


SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Saint Aubyn Homes, LLC (“SAH”), on one side and Jerry Richbow, on the other (collectively “Richbow”). SAH and Richbow are sometimes collectively referred to as the “Parties,” or when the context requires, as a “Party.” This Agreement shall be deemed effective on the date of the last counter-signature applied (the “Effective Date”).

I. RECITALS

A. Richbow and SAH are parties in El Paso County District Court, Case No. 2020CV30197, *Jerry Richbow v. Saint Aubyn Homes, LLC* (the “Lawsuit”).

B. Richbow is Plaintiff in the Lawsuit and is owner of  Colorado Springs, Colorado 80925 (“Home”).

C. SAH is Defendant in the Lawsuit and acted as the Home’s builder-vendor.

D. The Lawsuit relates to alleged construction defects at the Home.

E. The Parties have reached a repair-based settlement of all issues in the Lawsuit. A copy of the Settlement Addendum that contains the repair-based settlement is attached as **Exhibit A** (“Settlement Addendum”).

In consideration of the above Recitals, which are expressly incorporated into the Agreement below, the terms, conditions and considerations stated in this Agreement, and in exchange for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

II. AGREEMENT

A. Reference to Settlement Addendum. The Parties acknowledge that the Settlement Addendum that contains a list of the Repairs to be completed at the Home remains in full force and effect. The Settlement Addendum and this Agreement are intended to and shall be read and interpreted as one integrated document, and comprise the Parties’ full and complete agreement on the subject matter that is covered in those documents.

B. Repairs Pursuant to Richbow’s Satisfaction. The Repairs shall be completed to a commercially reasonable standard on or before 30 calendar days after the Effective Date.

C. SAH to Continue Warranty Obligations. SAH shall continue to honor its warranty obligations to Richbow and to any successor owner to the extent the such warrant is transferrable by its existing terms.

D. Mutual Release. Upon completion of the Repairs in the Settlement Addendum to a commercially reasonable standard, the Parties, as well as their heirs, successors, and assigns,

release and forever discharge each other, and each other's members, managers, employees, agents, insurers, contractors, subcontractors, attorneys, and representatives, as well as each of their heirs, successors and assigns, from any and all claims, demands, lawsuits, damages, losses, liabilities, attorney fees, expenses and costs of any nature whatsoever, past, present, or future, whether known or unknown, fixed or contingent, suspected or unsuspected, liquidated or unliquidated, which: (1) were asserted in the Lawsuit; (2) which could have been asserted in the Lawsuit; and/or (3) which relate to or arise from construction of the Home by SAH and/or the sale of the Home to Richbow. This Agreement does not modify the terms of the warranty that has been provided to Richbow.

E. Stay and Dismissal. Within seven calendar days of the Effective Date, Richbow, through counsel, shall request a stay of the Lawsuit pending completion of the Repairs. Upon satisfactory completion of the Repairs in the Settlement Addendum, Richbow's counsel shall file a stipulation to dismiss with prejudice the claims against SAH in the Lawsuit.

F. Advice of Counsel. SAH and Richbow each hereby represent, warrant, acknowledge and agree that:

1. They have each received advice from independent legal counsel selected by them prior to their execution of this Agreement.
2. The legal nature and effect of this Agreement has been fully explained to them by such independent counsel;
3. They fully understand the terms, provisions and ramifications of this Agreement;
4. They are relying solely upon their own judgment and the advice of their own independent and independently chosen counsel in executing this Agreement;
5. They have not relied upon any representation or statement of any other Party to this Agreement, any employee or agent of any such Party, or counsel for any other Party in executing this Agreement;
6. They are aware that they or their attorneys may, after this Agreement is signed, discover facts different from or in addition to the facts that they or their attorneys now know or believe to be true with respect to the subject matter of this Agreement, but that their intention is to fully and finally release each person or entity released by them, as set forth in this Agreement, from any and all manner of liabilities and claims which have arisen, are now arising, or may in the future arise in connection with or in any way related to the matters referred to in this Agreement.

G. No Admission of Liability, Fault, or Defect. The execution of this Agreement is not an admission of liability or fault by the Parties or their agents, representatives, members or officers nor shall it be construed as recognition of the merits of any of the claims asserted in the Lawsuit. By executing this Agreement, no party is acknowledging any liability or breach of any duty or obligation to the other and this Agreement merely represents a compromise of disputed claims. Further, execution of this Agreement is not admission or acknowledgement by SAH that any of the defects alleged by Richbow are, in fact, defects or that such actually require repair.

H. No Assignment. Each Party represents and warrants to the other Party that she/he/it is the sole owner of all claims asserted in the Lawsuit by that Party, and she/he/it has not sold, transferred or assigned any of his/its rights in the Lawsuit to anyone.

I. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

J. Counterparts. This Agreement may be executed in counterparts, with each counterpart being an original document, and all counterparts together constituting a single agreement. Faxed, scanned and electronic signature are binding on the Parties.

K. Merger. This Agreement states the entire agreement and the full understanding between the Parties, and supersede all prior discussions or negotiations, and there are no further understandings or agreements, oral or written, relating to the subject matter of this Agreement.

L. Costs and Expenses. Each Party agrees to bear her/his/its own costs, including attorney's fees, in connection with this Agreement, and any other matters which are the subject of this Agreement.

M. Severability. If any provision of this Agreement shall be deemed invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired.

N. Modifications. No modification of this Agreement shall be effective unless in writing and signed by the Party against whom it is sought to be enforced.

O. Successors in Interest. This Agreement is and shall be binding and inure to the benefit of the heirs and successors of each Party.

P. Further Assurances. Each Party agrees to execute and deliver all such other and additional documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

Q. Paragraph Headings. Paragraph headings are for reference purposes only and do not affect the interpretation of this Agreement.

Saint Aubyn Homes, LLC

By: [Signature]

Title: President

STATE OF COLORADO)
) ss.

COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 1st day of April, 2020, by Jeff Mark, as President of Saint Aubyn Homes, LLC.

Witness my hand and seal.

[Signature]
Notary Public
My commission expires: 3.22.21

[SEAL]

SUSAN L GONZALES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044004607
MY COMMISSION EXPIRES MARCH 22, 2021

Jerry Richbow

Jerry Richbow

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of March, 2020, by Jerry Richbow.

Witness my hand and seal.

[SEAL]

Notary Public
My commission expires: _____

Exhibit A – Settlement Addendum

1. **Front Door** repair (SAH: make sure door is plumb, repair chip at top of door, caulk and paint).
2. **Entryway** floor panel (SAH: fill gap between threshold and floor panel), Window Sill (SAH: re-caulk all windows and sills, re-paint), Baseboards (SAH: check all trim, re-caulk, re-paint), Hallway Closet Door (SAH: re-caulk, re-paint).
3. **Dining Room**; Entryway (Both) and walls (SAH: drywall repairs), light fixture (SAH: repair as needed), window sills (SAH: re-caulk and paint), outlets (SAH: J2D electric to adjust all outlets flush with drywall).
4. **Kitchen**; Entryway (SAH: drywall repairs), Pantry door (SAH: re-caulk and paint), cabinets (*South* cabinet falling off wall, *North* cabinet top doesn't fit) (SAH: reset cabinet and reskin top of cabinet), countertops cracked and separating (SAH: Planet granite to evaluate adjust if needed and re-caulk), entryway floor boards (SAH: ILG to seal gap with colored caulking once door is checked for levelness), light fixture (SAH: J2D electric to reset can lights).
5. **Living Room**; All corners cracked floorboards (SAH: secure/re-caulk and paint), Window sills cracked (both) (SAH: re-caulk and paint), Countertop needs sealed, (SAH: Planet Granite to check and re-caulk), Ceiling cracked (SAH: repair drywall).
6. **Entry way laundry room**; Cracked (SAH: re-caulk and paint, drywall repairs).
7. **Master Bedroom**; Entry way door (SAH: re-caulk and paint), Baseboards cracked, (re-caulk and paint), floor behind door separating from wall (SAH: ILG to evaluate and repair), entryway to Master Bathroom (re-caulk, do necessary drywall repairs and paint).

8. **Master Bathroom;** entry way cracked (SAH: re-caulk, do necessary drywall repairs and paint), tub separating from wall (SAH: ILG to evaluate and repair), floorboards (SAH: ILG to evaluate and repair), window sills (SAH: re-caulk and paint), cracked vanity (SAH: Kimbel plumbing to evaluate), linen closet doorway (SAH: re-caulk and paint), cracks in shower wall, (SAH: ILG to evaluate and repair) tiles separating from shower walls, (SAH: ILG to evaluate and repair), shower seal separating from floor (SAH: ILG to evaluate and repair).
9. **Laundry Room;** Cracks above doorway, both (SAH: drywall repairs and paint).
10. **Garage;** Cracks above doorway (SAH: drywall repair).
11. **Basement stairs;** cracked (SAH: drywall repairs and paint).
12. **Main Flor Wash Room;** Floorboards (SAH: re-caulk and paint), doorway (SAH: re-caulk and paint).
13. **Main Stairs;** Separating from Floor, Banister, handle (separating) (SAH: remove baseboards, evaluate/secure, re-secure baseboards caulk, paint and repair banister, rail and handle).
14. **Loft;** Ceiling (SAH: drywall repair, retexture, repaint), baseboards (SAH: re-caulk and paint), electrical outlets (SAH: J2D to adjust all outlets flush to walls), Doorway to rooms (SAH: adjust all doors, re-caulk and paint).
15. **Upstairs North Bedroom;** Outlets (SAH: J2D to adjust all outlets flush to walls) entryway to bathroom (SAH: adjust door, re-caulk and paint, drywall repairs), handle entryway to closet (SAH: adjust/replace if needed), Baseboards (SAH: re-caulk and paint), window sill (SAH: re-caulk and paint).

16. **Upstairs Bathroom;** Baseboards (SAH: re-caulk and paint), entryway(Both) cracked (SAH: drywall repair), Linen closet entryway cracked (SAH: drywall repair), window sill (SAH: re-caulk and paint), baseboard around toilet (SAH: recaulk and paint), door handles (SAH: adjust/replace if needed).
17. **Upstairs West Bedroom;** Ceiling cracked (SAH: repair drywall), and patchwork never completed (SAH: complete drywall repairs), drywall in closet shows crimping (SAH: repair drywall), closet trim cracked (SAH: drywall repair), window sill (SAH: re-caulk and paint).
18. **Basement;** Floor Cracked along west side (SAH: fill crack with sealer).
19. **Backyard/Southside of Home;** Leveling, and backfill (SAH: correct grade to engineer's recommendations).
20. **Fencing Entry/Gate;** Doesn't close, Uneven (SAH: Correct gate issue).