

**DISTRICT COURT, EL PASO COUNTY,
COLORADO**

270 S. Tejon
P.O. Box 2980
Colorado Springs, CO 80901

DATE FILED: July 14, 2021 11:09 AM

Plaintiff:

JOHN BETANCOURT,

v.

Defendant:

SAINT AUBYN HOMES LLC

Attorneys for Saint Aubyn Homes, LLC

Ryan M. Hicks, Reg. No. 48477

Michael D Simpson, Reg. No. 49951

Wood, Smith, Henning & Berman LLP

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Case No. 2021CV30888

Division:

**DEFENDANT SAINT AUBYN HOMES, LLC'S ANSWER TO PLAINTIFF'S
COMPLAINT WITH JURY DEMAND**

Defendant Saint Aubyn Homes, LLC ("SAH"), by and through its attorneys, Wood, Smith, Henning & Berman LLP, hereby answers Plaintiff's Complaint with Jury Demand, as follows:

PARTIES, JURISDICTION, AND VENUE

1. Without knowledge and therefore, denied.
2. Admitted.
3. SAH does not challenge jurisdiction at this time.
4. SAH does not challenge venue at this time.

FACTUAL BACKGROUND

5. Admitted that the provisions of the subject contract speak for themselves.
6. Admitted that the provisions of the subject contract speak for themselves.
7. Admitted that the provisions of the subject contract speak for themselves.
8. Admitted that the provisions of the subject contract speak for themselves.
9. Admitted.
10. Admitted that SAH constructed the property and secured materials via various agreements with competent and knowledgeable subcontractors and/or vendors.
11. Denied.
12. Without knowledge and therefore, denied.
13. Without knowledge and therefore, denied.
14. Denied.
15. Denied.

COUNT I
(Negligence)

16. SAH incorporates its responses to Paragraphs 1 – 15 as if fully set forth herein.
17. Admitted.
18. Admitted that at all times SAH acted in accordance with applicable Colorado law.
19. Denied.
20. Denied.

COUNT II
(Negligence *Per Se*)

21. SAH incorporates its responses to Paragraphs 1 – 20 as if fully set forth herein.

22. This Paragraph contains legal conclusions which cannot be either admitted nor denied rather than allegations. To the extent a response is deemed necessary or required, SAH denies the same.

23. This Paragraph contains legal conclusions which cannot be either admitted nor denied rather than allegations. To the extent a response is deemed necessary or required, SAH denies the same.

24. Denied.

25. Denied.

COUNT III
(Breach of Express Warranty)

26. SAH incorporates its responses to Paragraphs 1 – 25 as if fully set forth herein.

27. Admitted.

28. Admitted that the provisions of the subject contract speak for themselves.

29. Denied.

30. Without knowledge and therefore, denied.

31. Denied.

COUNT IV
(Breach of Contract)

32. SAH incorporates its responses to Paragraphs 1 – 31 as if fully set forth herein.

33. Admitted that the provisions of the subject contract speak for themselves.

34. Admitted that the provisions of the subject contract speak for themselves.

35. Admitted that the provisions of the subject contract speak for themselves.

36. Denied.

37. Denied.

38. Denied.

WHEREFORE CLAUSE

SAH denies all allegations contained in the Wherefore Clause of Plaintiff's Complaint with Jury Demand.

GENERAL DENIAL

SAH generally and specifically denies all allegations not expressly admitted herein.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiff's damages, if any, may be limited by C.R.S. § 13-21-111.6. Specifically, Plaintiff's damages, if any, shall reduce by the amount Plaintiff has already been compensated by a collateral source in relation to the injuries or damages sustained.

2. In the event SAH is determined to be in any way at fault concerning Plaintiff's claimed damages, liability for which is expressly denied, then SAH shall not be held liable for any greater amount of damages than is represented by its degree or percentage of causal fault, which determination shall be made in accordance with C.R.S. § 13-21-111.5.

3. Plaintiff's damages, if any, are limited and/or barred by the express provisions of the Colorado Construction Defect Action Reform Act.

RESERVATION OF DEFENSES

SAH reserves its rights to assert and amend defenses as discovery and investigation in this matter is accomplished, including by amending this Answer to add, delete, and/or modify affirmative defenses. SAH does not waive any applicable affirmative defenses in this proceeding.

JURY DEMAND

SAH respectfully demands a jury trial on all issues so triable.

WHEREFORE, SAH respectfully requests that the Court dismiss Plaintiff's Complaint with Jury Demand with prejudice, enter judgment in favor of SAH, and award SAH its attorneys' fees, costs, expenses, and such other relief that the Court deems just and proper.

Respectfully submitted this 14th day of July, 2021.

WOOD, SMITH, HENNING & BERMAN LLP

/s/ Michael D. Simpson

Ryan M. Hicks

Michael D. Simpson

Pursuant to C.R.C.P. 121 1-26(9), a printed copy of the foregoing document with original signatures shall be maintained in Wood, Smith, Henning & Berman LLP's client files and made available for inspection upon request.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2021, a true and correct copy of the foregoing DEFENDANT SAINT AUBYN HOMES, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT WITH JURY DEMAND was e-filed and e-served via Colorado Courts E-Filing System on the following parties:

SMITH JADIN JOHNSON, PLLC
Jared W. McLuskey
Christopher M. Drake
1775 Sherman St., #2750
Denver, CO 80203
Attorneys for Plaintiff

/s/ Sharon Nordentoft
Sharon Nordentoft

2. Defendant Saint Aubyn Homes, LLC (“Defendant”) is a Colorado Limited Liability Company with a registered agent address on file with the Colorado Secretary of State at 212 N Wahsatch Ave., Suite 201, Colorado Springs, CO 80903.

3. This Court has jurisdiction over the subject matter of this action and the parties hereto.

4. Venue is proper in this Court pursuant to C.R.C.P. 98(a) and/or 98(c) of the Colorado Rules of County Civil Procedure because this is an action concerning real property located in El Paso County, Colorado.

FACTUAL BACKGROUND

5. On or around April 23, 2019, BetanCourt entered into an Agreement for Purchase and Sale of the Home (the “Construction Contract”). A true and correct copy of the Construction Contract is attached hereto as **EXHIBIT A**.

6. Pursuant to the Construction Contract and otherwise, Defendant agreed to construct the Home in a good and workmanlike manner, pursuant to all applicable building codes and ordinances, and pursuant to generally accepted standards of care for residential construction.

7. The Construction Contract incorporates a written Limited One-Year Warranty (the “Express Warranty”), a true and correct copy of which is attached hereto as **EXHIBIT B**.

8. Pursuant to the terms of the Express Warranty, Defendant agreed to provide a one-year warranty on all materials and workmanship used to construct the Home. Defendant further agreed to establish proper site grading and swales on the exterior of the Home.

9. Upon information and belief, Defendant was the general contractor for the construction of the Home, which was constructed in approximately 2019.

10. As the general contractor, Defendant was responsible for and had a duty to direct and supervise the construction of the Home, including the selection of subcontractors who performed each of the tasks necessary to build the Home, as well as the selection of materials used in the construction of the Home. Upon information and belief, Defendant contracted with others to act as subcontractors and to provide materials in the construction of the Home.

11. Upon information and belief, the Home's exterior grading and drainage was not done in a good and workmanlike manner, pursuant to all applicable building codes and ordinances, and/or pursuant to generally accepted standards of care for residential construction was a significant problem. Among other things, the exterior grading and drainage does not direct water away from the Home, but rather directs water towards the Home. This has allowed – and continues to allow – standing water to pool on the Home's lawn and subsurface runoff water to penetrate and damage the Home's building components. At least some of these problems and damages are documented in the engineering report prepared by Geostruct Engineers, Inc. d/b/a RMG – Rocky Mountain Group ("RMG") attached hereto as **EXHIBIT C**.

12. Pursuant to the Colorado Construction Defect Action Reform Act, C.R.S. § 13-20-801, *et seq.* ("CDARA"), BetanCourt sent Defendant a written pre-litigation Notice of Claim and invited Defendant to inspect the Home and make a written offer to settle the claim through corrective work or payment.

13. Defendant inspected the Home but did not make a written offer to settle the claim through corrective work or payment within the 30-day period specified by CDARA.

14. To date, Defendant has not corrected the problems with the Home's exterior grading and drainage, water continues to pool on the Home's exterior, and water continues to cause damage to the Home and its components.

15. As a result of the Defendant's failure to properly construct the Home's exterior grading and drainage and its subsequent failure to correct the same, BetanCourt has suffered damages in an exact amount to be determined at trial.

COUNT I
(Negligence)

16. BetanCourt incorporates the preceding Paragraphs of his Complaint as if fully set forth herein.

17. Defendant was the general contractor for the construction of the Home.

18. As the general contractor, Defendant had a non-delegable duty of care to ensure that the Home's exterior grading and drainage was built in a good and workmanlike manner.

19. As evidenced by the poor drainage and resulting water intrusion and physical damage identified by RMG, the Home's exterior grading and drainage was not constructed in a good and workmanlike manner and Defendant therefore breached its duty of care.

20. As a direct and proximate result of Defendant's negligence, BetanCourt has been damaged in an amount to be determined at trial.

COUNT II
(Negligence *Per Se*)

21. BetanCourt incorporates the preceding Paragraphs of his Complaint as if fully set forth herein.

22. El Paso County, Colorado has adopted the Pikes Peak Regional Building Code (the “Code”) to provide minimum standards to protect the public health and safety by regulating and controlling the construction of buildings.

23. The Pikes Peak Regional Building Code imposes a fixed duty of care upon Defendant, pursuant to which Defendant was obligated to construct the Home in compliance with the Pikes Peak Regional Building Code.

24. Defendant failed to construct the Home’s exterior grading and drainage in compliance with the Pikes Peak Regional Building Code, breached the fixed duty of care imposed by the same, and is therefore negligent *per se*.

25. As a direct and proximate result of Defendant’s negligence, BetanCourt has been damaged in an amount to be determined at trial.

COUNT III
(Breach of Express Warranty)

26. BetanCourt incorporates the preceding Paragraphs of his Complaint as if fully set forth herein.

27. Defendant sold the Home to BetanCourt.

28. In connection with the sale of the Home, Defendant gave BetanCourt an express written warranty which stated that Defendant would establish proper site grading and swales on the exterior of the Home.

29. The Home was not as warranted, as the exterior site grading and swales were not properly constructed.

30. BetanCourt notified Defendant of the exterior grading and drainage problems with the Home, but to date Defendant has failed and refused to correct them.

31. BetanCourt has been damaged by Defendant's failure to honor its express written warranty in an amount to be determined at trial.

COUNT IV
(Breach of Contract)

32. BetanCourt incorporates the preceding Paragraphs of his Complaint as if fully set forth herein.

33. BetanCourt and Defendant entered into a contract whereby Defendant agreed to be the general contractor for the construction of the Home.

34. Defendant's contract with BetanCourt contains an implied covenant of good faith and fair dealing that required it to construct the Home in a good and workmanlike manner, free from defects, in compliance with applicable building laws and codes, and in compliance with applicable building standards.

35. Defendant's contract with BetanCourt expressly required it to establish proper site grading and swales on the exterior of the Home.

36. Defendant breached its contract with BetanCourt by failing to construct the Home in a good and workmanlike manner, free from defects, in compliance with applicable building laws and codes, and in compliance with applicable building standards.

37. Defendant further breached its contract with BetanCourt by failing to establish proper site grading and swales on the exterior of the Home.

38. BetanCourt has been damaged by Defendant's breach of contract in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, BetanCourt requests that this Court issue an Order granting it the following relief:

1. Judgment against Defendant in an exact amount to be proven at trial.
2. An award of costs and disbursements against Defendant as provided by statute.
3. For such other and further relief as this Court deems just and equitable.

JURY DEMAND

Mr. BetanCourt demands a trial by jury of all issues so triable.

Respectfully submitted this 8th day of June 2021.

s/ Jared W. McLuskey

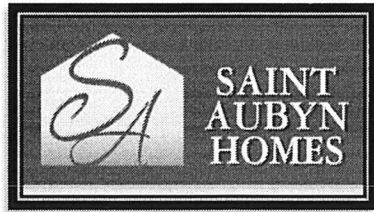
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June 2021, a true and correct copy of the foregoing was e-filed and served via CCEF upon all parties of record.

s/ Hannah K. Lenz

FOR SMITH JADIN JOHNSON PLLC



DATE FILED: June 8, 2021 4:36 PM

Purchasing a home is a time consuming task, but it is well worth it when you have your own "home sweet home." We have provided the information below to assist you in your process to closing.

Certificate of Occupancy (CO) and Improvement Location Certificates (ILC) will be provided by the builder as per the Title Commitment. Improvement Location Certificate (ILC) is at the buyer's expense.

If you will be scheduling a Home Inspection please inform us as soon as possible so we can coordinate with your inspector. We appreciate your interest in Saint Aubyn Homes and hope that our team members will make this an enjoyable experience for you.

COMMUNITY MANAGER & APPRAISAL CONTACT

Kit Bradshaw
SAINT AUBYN HOMES, LLC
212 North Wahsatch Avenue, Suite 201
Colorado Springs, Colorado 80903
Direct 719 352-9998
Phone 719 434-4750
Fax 719 434-3418
Email kit@saintaubynhomes.com

TRANSACTION COORDINATOR

Melissa Ratcliff
SAINT AUBYN HOMES, LLC
212 North Wahsatch Avenue, Suite 201
Colorado Springs, Colorado 80903
Phone 719 434-4750
Email Melissa@saintaubynhomes.com

TITLE INFORMATION

Elly Moore
UNIFIED TITLE COMPANY
101 South Sahwatch St, Suite 212
Colorado Springs, CO 80903
Phone 719 955-7085
Fax 877 239-2977
Email sateam@unifiedtitle.com

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INTERIOR COLOR SELECTIONS

Design Center-Interior Logic Group
Phone 719-799-4212
Email Saint.Aubyn@interiorlogicgroup.com

EXTERIOR, ADDITIONAL & APPLIANCE SELECTIONS

Onsite Sales Office

Buyer Initial _____

01/25/2021 *JMB MRB*

EXHIBIT A

B. Loan Application. Buyer shall use its best efforts to obtain the loan and, accordingly, agrees to make a diligent, truthful, proper and verifiable loan application to a lender(s), without delay, but in no event later than seven (7) days from the date of this Agreement. Buyer further agrees to promptly (within 48 hours after each request from any lender) furnish such verifications of bank accounts and employment or any other instruments or information as may be required by lender to process Buyer's application. Within seven (7) days from the date of this Agreement, Buyer shall give Seller written notice of the name and address of each lender with which Buyer has submitted an application for a loan. In the event Buyer fails to apply for said loan within said period, or does not diligently furnish requested loan information within Buyer's control within the time frames set forth herein, Buyer shall be in default hereunder and Seller, in its sole and absolute discretion, may pursue Seller's remedies described herein.

C. Expenses of Loan. Buyer agrees to (i) pay the usual expenses incident to negotiating and obtaining said loan, including, but not limited to, amounts required by lender as fees and the amounts escrowed for taxes and fire and casualty insurance premiums; (ii) execute without delay any and all mortgage, deed of trust, and other forms required by lender; and (iii) otherwise comply with any and all requirements imposed by lender in connection therewith.

D. Loan Commitment. This Agreement is contingent upon Buyer obtaining a written loan commitment on or before 05/09/2019 ("Loan Commitment Deadline"). This contingency shall be deemed waived unless Seller receives from Buyer, no later than **Loan Commitment Deadline** written notice of Buyer's inability to obtain such loan commitment. If Buyer so notifies Seller, this Agreement shall terminate and the Earnest Money Deposit shall be returned to Buyer. **IF SELLER DOES NOT RECEIVE WRITTEN NOTICE TO TERMINATE AND BUYER DOES NOT CLOSE, BUYER SHALL BE IN DEFAULT AND THE EARNEST MONEY DEPOSIT SHALL NOT BE RETURNED TO BUYER. BUYER'S DECISION NOT TO PURSUE A LOAN SHALL NOT BE DEEMED AS BUYER'S INABILITY TO OBTAIN A LOAN COMMITMENT.**

E. Backup Commitment. **Within seven (7) days from the date of this Agreement, Buyer agrees to submit a backup loan application and all required documentation to Sellers Preferred Lenders.** Buyer agrees to perform pursuant to this Agreement and obtain a loan through either lender of Buyer's choosing or Sellers Preferred Lender in order to ensure the timely close of this transaction. A loan must be fully approved by **Loan Commitment Deadline** and all loan contingencies removed, or Buyer shall submit a complete backup loan package with Sellers Preferred Lender. If Buyer cannot close on time due to lender issues, Buyer shall close with Sellers Preferred Lender, subject to approval by Sellers Preferred Lender. **Sellers preferred lenders are:**

Mortgage solutions-Marc Guile; marc.guile@mortgagesolutions.net (719) 599-7148

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Northpointe Bank-Horizon Team; mike.gallegos@northpointe.com (719) 445-6136

4. CONSTRUCTION OF RESIDENCE. The Purchase Price of the Property includes construction of a single-family residence to be built by the Seller in substantial compliance with the floor plans, renderings and/or Option Selection Addendum (collectively, the "Plans") identified on Exhibit A attached hereto and incorporated herein by reference. A description of the options which Buyer has selected in connection with the construction of the residence ("**Personal Choice Selections**") is identified on Exhibit C attached hereto and incorporated herein by reference. It is the understanding of the parties that the Purchase Price includes allowances for those specific items ("**Standards**") identified on Exhibit D attached hereto and incorporated herein by reference. Notwithstanding the foregoing, Buyer hereby acknowledges and agrees that:

A. Seller shall have the right to construct the residence as shall best conform, in Seller's sole and absolute discretion, to the grade of the lot upon which the residence is being constructed or in accordance with the recommendation of Seller's engineers. Seller shall not be responsible in any manner for grading subsequent to installation of landscaping or grading changes made by Buyer or any other person or entity.

B. Seller, in its sole and absolute discretion, shall have the right to substitute any and all materials, equipment and fixtures of equal or better quality for the materials, equipment and fixtures specified on the Plans, Specifications and the Options selected by Buyer.

C. Seller reserves the right to make changes in the construction of the residence as may be required from time to time by Seller's construction lender or any governmental entity having jurisdiction over the Property.

D. No additions, modifications, changes and/or alterations to the residence requested by Buyer shall be allowed unless the same is requested in writing by Buyer and approved in writing by Seller. Seller is under no obligation to approve any such addition, modification, change, or alteration. Any resulting increase in cost due to such additions, modifications, changes or alterations shall be paid by Buyer to Seller upon demand by Seller, and any such sums shall be retained by Seller as liquidated damages in the event Buyer does not close this transaction. In the event Buyer does not close this transaction, for any reason whatsoever, Seller shall not be obligated to reimburse Buyer for any and all sums which Buyer may pay, or has paid to third party suppliers, contractors or material-men for any and all upgrades and/or options. Any benefit to Seller for upgrades and/or options paid for by Buyer shall be retained by Seller as liquidated damages as a result of Buyer's failure to close this transaction.

5. CHANGE ORDERS. Buyer may select options in addition to any provided for on the Plans and Specifications provided in this Agreement. To request a change order Buyer shall execute a written change order form ("Change Order") to be provided by Seller and submit such Change Order to Seller. **There is a non refundable administrative cost to Buyer of One Hundred Seventy-Five Dollars (\$175) per Change Order submitted.** The administrative cost of any such Change Order shall be non-refundable (except as specifically provided herein), and shall be paid in full by Buyer in cash upon submission of the Change Order form. Seller shall be under no obligation to accept any requested Change Order submitted by Buyer. Each Change Order shall specify the change, addition, or deletion, and the method of payment of the additional cost including, without limitation, any adjustment in the Purchase Price and any extensions of time for performance hereunder. If any Change Order is not accepted by Seller, any deposit and the administrative cost paid by Buyer for the Change Order shall be returned to Buyer. If Seller agrees to a requested Change Order from Buyer, Seller shall sign the Change Order form. Change Orders will only be honored if signed by both Buyer and Seller. If the Purchase Price increases as a result of a Change Order, Buyer's lender shall deliver to Seller within three (3) business days following the date of the Change Order, written verification that such increase in Purchase Price shall not affect Buyer's ability to qualify for the new loan to be obtained by Buyer, and that either the loan amount or the cash required at closing, or some accommodation thereof, shall be increased as necessary to pay the increase in Purchase Price.

6. COLORS AND OPTIONS. Buyer agrees that colors and options selected by Buyer may only be available within the time frame specified by the Seller and only through suppliers designated by Seller using forms provided by Seller for such purpose. In the event a given color or optional item is unavailable Buyer shall select a compatible color or item listed on the option sheet provided by Seller within **three (3) business days** after notice that the color or item is unavailable. If Buyer fails to make such selections within the specified time Seller shall have the right to make the selections on behalf of Buyer and Buyer agrees to accept such selections. Any color or option selected by Buyer shall be subject to the final approval of Seller, in Seller's sole and absolute discretion.

7. OCCUPANCY. The Property shall not be occupied by Buyer, nor shall any property of Buyer be stored therein, until the residence is fully completed, the Purchase Price has been paid to Seller, and title is transferred to Buyer.

8. ADDITIONAL WORK. Unless authorized by Seller, Buyer shall not contract for additional work with Seller's subcontractors, material-men or suppliers nor engage other subcontractors to perform work on the Property until the residence is complete and title is transferred to Buyer.

9. DIRECTION OF WORKING FORCES. Buyer agrees that direction and supervision of the working forces including, but not limited to, any and all subcontractors rests exclusively with Seller, and Buyer shall not issue any direction, supervision or instruction to or otherwise interfere with the working forces.

10. SUBSTANTIAL COMPLETION. Seller will use reasonable efforts to substantially complete and convey the Property within **five (5) months** after commencement of construction. Notwithstanding the foregoing, the date of substantial completion and the date of conveyance shall be automatically extended for a period equal to any period of time during which Seller is prevented from performing by strikes, labor disputes, weather, the unavailability or shortage of labor or materials, force majeure, or any other matters beyond the reasonable control of Seller. If, pursuant to this paragraph, substantial completion of the Property is delayed beyond nine (9) months after the date of this Agreement, any party to this Agreement shall have the right to terminate this Agreement by giving written notice thereof to the other party(s) and, upon such termination, all monies paid by Buyer hereunder shall be returned, without interest, to Buyer. Issuance of a temporary or conditional certificate of occupancy by any governmental entity having jurisdiction thereof shall constitute conclusive evidence that the Property has been completed in accordance with the Plans, Specifications, and Options.

11. NOTICE OF COMPLETION AND WALK-THROUGH. Prior to the closing, Buyer shall inspect the Property with an agent of Seller at a designated time set by Seller and, at such time, will specify by notice in writing to Seller any and all matters which Buyer claims do not conform to the requirements of this Agreement. Such matters may be repaired after the date of closing. Except as set forth in said written notice, acceptance by Buyer of the deed to the Property shall be deemed to be full performance by Seller of each and every obligation of Seller under this Agreement. Buyer shall not enter the construction site during the period of construction. Buyer shall only be allowed on the construction site upon reasonable notice to Seller, at a time and date to be scheduled by Seller and in the presence of Seller's designated representative. Buyer shall not have the right to enter the construction site, for any purpose, without compliance with the above requirements. Buyer and any guests, licensees or invitees hereby unconditionally release and waive any claim or cause of action for personal injury or property damage against Seller which may result in connection with Buyer's entrance on the construction site, with or without approval from Seller.

12. SELLER'S WARRANTY.

Buyer Initial JMB MRB

A. Warranty. Upon execution of this Agreement, Seller shall email a copy of Seller's homeowner's warranty program to Buyer. If Buyer does not notify Seller, in writing, of non receipt of such warranty program then Buyer is deemed to have received a copy. Buyer acknowledges and agrees that said warranty program constitutes the sole warranty by Seller, whether express or implied. **THE IMPLIED WARRANTIES OF WORKMANLIKE CONSTRUCTION AND HABITABILITY ARE HEREBY EXPRESSLY DISCLAIMED, AND ARE OF NO FORCE AND EFFECT.** Except for the Seller's homeowner's warranty program, the home is being purchased in its "AS IS" physical condition.

B. Expansive Soil, Damage Exceptions to Warranty. BUYER HEREBY ACKNOWLEDGES THAT HE/SHE HAS BEEN ADVISED BY SELLER, AND UNDERSTANDS, THAT THE SOILS WITHIN THE STATE OF COLORADO CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS, WHICH WILL ADVERSELY AFFECT THE INTEGRITY OF THE RESIDENCE IF THE RESIDENCE AND THE PROPERTY ARE NOT PROPERLY MAINTAINED. BUYER FURTHER UNDERSTANDS THAT IT HAS A DUTY TO PROPERLY MAINTAIN THE PROPERTY IN ORDER TO MINIMIZE OR PREVENT ANY DAMAGE AS A RESULT OF EXPANSIVE SOILS. THE BUYER, UPON EXECUTION HEREOF, ACCEPTS THE CONDITIONS OF THE PROPERTY AND THE RESIDENCE "AS IS", AND WITHOUT ANY WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT THOSE CONTAINED IN THE HOMEBUILDERS WARRANTY WHICH IS MADE A PART OF THIS CONTRACT AND THE INDUSTRY STANDARD ONE-YEAR WARRANTY. FOR EXAMPLE, SHOULD THE RESIDENCE BE BUILT ON EXPANSIVE SOIL, PRECAUTIONS MUST BE TAKEN WITH RESPECT TO VEGETATION PLANNING, WATERING, AND RAINWATER DRAINAGE AROUND THE DRIVEWAYS AND FOUNDATIONS TO PREVENT DAMAGE. SHIFTING AND CRACKING OF CONCRETE SLABS IS NORMAL AND SHOULD BE EXPECTED IN AREAS WITH EXPANSIVE SOIL AND IF MINOR, IS NO CAUSE FOR CONCERN. SELLER SHALL COMPLETE THE GRADING OF THE PROPERTY AND SHALL ESTABLISH SWALES AND DRAINAGE PATTERNS WHICH CONFORM TO THE FINAL APPROVED GRADING PLAN AND IN A MANNER WHICH WILL ASSURE THAT ANY WATER FALLING ON THE PROPERTY, WHETHER FROM NATURAL PRECIPITATION OR FROM LAWN IRRIGATION, WILL FLOW AWAY FROM THE RESIDENCE. BUYER HEREBY COVENANTS AND AGREES TO MAINTAIN THE GRADING, SWALES, AND DRAINAGE PATTERNS ESTABLISHED BY SELLER. IN THE EVENT THAT BUYER CHANGES OR FAILS TO MAINTAIN SAID GRADES, SWALES, AND DRAINAGE PATTERNS IN ANY MANNER, BUYER SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL DAMAGES CAUSED BY IMPROPER DRAINAGE, AND BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, EXPENSES, DAMAGES, AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, INCURRED BY SELLER ARISING FROM OR IN ANY WAY RELATED TO BUYER'S CHANGE OF OR FAILURE TO MAINTAIN SAID GRADES AND DRAINAGE PATTERNS.

C. Flatwork. THE PARTIES ACKNOWLEDGE THAT IT IS IMPOSSIBLE TO PREVENT CRACKING, PITTING, SCALING, AND/OR SPALLING IN DRIVEWAYS, WALKWAYS, PATIOS, STEPS, AND OTHER CONCRETE WORK (HEREINAFTER COLLECTIVELY "FLATWORK") DUE TO THE NATURE OF THE MATERIAL, TOGETHER WITH THE SOILS, WEATHER AND OTHER CONDITIONS EXISTING IN COLORADO.

D. Limitation on Warranty. BUYER EXPRESSLY UNDERSTANDS AND AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH 12.A, HEREOF AND EXCEPT FOR THOSE ITEMS NOTED IN THE WALK-THROUGH INSPECTION DESCRIBED IN PARAGRAPH 11 ABOVE, BUYER IS PURCHASING THE PROPERTY AND THE RESIDENCE AND OTHER IMPROVEMENTS CONSTRUCTED THEREON, IN THEIR "AS IS" CONDITION EXISTING AT THE TIME OF CLOSING. BUYER FURTHER UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, AND ANY OTHER CLAIMS OR LIABILITIES OF ANY NATURE, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THOSE OF WORKMANLIKE CONSTRUCTION, HABITABILITY, DESIGN, CONDITION, QUALITY OR OTHERWISE, AS TO THE PROPERTY AND THE RESIDENCE AND OTHER IMPROVEMENTS CONSTRUCTED THEREON, ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, BUYER FURTHER WAIVES ANY AND ALL CLAIMS WHICH BUYER MAY HAVE AGAINST SELLER, NOW OR IN THE FUTURE, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, BREACH OF WARRANTY, OR OTHERWISE, RELATING TO ALL MATTERS DESCRIBED IN THIS AGREEMENT. EXCEPT FOR THE WARRANTIES PROVIDED IN SUBPARAGRAPH 12.A, HEREOF BUYER ASSUMES THE RISK OF ANY AND ALL DAMAGE OCCURRING IN OR APPEARING ON THE PROPERTY OR THE RESIDENCE AND OTHER IMPROVEMENTS CONSTRUCTED THEREON FROM AND AFTER THE DATE OF CLOSING, REGARDLESS OF THE CAUSE THEREOF. BUYER'S ASSUMPTION OF THIS RISK IS PARTIALLY IN CONSIDERATION OF THE AMOUNT OF THE PURCHASE PRICE STATED HEREIN, WHICH IS LOWER THAN IT WOULD BE IF SELLER WERE TO BE HELD RESPONSIBLE FOR ANY SUCH RISKS BY VIRTUE OF ANY BREACH OF CONTRACT, NEGLIGENCE, EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES.

13. ECOLOGICAL AND/OR ENVIRONMENTAL CONDITIONS. Certain conditions, including but not limited to Radon may affect this Property. The Seller and Seller's Broker do not warrant any existing or future ecological or environmental conditions affecting this Property. Seller or Seller's Agents have made no representation or warranties express or implied, concerning the presence or absence of Radon on the Property. Buyer acknowledges receipt of the EPA's pamphlet, titled "A Citizens Guide to Radon" and hereby releases the Seller from any and all liability with respect to the above matters.

14. DATE OF CLOSING. The date of closing shall be 05/16/2019. The hour and place of closing shall be designated by Seller. Seller shall deliver possession of the Property to Buyer pursuant to paragraph

Buyer Initial JMB MRB

10. Notwithstanding the foregoing, Seller shall have the unconditional right to extend the closing date up to an additional thirty (30) days, at the sole and absolute discretion of Seller.

15. EVIDENCE OF TITLE.

A. **Title Commitment.** A current commitment for title insurance policy in an amount equal to the Purchase Price shall be furnished to Buyer at least fifteen (15) days prior to the date of closing ("Title Deadline"). Seller shall deliver the title insurance policy to Buyer after closing and pay the premium thereon.

B. **Delivery of Deed/Exceptions to Title.** Except as otherwise specified in this Subparagraph 15.B and in Subparagraph 15.C hereof, title to the Property shall be merchantable in Seller. Subject to payment or tender as above provided and compliance with the other terms and conditions hereof by Buyer, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer on the date of closing conveying the Property free and clear of all liens and encumbrances except general taxes for the year of closing and subsequent years; any taxes or assessments arising by reason of the inclusion of the Property in a fire protection district, recreation and park district, water and sanitation district, or metropolitan district; easements, rights-of-way, covenants, and restrictions in existence or of record which will not affect the occupancy of the Property as a residence; and liens for special improvements thereafter installed and assessed and subject to any applicable building and zoning regulations.

C. **Copies of Exceptions.** On or before **Title Deadline**, Seller, at Seller's expense, shall furnish to Buyer, a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and copies of any other documents listed in the schedule of exceptions. This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder(s). The title insurance commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents ("Title Documents").

D. **Title Review/Right to Cure Defects.** Buyer shall have a right to inspect the Title Documents. If title is not merchantable, written notice of defect(s) must be given by Buyer or Buyer's agent to Seller or Seller's agent within seven (7) days from the date the title commitment is furnished to Buyer, otherwise Buyer will be deemed to have accepted the condition of title to the Property. If Buyer provides such notice, Seller shall have the right, at its sole option, to correct such items and to extend the date of closing for not more than thirty (30) days. If title is not rendered merchantable within said thirty (30) days, then Buyer shall have the right, at his sole option, to terminate this Agreement by giving written notice thereof to Seller and, upon such termination, all monies paid by Buyer hereunder shall be returned, without interest, to Buyer and both parties shall be released from any further obligations hereunder; provided, however, Buyer may, on or before closing, waive objection to said unsatisfactory title condition(s).

E. **Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY MAY BE LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS. THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

F. **Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **THE SURFACE ESTATE MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE DOES NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL RIGHTS. THIRD PARTIES MAY HOLD INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE PROPERTY.** Such matters may be excluded from the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this contract.

16. PRORATIONS. General taxes for the year in which the closing occurs shall be prorated to the date of closing based upon the most recent mill levy and assessment available from government authorities. Any homeowner association fees or water and sewer charges shall also be prorated to the date of closing. Fees for real estate closing services shall be paid at closing equally by Seller and Buyer. If the closing is held later than the closing date established pursuant to Paragraph 14 hereof through no fault of Seller, the above items shall be prorated to the original closing date. All adjustments and prorations at the time of closing shall be final.

- A. Any fees incident to the issuance of an HOA statement of assessments, transfer fees and working capital assessed by the HOA shall be paid by the buyer

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17. RISK OF LOSS. Prior to the date of closing, the risk of loss with respect to the residence shall be borne by Seller. In case of any partial or total destruction of the residence, the estimated completion date may be extended by Seller; provided, however, that if completion is delayed beyond twelve (12) months after Seller's receipt of Buyer's loan approval, any party to this Agreement shall have the right to terminate this Agreement by giving written notice thereof to the other party, and upon such termination, all monies paid by Buyer hereunder shall be returned, without interest, to Buyer. Notwithstanding the foregoing, if the residence is damaged to an extent exceeding thirty (30) percent of the then reconstruction cost of the residence, Seller shall have the right, at its sole option, to terminate this Agreement by giving written notice thereof to Buyer and, upon such termination, all monies paid by Buyer hereunder shall be returned, without interest, to Buyer. In no event shall Seller be responsible for any flooding, storm, natural disaster, storm water run-off resulting from Buyer's failure to landscape or Buyer's election to change the grade of the Property, extreme weather, or any other cause beyond the reasonable control of Seller.

18. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

A. If Buyer is In Default:

1. Seller may elect to treat this Agreement as cancelled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller, and Seller may recover such damages as may be proper, or Seller may elect to treat this Agreement as being in full force and effect, and Seller shall have the right to specific performance or damages, or both.

B. If Seller is in Default:

1. Buyer may elect to treat this Agreement as cancelled in which case all payments and things of value received hereunder shall be returned. Any Earnest Money deposit(s) paid to Seller shall be returned to Buyer as the sole and exclusive remedy available to the Buyer for such default.

C. This limitation shall include any claims for attorneys' fees, interest and actual or consequential damages. It is agreed that the return of the Earnest Money shall represent the reasonable estimate by the parties of the amount of damages that Buyer would suffer. Buyer hereby waives any other remedy it may have. Buyer, at its option, may elect to waive the performance of any condition, contingency or provision in Buyer's favor set forth in this Agreement. Should any action be brought by Seller to enforce or interpret this Agreement, Seller shall be entitled to receive all reasonable costs and expenses, including reasonable attorney's fees, incurred in such action.

19. DOCUMENTS. Upon receipt of executed documents, Buyer expressly acknowledges receipt from the Seller or its representatives, a copy of the Geotechnical Engineering Report and any addendums thereto for the Subdivision, and a copy of the Final Drainage Report for the Subdivision. Buyer also acknowledges receipt of all plats or maps of the Subdivision and all exceptions to title commitments upon issuance of a title commitment pursuant to this Agreement. Buyer also acknowledges receipt of the following homeowner's association documents:

1. Declaration of Covenants, Conditions and Restrictions and any supplements thereto;
2. Bylaws and rules
3. Minutes (if applicable)
4. Operating budget, if any (if applicable)
5. Annual financial statements (if applicable)

for the Subdivision ("Governing Documents"). The Governing Documents constitute an agreement between Buyer and the homeowner's association. Buyer is responsible to pay all assessments. The association may place a lien on the Property and possibly sell the Property to collect unpaid assessments. Any change to the exterior of the Property may be subject to architectural review and approval. All documents are provided to the Buyer as a courtesy and convenience only, and Seller does not offer any warranties with respect thereto including, but not limited to, warranties relating to accuracy or completeness thereof.

20. ASSIGNMENT. Buyer represents that the Property is being purchased for its own residence. This Agreement is personal to Buyer and may not be assigned by Buyer. In the event Buyer shall assign this Agreement without the prior written consent of Seller, Buyer shall be in default under the terms of this Agreement, and Seller shall have all remedies as described herein.

21. NO CLOUD ON TITLE. This Agreement shall not be recorded by Buyer and, upon any such attempted recording, this Agreement shall, at Seller's sole option, become null and void. Nothing herein contained shall operate to bind or cloud the title to said Property in case Buyer fails to fulfill the terms hereof. If this Agreement is cancelled for any reason, then and in that event, Buyer agrees to immediately return all copies of this Agreement to Seller.

22. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer acknowledges that this document has important legal consequences and that Seller has recommended the examination of title and consultation with legal and tax or other counsel before signing this Agreement.

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23. DAMAGE CAUSED BY BUYER. Buyer shall be responsible for the repair and payment of any damage caused to the Property prior to closing by Buyer or Buyer's agents, engineers, and inspectors.

24. RECEIPT OF DOCUMENTATION. Buyer acknowledges receipt of a summary report of the site analysis and recommendations, which is a description of the soil conditions of the subdivision in which the Property is located.

25. COMMISSIONS. Commissions to selling agents shall be based on the Purchase Price to include any and all options.

26. AGENCY DISCLOSURE. Buyer acknowledges that the listing agent constitutes as "Seller's Agent".

27. ADDITIONAL PROVISIONS: 1.) Buyer acknowledges at the time of closing they will pay for any HOA or Metro District transfer fees, status letters, or prepaid monthly fees/reserves.
2.) The buyer also acknowledges that they will reimburse the seller \$250 for the Improvement Location Certificate (ILC).
3.) Buyer agrees to have their lender order the appraisal no later than 3 weeks prior to the scheduled closing date. Buyer is responsible for ensuring that Buyer's lender has all change orders, and that the appraisal is ordered for the correct Purchase Price.
4.) Buyer acknowledges that in the event the closing is postponed due to timing of the appraisal or any other financing related delay, the buyer(s) shall pay to the seller a penalty of \$300/day.

28. MISCELLANEOUS.

A. **Facsimile.** Signatures may be evidenced by facsimile. Documents with original signatures shall be provided to the other party at Closing, or earlier upon request of any party.

B. **Notices.** Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed given when personally delivered to the party for whom intended, or when deposited in the U.S. mail, postage prepaid, addressed to the party for whom intended at the address provided on the signature page hereof or at such other address as the party may hereafter designate in writing served in the manner aforesaid.

C. **Joint and Several Liability.** If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several.

D. **Binding Effect.** Except as otherwise specified herein, this Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

E. **Survival of Terms.** The terms and conditions of this Agreement shall survive the closing of the Property.

F. **Pronouns, Singular and Plural.** As used herein, the masculine gender shall include the feminine gender and the singular shall include the plural, as the context may require.

G. **Headings for Convenience Only.** The paragraph headings, captions and titles contained herein are intended for convenience and reference only, and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

H. **Invalidity.** If any provision, sentence, phrase, or word of this Agreement, or any application thereof to any person or circumstance shall be held invalid, the remainder of the Agreement or the application of such provisions, sentence, phrase, or word to persons or circumstances other than those as to which it is held invalid, shall not be affected hereby.

I. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Colorado.

J. **Insulation.** In compliance with the Federal Trade Commission's Ruling on insulation disclosure on newly constructed homes, Buyer is hereby made aware of and Buyer acknowledges and accepts:

CEILING INSULATION		WALL INSULATION	
Type:	Blown	Type:	Unfaced Batt
Thickness:	11"	Thickness:	3-5/8"
R-Value:	R-38	R-Value:	R-13 / R-19
Manuf.:	Owens Corning	Manuf.:	Owens Corning

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K. Attachments. The following Exhibits and Attachments are hereby made a part of this Contract and Buyer acknowledges receipt of the same:

- | | |
|-----------------------------------------|------------------------------------------------------------------------------------|
| Exhibit "A": Model Description | Square Footage Disclosure |
| Exhibit "B": Color Selection(s) | Realtor Commission Agreement |
| Exhibit "C": Personal Choice Selections | Home Sale Contingency <i>(If Applicable)</i> |
| Exhibit "D": Standards | Common Interest Community Disclosure-
(Townhomes/Multi Family communities only) |
| Exhibit "E": Source of Water Addendum | |
| Exhibit "F": Mold Disclosure | |

L. Improvement Location Certificate (ILC). Improvement Location Certificate is required by Title and most lenders. Seller shall order and provide to Title at buyer's expense.

29. ENTIRE AGREEMENT. BUYER REPRESENTS THAT BUYER HAS READ THIS AGREEMENT AND THAT THE SAME CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER AND THAT NO OTHER AGREEMENTS, PROMISES, REPRESENTATIONS, OR WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH HEREIN HAVE BEEN MADE TO BUYER BY SELLER OR THEIR SALESMEN, AGENTS, OR EMPLOYEES, AND THAT NO AMENDMENT OR MODIFICATION OF THIS AGREEMENT SHALL BE CLAIMED BY BUYER SUBSEQUENT TO THE EXECUTION HEREOF UNLESS FIRST REDUCED TO WRITING AND EXECUTED BY THE PARTIES HERETO. BUYER UNDERSTANDS AND AGREES THAT THE SALES COUNSELOR WITH WHOM BUYER HAS DEALT IN CONNECTION WITH THIS PURCHASE HAS NO AUTHORITY TO AGREE TO CHANGES OR MODIFICATIONS IN THE PLANS OR SPECIFICATIONS OR TO MAKE REPRESENTATIONS OR AGREEMENTS WITH BUYER NOT EXPRESSLY CONTAINED HEREIN IN WRITING SIGNED BY SELLER IN ACCORDANCE WITH THE TERMS OF AGREEMENT. NO MODIFICATION OR AMENDMENT TO THIS AGREEMENT SHALL BE BINDING UPON THE PARTIES EXCEPT BY WRITTEN AGREEMENT SIGNED BY ALL PARTIES.

BUYER(S):

<u>John M. Betancourt</u>	<u>04/23/2019</u>	<u>Madel Rio Benancourt</u>	<u>04/23/2019</u>
BUYER SIGNATURE	DATE	BUYER SIGNATURE	DATE
			
<u>Peyton, CO 80831</u>			
ADDRESS			

SELLER:

_____	TITLE: Authorized Agent
SAINT AUBYN HOMES, LLC	DATE

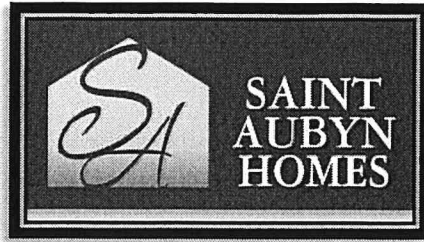
SELLING AGENT:

BY: Hailey Norman 04/23/2019 PRINT NAME: Hailey Norman

COMPANY NAME: Keller Williams Partners

PHONE: _____ TITLE: _____

COUNTER / REJECTION. This offer is (Initials only of party (Buyer or Seller) who countered or rejected offer):
Countered _____ Rejected _____



DATE FILED: June 8, 2021 4:36 PM

LIMITED ONE YEAR WARRANTY

TERMS

Saint Aubyn Homes hereby provides to owner a One Year Limited Warranty on materials and workmanship for a period of one year from the date of closing, unless otherwise specified in this document or by manufacturer's warranty. The builder will adjust or correct minor defects, omissions, or malfunctions, such as missing equipment or hardware, sticking doors, drawers, and windows, dripping faucets, and other minor malfunctions reported by owners upon inspection of the property on the Punch list within the first 30 days of closing.

A) CLAIMS

1) Claim Procedure

If a defect appears that Homeowner thinks is covered by the One Year Limited Warranty, Homeowner must submit a Saint Aubyn Homes warranty request form describing it and send it to Saint Aubyn Homes. Homeowner must tell Saint Aubyn Homes in the form what times during the day he/she will be at home, and Saint Aubyn Homes will schedule service calls appropriately. If delay will cause extra damage (e.g., if a pipe has burst) telephone us. Only emergency reports will be taken by phone.

2) Repairs

Upon receipt of Homeowners written report of a defect the builder will repair or replace it at no charge to the Homeowner within 30 days (if the defective item is covered by the One Year Limited Warranty) longer if weather conditions, labor problems, or material shortage cause delay. Saint Aubyn Homes or a Subcontractor chosen by Saint Aubyn Homes will do the work. The choice between repair and/or replacement is Saint Aubyn Homes'.

Repair work will be done during Saint Aubyn Homes normal business hours. Normal business hours are Monday through Friday from 7:30 AM to 5:00 PM, excluding federal holidays. Owner agrees to provide Saint Aubyn Homes or representative access to the house and the presence of a responsible adult with authority to approve repair during the work and who is able to sign a callback ticket upon completion of repair.

3) Limitations

The Homeowner also understands that, with respect to any claim whatsoever asserted against Saint Aubyn Homes or its Subcontractors, there will be no right to recover or request compensation. Saint Aubyn Homes shall not be liable for any incidental, consequential, secondary or punitive damages, or for damages for mental anguish, emotional distress, pain and suffering, or attorneys' fees or costs.

This warranty is personal to the original purchaser and does not run with the property or the items contained in the house. The original purchaser may not assign, transfer, or convey this warranty without the prior written consent of Saint Aubyn Homes.

B) EXPLANATION OF COVERAGE

1) Site Grading

Settling of the ground around the foundation wall, utility trenches or other filled areas is common. Builder shall fill settled areas affecting proper drainage one time only during the Saint Aubyn Homes One Year Limited Warranty period. Homeowner shall be responsible for removal and replacement of grass, shrubs, or other landscaping affected by the replacement of such fill.

The necessary grading and swales have been established by Saint Aubyn Homes to ensure proper drainage away from the home. At the time of closing, the buyer accepts all responsibility for grading and drainage at the home, excluding issues noted on the pre-closing walkthrough list.

Saint Aubyn Homes is responsible only for initially establishing the proper grades and swales. The Homeowner is responsible for maintaining such grades and swales once they have been properly established.

2) Landscape

1. **Lawn, plants, shrubs, and trees**-Builder accepts no responsibility for the growth of grass, plants, shrubs, or trees. Once grading, and or sod and fertilizing have been completed, it is the homeowner's responsibility to water and spread ground cover to prevent erosion. Saint Aubyn Homes will not re-grade a yard, or remove or replace plants, shrubs or trees which die afterwards due to lack of homeowner care, drought or extreme weather, except those noted as diseased at thirty (30) day inspection. It is necessary to water trees, shrubs and grass even in the winter to maintain survival and growth.
2. Keep downspout extensions in the down position to channel roof runoff away from the foundation area of your home.
3. Bark or Rock Beds – Do not allow edgings around decorative rock or bark beds to dam the free flow of water away from the home. Perforated edging is ideal for this application. V-cuts in solid metal edging provide some protection against damming. Use a non-woven landscape fabric between the soil and rock or bark to restrict weed growth while still permitting normal evaporation of ground moisture.
4. At the first sign of frost it is solely the homeowner's responsibility to drain the sprinkler system. Under no circumstances will Saint Aubyn Homes, LLC repair or replace any parts due to frozen water in the system.

3) Basement and Foundation Walls

Shrinkage cracks are not unusual in concrete foundation walls. Such cracks greater than 1/4 of an inch width shall be repaired by Saint Aubyn Homes.

4) Concrete Flatwork *See "ADDENDUM" For Additional Information

Concrete floors, walks, drives, and patios can develop hairline cracks, which will not (defined as smaller than a 3/8") affect the structural integrity of the building. There is no known method for eliminating this condition that is caused by the characteristics of expansion and contraction. It does not affect the strength of the building and is not a condition covered by any warranty.

The builder will repair cracks exceeding the maximum tolerances by surface patching or other methods as required.

Except for basement floors or where a floor portion has been designed for specific drainage purposes, concrete floors in rooms designed for habitability shall not have pits, depressions, or areas of unevenness exceeding a 1/4 inch in 32 inches. If pits, depressions, or unevenness exceed a 1/4 inch, Saint Aubyn Homes will correct or repair by surface patching.

Concrete surfaces shall not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use. Saint Aubyn Homes will take whatever corrective action is necessary to repair or replace defective concrete surfaces. Builder is not responsible for deterioration caused by salt, chemicals, mechanical implements and other factors due to accidental damage.

Stoops, steps, or garage floors shall not settle, heave, or separate in excess of one inch from the house structure. Saint Aubyn Homes shall repair this problem. Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops for a period after rainfall can be anticipated.

Foundation leaks resulting in actual trickling of water shall be repaired. Leaks caused by improper landscaping or failure to maintain proper grades is not covered by the One Year Limited Warranty. Dampness of the walls or floors may occur in new construction and is not considered a deficiency.

Saint Aubyn Homes will take such action as necessary to correct basement leaks except where the cause is determined to result from action or negligence by Homeowner.

5) Masonry

Masonry and mortar can develop cracks due to shrinkage in either the mortar or brick. This is normal and should not be considered a defect. It is not covered by any warranty.

Brick/Stone Discoloration: Most bricks/stones may discolor due to the elements, rain run-off, weathering, effervescence, or bleaching. Thus the color of the brick/stone is not covered by any warranty.

Cracks Greater than 3/8 of an inch in width are considered excessive. Saint Aubyn Homes will repair cracks by pointing or patching. These repairs shall be made during the first year of the Saint Aubyn Homes One Year Limited Warranty period. Saint Aubyn Homes will not be responsible for color variation between old and new mortar.

6) Stucco

Homeowner use and maintenance guidelines - stucco is a brittle cement product that is subject to expansion and contraction. Minor hairline cracks will

develop in the outer layer of stucco. This is normal and does not compromise the integrity of the stucco in any way.

Efflorescence – the white powdery substance that sometimes accumulates on stucco surfaces is called efflorescence. This is a natural phenomenon and cannot be prevented. In most cases, you can remove it by rinsing the area with a garden hose and brushing lightly. For spots that are more stubborn, consult your home center or hardware store for commercial products to remove efflorescence.

Snow and Ice – stucco is highly susceptible to damage caused by freeze and thaw cycles. Immediately remove snow or ice from any stucco surface. Snow drifts left to melt against a stucco surface may cause staining.

Drainage – to ensure proper drainage, keep dirt and concrete flatwork below the stucco screed (metal channel underneath final coat of stucco). Do not pour concrete or masonry over stucco screed or right up to the foundation.

Sprinklers – stucco is a water barrier, avoid spraying water from irrigation or watering systems on stucco surfaces to avoid possible leaks and staining. Check the spray from the lawn and plant irrigation system frequently to make certain that water is not spraying or accumulating on stucco surfaces.

7) Rough Carpentry

Floor Squeaks: After extensive research on the subject, it has been concluded that, much has been tried, but little can be done about floors squeaks. Accordingly Saint Aubyn Homes' One Year Limited Warranty does not cover floor squeaks. Generally, they appear and disappear over time with changes in the weather.

8) Finish Carpentry

Wood is an imperfect material; it is not uniform in texture or appearance. Saint Aubyn Homes is not responsible for these natural flaws of wood. Wood will sometimes crack or spread apart due to the drying out process. This is most often caused by the heat inside the house or the exposure to the sun on the outside. This is normal and considered a maintenance item to be cared for by the Homeowner.

Interior joints in moldings or joints between moldings and adjacent surfaces shall not result in open joints exceeding 1/8 inch in width. Saint Aubyn Homes will repair defective joints as defined. Caulking is an acceptable solution.

Stained Wood: All items that are stained will normally have a variation of colors due to the different texture of the wood. Doors that have panels will sometimes dry out and leave a small crack of bare wood. This is due to weather changes. None of these issues are a warrantable condition.

Caulking: Exterior and interior caulking in bathtubs, shower stalls, and ceramic tile surfaces will crack or bleed somewhat in the months after installation. This is normal and should not be considered a problem. This is not covered by the One Year Limited Warranty and is a minor occurrence to be maintained by the Homeowner.

9) Windows and Garage Doors

Broken glass not reported to Saint Aubyn Homes on the Buyer's Punch List is the Homeowner's responsibility.

Garage doors shall be installed as recommended by the manufacturer. Saint Aubyn Homes will correct or adjust garage doors to operate properly and some entrance of snow or rain can be expected under abnormal climatic conditions.

Windows are to be installed so they operate with reasonable ease as designed.

Windows will collect condensation on interior surfaces when extreme temperature differences and high humidity levels are present. Condensation is usually the result of climatic humidity conditions created by the Homeowner. Unless directly attributed to faulty installation, window condensation is a result of conditions beyond Saint Aubyn Homes' control. Saint Aubyn Homes will take no corrective action. Saint Aubyn Homes will adjust or correct poorly fitting door, windows, and weather stripping.

10) Siding

Saint Aubyn Homes will repair or replace siding as needed unless caused by Homeowner's neglect to maintain properly. Repaired area may not match in color/texture. For surfaces requiring paint or stain, Saint Aubyn Homes will paint or stain only the new materials. The Homeowner can expect that the new material may vary slightly in color.

Joints and cracks in exterior wall surfaces and around openings shall be properly caulked to exclude the entry of water. Saint Aubyn Homes will repair and/or caulk joints or cracks in exterior wall surface as required to correct the deficiencies once during the first year of the Saint Aubyn Homes One Year Limited Warranty period. Even properly installed caulking shrinks during the life of the home, and therefore must be part of the Homeowner's maintenance routine.

Joints between exterior trim elements, including siding and masonry shall not result in open joints of more than 3/8 of an inch. In all cases the exterior trim, masonry, and siding shall be capable of performing its function to exclude the elements. Saint Aubyn Homes will repair open joints, as defined. Caulking is acceptable.

✓11) Gutters

Gutters and downspouts should not leak but gutters may overflow during heavy rain. Saint Aubyn Homes will repair leaks. It is the Homeowner's responsibility to keep the gutters and downspouts free of debris. When the gutter is unobstructed the water level shall not exceed one inch in depth.

Industry practice is to install gutters approximately level. Consequently, it is entirely possible that small amounts of water will stand in certain sections of gutters immediately after a rain. Saint Aubyn Homes will adjust gutter if water level is consistently over one inch.

12) Louvers and Vents

Attic and crawl spaces shall be ventilated as required by the approved building code. Saint Aubyn Homes shall provide adequate ventilation. Saint Aubyn Homes will not be responsible for alterations to the original system.

13) Roofing

Roof Damage: The warranty on your roof is for materials only and is prorated over the rated lifetime of the roof. The manufacturer shall handle warranty claims for any defects in materials with assistance from Saint Aubyn Homes.

Construction will not be responsible for any damages caused by walking on the roof, installing a TV antenna, or any other item not installed by Saint Aubyn Homes.

During prolonged cold periods, ice build-up is likely to occur at the eaves of the roof. This condition occurs when snow and ice accumulate; gutters and downspouts are likely to freeze up as well. Roofs or flashing shall not leak under normally anticipated conditions, except where the cause is determined to be from ice build-up of Homeowner action or negligence.

Saint Aubyn Homes will repair any leaks not caused by ice build-up or Homeowner action or negligence. Saint Aubyn Homes is not responsible for leaks due to rain or snow driven into the attic through louvers and/or vents. Attic vents and/or louvers are provided for proper ventilation of the attic space, by code.

14) Drywall

Sheetrock will sometimes develop seams, nail pops, or settlement cracks. This is a normal part of the drying out process and an item that can easily be handled by the Homeowner with spackling during normal redecorating. However, if the Homeowner wishes, Saint Aubyn Homes will send in a repairman at the end of the one year to make necessary repairs only if cracks exceed 1/8 of an inch or nail pops that break the surface of the drywall, in no event will Saint Aubyn Homes be responsible for redecorating or painting the repaired area.

15) Ceramic Tile

Saint Aubyn Homes will not replace cracked tiles not noted on the pre closing check list. Saint Aubyn Homes will not be responsible for discontinued patterns or color variations in tile and grout. Saint Aubyn Homes will repair grout, if necessary, one time during the One Year Limited Warranty period. Re-grouting of cracks is a maintenance responsibility of the Homeowner throughout the life of the home.

16) Flooring

Your floors are not warranted for damage caused by neglect or the incidents of use. Wood, tile, and carpet will require maintenance.

Floor casters are recommended to prevent scratching or chipping of wood or tile; clean stains from flooring to prevent discoloration. Carpet has a tendency to loosen in damp weather and will stretch tight again in dryer weather. Finished wood flooring may develop cracks. Vinyl flooring shall not lift, bubble, or become unglued. If nail pops break the surface of the vinyl, Saint Aubyn Homes will repair. Depressions and ridges in

vinyl develop at times due to the sub-floor irregularities. Ridge measurement is taken by holding a 6" straight edge firmly on the floor 3" to one side of the ridge. Measuring from the straight edge to the floor on the other side of the ridge, if the gap is greater than one inch, Saint Aubyn Homes will repair. The builder is not responsible for discontinued patterns or color variation in floor covering, or for problems caused by Homeowner neglect or abuse.

Gaps shall not exceed 1/16 of an inch in width in vinyl floor covering joists. Where dissimilar materials abut, a gap is not to exceed 1/8 of an inch.

17) Paint, Stain, and Wall Coverings

Good quality paint has been used internally and externally on your home. Nevertheless, exterior paint can sometimes crack or chip. This is not a defect in the paint, and is most often caused by other sources. You should avoid allowing sprinklers to hit painted areas, washing down painted areas, etc. Inside, do not scrub latex-painted walls, and be aware of the newly painted walls, as you are moving in. Even the best paint can be chipped or stained if not properly maintained. Any defects in paint that are not noted at the final inspection are a non-warrantable item.

Exterior paints or stains should not fail during the first year of the Saint Aubyn Homes One Year Limited Warranty period. However, fading is normal and the degree is dependent on climatic conditions. If paint or stain is defective, Saint Aubyn Homes will properly repair and refinish the affected areas matching colors as close as possible. Where finish deterioration affects the majority of the wall area, the whole area will be refinished.

Painting required as corollary repair is the responsibility of the Homeowner.

Mildew, fungus, or mold will form on painted surfaces if the building is subject to abnormal moisture exposures (i.e., rainfall, lake or riverfront).

Mildew, mold, and fungus are a condition that Saint Aubyn Homes cannot control and is Homeowner maintenance item unless it is a result of noncompliance with other sections of this building contract.

18) Kitchen

Countertops fabricated with high-pressure laminate coverings shall not delaminate. Saint Aubyn Homes will replace or repair at our discretion any countertops that delaminate. The finish will discolor if cleaned with improper chemicals. Saint Aubyn Homes will not be responsible for damage to the finish due to Homeowner neglect or abuse. Saint Aubyn Homes will not be responsible for chips and cracks, unless otherwise noted in the final walkthrough and Buyer Punch List.

19) Cabinets

With door or drawer front in closed position warping not to exceed 3/8 of an inch measured from face frame to point of furthest most warping. Builder will correct or replace door or drawer fronts. Concerning gaps between cabinets, ceilings, or walls there is an acceptable tolerance of 3/8 of an inch. Saint Aubyn Homes will correct any gaps exceeding the limit.

20) Plumbing

Frozen Pipes: Homeowner must take precautions to prevent freezing during severely cold weather, such as removing outside hoses from sill cocks, leaving faucets with a slight drip, and turning off the water system if you are leaving the house for an extended period of time. Frozen pipes or sill cocks will not be considered for warranty.

Saint Aubyn Homes cannot remove noises due to water flow and pipe expansion. Saint Aubyn Homes will correct to eliminate "Water Hammer". Chips and cracks can occur on the surface of bathtubs or sinks when the surface is hit with a sharp or heavy object. Saint Aubyn Homes will not be responsible for repairs unless otherwise noted on the final walk through. Saint Aubyn Homes will replace any defective fixtures or fitting which does not meet acceptable standards, as defined by the manufacturer.

21) Heating and Cooling

Your furnace and air conditioner are covered by a manufacturer's warranty. It is the Homeowner's responsibility to change the filters every 30 days. Failure to do so may void the warranties. It is also a good idea to have the equipment checked and serviced once a year.

Heating systems shall be capable of producing an inside temperature of 65 degrees F, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor winter conditions. Federal, state, or local energy codes shall supercede this standard where such codes have been locally adopted. Saint Aubyn Homes will correct heating system to provide the required temperatures. However, the Homeowner shall be responsible for balancing dampers, registers, and other minor adjustments.

Saint Aubyn Homes will correct cooling system to meet temperature conditions in accordance with specifications.

Condensation lines will eventually clog under normal use. This is considered a Homeowner maintenance item. Saint Aubyn Homes shall provide unobstructed condensation lines at the time of first occupancy.

When metal ductwork is heated it expands, and when it is cooled it contracts. The results is "tickling" or "cracking" which is to be expected, and this is not a responsibility of Saint Aubyn Homes. The stiffening of the ductwork and the gauge of the metal shall be such that the ducts do not "Oilcan". The booming noise is caused by "oil caning", and is not acceptable. Saint Aubyn Homes will correct or eliminate the sound. Ductwork shall remain intact and be securely fastened. Saint Aubyn Homes will re-attach and re-secure all separated or unattached ductwork.

Refrigerant lines should not develop leaks during normal operations. If leaks occur during normal operations, Saint Aubyn Homes will repair leaking refrigerant lines and recharge unit, unless the Homeowner caused the damage.

22) Electrical

Fuses and circuit breakers shall not activate under normal usage. Saint Aubyn Homes will check wiring and circuits for conformity with local electrical code requirements. Saint Aubyn Homes will correct circuitry not conforming to code specifications. Electrical junction boxes on exterior walls may produce airflow whereby cold air can be

drawn through the outlet into a room. The problem is normal in new home construction. This is not a builder responsibility.

All switches, fixtures, and outlets shall operate as intended. Saint Aubyn Homes will repair or replace defective switches, fixtures, and outlets.

Ground fault interrupters are sensitive safety devices that can be tripped very easily. Saint Aubyn Homes shall install ground fault interrupter in accordance with approved electrical code. Tripping is to be expected and is not covered, unless due to a construction defect. Wiring should be capable of carrying the designed load for normal residential use. Saint Aubyn Homes will check wiring for conformity with local code requirements. Saint Aubyn Homes will repair wiring not conforming to code requirements.

23) Water/Sewer

If water supply systems fail to deliver water: All on-site service connections to municipal water main and private water supply shall be in accordance with all approved building, plumbing, and health codes. Saint Aubyn Homes will repair if failure is the result of defective workmanship or materials. If conditions beyond the control of Saint Aubyn Homes disrupt or eliminate the source of the supply, Saint Aubyn Homes has no responsibility.

No water leaks of any kind shall exist in any soil, waste, vent, or water pipe. Condensation on piping does not constitute leakage, and is not covered. Saint Aubyn Homes will make repairs to eliminate leakage.

- ✓ Sewers, Fixtures, and Drains shall operate properly: Saint Aubyn Homes will not be responsible for sewers, fixtures, and drains, which are clogged through the Homeowner's negligence. If a problem occurs, the Homeowner should consult Saint Aubyn Homes for a proper course of action. Where defective construction is shown to be the cause, Saint Aubyn Homes shall assume all repair costs.

C) NON-WARRANTED CONDITIONS

This is a statement of conditions that are not subject to Saint Aubyn Homes One Year Limited warranty and explains some of the changes and maintenance items that may occur in your new home over the first year or so of occupancy. Your home will require more maintenance and care than most new products, since it is made up of many components, each with its own characteristics. Also, Homeowner understands that like other products made by humans, a house is not perfect. It will show some minor flaws and unforeseeable defects and it may require some adjustments and touching up.

As described in the Saint Aubyn Homes One Year Limited Warranty provided to you, in which this statement of non-warranted conditions is a part of, Saint Aubyn Homes, will correct certain defects that arise during the defined time periods after construction. Other items that are not covered by Saint Aubyn Homes' warranty may be covered by specific manufacturer's warranties. There are some conditions, however, that are not covered under Saint Aubyn Homes' warranty. It is important for you to read these carefully and understand that you have not contracted for Saint Aubyn Homes to correct certain areas of maintenance that are the responsibility of the Homeowner, and that could lead to problems if they are neglected.

The following is an outline of some of the conditions that are not warrantable by Saint Aubyn Homes. Please be sure you understand this list. Ask Saint Aubyn Homes if you have any questions and feel free to consult your attorney before signing the acknowledgement.

A) Any damage to the extent it is caused or made worse by:

- 1) Negligence, improper maintenance or improper operation by anyone other than Saint Aubyn Homes, its employees, agents, or subcontractors: or
- 2) Failure by Homeowner or anyone other than Saint Aubyn Homes, its employees, agents, or subcontractors to comply with the warranty requirements or manufacturers of appliances, fixtures, and items of equipment: or
- 3) Failure by the Homeowner to give notice to Saint Aubyn Homes of any defective item within a reasonable time: or
- 4) Changes of the grading of the lot by anyone other than Saint Aubyn Homes, its employees, agents, or subcontractors: or
- 5) Changes, alterations, or additions made to the home by anyone after the commencement of the Saint Aubyn Homes One Year Limited Warranty: or
- 6) Dampness or condensation due to the failure of the Homeowner to maintain adequate ventilation.

B) Any Condition which does not result in actual physical damage to the home, including, but not limited to, uninhabitability or health risk due to the presence or consequence of unacceptable levels of radon gas, formaldehyde, or other pollutants or contaminants; or the presence of hazardous or toxic on-site materials.

C) Loss or damage, which arises while home, is being used primarily for nonresidential purposes.

D) Bodily injury or damage to personal property.

E) Loss or damage caused by or resulting from abnormal loading on floors by the Homeowner, which exceeds design, loads as mandated by codes.

F) Costs of shelter, transportation, food, moving, storage, or other incidental expenses related to inconveniences or relocation during repairs.

G) Insect or rodent damage.

H) Loss or damage resulting from accidents, riot, civil commotion, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind driven water, and changes in the underground water table which were not reasonably foreseeable.

I) Loss or damage caused by or resulting from seepage of water.

J) The upkeep of cosmetic aspects of your home is your responsibility. You have not contracted with Saint Aubyn Homes to cover ordinary wear and tear or other occurrences subsequent to construction that affect the condition of the features of your home. Chips, scratches, mars in tile, woodwork, walls, porcelain, brick, mirrors, plumbing fixtures, marble, Formica tops, lighting fixtures, all flooring, cabinets, etc., which are not recognized and noted by the Homeowner in the final walk-through are non-warrantable conditions.

Warning: Energy efficiency in this home is achieved by construction methods that reduce air infiltration and air changes per hour. This may result in a concentration of water vapor from cooking, showering, etc., which, at excessive levels can cause property damage. Likewise, concentrations of radon or chemical compounds released from soil, household furniture, personal possessions, and building materials; at excessive levels, may create irritant effects or health hazards. Buyer can minimize these effects by proper ventilation devices installed by Saint Aubyn Homes and/or opening doors and windows as much as possible when possible to increase ventilation.

I ACKNOWLEDGE having read, understood, and received a copy of the above Saint Aubyn Homes One Year Limited Warranty including: terms, claims, coverage, and non-warranted items. I understand and agree with these stated terms and conditions.

Buyer hereby acknowledges that buyer has been informed of such health risks and buyer assumes all risks of damage or injury which may result from said risks, or in any way connected with such construction methods, and hereby fully, finally, forever releases and discharges Saint Aubyn Homes, its officers, employees, subcontractors, and agents from any and all claims, liabilities, expenses, and damages there from whatsoever, whether now known or hereafter known, which buyer or its assigns may hereafter have against Saint Aubyn Homes, its officers, employees, subcontractors, and agents. Regarding the matter referred to in this paragraph, Saint Aubyn Homes makes no express or implied warranty of habitability, fitness, or good workmanship as to building materials and/or construction methods.

Accepted this ___ day of _____, 20__.

Address:  Peyton, CO 80831

Buyer: _____

Buyer: _____

Saint Aubyn Homes, LLC: _____

“ADDENDUM TO THE LIMITED ONE YEAR WARRANTY AGREEMENT”

PARAGRAPH B. EXPLANATION OF COVERAGE, ITEM 4) CONCRETE FLATWORK

LIMITED WARRANTY

1. COLOR

The concrete for your floors, driveway, porch and walks were poured at different times, and with multiple loads of concrete. As a result, there may be variations in color. All concrete placed during winter conditions may experience discoloration. Discoloration because of winter conditions does not affect the integrity of the concrete. No correction is provided for this condition.

2. CRACKS IN BASEMENT FLOORS

Minor cracks in basement floors are normal; however, if concrete cracks exceed 1/4inch in width or 1/4inch in vertical displacement, SAINT AUBYN HOMES, LLC will patch or repair them one time during the warranty period. Homeowners must immediately seal all cracks as they appear with a waterproof caulk. Caulking is an accepted repair; cracks that occur within the control joint of concrete are excluded from the SAINT AUBYN HOMES, LLC Limited Warranty. Subsequently, CONCRETE SLAB MAINTENANCE IS YOUR RESPONSIBILITY.

3. CRACKS IN GARAGE SLAB, DRIVEWAYS, PATIO'S, PORCHES AND SIDEWALKS

Minor cracks in concrete is normal; however if concrete cracks exceed 3/8inch in width or 3/8inch vertical displacement, SAINT AUBYN HOMES, LLC will patch or repair them one time during the warranty period. Homeowner must immediately seal all cracks as they appear with a waterproof caulk. Caulking is an accepted repair; cracks that occur within the control joint of concrete are excluded from the SAINT AUBYN HOMES, LLC Limited Warranty. Subsequently, CONCRETE SLAB MAINTENANCE IS YOUR RESPONSIBILITY.

4. LEVEL FLOORS

Concrete floors in the habitable areas of your home shall not have pits, depressions, or areas of unevenness exceeding 3/8inch within 32inch measurement with the exception of an area specifically designed to slope toward a floor drain. SAINT AUBYN HOMES, LLC will repair the floor within this tolerance by filling with a leveler compound or mechanical grinding.

5. SEPARATION OR MOVEMENT OF SLAB WITHIN HOME

Concrete slabs within the structure are designed to move at expansion and contraction joints. All of these interior slabs are designed to “float” or move independently from the concrete foundation walls and are not a “structural” part of the home. The unfinished area of your basement is a good area to check for slab movement. The gap between the bottom plates of an unfinished wall is normally 1 1/2inch to 3inches when installed. Extreme or excessive movement (over 3/8inch or as described in your engineered soils report) should be brought to Saint Aubyn Homes, LLCs’ attention for assessment. HEAVING OR SETTLING BEYOND THIS PERFORMANCE GUIDELINE MAY BE CAULKED OR REPLACED AT SAINT AUBYN HOMES, LLC’S SOLE DISCRETION. ONLY AFFECTED SECTIONS OF CONCRETE WILL BE REPAIRED OR REPLACED. COLOR AND FINISH ARE NOT GUARANTEED TO MATCH.

6. SEPARATION AND MOVEMENT OF SLAB ON EXTERIOR OF HOME

Concrete slabs outside of the structure are designed to move at expansion and contraction joints. All of these exterior slabs are designed to “float” or move independently and are not a “structural” part of the home. Extreme or excessive movement (over 3/8inch or as described in your engineered soils report) should be brought to Saint Aubyn Homes, LLCs’

attention. HEAVING OR SETTLING BEYOND THIS PERFORMANCE GUIDELINE MAY BE CAULKED OR REPLACED AT SAINT AUBYN HOMES, LLC'S SOLE DISCRETION. ONLY AFFECTED SECTIONS OF CONCRETE WILL BE REPAIRED OR REPLACED. COLOR AND FINISH ARE NOT GUARANTEED TO MATCH. HEAVING OR SETTLING DUE TO A LACK OF HOMEOWNER MAINTENANCE IS NOT COVERED BY SAINT AUBYN HOMES, LLC, LIMITED WARRANTY.

7. SPALLING (SURFACE CHIPS)

Causes of spalling included but are not limited to: repeated hosing of concrete for cleaning, animal urine, radiator overflow, fertilizer, uncleared snow and ice, ice-melting agents, heavy vehicles and road salts from vehicles. REPAIR OF SPALLING IS A HOMEOWNER RESPONSIBILITY.

8. STOOPS AND STEPS

Minor settling, heaving and separation of such stoops and steps is to be expected. Stoops and steps should not separate, settle or heave an average of more than one (1) inch from the home. Homeowner must immediately seal all cracks as they appear with a waterproof caulk.

9. STANDING WATER ON CONCRETE

After rain or snow melt, some minor ponding or standing water is to be expected. Such water should not remain for more than 24hours. Water flow should not be impeded from stoops, patios, window wells, driveways, or steps by homeowner landscaping. Minor ponding may occur on interior garage slabs caused by water deposited on the floor by melting snow or water dripping from a vehicle onto the slight depressions in the garage slab.

HOMEOWNER USE AND MAINTENANCE GUIDELINES

By maintaining good drainage, you protect your home's foundation and concrete flatwork; the basement floor, porch, patio, driveway, garage floors and sidewalks.

Movement of the basement slabs or any concrete slab results in cracking. Minimize this movement by following SAINT AUBYN HOMES, LLC grades and landscaping recommendations, the objective of which is to prevent moisture from reaching soils around and under the home

1. CLEANING

Avoid washing exterior concrete slabs with cold water from outside faucet when temperatures are high and sun has been shining on the concrete. The abrupt change in temperature can damage the surface bond of the concrete. SAINT AUBYN HOMES, LLC recommends sweeping for keeping the exterior concrete clean. If washing is necessary, do this when temperatures are moderate.

Repeated cleaning of the garage floor by hosing can increase soil movement by allowing water to penetrate any existing cracks, SAINT AUBYN HOMES, LLC recommends sweeping to clean the garage floor.

2. CRACKS

A concrete slab 10feet across shrinks approximately 5/8inch as it cures. Some of this shrinkage shows up as cracks. Cracking of concrete flatwork also results from temperature changes that cause expansion and contraction.

During the summer, moisture finds its way under the concrete along the edges or through cracks in the surface. In winter, moisture forms frost that can lift the concrete, increasing cracking. This is a normal condition. Maintaining drainage away from all concrete slabs will minimize cracking from this cause.

As cracks occur, seal them with a waterproof concrete caulk (available at hardware or home improvement stores) prevent moisture from penetrating to the soil beneath.

3. CONTROL OR EXPANSION JOINTS

SAINT AUBYN HOMES, LLC installs expansion joints to help control expansion. However, as the concrete shrinks during the curing process, moisture can penetrate under the concrete and lift the expansion joint. When this occurs, fill the resulting gap with gray silicone sealant, which you can purchase at most hardware stores.

4. HEAVY VEHICLES

Do not permit heavy vehicles such as moving vans, large RV's or concrete trucks to drive on your concrete work. SAINT AUBYN HOMES, LLC designs and installs this concrete for residential use only.

5. ICE, SNOW AND CHEMICALS

Driving and parking on snow creates ice on the drive, which magnifies the effects of snow on concrete surface. Remove ice and snow from concrete slabs as promptly as possible after snowstorms. Protect concrete from abuse by chemical agents such as pet urine, fertilizers, radiator overflow, repeated hosing or de-icing agents, such as calcium chloride or road salt that can drip from vehicles. All of these items can cause spalling (chipping of the surface) of concrete. The area beneath the overhead garage door is particularly susceptible to these effects. SAINT AUBYN HOMES, LLC will not be responsible for this condition.

6. SEALER

Concrete produces concrete dust. A concrete sealer, available at paint stores, will help you keep an unpainted concrete floor clean. Do not use soap on unpainted concrete. Instead, use plain water and washing soda or, if necessary, a scouring powder.

7. STAMPED AND STAINED CONCRETE

Depending on your contract, SAINT AUBYN HOMES, LLC may have installed stamped and stained concrete. The inherent texture of the stamp will cause some water puddle. A sealer is applied to the finished surface, and will require re-sealing to protect the color and concrete integrity. Re-sealing is a homeowner responsibility.

Stain color may vary and slightly from samples and is not covered by the SAINT AUBYN HOMES, LLC Limited Warranty.

Architecture
Structural
Geotechnical



Materials Testing
Forensic
Civil/Planning

ROCKY MOUNTAIN GROUP
EMPLOYEE OWNED

DATE FILED: June 8, 2021 4:36 PM

Job No. 179153

November 5, 2020

Saint Aubyn Homes
212 North Wahsatch Avenue, Suite 201
Colorado Springs, CO 80903

Attn: Cory Galicia

Re: Amendment to Structural Observation Report
[REDACTED]
Colorado Springs, Colorado

Ref: *Structural Observation Report by RMG dated 10/9/2020, Job No. 179153*

Dear Saint Aubyn Homes:

After our original structural observation report was completed, we were informed by a representative of Saint Aubyn Homes that a subsurface drain was installed along the entire length of the east and west sides of the house. The installation of the drains was not observed by Rocky Mountain Group – RMG. No documentation regarding the installation of the subsurface drains was provided to RMG for review.

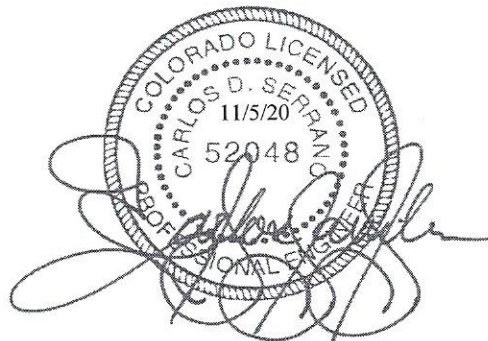
If installed correctly, these subsurface drains would address the poor drainage grade conditions mentioned in our original report. Therefore, the regrading commendation provided in our original *Structural Observation Report*, referenced above, may be omitted.

I hope this provides the information you requested. Should you have any questions, please do not hesitate to call.

Cordially,

RMG – Rocky Mountain Group

Carlos Serrano, P.E.
Forensic Project Engineer



Architecture
Structural
Geotechnical



Materials Testing
Forensic
Civil/Planning

**ROCKY MOUNTAIN GROUP
EMPLOYEE OWNED**


Job No. 179153

October 9, 2020

Saint Aubyn Homes
212 North Wahsatch Avenue, Suite 201
Colorado Springs, CO 80903

Attn: Cory Galicia

Re: Structural Observation


Colorado Springs, Colorado

Dear Sain Aubyn Homes:

As requested, personnel of RMG - Rocky Mountain Group have visually observed the structure at the above referenced address. The purpose of our visit was to assess the condition of the structure with regards to the foundation system, soil conditions and drainage conditions. This letter represents the documentation of our site observations, provides an evaluation of the present condition of the structure, and lists, if necessary, conceptual recommendations for the repair of past damage or to reduce the probability of future damage. It should be noted the documentation of items such as drywall cracks does not automatically imply structural damage has occurred. It is important the reader reviews our entire evaluation before drawing conclusions regarding the present structural condition.

Based on our observations of the structure and its age, it is our opinion that the foundaiton is structurally stable and adequately supporting the structure. Additional comments will be contained in the body of this report.

The site visit was performed on September 24, 2020. The house was observed to be a one-story structure with a basement. The house was reportedly built in 2018. For the purpose of this report, the front of the house will be considered south.

BACKGROUND:

The homeowner reported that some improvements to the drainage grade around the house were performed by the builder soon after the home was purchased. It was also reported that some drywall cracks were patched by the builder after the house was purchased. Reportedly, cracks along the control joints of the garage slab have developed over the previous year.

Southern Office:
Colorado Springs, CO 80918
719.548.0600

Central Office:
Englewood, CO 80112
303.688.9475

Northern Office:
Evans, CO 80620
970.330.1071

Fort Collins: 970.616.4364
Monument: 719.488.2145
Woodland Park: 719.687.6077

www.rmgenineers.com

EXHIBIT C

OBSERVATIONS:

Basement:

The basement was found to be generally in good condition. No significant cracks were observed on finished surfaces. There is a sump pit located within the utility room at the south side of the basement. A constant trickle of water was noted from the perimeter drain pipe entering the pit. The pit was partially filled with water. Algae growth was observed inside the sump pit. The basement slab was found to be roughly level except around the family room. The floor slab around the family room and northeast bedroom appeared to be somewhat uneven. The basement perimeter walls were found to be roughly plumb.

Main Level:

A cursory observation of the main level was performed. The main level floor appeared to be roughly level. No significant cracks were noted on finished surfaces. There is a previously patched crack over the wall opening at the foyer.

Garage:

The garage was partially observed due to stored items blocking visual access. The garage was observed to be generally in good condition. There is a high point on the floor slab at the intersection of the control joints. Cracks approximately 1/8" wide were noted along the control joints. There is a 1/16" wide vertical crack on the exposed portion of the foundation wall at the north side of the garage. A weather strip along the west side of the garage door was noted to have buckled. The homeowner reported that a similar condition had developed on the east jamb of the garage door, which was recently repaired by nailing the weatherstrip.

Exterior:

The drainage grade around the house was observed to be positively sloping away from the house except along the west side. The grade along the west side of the house is flat to negatively sloping towards the foundation. The ground around the house was probed with a 3' long steel bar. The probe penetrated the backfill 12" to 24" at several areas. The window wells have experienced some separation from the foundation walls. There is a 1/8" wide crack on the north foundation wall of the garage. This crack is located at the same location where a crack has developed at the interior of the garage. The homeowner had previously excavated the ground adjacent to the foundation wall where the crack is located and discovered a 6" diameter perforation on the foundation wall. The crack stems from the perforation. A 1/4" separation was observed between the back patio slab and the foundation wall. A 1/16" wide crack was noted on the driveway slab. The sump pit evacuation pipe drains along the south edge of the property, near the street. Water was noted to pond at that location and water was observed along the street gutter for the entire length of the house.

CONCLUSIONS:

Based on our observations of the structure and its age, it is our opinion that the foundation is structurally stable and adequately supporting the structure

Foundation movement is typically characterized by cracking of exterior walls as well as out-of-level floors on the main level of the house. The levelness of the main level floors and lack of significant cracks on the main level indicate that no significant foundation movement has taken place.

The uneven areas of the basement floor slab indicate that some slab movement has occurred. Floor slab movement is not considered to be of structural concern since it is not connected to the foundation components. If desired, the floor slab could be mudjacked to restore its original position. Mudjacking is a process in which grout is pumped below the concrete slab to densify the near surface soils. The pressure of the grout is adjusted to provide an upwards force below the slab in order to return the surface to a near level position.

The flat/low grade areas around the perimeter of the structure are likely causing water to pond. When water ponding occurs, it can allow water seepage into the subgrade soils, which can lead to foundation movement. It is critical to keep water away from the foundation since movement is typically a result of changes in the moisture conditions of the subgrade soils. In order to keep water away from the foundation, a proper drainage grade and/or drainage system should be provided. Also, the downspout outlets should be extended to drain to a proper location away from the foundation.

The backfill soil around the house was found to be relatively loose. Although this is not of structural concern, the settlement of the loose backfill is most likely resulting in the separation of the window wells from the foundation, as well as, settlement of the back patio slab. The backfill should be removed and replaced down to the bottom of the window wells. The backfill soil should be replaced according to the recommendations included in the open hole observation report. After the backfill is removed, the window wells should be inspected and re-attached as needed.

The garage slab has experienced some vertical movement, which has caused the high spot in the slab and the cracks along the control joints. As previously stated, slab movement is not considered to be of structural concern. If desired, the garage slab could be removed/replaced where the high areas have developed.

The sump pit and pump system appear to be working adequately. There appears to be significant amounts of water being collected by the pit. However, there has not been significant rain or snow in the past several months. Therefore, the water being collected does not appear to be from surface water runoff. It is our opinion that a geotechnical engineer should be consulted to further investigate this condition.

RECOMMENDATIONS:

The following is a list of recommendations that should be performed in order to enhance the performance of the structure in the future:

1. It is our recommendation that the backfill zone around the structure, including but not limited to those specified in the “**Exterior**” paragraph, be regraded to a minimum

positive slope of 5% (2% for paved areas) for the first ten feet from the foundation walls. This slope should be maintained for the life of the structure. The soil placed adjacent to the foundation walls should consist of topsoil type material and under no circumstances should a clean gravel or rock be utilized to obtain the minimum slope. Decorative rock adjacent to the foundation walls should be placed over a landscape fabric. Plastic membrane should not be installed adjacent to the foundation walls. Local building code requirements require a minimum distance of six inches between any wood components and soil. Therefore where necessary drainage swales may be required in order to properly slope the grade in the backfill zone and collect it and discharge it away from the foundation walls.

2. The roof gutter/downspout system should be monitored and regularly cleaned to provide for the free flow of collected water.
3. If desired, the basement slab could be "mudjacked" to re-establish a near level surface and/or reduce vertical offsets. It should be noted that "mudjacking" is considered a temporary solution that may require additional applications in the future.
4. The backfill soil around the house should be removed and replaced down to the bottom of the window wells. The backfill soil should be replaced according the recommendations included in the open hole observation report. After the backfill is removed, the window wells should be inspected and re-attached as needed.
5. Although not required, the garage slab could be removed/replaced where the high areas have developed.
6. It is our opinion that a geotechnical engineer should be consulted to further investigate the unusual high water level condition causing the sump pump to activate constantly. RMG may be retained to provide geotechnical engineering services for an additional fee.

LIMITATIONS:

This report does not express nor does it imply any warranty of the future performance of the structure or drainage condition. The opinions and recommendations presented in this report are based solely on conditions available for viewing at the time of the site visit, information provided by the client to RMG, the pertinent experience with similar conditions of personnel performing the observations and accepted local engineering practice. No additional subsurface testing, material testing, calculations, nor monitoring over time of the conditions presented in the report were performed by RMG unless noted. These additional investigations can be performed upon request for an additional charge, which may or may not provide information to better address the observed structural or drainage conditions that presently exist. It is the responsibility of the client to provide adequate access to any areas not physically accessible, whether or not RMG is aware of the existence of such areas. Not included is a review of architectural, mechanical, electrical, plumbing, mold or cosmetic conditions, nor a comprehensive review of compliance with applicable building codes. **Also, excluded from the scope of this report are evaluations of geologic, natural and environmental hazards such as landslides, unstable slopes, seismicity, underground mines, avalanches, flooding, corrosive soils, erosion, radon, wild fire dangers and hazardous waste.**

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Colorado Springs, Colorado

I hope this provides the information you requested. Should you have any questions, please do not hesitate to call.

Cordially,

RMG – Rocky Mountain Group

Carlos Serrano, P.E.
Forensic Project Engineer

