[Check either 3 or 4]*

(3) Radon tests have not occurred on the Property.

(4) Radon tests have occurred on the Property. Radon tests conducted on the Property detected the following radon concentrations: *[Provide measured radon concentration(s) and date(s) of any such measurement(s)]*

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**B. Radon Mitigation or Remediation.** To the Best of Builder’s knowledge, the following radon mitigation or remediation activities have been conducted or implemented on the Property to permanently reduce indoor radon concentrations in the Home: *[describe any radon mitigation/remediation system installed or other measures taken to reduce radon in the Home].*

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*[Attach Documentation of radon mitigations system(s) installed in the Home, if any.]*

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**C. Radon Information.** Buyer hereby acknowledges that Builder has provided Buyer with a copy of the Minnesota Department of Health publication entitled “Radon in Real Estate Transactions.”

25. **Electromagnetic Fields and Other Environmental Conditions.** Builder does not have expertise or special information about the measurement or reduction of electromagnetic fields, the detection of electromagnetic fields, acceptable levels or possible health hazards associated with formaldehyde or electromagnetic fields, or any other environmental condition or hazard (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.

26. **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 Buyer to maintain the home in a manner that controls the growth of mold.

Buyer 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 Buyer, 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 Buyer’s exercise of good mold management practices, or for incidental or consequential damages.

**Buyer 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. Buyer waives all claims against Builder arising because of the existence of mold.**

27. **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.

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

28. **Final Rough Grade.** The Improvements include a final rough grading of the Land. Buyer 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. Buyer 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.

29. **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 Purchase Price or is otherwise a part of this Agreement.

30. **Possession And Occupancy.** Buyer shall be entitled to possession of the Property from and after the Construction Closing. It is understood and agreed that Buyer shall not have the right to occupy the Property or store any belongings in the Property prior to completion of the Construction Closing and neither Buyer nor any agent, separate contractor, employee, or representative of Buyer shall be entitled to be in the Property unless accompanied by Builder or a designated representative of Builder.

31. **Notices Regarding Condition of the Property.**

A. Builder covenants that, by the Construction Closing, the Property will be connected to: city sewer [*strike one*] – YES/NO; city water – YES/NO; cable TV – YES/NO.

B. Builder knows of no hazardous substances or petroleum products having been placed, stored, or released from or on the Property by any person in violation of any law, nor of any underground storage tanks having been located on the Property at any time, except as follows:

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If the presence of underground storage tanks is disclosed, then this paragraph applies: Builder hereby represents and warrants to Buyer that all of the underground tanks known to Builder on the subject property have been disclosed to Buyer on the attached drawing or map. Builder shall provide at the Construction Closing the affidavits required by Minnesota Statutes Sections 115B.16, Subd. 2, and 116.48 if applicable to the subject property and record an affidavit attesting to the location of any underground tanks which are used for the storage of petroleum products.

C. **Protected Sites.** Builder has no knowledge that the property has any conditions that are protected by federal or state law (such as American Indian burial grounds, other human burial grounds, ceremonial earthworks, historical structures or materials, or archeological sites).

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**D. Diseased Trees.** Builder has not received any notice from any governmental authority as to the existence of, and Builder has no knowledge of, any Dutch elm disease, oak wilt, or other disease of any trees on the real property.

**E. Methamphetamine Disclosure.** *[Check only one box, either (1) or (2).]*

- (1) To the best of Builder's knowledge, methamphetamine production has not occurred on the property.
- (2) To the best of Builder's knowledge, methamphetamine production has occurred on the property and Builder's disclosure is continued in Part B., **METHAMPHETAMINE DISCLOSURE STATEMENT**, M.S.B.A. Real Property Form No. 22 (2005), included as an addendum to this Purchase Agreement.

**F. Notice of Airport Zoning Regulations.** If airport zoning regulations affect this real property, a copy of those airport zoning regulations required as adopted can be viewed or obtained at the office of the county recorder where the zoned area is located.

**G. Well Disclosure.** *[Check one of the following:]*

- Builder certifies that Builder does not know of any wells on the Property.
- Wells on the Property are disclosed by Builder on the attached Well Disclosure form *(attach form)*

**H. Sewage Treatment System Disclosure.**

*[Check either 1 or 2]*

- (1) Builder certifies that sewage generated at the Property goes to a facility permitted by the Minnesota Pollution Control Agency (for example, a city or municipal sewer system).
- (2) Builder certifies that sewage generated at the Property does not go to a facility permitted by the Minnesota Pollution Control Agency and Builder's Disclosure of Individual Sewage Treatment System is attached *(attach form)*.

*[Check either 3 or 4]*

- (3) Builder does not know if there is an abandoned individual sewage treatment system on the Property.
- (4) Builder knows that there *[strike one:]* **are / are no** abandoned individual sewage treatment systems on the Property. If Builder discloses the existence of an abandoned individual sewage treatment system on the Property, then Minnesota law requires that the location of the system be disclosed to Buyer with a map. *[Attach Seller's Disclosure of Individual Sewage Treatment System with map completed.]*

**32. Required Notice Regarding Predatory Offender Information.** Information regarding the predatory offender registry and persons registered with the predatory offender registry under MN Statute 243.166 may be obtained by contacting the local law enforcement offices in the community where the property is located or the Minnesota

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**Department of Corrections at (651) 361-7200, or from the Department of Corrections website at [www.corr.state.mn.us](http://www.corr.state.mn.us).**

33. **Miscellaneous.** Time is of the essence. The exhibits attached to this Agreement shall be considered to be a part of this Agreement. 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. Buyer shall pay attorneys' fees actually incurred by Builder if Buyer breaches its obligations under this Agreement. This Agreement shall not be assigned by Buyer except with Builder's prior written consent. This Agreement may be assigned by Builder without prior written consent of Buyer. 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, Buyer acknowledges receipt of a copy of this Contract.

34. **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: \_\_\_\_\_ BUYER: \_\_\_\_\_

Minnesota Builder's Lic. # \_\_\_\_\_

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

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_



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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013    Dated this \_\_\_\_ day of \_\_\_\_\_, 2013

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**EXHIBIT A**

**(Legal Description of the Land)**

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**EXHIBIT B**

**(Drawings)**

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**EXHIBIT C**  
**(“Specifications”)**

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**EXHIBIT D**

**(“Allowance Items”)**

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**EXHIBIT E**

**(“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.

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**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.**

**Subdivision 1.Warranties by vendors.**

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

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.

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**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.

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(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;

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(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 home improvement contractor and an owner, any of the warranties provided for in section

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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.**

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

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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 neutral's selection, except by mutual agreement of the parties. In addition, the neutral shall

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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.**

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.

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**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**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 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.

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(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

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**EXHIBIT F**

(Written Performance Guidelines)

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**ARBITRATION AGREEMENT**

This Arbitration Agreement is entered into effective \_\_\_\_\_, 2013 between \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (“**Buyer**,” whether one or more) and \_\_\_\_\_, Minnesota  
Builders License # \_\_\_\_\_.

**RECITALS**

A. The parties wish to enter into a document entitled “*Standard Construction Contract With Land Sale*” (the “**Construction and Sale Agreement**”) pursuant to which Builder would agree to sell Buyer certain “**Land**” and construct certain “**Improvements**,” all as described in the Construction and Sale Agreement.

B. Notwithstanding any provisions of the Construction and Sale Agreement to the contrary, 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 and Sale 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 and Sale Agreement or the physical condition of the 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 Purchase 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 and Sale Agreement using the procedures described in Section 559.21 of the Minnesota Statutes and, if such cancellation is successful, to retain the Initial Payment as liquidated damages.

2. **Demand for Arbitration.** 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.

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

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

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.

7. **Survival.** In case of any conflict or inconsistency between the terms of this Agreement and the Construction and Sale Agreement, the terms of this Agreement shall control. The provisions of this Agreement shall survive delivery of the deed pursuant to the Construction and Sale Agreement or any termination of that agreement.

**The balance of this page has been intentionally left blank. The signatures of the parties are set forth on the following page.**

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_

**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:

BUYER:

\_\_\_\_\_

\_\_\_\_\_

Minnesota Builder's Lic. #

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

\_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013

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(Version 3 of document 6956833)

**Initials**  
**Buyer** \_\_\_\_\_  
**Builder** \_\_\_\_\_