



TWO-YEAR LIMITED TRADESMAN WARRANTY AGREEMENT

Design Builder, Fleming Construction LLC ("Contractor" or "Fleming Construction") hereby provides to the Client/Owner(s) ("Owner") (together the "Parties") of the house ("House"), which is either a newly constructed house built by Contractor or an existing house for which Contractor performed certain remodeling work, the limited warranty as set forth within this agreement ("Limited Tradesman Warranty Agreement" or "Limited Warranty").

ARTICLE 1: GENERAL TERMS OF THIS LIMITED WARRANTY AND WARRANTED ITEMS

A. This Express Limited Warranty. (1) The express warranty being provided by Contractor herein is a two-year Limited Warranty, the terms of which are set forth herein. The Limited Warranty is the only express or implied warranty being provided by Contractor and is the only warranty covering the Property and the Work. By signing this Agreement, Owner agrees to the Limited Warranty and, further, acknowledges that he/she has read and understands the terms of the Limited Warranty or has had an opportunity to inquire as to the meaning or significance of such provisions. Further, the provisions contained within this Limited Warranty supersede and prevail over any conflicting, differing, and/or general terms and provisions of any purchase agreement or like agreement entered into between the Parties.

(2) Definitions. Capitalized terms contained within this Limited Tradesman Warranty Agreement shall have the same meaning as the definition and meaning given to such terms within the underlying agreement ("Construction Agreement") between the Parties for the new construction or remodeling Project, unless a different definition is expressly set forth herein. As used herein, "Work" has the same meaning given to the word "Work" and/or "Services" under the Construction Agreement. As used herein, "Substantial Completion" means that all Work has been completed except for any Punch List items, that the Work is sufficiently complete and in accordance with the Contract Documents such that Owner can occupy and utilize the House, or the remodeled portion of the House, for all normal purposes, and/or that a certificate of occupancy has been issued for the House.

(3) Warranty Period. The warranty period ("Warranty Period") under this Limited Warranty is the two-year period following the closing on the new House (for new construction projects), Substantial Completion of the House or Work, or final payment to Contractor, whichever occurs first ("Commencement Date").

B. Warranted Items Under this Limited Warranty. For the two-year Warranty Period, and if and only if Contractor has received timely and proper written notice under this Limited Warranty of the claimed warranted item from Owner, Contractor agrees to reasonably repair or remedy, at its own cost, the following two categories of warranted items:

- (1) Any part of the Work (which includes, by definition, all labor, services, and materials) that is materially (a) nonconforming to and noncompliant with the Contract Documents, (b) nonconforming to or noncompliant with the state or local building codes, and/or (c) below or nonconforming with the standard of care and generally recognized and accepted practices for the quality of the Work and Materials in the residential homebuilding industry in the geographic area in which the House is located and at the time of the Work, except to the extent excluded under Article 2 or otherwise herein; and
- (2) Any additionally warranted item of Work expressly set forth in the below provision entitled "Additionally Warranted Items."

C. Additionally Warranted Items. In addition to, and/or notwithstanding, the terms of the Limited Warranty, the following items are warranted items under this Limited Warranty:

- (1) Any verifiable roof or other envelope leak will be repaired once during the Warranty Period, except for leaks resulting from Owner's failure to maintain proper grade; Owner's neglect in adjusting door thresholds; Owner's failure to engage in periodic caulking in relation to exterior sealants used to seal doors, windows, and siding; ice buildups; rain driven into attic louvers/vents; overflowing gutters; or leaks that fall into the list of excluded items excluded from this Warranty that are set forth in Article 2.
- (2) Concrete foundations, walls, patios, floors, driveways, sidewalks, and other cracks are covered under this Warranty if, and only if, the cracks were solely caused by defective concrete/materials or improper installation of the concrete that is below the standard of care and does not conform to the generally recognized and accepted practices in the local residential homebuilding industry and the cracks are substantial in size and substantially affect the functionality and use of the concrete. Owner acknowledges and agrees to the following: no concrete surface will remain crack-free, concrete cracks will happen and are simply the result of the natural expansion and contraction of the concrete including due to weather variation, and cracks that are ¼ inch or less are not substantial and instead are normal cracks, and as such, are not covered by this Warranty. Owner also acknowledges and agrees that surface patching is an acceptable method to remedy this item and that the patched areas will likely not exactly match the rest of the concrete and Contractor has no liability for the aesthetic result of any concrete patching.
- (3) Stucco, stone, masonry, or brick cracks greater than 1/8 inch will be repaired once during the Warranty Period, but there is no guarantee as to the color match or pattern in such repair work, and Owner acknowledges and agrees that patching with a concrete sealant is an acceptable method to remedy this item.
- (4) Wood trim separations between joints that exceed 1/8 inch in width will be repaired, and Owner acknowledges and agrees that puttying and/or caulking are acceptable methods to remedy this item.
- (5) Wood floors exhibiting substantial and abnormal squeaking are covered under this Warranty if, and only if, the cracks were solely caused by defective wood/materials or improper installation of the floor that is below the standard of care and does not conform to the generally recognized and accepted practices in the local residential homebuilding industry, to the extent possible without removing the floor or ceiling finishes. Owner acknowledges and agrees to the following: no wood floor will be squeak/noise free and squeaking/noise within wood floors is normal. Owner also acknowledges and agrees that face-nailing is the acceptable method to remedy this item and Contractor has no liability for the aesthetic result of any face-nailing.
- (6) Newly constructed walls by Contractor with a bow exceeding 1/2 inch out of line in a 32-inch horizontal measurement, or 1/2 inch out of line in an 8-foot vertical measurement will be repaired, provided however that Owner acknowledges and agrees that interior and exterior walls, initially and after any wall repair, will have slight variances in their finished surface.
- (7) Carpet seams that open in excess of 1/8 inch will be repaired during the Warranty Period.
- (8) Nail pops in the walls or ceilings that break the surface paper will be repaired one time during the Warranty Period.
- (9) Drywall cracks that exceed 3/32 inch will be repaired once per year during the Warranty Period, provided however that minor dings, scratches, and other imperfections in the drywall are not covered by this Limited Warranty.
- (10) Paint touch-ups will be done only following warrantable repairs, such as excessive drywall cracks (in excess of 3/32 inch, but color and texture matches on touch-ups will only be as close as reasonably possible and may not exactly match the rest of the drywall. In the event Owner requests that the entire wall be painted by Contractor following a warranted repair, as opposed to merely a paint touch-up on the repaired portion of the wall, Owner acknowledges and agrees that Owner will pay for all such painting costs.
- (11) Circuit breakers, wiring circuits, switches, outlets, and wiring that do not operate as intended will be repaired or replaced.
- (12) For faulty plumbing or electrical/lighting fixtures supplied & installed by Contractor's subcontractors, Contractor will coordinate repair and replacement of these fixtures, and the ordering of parts, as necessary, with Contractor's plumbing and/or electrical subcontractors.

D. Owner's General Remedies Under this Limited Warranty.

(1) Procedural Provisions for Requesting Service Under this Warranty. Article 3 herein sets forth certain notification and procedural requirements that Owner must strictly satisfy in order to avail itself of the terms of this Limited Warranty.

(2) Notice and Cure Period. In the event Owner believes Contractor has not fulfilled the terms of, or otherwise breached, this Limited Warranty, then Owner shall: (i) provide Contractor with written notice of any claimed breach/default; and (ii) provide Contractor with thirty (30) days to cure any such claimed breach/default and to otherwise inspect the Property/Work.

(3) Commencement and Limitation of Action. Owner may commence a legal action based upon a claimed breach under the Limited Warranty if, and only if: (i) Owner has strictly complied with all notification and procedural requirements set forth within Article 3 herein; (ii) Owner has strictly complied with the notice and cure prerequisites set forth in subparagraph(2) above, and Contractor has failed to cure the alleged breach within the cure period; and (iii) Owner commences the action within one year following the end of the two-year Warranty Period, or three years following the date of Substantial Completion of the Work, whichever is sooner.

(4) Other Provisions. (i) Contractor, in its sole discretion and in lieu of performing repair or remediation work, can elect to pay Owner the reasonable cost of repairing or remedying the warranted item of Work. (ii) This Limited Warranty cannot be transferred and is only applicable to the Owner(s) named herein; thus, any obligation under this Limited Warranty terminates if the Property is sold or ceases to be occupied by Owner. (iii) If Contractor repairs or replaces, or pays the reasonable cost of repairing or replacing, any defect under the Limited Warranty that is also covered by Owner's insurance, then Owner must, upon Contractor's request, assign the proceeds of such insurance to Contractor to the extent of Contractor's cost for such repair, replacement or payment. (iv) Actions taken to correct actual or claimed defects do not extend the duration of the Two-Year Warranty Provision.

(5) Mandatory Mediation and Arbitration Clause. (i) If a dispute arises under this Limited Warranty or Construction Agreement, a Party must participate in a non-binding mediation prior to the commencement of any legal proceeding, if and only if requested, in writing, by the other party within thirty (30) days of the existence or notice, whichever is sooner, of the dispute. (ii) All claims and disputes relating to the Limited Warranty or Project shall be submitted to arbitration in the location of the Project. Unless the Parties agree otherwise, the arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction thereof. (iii) Both Parties waive all right to a trial by jury in any action relating to this Agreement or the Project; this waiver is knowingly, willingly, and voluntarily given.

E. Other Provisions Regarding Liability and Damages.

(1) Contractor's Liability Under the Agreements. CONTRACTOR'S TOTAL LIABILITY UNDER THIS LIMITED WARRANTY, THE CONSTRUCTION AGREEMENT, AND THE CONTRACT DOCUMENTS IS LIMITED TO THE REASONABLE COST OF REPAIRING OR REMEDYING THE WARRANTED ITEM OF WORK. Contractor is not liable for, and the following damages are expressly excluded from this Limited Warranty: loss of use, loss of opportunity, loss of rental value, and loss of or low market value of the Property; cost of shelter, transportation, food, moving, storage, or other expenses related to inconvenience or relocation; all other consequential, incidental, or secondary damages; loss caused by Owner's failure to mitigate damages; and bodily/personal injury of any kind, and any associated medical or other incidental expenses, due to damage or loss to the Property.

(2) Exclusion of Certain Warranties. Except for the Limited Warranty, THE HOUSE, PROPERTY, AND WORK ARE SOLD "AS IS"; ALL IMPLIED WARRANTIES OF ANY KIND COVERING THE WORK OR HOUSE ARE HEREBY EXCLUDED; AND THERE IS NO IMPLIED WARRANTY OF HABITABILITY, IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION, IMPLIED

WARRANTY OF MERCHANTABILITY, OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE UNDER THE AGREEMENT. This provision shall not merge with but shall survive any closing or completion of the Work.

(3) Recoverability of Attorney's Fees and Costs. The Parties agree that Contractor shall be entitled to recover from Owner all of its costs, including but not limited to all court costs and expert costs, and attorney's fees resulting from Owner's breach of this Limited Warranty or the Construction Agreement, Contractor enforcing its rights under this Limited Warranty or the Construction Agreement, or Contractor being the prevailing party in defense of any suit, arbitration claim, or proceeding brought by Owner against Contractor arising from this Limited Warranty or the Project.

ARTICLE 2: EXCLUSIONS FROM THIS LIMITED WARRANTY

A. Exclusions. This Article contains information regarding certain Work and other items that are *excluded* from this Limited Warranty.

B. Assignment of Manufacturer Warranties and Exclusion from this Limited Warranty. The Parties agree that (1) Contractor has no responsibility or liability under this Limited Warranty or the Construction Agreement for defects in any appliances or equipment as provided herein. Specifically, any appliance or item of equipment that is a consumer product for the purposes of the Magnuson-Moss Act or otherwise covered by a manufacturer warranty, is entirely excluded from the coverage of the Limited Warranty, and thus, any defect in, or claimed issue with, such appliances or equipment is excluded from Contractor's Limited Warranty. This includes the following consumer products: refrigerator, stove/range, dishwasher, garbage disposal, microwave, air conditioner, furnace, water heater, washer/dryer, and garage doors and openers. (2) All manufacturer warranties are hereby assigned to Owner, and Contractor does not assume any obligation under such warranties. (3) Upon request, Contractor shall supply Owner with copies of all warranties, guaranties, or similar documents in its possession setting forth the responsibility or liability assumed by the manufacturers of such materials.

C. Other Exclusions from this Limited Warranty. The following items are specifically not covered or warranted under this Warranty:

(1) Manufacturer Warranties on Materials:

- (i) All express manufacturer warranties are hereby assigned to Owner, and Contractor does not assume any obligation under those manufacturer's warranties. Upon request, Contractor will assist Owner in submitting a warranty claim to the manufacturer. The Parties expressly agree that any appliance, item of equipment, or other item upon the Property that is a consumer product for the purposes of the Magnuson-Moss Act or that is otherwise covered by a manufacturer warranty, is entirely excluded from the coverage of this Warranty, and thus, any defect in, or claimed issue with, such appliances or equipment is excluded from this Warranty. The following are examples of such consumer products: refrigerator, stove/range, dishwasher, garbage disposal, microwave, air conditioner, furnace, hot water heater, clothes dryer and washer, thermostat, and automatic garage doors and openers. Owner is responsible for obtaining and understanding any warranties from such manufacturer/installer.
- (ii) Loss or damage to or relating to any pool, hot tub, spa, steam room, or recreational facility is hereby excluded from this Warranty. All express warranties, if any, from the manufacturer or installer of those items, are hereby assigned to Owner, and Contractor does not assume any obligation under those manufacturer/installer express warranties.

(2) Loss or Damage Caused by Actions of Owner or Owner's Agents and/or by Natural Causes:

- (i) Loss or damage, in whole or part, due to normal and ordinary wear and tear or deterioration.
- (ii) Loss or damage, in whole or part, due to neglect or a lack of proper home maintenance, improper home maintenance, and/or any negligent or intentional action or omission, by Owner, Owner's agent, or anyone other than Contractor and Contractor's employees and subcontractors.
- (iii) Loss or damage that is caused by, or made worse by, Owner's failure to give immediate/emergency notice of the defect or problem to Contractor when such defect or problem may worsen, or cause further damage, over

time (including, but not limited to, any issue relating to alleged water intrusion or the envelope of any structure upon the Property).

- (iv) Loss or damage caused by changes in the grading or drainage patterns resulting from any act or omission by a person other than Contractor and/or its employees and subcontractors. Non-warranted items include changes in the drainage pattern due to, as well as any other damage or loss caused by, landscaping, the planting of trees, the installation of retaining walls, and/or the installation of concrete patios or walkways performed by any person other than Contractor and/or Contractor's employees and subcontractors.
 - (v) Loss or damage due to, or arising from, any structure being used primarily for nonresidential purposes.
 - (vi) Loss or damage caused by loading on floors that exceeds design load.
 - (vii) Damage or defects due to faulty materials supplied by, or poor or substandard workmanship performed by, parties other than Contractor and Contractor's employees and subcontractors, including but not limited to design defects of an architect retained or hired by Owner. In particular, Contractor provides no warranty whatsoever (i.e., no labor or material warranty) regarding any materials that Owner purchased him or herself.
 - (viii) Loss or damage from or caused by insects and animals; weather, wind, rain, hail, snow, other precipitation, flood or lightning; fire, explosion, or smoke; falling trees or other objects; earthquakes or other natural disasters, radon or other gases, or other acts of God.
 - (ix) Normal variations in materials, as well as any other claimed defect that is a result of the natural characteristics of materials used on the Project, including but not limited to natural defects, characteristics, and variations in brick, stone, masonry, paint, wood, mortar, caulk, concrete, stucco, shingles, porcelain, granite, vinyl, plumbing and light fixtures, and tile. The aforementioned types of normal and/or natural defects or variations in materials include, but are not limited to, discoloration or fading of materials; warping, cupping, or bowing of wood; and efflorescence (chalking) of brick, masonry, or concrete.
 - (x) Minor drywall cracks, minor molding separations, and any other condition that is the result of the natural drying out and/or settling process of any structure upon the Property; imperfections in paint touchups; and imperfections resulting from the use of smooth/flat drywall.
 - (xi) Cracking, flaking, peeling, shifting, settling, or pitting of paint, concrete, mortar, grout, or caulk due to natural causes or Owner neglect.
 - (xii) Broken waterlines or broken sillcocks or faucets due to frozen water lines.
 - (xiii) Conditions or defects due to radon gases. The parties agree that radon and radon gases are naturally created and exist everywhere and that Contractor provides no warranty regarding radon presence.
- (3) Other Items Excluded From Contractor's Warranty
- (i) Loss or damage to any part of any structure upon the Property that was not part of the structure as originally constructed by Contractor.
 - (ii) Defects or any other problems with sod *at any time after installation*, or with trees, shrubs, and plants after installation. In particular, Contractor, itself, provides no warranty of any kind regarding the installed sod, planted trees, shrubs, or plants once those items are installed; though, Contractor hereby assigns to Owner any express warranty provided by Contractor's tree supplier/subcontractor. Owner also acknowledges and agrees that once the sod is installed, Contractor provides no warranty and has no liability for the sod, including in the event the sod dies, and that installed sod does die, including within the first year of installation, for a variety of reasons including lack of daily watering by Owner, hot weather, lack of or too much precipitation, other weather conditions, and unknown factors. Thus, Contractor provides no warranty or any kind regarding the sod.
 - (iii) Loss or damage related directly or indirectly to mold or other fungi except when the loss or damage is solely caused by Contractor's breach of an obligation under this Warranty.
 - (iv) Loss or damage related to water intrusion except when the loss or damage is solely caused by Contractor's breach of an obligation under this Warranty.
 - (v) Loss or damage to or regarding wells, septic tanks, sewers and/or storm sewers.
 - (vi) Otherwise warranted items for which the requested repair would amount to economic waste or a betterment under the law.

ARTICLE 3: REQUESTING SERVICE UNDER THIS WARRANTY AND PROCEDURAL PROVISIONS

A. This Article. This Article sets forth all notification and procedural requirements that Owner must strictly satisfy in order to avail itself of the terms of this Limited Warranty, as well as other information regarding the final walk-through of the House.

B. Requests Under this Limited Warranty. (1) After the Punch List is created and completed, and/or once Owner has signed off on the final completion of the Punch List and the Work by signing at the appropriate spot on the Punch List and Completion Document, any actual or claimed items falling under this Limited Warranty shall be submitted by Owner to Contractor strictly in accordance with the below schedule:

- (a) 11-Month / 1-Year Warranty Service Request. All claimed defects appearing within the first 1 year after the Commencement Date and that are covered within the Limited Warranty should be included in one written request from Owner to Contractor requesting Contractor remedy such defects. Such request shall be sent to Contractor at the end of the 11th month of the Warranty Period if possible, or otherwise by the end of the first year of the Warranty Period.
- (b) 2-Year Warranty Service Request. All claimed defects covered by this Limited Warranty appearing since the Commencement Date and after the 11-Month / 1-Year mark should be included in one written request from Owner to Contractor requesting Contractor remedy such defects. Such request shall be sent to Contractor at the end of the 23th month of the two-year Warranty Period if possible, or otherwise by the end of the two-year Warranty Period.
- (c) Emergency Items. Notwithstanding the foregoing, emergency items shall be reported immediately to Contractor, including via telephone call, in addition to the required written request. An emergency item includes a defect resulting in an actual or potential imminent danger to the House or its occupants and any defect that may worsen, or cause further damage, over time if Contractor is not given immediate notice.

(2) Contractor will, weather conditions and labor/materials permitting, use reasonable efforts to promptly complete all items reported in Owner's timely and properly submitted warranty requests; notwithstanding the foregoing, Contractor does not have an obligation to complete items that Contractor disputes.

C. Additional Notice Requirements. (1) All repair/service requests made by Owner under this Limited Warranty must be in writing and mailed to Contractor; must in all cases be received by Contractor by the end of the two-year Warranty Period; and must include a detailed description of each and every request for relief under the Limited Warranty. (2) Owner is not entitled to relief under this Limited Warranty unless Owner strictly satisfies all notice and procedural provisions set forth within this Limited Warranty. (3) Contractor does not waive these notice requirements by opting to accept and respond to certain service requests made via email or telephone or made after the Warranty Period. (4) For purposes of notice under this Limited Warranty, written service requests shall be mailed by Owner to Contractor at the following address: Fleming Construction LLC, 3051 104th St. Suite A, Urbandale, IA 50322.

READ BEFORE SIGNING: This is a legally binding and enforceable document. The terms of this Limited Tradesman Warranty Agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained in this Limited Warranty may be legally enforced. You may change the terms of this Limited Warranty only by another written agreement. You are encouraged to consult with legal counsel to discuss the impact this Limited Warranty before signing.

CONTRACTOR/BUILDER: Fleming Construction LLC

By (Sign): _____

Name/Title: _____

Date: _____

OWNER/CLIENT: *(All Owners must sign)*

By (Sign): _____

Name: _____

Date: _____

By (Sign): _____

Name: _____

Date: _____