

## **SETTLEMENT AGREEMENT**

***THIS SETTLEMENT AGREEMENT*** is entered into on this \_\_\_\_\_ day of May, 2018, effective on the "Effective Date," between [REDACTED] (collectively "Wassmund") and ***Richmond American Homes of Colorado, Inc.*** ("Richmond") [REDACTED] and Richmond are sometimes individually referred to as a "Party" and collectively as the "Parties").

### **RECITALS**

A. [REDACTED] is the owner of a single-family residence constructed by Richmond (the "Home") located on the real property situate in El Paso County, Colorado known as [REDACTED] Peyton, Colorado (the "Property").

B. [REDACTED] purchased the Home and Property from Richmond under a Purchase Agreement dated on or about November 4, 2015 (the "Contract").

C. Certain disputes have arisen between [REDACTED] and Richmond regarding the Home and the Property.

D. [REDACTED] has asserted claims against Richmond in a case captioned [REDACTED] v. Richmond Homes, MDC Holdings, El Paso County District Court, Case No. [REDACTED] (the "Lawsuit").

E. The Parties have agreed to settle, compromise and resolve their disputes on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

***NOW, THEREFORE***, in consideration of the foregoing Recitals which are deemed a substantive part hereof, and for and in consideration of the mutual promises and covenants herein contained, [REDACTED] and Richmond agree as follows:

1. **Payment to** [REDACTED]. Within 15 business days of the execution hereof Richmond shall pay to [REDACTED] the sum **\$10,561.50**, in the form of a corporate check payable to [REDACTED], as a full and complete payment to settle and compromise all disputes.

2. **Release.** [REDACTED], in their individual capacity and on behalf of all occupants of the property (including any minor children) their agents, personal and legal representatives, invitees, heirs, successors and assigns, and each of them (collectively, "Releasers"), each hereby fully waive, surrender, release, remit and forever discharge Richmond and any and all of its parents, affiliated corporations, stockholders, directors, officers, employees, agents, predecessors, successors, assigns, contractors, subcontractors, engineers, architects, sales agents, insurers, and the respective directors, officers, stockholders, employees, agents, successors and assigns of each of them (hereinafter collectively referred to as the "Richmond Releasees") from all claims, demands, actions or causes of action, known or unknown, which Releasers may have

or which could be asserted by another on their behalf, based on any action, omission or event whatsoever, and more particularly but not by way of limitation, based upon, related to or arising from any action, omission or event whatsoever, and more particularly but not by way of limitation, based upon, related to or arising from the Lawsuit, the subject matter of the Lawsuit; the development, design or construction of the Home on the Property; the Contract; the marketing and/or sale of the Property by Richmond; the purchase of the Property by Releasors; the handling of any warranty or other requests for repairs; the performance of any investigation of or repairs to the Home and/or the Property; and any claims for breach of contract, breach of express warranty, breach of the implied warranties of habitability, workmanlike construction, fitness for a particular purpose, merchantability, or fitness for intended use, negligence, negligence per se, breach of fiduciary duty, negligent misrepresentation, negligent concealment, fraudulent misrepresentation, fraudulent concealment, violation of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq.*, bad faith breach of contract, violation of C.R.S. § 10-4-1103, promissory estoppel, claims pursuant to the Colorado Organized Crime Control Act, claims related to or based on alleged personal injury or property damage, claims for compensatory damages, exemplary damages, all claims for personal or bodily injury, compensation, consequential damages of whatsoever kind or nature, interest, costs and attorney's fees, and any and all claims that were or could have been asserted by Releasors in any forum on any legal or equitable theory including any and all express or implied warranties (collectively the "Released Claims"). This Release shall extend to and include all claims arising under the Residential Warranty Corporation ("RWC") warranty to the extent that claims were made or could have been made under the RWC Warranty and agree that such warranty is hereby terminated. Releasors covenant and agree that they will not pursue any claims against RWC or make claims under RWC Warranty for any matter asserted or claimed in the Lawsuit.

Releasors intend that this release shall be effective as, *inter alia*, a full and final release of each and every Released Claim against each one of the Richmond Releasees. In furtherance of this intention, Releasors agree that the release contained herein shall extend to all matters, whether known or unknown, which have or may have existed, presently exist or may arise in the future, suspected or unsuspected, of every nature whatsoever that they may have against any of the Richmond Releasees or any claim which could be asserted against or through Richmond. Releasors further agree, to the extent that any applicable federal or state statutory law, rule, regulation, common law or rule of law might make such release inapplicable to claims which they do not know or suspect to exist in their favor, that they hereby waive and relinquish all of the rights and benefits which they may have under such law, rule, regulation, common law or rule of law. Releasors further acknowledge that they may hereafter discover facts in addition to, or different from, those which they now know or believe to be true with respect to the subject matter of this release and the Released Claims but that, notwithstanding the foregoing, it is their intention hereby to fully, finally, completely and forever settle and release each and every and all Released Claims and that the release given herein shall be and shall remain irrevocably in effect as a full and complete general release notwithstanding the discovery or existence of any such additional or different facts.

3. **Confidentiality; Nondisparagement.**

a. Neither [REDACTED] nor any person under the control of [REDACTED] shall knowingly or voluntarily disclose any provision of this Agreement. This provision shall not apply to disclosures required by law, including response to service of a subpoena or as may be necessary in defense of an action, or disclosures to the Internal Revenue Service or Colorado Department of Revenue, attorneys, accountants or tax advisors or insurance companies; however, any accountant, attorney, tax advisor or insurance company to whom such disclosure is made must agree to be bound by this confidentiality provision. As part of this confidentiality provision, all Parties agree not to communicate with the media or press regarding this Agreement.

b. Neither Party shall disparage, orally or in writing, the other Party or his, her or its business, professional or personal character, integrity or competence. If asked, each Party and his, her or its counsel shall state only that the dispute has been settled and that the Party cannot comment further.

c. The Parties recognize that the foregoing confidentiality and nondisparagement provisions are a material inducement to all Parties to enter into this Agreement, and a violation of the confidentiality and/or nondisparagement provisions by a Party may result in material and irreparable harm to the non-breaching Party. In the event of a violation of the confidentiality and/or nondisparagement provisions, in addition to any other remedies available at law or in equity, the non-breaching Party shall have the right to injunctive or monetary relief or both.

4. **Nonreliance.** Except as otherwise provided herein, each Party expressly assumes any and all risks that the facts and law may be or become different from the facts and law as known to, or believed to be by the Parties as of the date of this Agreement, and no Party has relied upon any information supplied by the other, or upon any obligation or alleged obligation of the other Party to disclose information relevant to this Agreement.

5. **Authority and Non-Assignment of Claims.** Each Party expressly represents and warrants that the Party has the authority to enter into this Agreement and further expressly warrant and represent that such Party has not sold, assigned, granted or transferred to any other person, natural or corporate, any chose in action, demand or cause of action encompassed by this Agreement.

6. **Assignability.** Richmond may assign this Agreement to any other person or entity, whether or not affiliated with Richmond, without the consent of [REDACTED]. [REDACTED] shall not assign their rights or obligations under this Agreement to any other person or entity, and any such purported assignment shall be void and of no force and effect.

7. **Time of Essence.** Time is of the essence. Failure of any Party to perform any condition of this Agreement according to the time limits and in the manner prescribed in this Agreement shall give rise to all remedies available at law or in equity.

8. **Breach of Agreement.** A cause of action for breach of this Agreement shall accrue immediately upon the commencement or continuation of any action by a Party to this Agreement based upon any claim, demand, action or cause of action released by this Agreement or by disclosure of the terms of this Agreement or disparagement of another Party in violation of Section 3. In any such action, this Agreement may be pleaded as a defense or by way of counterclaim or cross-claim. Unconditionally, immediately and on demand, the Party in breach of this Agreement shall hold and save harmless the other Parties from and against any and all actions, causes of action, claims, demands, counterclaims, liabilities, losses, damages, costs and expenses, including costs and attorney's fees, that may be sustained or incurred by reason of any breach of the Agreement.

9. **Venue.** The Parties agree that the District Court in and for the County of Denver, State of Colorado, shall be conclusively presumed to have exclusive jurisdiction over the Parties and subject matter over any dispute arising from or related to this Agreement, the non-performance or violation of this Agreement, or any claim for indemnification arising from this Agreement. The parties further agree that venue shall be conclusively presumed to be proper for any dispute described in the preceding sentence in the District Court in and for the County of Denver, State of Colorado, and that no Party shall assert the doctrine of forum nonconveniens in the event an action is commenced in the District Court, in and for the County of Denver, State of Colorado, arising with respect to any dispute described in the preceding sentence.

10. **Miscellaneous.**

a. **Effective Date.** This Agreement shall be effective on the last date that this Agreement is executed by any Party.

b. **Binding Effect; Benefit.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto, and their respective heirs, personal and legal representatives, and permitted successors, and assigns. Except as specifically set forth herein, nothing in this Agreement, express or implied, is intended to confer upon any other person any rights, remedies, obligations or liabilities.

c. **Severability.** Any provision of this Agreement which is held by a court of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining provisions of this Agreement.

d. **Syntax.** Whenever used in this Agreement, the singular shall include the plural and vice versa and the use of any gender shall include all genders and the neuter.

e. **No Admission.** This Agreement represents the full settlement and compromise of disputed claims. Neither the execution nor the performance of this Agreement shall be construed as an admission of liability on the part of any Party to this Agreement, and all Parties expressly deny any such liability.

f. **Applicable Law.** This Agreement is made and entered into and shall be governed by and construed in accordance with the laws of the State of Colorado.

g. **Survival of Representations, Warranties and Agreements.** All of the representations, warranties, covenants, promises and agreements of the Parties contained in this Agreement (or in any document delivered or to be delivered pursuant to this Agreement or in connection with the closing) shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

h. **Attorney's Fees.** Notwithstanding anything to the contrary herein, in the event of any litigation arising out of this Agreement, the Court shall award to the prevailing Party all reasonable costs and expenses, including attorney's fees.

i. **Voluntary Action.** EACH OF THE PARTIES ACKNOWLEDGES THAT HE, SHE OR IT IS FREELY AND VOLUNTARILY ENTERING INTO THIS AGREEMENT UNCOERCED BY ANY OTHER PERSON AND THAT HE OR IT HAS READ THIS AGREEMENT AND HAS BEEN AFFORDED THE OPPORTUNITY TO OBTAIN THE ADVICE OF LEGAL COUNSEL OF HIS, HER OR ITS CHOICE WITH REGARD TO THIS AGREEMENT IN ITS ENTIRETY AND UNDERSTANDS THE SAME.

j. **Execution.** This Agreement may be executed in one or more counterparts, each counterpart to be considered an original portion of this Agreement, and all of which together shall constitute a single instrument. A photocopy of this Agreement may be used in lieu of an original in any action or proceeding brought to enforce or construe this Agreement.

***IN WITNESS WHEREOF***, the undersigned Parties have set their hands and seals the day and year first above written.

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\_\_\_\_\_  
Richmond American Homes of Colorado, Inc.

BY: \_\_\_\_\_

Title: \_\_\_\_\_