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May 5, 2022

**VIA EMAIL AND CERTIFIED MAIL,**  
**RETURN RECEIPT REQUESTED**

Hephaistos Enterprises, Inc. d/b/a  
Liscott Custom Homes, Ltd.  
Attn: Jon R. Reid, Registered Agent  
PO Box 2714  
Parker, CO 80134  
Email: [jon@liscott.com](mailto:jon@liscott.com)

Re: Notice of Claim Pursuant to Colo. Rev. Stat. § 13-20-801, *et seq.* and Offer of Settlement

Property Address: 101 Mule Deer Court, Dillon, CO 80435

To whom it may concern:

This firm represents Holly and Ben Smith (collectively, the “Smiths”), owners of 101 Mule Deer Court, Dillon, CO 80435 (the “Property”). I write to you in connection with the negligent and defective work performed by your company, Hephaistos Enterprises, Inc. d/b/a Liscott Custom Homes, Ltd. (“Liscott”), at the Property. Liscott was retained by the Smiths to perform certain work related to the erection and finishing of a modular home on the Property, which work included site work for new home, foundation, new custom system-built home installation, garage, water and sewer tie ins, porches, walkways, inspections, labor and equipment to provide a final certificate of occupancy (collectively, the “Work”). The Work is described in detail in the General Contractor Agreement dated September 22, 2020 (the “Contract”).

*Defective Work*

Despite your obligations under the Contract, Liscott failed to perform, or otherwise unreasonably delayed in performing, significant portions of the Work. Those failures include:<sup>1</sup>

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<sup>1</sup> The below list accounts for the damages and defects known by the Smiths as of the date of this letter. This Smiths hereby reserve their right to supplement this notice and assert additional claims in the event additional defects attributable to Liscott are uncovered as repairs are being made and the project completed.



## Exterior Issues:

- Main structure is not level;
  - Because the home was never properly leveled when it was set, there now exists 1.5” – 2” dip running down the entire length of the center of the home. The outside walls that are attached to the foundation are a full 1.5” – 2” taller than the center section of the home. As a result, walls are not square, cabinets are pulling away from the walls, windows at the peak of the cathedral ceiling are under significant pressure (one has already broken), and wood floors are popping up.
- Repair all damage resulting from home not being leveled;
  - It is expected that efforts to level the home will result in significant damage to various aspects of the home, which damage will need to be repaired at Liscott’s cost. The repair costs are expected to include needing to remove and reinstall the existing panoramic doors.
- Damage to the siding and exterior trim for the entirety of the home;
  - Much of the exterior siding, soffit, fascia, and trim are not finished.
  - The minimal work that has been done thus far is of unacceptable quality.
  - The fascia and soffit at the peaks of either end of the home were left open to the outside with nothing to prevent birds from entering the attic. As a result, birds began to nest in the attic. One side remains open as of the date of this letter.
- Unfinished apartment entry and porch;
  - Liscott has been paid \$7,000 of the \$13,000 contract price for this portion of the home, but no work has been performed and materials have yet to be ordered.
- Unfinished front entry and porch;
  - Liscott has been paid the entire \$13,000 contract price for this portion of the home. As of the date of this letter, minimal work has been completed.
- Unfinished roof over prow front patio;
  - Liscott has been paid \$24,000 of the contracted price of \$33,840 for this portion of the home. As of the date of this letter, no work has been started nor materials delivered.
- Unfinished deck off master bedroom;
  - Footings for the deck off the master bedroom have shifted as a result of being left unsecured through the spring melt;



- Liscott has been paid \$2,000 of the \$8,100 contract price for this portion of the home. Beyond installing the footings that have since shifted, no other work has been performed and no additional materials delivered.
- Unfinished concrete for prow front porch and both entry way patios;
  - Liscott has invoiced \$4,950 as a concrete patio surcharge, but the work is far from complete.
- Unfinished entryways and roof over the prow;
  - These aspects have yet to be built.
- Unfinished asphalt shingles for the garage and dormer;
- Egress window well not secured to the home; and
  - The window well has since pulled away from the home and become bent in a few areas as mud and everything else shifted.
- Damaged exterior doors.

**Interior Issues:**

- Numerous areas of the home are damaged and in need of painting repairs and/or touch-up work;
- Damaged or incorrectly installed interior trim;
- Damaged drywall;
- Painting after drywall is repaired;
- Missing light fixtures;
- Damaged interior flooring;
- Damaged interior doors, windows, and cabinet doors; and
- Damaged or incorrectly installed knobs, locks, and other associated hardware for the exterior doors.



## **Other Issues:**

- Materials were not properly stored, left exposed to the elements, and damaged or destroyed; and
  - Liscott left several hundred dollars' worth of lumber outside all winter. The lumber was covered with snow, ice, rocks, and mud. Because this lumber was no longer safe to use in the home, Liscott inappropriately charged the Smiths to replace the lumber.
  - Several thousand dollars' worth of garage trusses were left outside and uncovered during several snow storms. As a result of this neglect, the trusses were damaged and the Smiths were charged an additional \$3,600 to dig them out of the snow and ice.
  
- Failure to account for Summit County Fire Code requirements in project plans.
  - Liscott was informed during the plan review process (a year and a half ago) that all areas of the home and garage with any timber framing needed to be sheeted with 5/8" drywall in order for the home to receive a certificate of occupancy. To comply with this mandate, the ceiling of the basement that has wooden floor joists, the mechanical room that is wood framed, and the entirety of the inside of the garage were required to be drywalled. Had Liscott acted in good faith under the contract and informed the Smiths of this obligation, the Smiths could have arranged for this work to be performed in line with the rest of the project timeline. Because Liscott failed to share this information, the Smiths will be forced to endure further delays to coordinate this additional work.

## Lack of Oversight

The above makes clear that there was an obvious lack of oversight throughout the Work. Indeed, throughout much of the project Liscott supervisors were not present at the Property. From all that appears, this job was subcontracted out with little, or no, direction.

## Damages

As a result of Liscott's defective and incomplete work, the Property has been damaged; the exterior is exposed to (and being harmed by) the elements; the home is not level; many of the items installed in the home are out of plumb; and there are countless instances of careless work that will require repairs. Additionally, Liscott's repeated delays in the project have resulted in the Smiths being forced to obtain temporary housing. As of the date of this letter, the home is several months past due, and Liscott was given substantial notice (4+ months) that the Smiths would be homeless if the project was not finished by April 1, 2022. While continuing to demand more money from the Smiths based on the timeline agreed to by the parties, Liscott made little progress on the home. When confronted about the ongoing delays, Liscott promised the Smiths that the home should be move-in ready within a few weeks of the April 1<sup>st</sup> deadline. That clearly



did not happen. As a result, the Smiths expect to spend \$5,000 per month to obtain alternative housing until the project is finished.

### Settlement Offer

While the Smiths are confident in their likelihood of success in any formal legal proceeding, the Smiths wish to resolve this matter in an amicable fashion, if possible. The Smiths are willing to settle all claims currently known related to work on the Property under the following terms:

- Liscott rectifies all of the issues set out above and completes the outstanding work contemplated under the Contract and associated change orders in a good and workmanlike fashion (and to the satisfaction of the Smiths) within thirty (30) days of the date of this letter;
- Liscott retains all monies already paid by the Smiths under the Contract;
- The Smiths will be relieved of any obligation to make further payments under the Contract;
- Liscott provides to the Smiths, within fourteen (14) days of the date of this letter, a complete accounting of all monies paid to Liscott related to work performed under the Contract as well as receipts for all items billed as change orders, including original receipts from vendors, subcontractors, and suppliers;
- Liscott provides all final lien waivers upon completion of the remaining Work and repairs;
- Liscott performs a deep clean of the entire home upon completion of all repairs; and
- Liscott stands by the warranty set out in the Contract as well as those required by law.

This offer is extremely generous and will expire within fourteen (14) days of the date of this letter. Should you choose to reject this offer, please consider this the Smith's request for mediation pursuant to section J of the Contract and request for an accounting of all monies paid to you by the Smiths and their lender related to the project, including production of original receipts from vendors, subcontractors, and suppliers.

### Opportunity to Inspect

In accordance with Colo. Rev. Stat. § 13-20-803.5, we will make the Property available for you to inspect the above-referenced defects at a date and time that is mutually acceptable to all parties. In the event that you wish to inspect the Property to examine Liscott's failure to comply with its contractual obligations, we ask that you do so posthaste. Because the Property is at risk of further damage if certain of the defects are not rectified soon, the Smiths, in an effort to mitigate their damages, may be forced to have the repair work performed in the immediate future.



If you wish to conduct an inspection of the Property, please contact me at your earliest convenience.

Sincerely,

Mike Harrison

MHH

cc: Holly Smith  
Ben Smith  
Heritage Homes