

June 17, 2011

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Remodeling Construction Agreement

This Remodeling Construction Agreement (“Agreement”) is made this [redacted] day of [redacted], 2011 by and between Castle Building & Remodeling, Inc., located at 2600 Johnson St NE, Minneapolis, MN 55418, (hereinafter “Contractor”) and [redacted] (hereinafter “Homeowner”) for the remodeling of Homeowner’s property at [redacted] (the “Project”).

1. Agreement Documents

The general conditions set forth herein, together with the plans, including all elevations, sections, and detailed drawings, technical data and specifications (attached hereto and referred to as *Plans*), the finalized line-item specifications, including all change orders as may be executed (attached hereto and referred to as *Line Item Estimate*), and all other documents incorporated into the Agreement executed by the Homeowner and Contractor shall together constitute the entirety of the Agreement Documents between the Homeowner and the Contractor and shall be binding upon the Homeowner and Contractor.

The Agreement Documents are complementary and are intended to completely describe the scope of the Project. When used in any of the Agreement documents, the term work shall mean and include all labor, skill and materials required for the complete furnishing, constructing, and installing of each item in question unless specific exclusion is made of some particular part thereof. This Agreement, including the various documents referenced above, represents the entire agreement between the Contractor and the Homeowner with respect to the Project and supersedes all prior negotiations or discussions between the parties hereto, either written, electronic or oral.

2. Agreement Price and Payment

The Agreement price for the remodeling/construction Project per the plans and specifications of this Agreement is \$ [redacted]. Payments to be made as follows: 40% due upon signing, 25% due after rough-in completion, 20% due at the start of millwork install, 12% due at substantial completion, and 3% due at final completion. (Delete if not a 2 phase project - 35% due upon signing, 20% due after first rough-in completion, 20% due after second rough-in completion, 20% due at substantial completion, and 5% due at final completion project).

Timely payment by the Homeowner to the Contractor is of the essence for this Agreement. Payment is due upon presentation of the invoice to the Homeowner. It is preferred that payments be made via E-check. This can be done by calling Castle’s bookkeeper, who can obtain the necessary information from your physical check so it can be accepted via the phone. The Contractor shall, upon request, provide the Homeowner with his/her own lien waiver(s) from all trade partners who have provided proper notice of their lien rights to the Homeowner. If requested by any lending institution, the Contractor will provide to the Homeowner’s lender all documentation reasonably required to meet the Lender’s lending provisions. In the event of a breach or default by the Homeowner of any payment provision of the Agreement, the Homeowner agrees that he/she shall pay to the Contractor all costs of collection, including all reasonable attorneys’ fees, disbursements and expenses incurred by the Contractor in an effort to collect payment from the Homeowner, whether in litigation, mediation, arbitration or otherwise, except as expressly stated elsewhere in this

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Agreement. Any unpaid amounts will begin to accrue interest at 1.5% per month seven (7) days after the invoice has been presented to Homeowner.

3. Scope of Work

The scope of work is listed in and shall be done according to the Agreement plans and specifications. In the event of unforeseen or hidden conditions, changes requested by the Homeowner and/or changes required by government inspectors or applicable governmental codes, which require deviation from the plans and line-item specifications, the Homeowner and Contractor shall meet and agree (in writing) as to the specific deviations from the plans and specifications that are a part of this Agreement. Additions or deductions from the Agreement price and extensions of the work schedule shall be simultaneously established and executed as a Change Order (see Change Order policy in section 10).

4. Guaranteed Completion Date

The contractor will make every effort to complete their portion of the project in a timely manner. Use this if homeowner is doing a majority of labor and we cannot guarantee a completion date – otherwise DELETE.

This agreement serves as a guarantee of substantial completion to a forecasted completion date. Substantial completion is defined as: the ability to use the remodeled space for its intended purpose. This guaranteed completion date does not guarantee that all miscellaneous punch list items, modifications, or even all material installations will be 100% complete by the guaranteed completion date.

Substantial completion of the Project that is the subject of this Agreement is anticipated to take [redacted] weeks from commencement of work. Please note some slack has been built into the schedule to accommodate for special orders that arrive late, defective materials, incorrect materials delivered to the site, labor unavailability, weather problems and/or other circumstances beyond the control of the Contractor. However, customer-requested change orders, unavailable owner-supplied fixtures, delayed owner-supplied labor, and other circumstances effected by the owner and beyond the control of the Contractor will add days and may extend the guaranteed completion date beyond the date that is originally promised at contract signing.

Contractor will present Homeowner with a guaranteed completion date prior to contract signing. Please see section 10. Change Orders for further detail on communication of additional working days added to the guaranteed completion date. If Contractor fails to reach substantial completion by said Guaranteed Completion Date plus all additions of days relating to change orders, Contractor will refund Client \$40.00 per work day (Monday through Friday – excludes weekends) to be reflected on final invoice as credit of Contractors Management Fee.

5. Standard of Performance

All work will be done in a professional and workmanlike manner. All materials will meet or exceed contractor's grade. Materials will, unless specified as custom order in the plans and specifications, be from local inventory of contractor's usual suppliers. If materials, fixtures, or appliances of the exact specifications are unavailable for any reason, Contractor will work with Homeowner to find an acceptable substitute, which may affect the cost of the Project.

Product Matching – with certain products, such as carpeting, brick siding, roofing materials, stucco, tile, cabinets, doors, interior and exterior trim, and wall coverings, etc., the final material may differ slightly from the sample due to aging, weathering, and/or changing manufacturing processes which produce the products. Therefore, the Contractor cannot promise an exact match of texture, shape, style or color of any products. In order to avoid installation of incorrect or unacceptable materials, upon request, Contractor will provide Homeowner with a sample of the materials.

Homeowner-Supplied Materials – It is the responsibility of the Homeowner to have all Homeowner-supplied items delivered to the job site where they are to be installed before the date that the associated trade partner will be on site (i.e. light fixtures delivered before the electrician is scheduled). Any extra trips that the trade partner must make to install late items will result in extra expense to the Homeowner.

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Any questions of the sufficiency of performance or materials will be resolved by reference to and compliance with the newest version of the Residential Construction Performance Guidelines, National Association of Home Builders/Remodeler's Council.

6. Hidden Conditions – Exclusions to No Unforeseen Change Order Guarantee

The Contractor shall not be responsible for bearing added costs of the Project due to the need to repair hidden, concealed or unforeseen conditions. For the purpose of this Agreement, a hidden, concealed and unforeseeable condition shall mean a condition not readily observable or easily discovered when inspecting the property for the purpose of estimating and performing the work specified within the context of this Agreement. Examples of such conditions may include, but are not necessarily limited to, hidden pipes or wires in walls that cannot be anticipated or observed from the basement or roof venting; unexposed rot; old septic tanks; covered wells and cisterns; prior fires; structural, mechanical or workmanship deficiencies; bad soil conditions that increase the costs of excavation and/or foundations; or any other unusual conditions that are beyond that which is specified in the Agreement. An agreed-upon course of action and any associated extra expenses will be addressed to the Homeowner if such an occurrence arises. Both parties must agree to such extra charges, or to a resolution method, in writing.

7. Mold/Hazardous Substances

The Homeowner warrants that he/she knows of no mold or hazardous environmental conditions, materials or substances in the property that may affect the Project.

The Contractor is not a mold, radon, asbestos, lead, formaldehyde or any other hazardous substances abatement specialist. In the event mold or other such hazardous substances are discovered, work on the Project may be stopped until inspected by an appropriate specialist. The Homeowner shall be responsible for all inspection and abatement costs as well as the Contractor's added administrative and rescheduling expenses resulting therefrom.

The Homeowner acknowledges that the Contractor makes no representation as to the presence or absence of mold, radon, asbestos, lead, formaldehyde or any other hazardous environmental substances, materials or conditions, or as to the effect of any such substance, material or condition on the residence or its inhabitants. Hazardous substances, materials or conditions such as those described above are frequently present in existing housing. Therefore, the Contractor will not be responsible for any loss or damages, including personal injury, caused by any such substance, material or condition that is exposed or damaged during the course of the Project. The Homeowner may elect to have any pre-existing hazardous substances, materials or conditions remediated by an independent remediation contractor prior to the commencement or continuation of work by the Contractor.

Although the Contractor will use industry standard materials and will make a reasonable effort to avoid the use of new materials that are known to be hazardous, the Contractor cannot and will not warrant that all such materials will be free of hazardous substances. The Homeowner expressly waives and releases all claims against the Contractor that are in any way associated with any hazardous environmental conditions, materials or substances present at the Project, including but not limited to mold, radon, asbestos, lead and formaldehyde.

8. Insurance

The Contractor is licensed and insured according to the rules and regulations of the State of Minnesota, Department of Commerce under Contractor License No. 5657. The Homeowner agrees that he/she has and will maintain reasonably sufficient replacement value homeowner's/property and owner's liability insurance on the property (including improvements described herein) throughout the performance of this Agreement. The Contractor will carry, at his/her own expense, appropriate workers' compensation and public liability insurance as required by statute. The Contractor's insurance includes an installation floater that covers up to \$100,000 in materials that have been delivered or installed on a job site. In addition, the Contractor carries General Liability Insurance in the amount of \$1,000,000 that covers any damage caused to the homeowner's property.

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9. Assessments and Charges

The Homeowner shall pay all assessments and charges required by governmental or quasi-governmental authorities or utility companies for financing or repaying the costs of usage or relocation of any utilities, including revolving fund charges, hook-up charges, lot surveys, soil testing and the like. Property surveys required by any third party or lender shall be the sole responsibility of the Homeowner.

10. Change Order Policy

The Parties to this Agreement agree that in the event that there is more than one Homeowner listed on this Agreement, the signature or electronic acceptance via email by the Homeowner will be sufficient to bind all Homeowners to any change orders on the Project.

Changes to the proposal will be negotiated between Contractor and the Homeowner(s) and approved in writing using a change order form prior to the accomplishment of the revision (“Change Order”). Change Orders occur for several reasons and end up changing the details of the project which may affect the cost of the project. Rather than amending the Agreement, Change Orders are dealt with as separate issues and are paid for as they occur. With each change, Homeowner will receive a copy of the Change Order via email or in person, that details all of the costs, changes to completion dates, and associated management fees associated with the change. Homeowner will be required to approve the change(s) via electronic acceptance or in writing and make prompt arrangements for payment if they wish to avoid delays in the project. There are two categories of change orders and how Contractor deals with them can be found below:

Chargeable Change Orders

a. Customer-Requested. A customer-requested Change Order occurs when Homeowner changes their mind about a detail of the project after the project has started and final plans have been approved. In these instances, Contractor is required to update the plans and/or line-item specifications. Because of the added work, Contractor charges a fee of \$125.00 per customer-requested Change Order in addition to the difference between the original price and the cost of the requested change(s) plus additional management fees. It is to Homeowner’s advantage to think about the project while in the design and planning process to avoid unnecessary changes and related fees. The fee will be applied per Change Order, not per change, so a number of changes can be dealt with in one change order.

b. Allowance Changes. Castle’s goal is to start each project with no allowances or undecided items. In the rare event that an allowance is used in place of a product decision this process will be used. A change in allowance Change Order occurs when the homeowner selects products that cost more or less than the allowance amount included in the line-item specifications. For example, the line-item specifications may have included an allowance of \$3,000.00 for kitchen appliances and the homeowner selects appliances that cost \$3,500.00. In this instance, the difference of \$500.00 plus the changes in management fees would be paid by the Homeowner along with the next payment. In the case that the Homeowner chooses appliances that cost less than what was allocated, the difference plus changes in management fees would be credited back to the Homeowner and applied against the next payment. There are no additional fees associated with change(s) in allowance Change Orders.

Non-Chargeable Change Orders

c. Dictated. Contractor guarantees there will be no additional or unforeseen expenses related to change orders with the exception of items in “Section 6 – Exclusions to No Unforeseen Change Order Guarantee” above. A dictated Change Order occurs when an unforeseen change, such as a city code or an inspector’s request, dictates that a change be made to the Project. In many cases, dictated Change Orders happen because Contractor is not able to see what electrical, heating, or plumbing conditions are like inside the Homeowner’s walls, floors, or ceilings before the Project starts. In an attempt to avoid surprises, Contractor may complete minor demolition to see inside walls, floors, or ceiling during the design & planning stage and prior to commencement of work to help avoid these unexpected conditions. Additionally, when it is impossible to know whether work will need to be completed until the project is underway,

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Contractor may include items in the line-item specifications and contract that may not need to be completed. In the event that an item in the contract is not necessary and is not completed the costs and associated management fees will be refunded via a change order. There are no additional fees associated with dictated Change Orders. Homeowner will not be charged for the difference between the original price and the required changes or the difference in management fees but will be made aware of the change or work via written agreement in the form of a Change Order.

11. Job Site Cleaning and Conditions

All work will be performed between the hours of 7:00 AM and 5:30 PM, Monday through Friday, unless additional working hours are approved by Homeowner. Homeowner will allow access to the property by scheduling specific times with Contractor, providing a key, or by allowing the installation of a lockbox on the property.

The Contractor will use masking materials and drop cloths when deemed appropriate by field workers or if requested by Homeowner as necessary to prevent damage to existing paint and wall coverings. The masking materials that the Contractor plans to use are outlined in section 02 – Site Prep and Demolition of the Line Item Specifications. The Contractor will make reasonable attempts to reduce migration of dust to non-remodeled spaces; however, some dust migration should be expected. Due to the general nature and varying properties of wallpaper and paint and the varied techniques needed to repair walls and tie structures together, the Contractor will not be responsible for damage and repairs to wallpaper and paint in areas where work is being performed except as set forth in the Project specifications. The Contractor strongly recommends replacement or complete repainting of all rooms affected by the Project.

After the construction of the Project, the Contractor will leave any exterior areas "raked" clean and any interior areas shall be left "broom-swept" clean. Removal of labels and cleaning of glass is the Homeowner's responsibility unless expressly provided for in the Agreement specifications. Minor damage such as scuffs, scratches, soiling of surfaces, etc. may still occur and will be cosmetically retouched. At the time of removal blue "non-stick" tape can pull loose the finish from hardwood floors. This typically occurs on floors that were finished 10+ years previously. Castle will make every attempt to not damage hardwood floors, but please be aware that Contractor is not responsible for damage resulting from tape pulling off the finish from hardwood floors. At the Homeowner's request, professional cleaning services are available at additional expense.

It is a common practice for contractors to order materials in excess of what is actually needed to complete the project. All excess delivered materials remaining after the Project is completed will be picked up, removed and remain the property of Contractor.

12. Disturbance of Driveways, Sidewalks and Landscaping

The Contractor shall use reasonable care to minimize cracks, depressions or damage to driveways, lawns and plantings. The Homeowner may direct the Contractor to avoid certain areas, time periods or the use of heavy equipment to minimize such damage, but delays or extra costs resulting therefrom will be added to the performance time and Agreement price. Except as set forth in the specifications, the Contractor shall not be responsible for yard, driveway or sidewalk repairs.

13. Dumpsters

Dumpsters are provided at the job site for Contractor use only. Due to restrictions of what materials may go into specific landfills, household debris may not be deposited in construction dumpsters unless explicitly approved by the Contractor. Additional fees may apply if anyone other than the Contractor uses the dumpsters.

14. Yard Signs and Advertising

The Homeowner agrees to allow the placement of the Contractor's yard sign for the purpose of promotion and to mark the property for deliveries, employees and/or trade partners. The Contractor may take and use any photographs of the project for promotional purposes, including but not limited to home shows, advertising and competitions.

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15. Homeowner's Duties

To facilitate the Project, the Homeowner shall have the duties set forth herein:

- Execute in a timely manner all documentation necessary for the work to proceed (i.e. variances, financing, etc.)
- Clear personal items and household furnishings from the areas in, on, or around the area where the work will take place. The Contractor bears no responsibility for breakages of or damage to such items if not removed from the work area.
- Take responsibility for all children and pets on the property. The Contractor and the workers shall not be expected to look out for or to protect animals and children in or around the workspace.
- Get neighbors' written permission to drive on any affected lawns or driveways if necessary for access to the project.
- Provide adequate utilities for the agreed upon work. The Homeowner agrees to make toilet facilities available to all workers, or to compensate the Contractor for the cost of rented port-a-potty units. The Homeowner shall furnish all necessary electricity, water, and other utilities at no expense to the Contractor.
- Grant free access to work areas for workers and vehicles and allow storage of materials and rubbish. Homeowner agrees to keep driveways clear and available for movement and parking of trucks during normal working hours (including the removal of snow and ice, if applicable).
- Accept the delivery of materials from suppliers at the time of delivery. The Homeowner will use common sense means to secure material from theft or damage, will provide a secure area for the Contractor's materials and tools, and will provide access to such areas during normal business hours.
- Advise the job foreman of any condition that affects the Contractor's ability to perform the work.
- Make no arrangements with, nor give any directions to, any tradesperson, trade partner, or Contractor's employee outside the scope of this contract without the written consent of the Contractor.
- Avoid interfering with the workers. Arrange specific times, preferably before or after work hours for questions or conversations.
- Perform no work on the Project without written agreement of the Contractor.

**Contractor is amenable to the Homeowner supplying material, labor or trade partners. However, should Homeowner decide to supply any of the above, all associated work will be exempt from Contractor's warranty and may, at Contractor's sole discretion, void the warranty of related work if failure occurs. Should work performed by the Homeowner cause delays, cause damage or increase the work the Contractor is to perform under this Agreement, Homeowner may, at Contractor's sole discretion, be charged at Contractor's prevailing rates for the delay, damage or extra work. The Homeowner and any trade partners provided by Homeowner assume all liability for injury or damage to materials and premises while engaged in Homeowner-supplied labor. Although hiring trade partners to do certain portions of the work is acceptable, it is not acceptable to solicit contractor-supplied trade partners to perform additional work. These requests should be handled through the Project Manager and handled through a Change Order.

**All preparation for painting or staining, including filling nail holes, sanding, dusting and final wall spackle, is the responsibility of the painter. If the Homeowner elects to paint, stain or varnish the project, all such preparation becomes the responsibility of the Homeowner.

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**The Homeowner shall be entitled to make periodic inspections of the work site when accompanied by a representative of the Contractor, provided such inspections do not interfere with the work and can, in the sole judgment of the Contractor, be made safely. All other entry onto the construction site, including that of pets or children, shall be at the Homeowner's own risk.

16. Warranties/Exclusions/Remedies

Warranty

2008 Minnesota Statutes

Chapter 327A. Housing; Statutory Warranties

Section Headnote

327A.01 Definitions

327A.02 Statutory Warranties

327A.03 Exclusions

327A.04 Waiver and Modification Limited

327A.05 Remedies

327A.06 Other Warranties

327A.07 Variations.

327A.08 Limitations

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 which constructs dwellings for the purpose of sale, including the construction of dwellings on land owned by vendees.

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.

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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.

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 12s12; art 13 s 4

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 to notice of claim.** (a) Following notice under section 327A.03, the vendee must allow an inspection and opportunity to offer to repair the known loss or damage. Upon request of the vendee, a court may order the vendor to conduct the inspection. The inspection must be performed and any offer to repair must be made in writing to the vendee within 30 days of the vendor's receipt of the written notice required under section 327A.03, clause (a), alleging loss or damage. The applicable statute of limitations is tolled from the date the written notice provided by the vendee is postmarked, or if not sent through the mail, received by the vendor until the earliest of the following:

(1) the date the vendee rejects the vendor's offer to repair;

(2) the date the vendor rejects the vendee's claim in writing;

(3) failure by the vendor to make an offer to repair within the 30-day period described in this subdivision; or

(4) 180 days.

For purposes of this subdivision, "vendor" includes a home improvement contractor.

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(b) 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.

History: 1977 c 65 s 2; 1981 c 119 s 6; 2001 c 207 s 9,10; 2006 c 202 s 5,6

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;
- (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

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.07 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.07, 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 statutory 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.

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Subd. 3. **Exception.** If a major construction defect is discovered prior to the sale of a dwelling, the statutory 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

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.06 OTHER WARRANTIES.

The statutory 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

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 statutory 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

327A.08 LIMITATIONS.

Notwithstanding any other provision of sections 327A.01 to 327A.07:

- (a) the terms of the home improvement warranties required by sections 327A.01 to 327A.07 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.07 shall not include products or materials installed that are already covered by implied or written warranty; and (c) the home improvement warranties required by sections 327A.01 to 327A.07 are intended to be implied warranties imposing an affirmative obligation upon home improvement contractors, and sections 327A.01 to 327A.07 do not require that written warranty instruments be created and conveyed to the owner.

History: 1981 c 119 s 11; 1997 c 7 art 1 s 126

Upgraded Warranty

If Homeowner completes and returns the Job Feedback Survey to Contractor within 30 days of completion of project and pays in a timely manner via electronic check for all payments after the down payment, Homeowner shall be eligible for Contractor's Upgraded Warranty.

Contractor's Upgraded Warranty is a promise to past clients and can be summarized in the following points:

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- Contractor shall respond to all warranty requests from clients within two (2) business days. During this response, Contractor will attempt to help fix the problem over the phone, if minor, or schedule an appointment to look at and begin to take action to correct the problem.
- Contractor shall investigate all warranty requests no matter the length of time from completion of the project. During this investigation, Contractor will determine if the warranty issue is the result of faulty workmanship on the part of Contractor, defective materials, substandard subcontracted work or if the problem is the result of some other non-related issue.
- Contractor shall take responsibility for and fix all warranty issues that are the result of faulty workmanship on the part of Contractor, defective materials, or substandard subcontracted work*.
- Contractor shall communicate with Homeowner throughout the warranty process in regards to all findings and the timing of all repairs, if applicable.

*No warranty is offered or intended by Contractor on Homeowner-supplied items (such as, but not limited to, windows, doors, paint, and electrical fixtures) nor on the Homeowner's items relocated as a part of a Project. Upgraded Warranty excludes normal wear and tear, acts of God, negligence by owner, or intentional misuse by owner and is at the sole discretion of Contractor. This Upgraded Warranty is extended to Homeowner only and is not transferable to any other party without approval of the Contractor.

LEGAL NOTICES SECTION

17. Limitation of Liability

In no event will either party be liable, one to the other, for special, indirect, punitive, exemplary, or consequential damages in connection with or arising out of this Agreement.

The limit of the parties' liability in tort, by statute or otherwise, concerning performance or nonperformance by either party hereunder, or the Contractor's subcontractors and suppliers, in any manner related to this Agreement, for any and all claims shall not exceed the total fees payable by Homeowner to Contractor. The parties, however, agree that the Contractor's insurance policies, identified in paragraph 8 of this Agreement, shall provide coverage to the Homeowner for any and all claims related to this Agreement that are in excess of total fees payable by Homeowner to Contractor, and that are caused by the Contractor or its subcontractors and suppliers, and then only to the limits provided by the insurance policies.

18. Dispute Resolution

Each party to this Agreement agrees to act in good faith and deal fairly with the other party hereto in an effort to resolve any controversy, dispute or claim of any nature that relates to or arises out of this Agreement or the performance of any term of the Agreement before resorting to litigation, mediation, arbitration or any other formal method of dispute resolution. The first step in resolving any disputes between the Contractor and the Homeowner will be the utilization of the Better Business Bureau's Dispute Resolution Service. The Better Business Bureau (BBB) is dedicated to promoting and fostering the highest ethical relationship between businesses and the public. They remain neutral in a dispute and do not take sides with either party. Their various dispute resolution processes are an alternative to going to court and include the following actions:

Conciliation:

In this process, the BBB staff collects factual information from both parties to a dispute and works to encourage open communication between them. The BBB staff may promote discussion and the exchange of offers but will not discuss the merits of either side's position.

Mediation:

The BBB provides a professionally-trained mediator to talk with the parties and guide them in working out

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their own mutually-agreeable solutions.

Information Dispute Resolution:

The BBB will provide a professionally-trained hearing officer who will listen to both sides and make a non-binding decision on how to resolve the dispute.

Conditionally-Binding Arbitration:

The BBB will provide a professionally-trained arbitrator who will listen to both sides and make a decision on how to resolve the dispute that is binding on the parties only if the customer accepts the decision.

Binding Arbitration:

The BBB will provide a professionally-trained arbitrator who will listen to both sides, weigh the evidence presented and made a decision on how to resolve the dispute that is binding on all parties.

In the event that the parties hereto are unable to resolve any controversy, dispute or claim between them after first attempting to amicably resolve same through the Better Business Bureau Dispute Resolution Process, the parties agree that any controversy, dispute or claim in an amount less than \$7,500.00 shall be submitted to the Conciliation Court of the State of Minnesota in the County where the subject real property is located, which Conciliation Court Action shall be subject to the State of Minnesota and local county rules for such court. In the event that either party appeals or removes such action at any time to the District Court for said county, no party to said action shall make any claim(s) therein that exceed a total of \$7,500.00. Any claim(s) that total or exceed \$7,500.00 shall be resolved pursuant to the mediation/arbitration procedure set forth below. The party that least prevails in the Conciliation Court Action (whether appealed or removed to District Court or not) shall pay to the party that most prevails in that Action the prevailing party's reasonable attorney's fees, costs and disbursements incurred therein.

Controversies, disputes and claims between the parties hereto that exceed \$7,500.00, or that involve claims that are not justiciable in Conciliation Court shall be subject to the following mediation/arbitration dispute resolution procedure:

All controversies, disputes or claims of whatever nature and kind whatsoever that relate to or arise out of this Agreement or the performance of any term of the Agreement (excluding those claims that must be submitted to Conciliation Court above) shall be resolved by a process involving mediation and then binding arbitration. In order to commence mediation, the party desiring to mediate any controversy, dispute or claim that qualifies under this Section (the "Claimant") shall notify the other party (the "Respondent") in writing at that party's home address (if to the Homeowner) or usual place of business (if to the Contractor), setting forth the precise nature of the controversy, dispute or claim, the dollar amount thereof (or any other remedy sought) and the name of the mediator proposed by the Claimant. Within five (5) business days thereafter, the Respondent shall provide the Claimant with a written response admitting or denying Claimant's allegations, and shall provide the Claimant with the name of the mediator proposed by Respondent. If the parties cannot mutually agree on one of the proposed mediators to mediate the dispute, the parties shall have their proposed mediators jointly select a third mediator within five business days after said request. The third mediator shall then mediate the dispute. The mediation of the dispute shall occur at the first available date on the mediator's calendar and the parties to the mediation shall not be entitled to discovery rights prior to mediation. If after 8 hour(s) of mediation, the parties cannot resolve their dispute, the mediator shall automatically be appointed as the sole arbitrator and shall decide the issues in accordance with the rules of the Minnesota Arbitration Statute, Chapter 572.

The arbitration award issued by the arbitrator shall be binding on the parties and is non-appealable. Either party may require disclosure and conduct discovery regarding the other party's claims or defenses in

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arbitration in accordance with the Minnesota Rules of Civil Procedure. Either party may initiate mediation/arbitration on one or more controversies, disputes or claims at any time during the Agreement process (assuming that they qualify for mediation under this Section). Unless agreed to by both parties in writing, any controversy, dispute or claim so submitted to mediation/arbitration shall be fully and finally resolved before *work* recommences on the Project. The Contractor and the Homeowner shall share the costs of the mediator/arbitrator equally. In the event that the dispute is resolved by arbitration under this section, the party that least prevails in the arbitration shall pay to the party that most prevails in the arbitration that party's reasonable attorney's fees, costs and disbursements incurred therein.

19. MECHANIC'S PRELIEN NOTICE

THE CONTRACTOR IS REQUIRED BY LAW TO INCLUDE THIS IMPORTANT LEGAL NOTICE. PLEASE READ IT CAREFULLY.

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

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

*****IT IS THE HOMEOWNER'S RESPONSIBILITY TO NOTIFY CASTLE UPON RECEIPT AND TO SUPPLY A COPY TO CASTLE OF ANY PRE-LIEN NOTICES RECEIVED BY THE OWNER FROM CASTLE TRADE PARTNERS AND/OR MATERIAL SUPPLIERS. DOING SO ENSURES THAT CASTLE CAN OBTAIN LIEN WAIVERS UPON PAYMENT TO TRADE PARTNERS AND/OR MATERIAL SUPPLIERS WHO HAVE SENT PRE-LIEN NOTICES. IF YOU DO NOT INFORM CASTLE OF PRE-LIEN NOTICES RECEIVED, CASTLE CAN NOT GUARANTEE THAT MATERIAL PROVIDERS USED BY CASTLE TRADE PARTNERS ARE PAID IN FULL, RUNNING THE RISK OF A LIEN BEING FILED AGAINST YOUR HOME.**

20. IMPORTANT HEALTH NOTICE. The following notice is required to be given pursuant to Minnesota Law:

SOME OF THE BUILDING MATERIALS USED IN THE HOME (OR THESE BUILDING MATERIALS) EMIT FORMALDEHYDE. EYE, NOSE, AND THROAT IRRITATION, HEADACHE, NAUSEA AND A VARIETY OF ASTHMA-LIKE SYMPTOMS, INCLUDING SHORTNESS OF BREATH, HAVE BEEN REPORTED. AS A RESULT OF FORMALDAHYDE 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

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