

AGREEMENT AND MUTUAL RELEASE

This Agreement and Mutual Release (“Settlement Agreement”) is entered into as of October 16, 2023, by and between Virginia K. Williams and Ronald W. Stepien (referred to collectively as “Homeowners”) and between Onyx Creek Exteriors, LLC. (Referred to hereafter as “Onyx”) Each of these parties hereto may be referred to herein individually or as “Party” and collectively as “Parties,” as the context dictates.

RECITALS

This Settlement Agreement is entered into with reference to the following Recitals:

A. On or about, August 11, 2023, the Parties entered into a contract (hereafter referred to as ‘the Contract’) to replace the roof on the home owned by Virginia K. Williams and Ronald W. Stepien. The subject home being located at 50 North Lake Tr. Road, Cuchara, Colorado 81055

B. Onyx began the roof installation process and after a portion of the roof was replaced, Homeowners advised Onyx that the finished product was not what they had envisioned. Homeowners also advised Onyx of several issues with the work that Homeowners considered defective and/or improper workmanship and unacceptable.

C. The Homeowners expressed their concerns with the quality of work performed by Onyx.

D. The Parties desire to avoid costly and time-consuming litigation. To that end, the Parties have mutually agreed to terminate the Contract and have now agreed to resolve this matter as follows:

E. Onyx Creek Exteriors will provide a full refund to the deposit paid by Virginia K. Williams and Ronald W. Stepien to Onyx Creek Exteriors in the amount of \$39,600.00. The check will be made out to Virginia K. Williams.

F. Onyx Creek Exteriors will remove all unused materials from the jobsite located at 50 North Lake Tr. Road, Cuchara , Colorado 81055. Onyx Creek Exteriors will take possession and ownership of the unused materials.

G. It is the intent of the Parties that this agreement settles all disputes between Virginia K. Williams and Ronald W. Stepien and Onyx Creek Exteriors and that this agreement will supersede any and all previous agreements.

In consideration of the above Recitals and agreements contained herein and for other valuable consideration, the Parties agree as follows:

AGREEMENT

1. Onyx Creek Exteriors will provide a Cashier’s check made payable to Virginia K. Williams.

2. Onyx Creek Exteriors will take possession and ownership of any and all unused materials and remove such items from the property located at 50 North Lake Tr. Road, Cuchara, Colorado. All such materials shall be removed from subject property no later than 6:00 p.m., October 20, 2023. Any materials not removed by said date and time will become the property of Homeowners.
3. Resolution of Dispute. The Parties stipulate that the deposit payment in the amount of \$39,600.00 made by Ronald W. Stepien to Onyx shall be returned via a Cashier's Check made payable to Virginia K. Williams. Onyx will deliver said check to Virginia K. Williams at Wells Fargo Bank, Pueblo, Colorado at the Prairie Avenue location.
4. Attorneys' Fees and Costs. Each Party shall bear its own attorneys' fees and costs incurred in connection with the dispute, the Agreement, and this Settlement Agreement. Should any litigation regarding the terms or enforcement of this Agreement and Mutual Release become necessary the prevailing party in that litigation shall be entitled to reimbursement of their attorney's fees and costs.
5. Governing Law. This Settlement Agreement is made and entered into in the State of Colorado and shall, in all respects, be interpreted, enforced and governed under Colorado law.
6. Successors and Assigns. This Settlement Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective agents, heirs, successors and assigns.
7. Voluntary Agreement with Benefit of Counsel. The Parties hereto, and each of them, acknowledge that, in negotiating and executing this Settlement Agreement, they have consulted with, and had the advice of, counsel, and that this Settlement Agreement is entered into voluntarily after such advice, consultation and the Parties' respective independent investigation. If either Party has chosen of their own accord to not consult with an attorney any such decision is by choice and said Party hereby waives any such consultation.
8. Counterparts. This Settlement Agreement may be executed in any number of counterparts, and by electronic signatures, each of which may be deemed an original and all of which collectively shall constitute a single instrument. This section is necessary because Ronald W. Stepien is believed to be currently outside the State of Colorado. This section is for the convenience of the parties and to prevent unnecessary delay in the execution of this Agreement and Mutual Release.
9. Joint Drafting. The Parties acknowledge that each party has cooperated in the negotiating and preparation of this Settlement Agreement. Hence, in any construction to be made of this Settlement Agreement, the same shall not be construed against any particular Party as the drafter of the Settlement Agreement.
10. Entire Agreement. This Settlement Agreement contains the full, final and entire agreement between the Parties hereto, and supersedes all prior negotiations and proposed agreements, whether written or oral. This Settlement Agreement may not be modified or amended except by written instrument, signed by the affected Parties, expressing such a modification or amendment.

11. Severability. In the event that any portion of this Settlement Agreement is held by a court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the remaining portions shall not be adversely affected.

IN WITNESS WHEREOF, the Parties, by their signatures have caused this Confidential Settlement Agreement and Mutual Release to be executed.

Onyx Creek Exteriors, LLC

By _____
Jake E. Martinez IV, President

Virginia K. Williams

Ronald W. Stepien