



TWO-YEAR TRADESMAN LIMITED WARRANTY AGREEMENT

This limited warranty agreement is extended by Fleming Construction LLC ("Remodeler"), Client/Owner(s) ("Owner") of the residential property ("Premises") which is either a newly constructed house built by Remodeler or an existing house for which Remodeler performed certain remodeling work, the limited warranty as set forth within this agreement ("Tradesman Limited Warranty Agreement").

1. **WHAT IS COVERED BY THE WARRANTY** The remodeler warrants that all construction related to the improvements made under the parties' contract substantially conforms to the plans and specifications and change orders for this job.

Within two (2) years from the date of Substantial Completion, or commencement of use by the owner, whichever is first, the remodeler will repair or replace, at the remodeler's option, any latent defects, not apparent or ascertainable at the time of Substantial Completion or initial use, in the building materials or workmanship. Actions taken to correct actual or claimed defects do not extend the duration of the Two-Year Warranty. The owner agrees to accept reasonable matches in any repair or replacement in the event the specified or originally used item is no longer available. Remodeler 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, Remodeler does not have an obligation to complete items that Remodeler disputes.

- A. 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.
- B. 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 Remodeler has no liability for the aesthetic result of any concrete patching.
- C. 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.
- D. 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.
- E. 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 Remodeler has no liability for the aesthetic result of any face-nailing.
- F. Newly constructed walls by Remodeler 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.
- G. Carpet seams that open in excess of 1/8 inch will be repaired during the Warranty Period.
- H. Nail pops in the walls or ceilings that break the surface paper will be repaired one time during the Warranty Period.
- I. 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.
- J. 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 Remodeler 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.

- K. Circuit breakers, wiring circuits, switches, outlets, and wiring that do not operate as intended will be repaired or replaced.
- L. For faulty plumbing or electrical/lighting fixtures supplied & installed by Remodeler's subcontractors, Remodeler will coordinate repair and replacement of these fixtures, and the ordering of parts, as necessary, with Remodeler's plumbing and/or electrical subcontractors.

2. WHAT IS NOT COVERED This limited warranty does not cover the following items:

- A. Damage resulting from fires, floods, storms, electrical malfunctions, accidents, or acts of God.
- B. Damage from alterations, misuse, or abuse of the covered items by any person.
- C. Damage resulting from the home owner's failure to perform reasonable home maintenance.
- D. Damage resulting from the owner's failure to observe any operating instructions furnished by the builder at the time of installation.
- E. Damage resulting from a malfunction of equipment or lines of the telephone, gas, power, or water companies.
- F. Defects or any other problems with sod, trees, shrubs, and plants after installation.
- G. Any Owner(s) or third party supplied materials, fixtures or workmanship including but not limited to appliances, ceiling fans, plumbing fixtures, lighting or fixtures installed or reinstalled (recycled) at the owners' request. The Remodeler bears no liability or responsibility related to such materials, the installation of that material, or warranties related to damages cause by failure of owner supplied material.
- H. Any appliance, piece of equipment, or other item that is a consumer product for the purposes of the Magnuson-Moss Warranty Act, 15 United States Code § 2301 et seq., installed or included in the owner's property. Examples of consumer products include, but are not limited to, dishwasher, garbage disposer, gas or electric range, range hood, refrigerator, microwave oven, trash compactor, garage door opener, washer, dryer, water heater, furnace, or heat pump. The only warranties for any appliance, pieces of equipment, or other item considered to be a consumer product for the purposes of the Magnuson Moss Act are those provided by the products' manufacturers.

3. MANUFACTURERS' WARRANTY

The remodeler hereby assigns (to the extent that they are assignable) and conveys to the owner all warranties provided to the remodeler on any manufactured items that have been installed or included in the owner's property. The owner accepts this assignment and acknowledges that the remodeler's only responsibility relating to such items is to lend assistance to the owner in settling any claim resulting from the installation of these products.

4. REMEDIES AND LIMITATIONS

- A. The owner understands that the sole remedies under this limited warranty agreement are repair and replacement as set forth here.
- B. With respect to any future claim whatsoever that may be asserted by the owner against the remodeler, the owner understands that the owner will have no right to recover or request compensation for, and the remodeler shall not be liable for, any of the following:
 - (1) Incidental, consequential, secondary, or punitive damages
 - (2) Damages for aggravation, mental anguish, emotional distress, or pain and suffering
 - (3) Attorney's fees or costs
- C. The owner understands and agrees that no implied warranties whatsoever apply to improvement to the realty or to the components of the improvement. The remodeler disclaims, and the owner waives, any implied warranties, including, but not limited to, the implied warranty of merchantability, implied warranty of Habitability, implied warranty of good and workman like construction, and the implied warranty of fitness for a particular purpose.
- D. This warranty is personal to the original owner and does not run with the property. The original owner may not assign, transfer, or convey this warranty and this warranty is terminated if the Property is sold or ceases to be occupied by Owner.

5. HOW TO OBTAIN SERVICE 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 Remodeler 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 Remodeler requesting Remodeler remedy such defects. Such request shall be sent to Remodeler 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 Remodeler requesting Remodeler remedy such defects. Such request shall be sent to Remodeler 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 Remodeler, 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 Premises or its occupants and any defect that may worsen, or cause further damage, over time if Remodeler is not given immediate notice.

6. WHERE TO GET HELP Remodeler 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. For purposes of notice under this Limited Warranty, written service requests shall be mailed by Owner to Remodeler at the following address: **Fleming Construction LLC, 3051 104th St. Suite A, Urbandale, IA 50322.**

7. THE ONLY WARRANTY GIVEN BY THE REMODELER—EXCLUSIVE REMEDY(a)The owner has thoroughly examined the improvements to the realty; (b) the owner has received, has read, and understands this limited warranty; and (c) neither the remodeler nor the remodeler’s representatives have made any guarantees, warranties, under-standings, or representations that are not set forth in this document. This warranty document constitutes the exclusive remedy of all claims by the owner against the remodeler or the remodeler’s employees. The owner specifically waives the right to seek damages or to assert any claims against the remodeler or the remodeler’s employees, except as is provided in this warranty agreement.

8. DISPUTE RESOLUTION: MEDIATION FIRST, THEN BINDING ARBITRATION; In the event Owner believes Remodeler has not fulfilled the terms of, or otherwise breached, this Limited Warranty, then Owner shall provide Remodeler with written notice of any claimed breach/default; and provide Remodeler with thirty (30) days to cure any such claimed breach/default and to otherwise inspect the Property/Work.

- A. Mediation Any controversy arising out of the condition of the improvement to the realty or the interpretation of this warranty, including, but not limited to, what constitutes a defect, any claim for damages against the remodeler or any claim of negligence, fraud, breach of express warranty, breach of implied warranty, consumer protection act violations, and breach of contract shall be decided by alternative dispute resolution. The parties agree to initially mediate in good faith and to attempt to achieve resolution of any dispute.
- B. Binding Arbitration In the event that the dispute is not fully resolved in mediation, the remodeler and the owner shall then submit the dispute to binding arbitration. The Arbitration shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association that are in effect at the time of the dispute. The arbitrator shall be authorized to order replacement or repair or to award damages; but awarded damages shall not exceed the cost of replacement and repair. The award rendered by the arbitrator(s) shall be final.
- C. 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.
- D. Both Parties agree that the Remodeler shall be entitled to recover from the Owner all costs resulting from Owner’s breach of this Limited Warranty or the Remodeler enforcing its rights under this limited warranty or the Remodeler being the prevailing party in defense of any dispute arising from this Limited Warranty.

CONTRACTOR/BUILDER: Fleming Construction LLC

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

By (Sign): _____

By (Sign): _____

Name/Title: _____

Name: _____

Date: _____

Date: _____

By (Sign): _____

Name: _____

Date: _____