

**June 24, 2008**

#

**Client Name**

**Client Address**

**City, Minnesota 55XXX**

**Client Phone**

## **Remodeling Construction Agreement**

This Remodeling Construction Agreement (“Agreement”) is made this [redacted] day of [redacted], 2008 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, 30% due after rough-in completion, 25% due at substantial completion, and 5% due at final completion.

Timely payment by the Homeowner to the Contractor is of the essence to this Agreement. Payment is due upon presentation of the invoice to the Homeowner. 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 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.

\_\_\_\_\_ Homeowner(s) Initials

### **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 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. Estimated Time of Completion**

Completion of the Project that is the subject of this Agreement is anticipated to take approximately [REDACTED] week from commencement of work. However, change orders, special orders, defective or wrong materials, owner-supplied fixtures, labor availability, weather problems and/or other circumstances beyond the control of the Contractor should be expected to add to the completion schedule.

Contractor will present Homeowner with a forecasted schedule during the first week or so after work has commenced. This forecasted schedule is for informational purposes only and is in no way binding upon the Contractor.

### **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.

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**

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 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; 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.

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**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.

**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 of one 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 one of four 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 that details all of the costs and associated management fees

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associated with the change. Homeowner will be required to approve the change(s) in writing and make prompt arrangements for payment if they wish to avoid delays in the project. The four types of change orders and how Contractor deals with them can be found below:

*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. Dictated.* 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. There are no additional fees associated with dictated Change Orders. Homeowner will be charged for the difference between the original price and the required changes plus the difference in management fees.

*c. Allowance Changes.* A change in allowance Change Order occurs when Homeowner selects products that costs 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 chose 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.

*d. Interpretive.* An interpretive Change Order occurs when there is a misunderstanding between the Parties. Contractor will make every effort to include the Homeowner's wishes in the process of bidding and estimating the project, but items or details can be inadvertently forgotten or left out of the line-item specifications. In some instances, these details are discovered when work has already commenced. There are no additional fees associated with interpretive Change Orders, only the actual price of the change plus the changes in management fees. There may also be changes that do not incur a cost but need Homeowner's approval.

**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 dropcloths 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

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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 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.

#### **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.

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- 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.

\*\*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**

All work is subject to all warranties, exclusions to warranties and the limited remedies of the Minnesota State Homeowners Warranty Act. *M.S.A. 327A.01-.08*; no additional representations or warranties, express or implied, are made hereby or shall be deemed to be made hereby, except as otherwise expressly stated in this Agreement. A copy of the statute can be provided to Homeowner upon request.

#### **Standard Warranty**

As required by the State of Minnesota, Contractor guarantees that, (1) during the one-year period from and after the date of final payment, the home improvement made shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards; (2) during the ten-year period from and after the date of final payment, the home improvement shall be free from major construction defects due to noncompliance with building standards; and (3) during the two-year period from and after the date of final payment, improvement work done by trade partners involving the installation of plumbing, electrical, or heating or cooling systems shall be free from defects caused by the faulty installation of the system or systems due to noncompliance with building standards.

#### **Upgraded Warranty**

If Homeowner completes and returns the Job Feedback Survey to Contractor within 30 days of completion of project, 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, in any manner related to this Agreement, for any and all claims shall not exceed the total fees payable by Homeowner to Contractor.

### **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. 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 negotiation, 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**

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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 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.**

**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**

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