

CONTRACT FOR REPAIR, REPLACEMENT, RESTORATION, OR REMODELING.

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[This contract form is suitable for repair, replacement, restoration, or remodeling of an existing house. MSBA Real Property Form No. 92 is suitable for construction of a new house, for construction of an addition to an existing house, or for construction of an accessory building on residential real property.]

PROPOSAL FOR CONTRACT

Date of Proposal: _____

Proposal submitted to: [full legal names] _____ ("Owner")

Address: _____

Phone Number(s): _____ Job Site Phone Number: _____

Job Site Address: _____

Contractor's Name: _____ ("Contractor")

Contractor's Address: _____

Contractor's Phone Numbers: _____

Contractor's Minnesota contractor license number: _____

Legal Description of the Real Property ("the Property"): _____

Brief Description of the Work: _____

Attachments that are part of the "Contract:"

- Contractor's Licenses
- Exhibit A: FORM OF CHANGE ORDER
- Exhibit B: ALLOWANCES, approved by the parties and attached to this Contract at time of signing
- Exhibit C: SPECIFICATIONS, approved by the parties and attached to this Contract at time of signing
- Others [list]: _____

Any changes to this Contract must be in writing and signed by the parties. Any supplemental documents, modifications, amendments, or Change Orders signed by both parties after the date of the Contract become part of the Contract.

Contractor offers to provide for all labor, materials, mechanical equipment, furnishings, tools, construction equipment and machinery, approvals, permits, licenses, fees, transportation, and other facilities and services necessary for the execution and completion of the Contract (the "Work") for the sum of \$ _____ (the "Contract Price") to be paid by Owner to Contractor. The Work will begin on _____, 20__ (the "Start Date"), and will be substantially completed by _____, 20__ (the "Substantial Completion Date").

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This Proposal may be withdrawn by Contractor if not accepted by 12:00 noon on _____, 20____.

By _____
Contractor's authorized signer

Its _____
title

OWNER ACCEPTANCE OF PROPOSAL

The Contractor's Proposal is hereby accepted.

BY SIGNING THIS ACCEPTANCE YOU ARE INCURRING SIGNIFICANT LEGAL AND FINANCIAL OBLIGATIONS. YOU SHOULD CONSULT YOUR LAWYER BEFORE YOU SIGN THIS ACCEPTANCE.

Owner Signature Date Owner Signature Date

GENERAL CONDITIONS OF CONTRACT

A. START DATE; COMPLETION DATE; DAMAGES FOR DELAY; DELAY. The Work will begin on the Start Date and will be substantially completed by the Substantial Completion Date.

If the Work is not substantially completed by the Substantial Completion Date, the Contract Price will be reduced by \$_____ for each day that substantial completion of the Work is delayed beyond the Substantial Completion Date. The actual damages for a delay in completing the Work would be difficult to determine, and the amount set forth in the preceding sentence is a reasonable measure of the damages caused by the delay and is not a penalty.

If Contractor is delayed in the progress of the Work by weather conditions not reasonably anticipated or any other cause not reasonably foreseeable and beyond Contractor's reasonable control, then the Substantial Completion Date shall be extended for a reasonable period of time as determined by the parties and confirmed in a Change Order.

B. SUBSTANTIAL COMPLETION. The Work will be deemed substantially completed when (1) a Certificate of Occupancy is issued for the Property or, if no Certificate of Occupancy will be issued, the date that the government building inspector completes a final inspection of the Work, and (2) Contractor and Owner agree upon a Certificate of Substantial Completion. The Certificate of Substantial Completion shall specify whether Contractor will thereafter maintain any responsibility for the job site items such as security, maintenance, utilities, insurance, and damage to the Work, include a list of items which are part of the Work that are not complete as of the Substantial Completion Date ("Punch List Items") and state a time for completion of all Punch List Items.

C. PAYMENT OF CONTRACT PRICE. Owner shall pay the Contract Price to Contractor in the following manner at the times indicated:

1. Before Substantial Completion. Payments to be made before Substantial Completion include the following [Select applicable options]:

Initial Deposit:
\$_____ shall be paid when Owner signs the Owner Acceptance of Proposal. The Initial Deposit shall be [Select one]:

deposited in an account with _____ naming both Contractor and Owner as account holders and requiring both signatures for withdrawals.

paid directly to Contractor for deposit into a separate account to be used by Contractor solely for the costs of the Work.

paid directly to Contractor and commingled with Contractor's general funds for use by Contractor without restriction.

Progress Payments:
Progress Payments for portions of the Work then completed shall not be requested by Contractor more often than once during any one 30-day period.

"Lien Waiver" in this Contract means a Receipt and Waiver of Mechanic's Lien Rights, Minnesota Uniform Conveyancing Blank Form 40.5.1. All draw requests for payments from Owner's funds shall include a sworn construction statement and

Lien Waivers for labor and materials furnished since the prior draw request.

Each Progress Payment shall be disbursed by _____ (“Disbursing Agent”). Contractor and Owner promptly shall comply with Disbursing Agent requirements. Disbursing Agent shall issue all checks directly to the suppliers and Subcontractors for those portions of the Work being performed by the suppliers and Subcontractors. If Contractor is required to make an advance payment to a supplier or Subcontractor, Contractor may include the advance payment for reimbursement with the next Progress Payment and the advance payment shall be paid to Contractor. Any part of the Progress Payment to be paid for portions of the Work performed by Contractor shall be subject to a “Retainage” so that Contractor shall receive 90% of such part of the Progress Payment with the remaining 10% being retained on behalf of Owner until Substantial Completion.

[] **Milestone Payments:**

All requests for Milestone Payments shall include a sworn construction statement and supporting lien waivers for the portion of the Work included in the Milestone Payment.

<u>Milestone Event(s)</u>	<u>Amount to be Paid</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

2. After Substantial Completion. The unpaid balance of the Contract Price less an amount equal to 200% of the estimated cost of Contractor completing the Punch List Items (“Substantial Completion Payment”) is due and payable upon acceptance of the Certificate of Substantial Completion. Payment of the Substantial Completion Payment is subject to reasonable delay resulting from the processing of Owner’s insurance claims, if any, relating to the Work. If the Progress Payments option was selected above, the Substantial Completion Payment shall be made in the same manner as provided above for a Progress Payment. If the Progress Payments option was not selected above, the Substantial Completion Payment shall be made only after Contractor has delivered to Owner a Contractor’s sworn construction statement identifying all contractors, Subcontractors, and material suppliers who provided labor or material to the Work, attesting that all of them have been paid in full, and accompanied by lien waivers from each of them along with recordable satisfactions or releases for any liens of record. Thereafter, as each Punch List Item is completed, the Owner shall pay Contractor monthly the amount retained for that completed Punch List Item.

3. Upon Final Completion. Upon final completion of the Work, Contractor shall prepare for Owner’s acceptance a Final Application for Payment stating that, to the best of Contractor’s knowledge, and based on Owner’s inspections, the Work has been completed in accordance with the Contract. Contractor shall also submit:

- a. an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Property;
- b. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract;
- c. a release of any liens, conditioned on final payment being received;
- d. a consent of any surety, if applicable; and
- e. a report of any accidents or injuries experienced by Contractor or its Subcontractors at the work site.

Payment of the balance of the Contract Price shall be made to Contractor within 20 calendar days of Owner’s receipt and acceptance of the Final Application for Payment along with the submissions. Any claims not reserved in writing by the Owner with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, non-conforming Work, non-conforming materials, fixtures, or equipment, defective work, and latent defects.

D. CONTRACTOR’S RESPONSIBILITIES.

1. Quality of Work. Contractor shall perform and complete the Work in a good and workmanlike manner. The Work shall be free from material defects not intrinsic in the design or materials specified in the Contract. All materials, fixtures, and equipment shall be new unless otherwise specified, of good quality, and free from defects. All Work shall conform to applicable building codes and laws. Upon completion of construction, all improvements will comply with all applicable laws, ordinances, and regulations and with all covenants, easements, and restrictions affecting the Property. The uses for which the Work is intended will be conforming uses and the Property will be a conforming lot size and a conforming site plan under applicable land use regulations. Contractor shall promptly correct any work not completed according to this Contract and shall repair or replace any defective materials, fixtures, or equipment if requested by Owner in writing.

2. Construction Obligations. Contractor will supervise and be solely responsible for all construction means, methods, techniques and procedures for the Work. Contractor will provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for execution and completion of the Work. The Contract Price reflects that Contractor has evaluated the existing utilities on the Property. Contractor acknowledges that

176 the utilities are available to the Property in capacities sufficient for the Work, or Contractor has included an upgrade to utilities
177 as part of the Contract Price and shall provide such utilities to the Property as part of the Contract Price. For any utility
178 upgrades or additions, Contractor shall pay all municipal charges for development on, construction on, or improvement of the
179 Property related to access fees, connection fees, and "hook up" fees for connections to sewer, water, and other utilities
180 necessary to complete the Work.

181 Contractor will obtain and pay for all approvals, building permits, architectural reviews, licenses, zoning permits, conditional
182 use permits, variances, well permits, sewage treatment system permits, environmental permits, environmental approvals, and
183 all other permits, licenses, approvals, and inspections necessary for completion of the Work. Contractor will comply with all
184 laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction over performance of the Work.
185 Contractor shall maintain the Property in a reasonably clean condition throughout the course of construction so that Owner may
186 continue to use and occupy that part of the Property not under construction. Upon completion of the Work, Contractor will
187 remove all of Contractor's tools, equipment, and surplus materials from the Property.
188

189 **3. Subcontractors.** A "Subcontractor" is a person or entity who has a direct contract with and authority from Contractor to
190 perform any part of the Work. Contractor will have sole discretion as to whom it hires for subcontracted work and shall be solely
191 responsible for the conduct and performance of the Subcontractors. Contractor will give Owner the names and addresses of
192 each Subcontractor and material supplier employed to perform or supply any portion of the Work.
193

194 **4. Mechanics' Liens.** Contractor will timely pay all Subcontractors, laborers, and material suppliers for their respective
195 contributions to the Work so as to prevent mechanics' or material suppliers' liens against the Property. Contractor will
196 indemnify, defend, and hold Owner harmless for any such liens against the Property, and this indemnity will survive termination
197 of this Contract.
198

199 **5. Condition of Property.** Contractor covenants that, by the Substantial Completion Date, Contractor shall have removed
200 all trash, garbage, and miscellaneous discarded materials from the Property, and shall leave the Property and the Work in a
201 thoroughly clean condition. (In this Contract, "thoroughly clean" means that all surfaces and floors will be free of spots, marks,
202 dust, and dirt, and will be in the same high level of cleanliness that would be required if the Property were scheduled to be
203 photographed and publicized as Contractor's "model home.")
204

205 **6. Indemnification; Protection of Property and Persons.** Contractor will indemnify, defend, and hold Owner harmless from
206 and against all claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees (1) for bodily
207 injury, sickness, disease or death or for injury to or destruction of tangible property (other than the Work itself) including the
208 resulting loss of use arising out of or resulting from any negligent act or omission of Contractor, any Subcontractor, anyone
209 directly or indirectly employed by Contractor or any Subcontractor or anyone for whose acts any of them may be liable, except
210 to the extent that the claim, loss, or expense is caused in part by a party indemnified under this Contract, or (2) arising out of
211 or relating to injury to any employee of Contractor, any Subcontractor or material supplier, or any of their respective employees,
212 which occurs as a result of, or is in any manner related to execution of the Work or which occurs or results from the use by
213 Contractor, Contractor's Subcontractors or suppliers or any of their respective employees of materials, equipment,
214 instrumentalities, or other property in connection with the Work, regardless of the owner thereof and all regardless of whether
215 Owner may be liable or claimed to be liable for the same. Contractor will reimburse Owner for all costs and disbursements,
216 including reasonable attorneys' fees paid or incurred to enforce the provisions of this Part D.6.
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218 **7. Insurance.** Contractor has, and will continue to maintain, insurance coverage sufficient to protect Contractor and Owner
219 from the claims of workers under the Workers' Compensation Act and other employee benefit acts for damages because of
220 bodily injury, including death. Contractor has, and will continue to maintain, insurance coverage sufficient to protect Contractor
221 and Owner from claims for damages to property, other than to the Work itself, which may arise out of or result from Contractor's
222 work under this Contract, whether the Work is conducted by Contractor or by any Subcontractor or anyone directly or indirectly
223 employed by Contractor or any Subcontractor. Contractor shall obtain and maintain liability insurance sufficient to protect Owner
224 against claims that arise from any operations under this Contract, which insurance policy will name Owner as an additional
225 insured. Contractor will also insure the Work against the perils of fire and extended coverage and shall include "all risk"
226 insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism, and malicious mischief,
227 which insurance policy will name Owner as an additional insured. Contractor shall obtain, maintain, and pay for Commercial
228 General Liability insurance coverage with a Contractual Liability endorsement. Before the Start Date, Contractor will give Owner
229 certificates evidencing the insurances required by this Part D.7.

230 Before the Start Date, Owner shall give Contractor a certificate of homeowner's insurance coverages and limits for public
231 liability coverage and for fire and casualty coverage on dwelling and improvements.
232

233 **8. Performance and Payment Bonds.** Contractor *[select one]* shall / shall not provide performance and payment
234 bonds to Owner, issued by a surety acceptable to Owner, naming Owner as an obligee, bonding and assuring performance by
235 Contractor of this Contract.
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237 **9. Toilet and Lavatory.** Sanitary facilities at the job site *[Select one]*:

238 Contractor will arrange for a portable, self-contained toilet on the job site at Owner's expense.
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[] Owner shall make a toilet and lavatory in the house available to Contractor and keep it supplied with soap and paper products. The location of the toilet and lavatory is _____.

E. WARRANTIES OF CONTRACTOR.

1. Statutory Warranties Under Minn. Stat. Chapter 327A. The "Statutory Warranties" of Minn. Stat. Chapter 327A (copy attached) apply to home improvement work involving the repairing, remodeling, altering, converting or modernizing of, or adding to a residential building but that the term "residential building" does not include appurtenant recreation 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.

Statutory Rights and Responsibilities:

- a. Owner must notify Contractor of any defective condition;**
- b. Contractor then has the right to inspect the defective condition; and**
- c. Contractor then has the right to make repairs and corrections.**

If these steps are not followed, Owner and Contractor might not be able to use the alternative dispute resolution provisions of the statute.

2. Special Warranties. For all portions of the Work not included in the Statutory Warranties (excluded from the definition of "Dwelling" in Minn. Stat. Section 327A.01, Subd. 3 or excluded from the definition of "Home Improvement" in Minn. Stat. Section 327A.01, Subd. 9), the following Special Warranties apply. Contractor warrants to Owner that:

- (a) during the one-year period from and after the final Completion Date the Work shall be free from defects caused by faulty workmanship and defective materials;
- (b) during the two-year period from and after the final Completion Date, that portion of the Work involving the installation of plumbing, electrical, heating or cooling systems shall be free from defects caused by the faulty installation of the system or systems; and,
- (c) during the **three-year** period from and after the final Completion Date the Work shall be free from construction defects due to noncompliance with building standards or this Contract.

3. Contractual Warranties. In addition to the Statutory Warranties and Special Warranties, the following Contractual Warranties apply:

Contractor represents and warrants to Owner that Contractor is licensed to perform construction work in Minnesota and Contractor has the financial and staffing capacity to complete the Work. Contractor warrants to Owner, and to Owner's heirs, successors, and current mortgagees, that all materials, fixtures and equipment will be new unless otherwise specified, of good quality, and free from defects, and that all Work will be of good quality. To the extent a higher standard of quality than "good" has been specified for any part of the Work, Contractor warrants that the applicable item of Work will conform to that higher standard.

Contractor warrants that the interior and exterior dimensions of the Work will be as shown on the plans, specifications and other documents that comprise this Contract.

Except as limited by the warranty periods of the Statutory Warranties and Special Warranties, Contractor shall remain responsible for Contractor's warranties and for conformance of the Work, materials, fixtures, and equipment with the requirements of the Contract for **three years** following the final Completion Date. Owner shall give written notice to Contractor of any non-conformance, defect, or breach of warranty within one year of the date of discovery and not later than the end of the three-year warranty period. Contractor covenants that Contractor will correct any defective or non-conforming Work, and repair or replace any defective or non-conforming materials, fixtures, or equipment, reasonably specified in Owner's written notices, and that such corrective action will begin and be completed promptly, at the sole expense of Contractor. Notification of non-conformance or defect and repair by Contractor is not a waiver or release of Contractor's obligation for any such repair that might arise in the future.

Contractor will assign to Owner all available manufacturers' warranties applicable to materials, fixtures, or equipment installed by Contractor or by any Subcontractor as a part of the Work.

The warranties of Contractor shall survive the closing of the mortgage loan transaction, any transfer of title, completion of the Work, final payment, occupancy, default, and cancellation, termination, or abandonment of the Contract. No warranties of Contractor in this Contract shall be affected by the dissolution of Contractor if Contractor is a corporation or other business entity.

F. DEFAULTS. The following default provisions will survive termination of this Contract.

By Owner: If Owner breaches a material term of this Contract, and fails to cure the breach within 5 business days after written notice by Contractor, Owner shall be deemed to be in default.

By Contractor: If Contractor breaches a material term of this Contract, and fails to cure the breach within 5 business days after written notice by Owner, Contractor shall be deemed to be in default.

G. GOVERNING LAW. This Contract is governed by Minnesota law.

H. RESTRICTION ON ASSIGNMENT. Neither party may assign this Contract without the written consent of the other party. This restriction does not preclude the hiring of Subcontractor(s) for performance of part(s) of the Work.

UREA FORMALDEHYDE DISCLOSURE OF CONTRACTOR

Minnesota Statute Section 325F.18 requires a warning to be provided in the sale of buildings or building products containing Urea Formaldehyde. Many products, particularly particle board and plywood use formaldehyde-based glue in their manufacture. Contractors who purchase and use products containing Urea Formaldehyde have a responsibility to pass this warning onto their customers. The required warning follows:

“IMPORTANT HEALTH NOTICE.

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.”

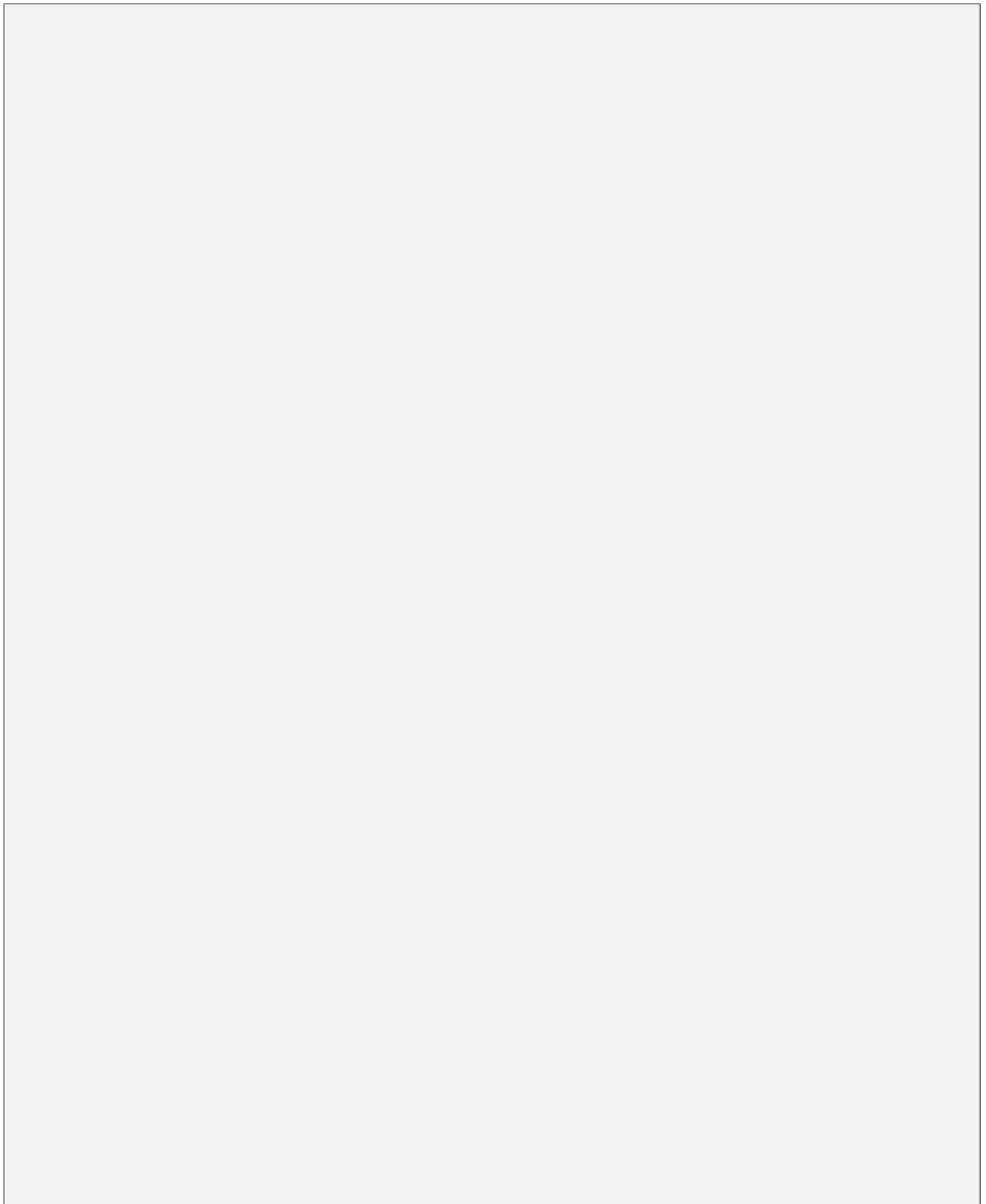
MECHANICS’ LIEN NOTICE BY CONTRACTOR (Minnesota Statutes Section 514.011)

“(a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions.

(b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due them from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice.”

ADDITIONAL TERMS

[Empty rectangular box for additional terms]



Insert copies of Contractor's licenses after this page and before Exhibit A.

Exhibit A to Contract

CHANGE ORDER NUMBER _____

Dated: _____

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Contractor: _____

Owner: _____

Job Site Address: _____

TO: Contractor

You are directed to make the changes noted below to the Work specified in our Contract.

[Signature of Owner]

[Signature of Owner]

Nature of Change:

Attachments [identify and attach amended plans, drawings, specifications, etc.]:

Changes to Contract Price and contract time resulting from this Change Order:

Contract Price before this Change Order: \$ _____

Net increase (decrease) from this Change Order: \$ _____

Resulting Contract Price: \$ _____

Substantial Completion Date before this Change Order: (date) _____

Net increase (decrease) in contract time: _____ days

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Resulting Substantial Completion Date:

(date) _____

ACCEPTANCE BY Contractor:

This Change Order is accepted this _____ day of _____, 20____.

Contractor

By: _____
authorized signer

Its: _____
signer's title

Exhibit B to Contract

ALLOWANCES

1	Included within the Contract Price are the following allowances for installation, labor and materials	
2	<i>[select as applicable:]</i>	
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4	_____	\$ _____
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52	_____	\$ _____
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57 If on-site conditions or Owner's selections cause an increase or decrease from these Allowances, the changes will be contained in
58 a Change Order signed by Owner and Contractor. Owner's "Selection Date" is *[check one]*:
59 14 calendar days following the Start Date
60 *[stated date]* _____.

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Owner shall make all of Owner's selections under these Allowances by the Selection Date. If Owner is late in making Owner's selections, Contractor unilaterally may extend the Substantial Completion Date one day for every day of Owner's delay past the Selection Date by giving Owner written notice of the extension on a Change Order which notice shall be effective without Owner's signature.

We approve these Allowances. We have initialed each page of any attachment to this exhibit regarding these Allowances.

Contractor:

Owner:

By: _____
authorized signer

signature

Its: _____
signer's title

signature

Exhibit C to Contract
SPECIFICATIONS

Attach detailed Specifications after this sheet.
Attach Specifications **before signing** this Contract.

1 Additional Terms Regarding the Specifications: _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
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10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____

Contractor and Owner: Initial each page of the approved Specifications.

We approve the attached Specifications. We have initialed each page of the approved Specifications.

Contractor:
By: _____
authorized signer

Owner:

signature

Its: _____
signer's title

signature

SUPPLEMENTAL SHEET

CHAPTER 327A. HOUSING; STATUTORY WARRANTIES [Effective August 1, 2010.]

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.

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; ISp2003 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. 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.

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 reinspected 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.

(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;
- (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 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 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 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.

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.

(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.
