

**This Warranty Addendum is provided to you as an example for review. We strongly advise that you contact an attorney, specializing in construction law, prior to using any forms or contracts in connection with your business. Using documents which do not reflect your actual model of business or true business operations can not only be ineffective, but also could potentially give rise to liabilities or other unintended consequences. Rinke-Noonan tailors all of the construction contracts and related documents that it drafts for maximum effectiveness, in accordance with the latest State and Federal Regulations and provides regular updates to all of its clients upon legislative changes.**

## **ADDENDUM TO CONTRACT**

This is an Addendum to the construction contract between \_\_\_\_\_ (Contractor) and \_\_\_\_\_ (Customer) dated \_\_\_\_\_, 20\_\_\_\_, for construction on property located at \_\_\_\_\_ (address). Customer acknowledges that they have received and read the following warranties which are hereby incorporated into the contract.

### **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. 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.

### **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. (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.

**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.

**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.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to contracts entered into on or after that date.

**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.

**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. EFFECTIVE DATE. This section is effective August 1, 2009, and applies to construction of dwellings or home improvements completed on or after that date.

**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.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to contracts entered into on or after that date.

**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 and conveyed 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. EFFECTIVE DATE. This section is effective August 1, 2009, and applies to contracts entered into on or after that date.

\_\_\_\_\_, CONTRACTOR  
By \_\_\_\_\_  
Its \_\_\_\_\_  
Contractor License No. \_\_\_\_\_

\_\_\_\_\_  
Customer