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**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF INDIANA
 FORT WAYNE DIVISION**

DESIGN BASICS, LLC, and
 W.L. MARTIN HOME DESIGNS LLC,

Plaintiffs,

vs.

HELLER & SONS, INCORPORATED
 d/b/a Heller Homes; and HELLER
 DEVELOPMENT CORPORATION,

Defendants.

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Case No.: 1:16-cv-00175

JURY DEMANDED

ORIGINAL COMPLAINT

Plaintiffs, Design Basics, LLC and W.L. Martin Home Designs LLC, file this Complaint against Heller & Sons, Incorporated doing business as Heller Homes (“Heller Homes”); and Heller Development Corporation (“Heller Development”) (collectively referred to as “Defendants”), and for its causes of action alleges the following:

Parties

1. Design Basics, LLC, is a Nebraska Limited Liability Company with its principal place of business in Omaha, Nebraska. Under Articles of Merger executed on July 1, 2009, Design Basics, LLC, is the successor by merger to Design Basics, Inc., and as such is the owner of all assets (including copyrights, trade and service names, trade and service marks, and all causes of action) that Design Basics, Inc., owned as of that date. Design Basics, LLC, and its predecessor (Design Basics, Inc.) will hereinafter be referred to as “Design Basics.”

2. Design Basics is engaged in the business of creating, marketing, publishing and licensing the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990, both codified at 17 U.S.C. § 101 et seq.) and technical drawings depicting such architectural works.

3. W.L. Martin Home Designs LLC is a Florida limited liability company with its principal place of business in Jacksonville, Florida. W.L. Martin Home Designs LLC will hereinafter be referred to as “WLM.”

4. WLM is engaged in the business of creating, marketing, publishing and licensing the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990, both codified at 17 U.S.C. § 101 et seq.) and technical drawings depicting such architectural works.

5. Defendant Heller Homes is a corporation organized under the laws of the State of Indiana with its principal place of business in Allen County, Indiana. Heller Homes may be served through its registered agent, Mark A. Heller, 10812 Coldwater Rd., Suite 1300, Fort Wayne, Indiana 46845-1267.

6. Defendant Heller Development is a corporation organized under the laws of the State of Indiana with its principal place of business in Allen County, Indiana. Heller Development may be served through its registered agent, Mark A. Heller, 10812 Coldwater Rd., Suite 1300, Fort Wayne, Indiana 46845-1267.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction of this case under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 et seq.

8. Venue is proper in this District under 28 U.S.C. § 1400(a) because Defendants may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District; and Defendants reside and do business in this District.

Factual Background

9. Design Basics and WLM are building design firms which create, market, and license the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990 (the “AWCPA”)) and technical drawings depicting architectural works. Design Basics and WLM own copyrights protecting the architectural works and technical drawings they have created.

10. Design Basics is the author and the owner of all copyrights in the following works, each of which has been registered with the United States Copyright Office:

Title	Registration Certificate No.
Plan No. 1032 – Monte Vista	VA 282-203 & 752-162
Plan No. 1380 – Patterson	VA 314-024 & 726-379
Plan No. 1748 – Sinclair	VA 371-214 & 726-353
Plan No. 1752 – Lancaster	VA 371-204 & 756-041

11. WLM is the author and the owner of all copyrights in the following works, each of which has been registered with the United States Copyright Office:

Title	Registration Certificate No.
Plan No. 24077 – Baisden	VA 1-044-287 & 1-042-002

12. The foregoing works described in paragraphs 10-11 above will be referred to collectively as the “Copyrighted Works.”

13. The Copyrighted Works have been published in various Design Basics and WLM plan books and publications. The Copyrighted Works have also been published by

Design Basics and WLM on the internet at www.designbasics.com and www.wlmartinhomes.com.

14. Each of the Copyrighted Works constitutes original material that is copyrightable under federal law.

15. Design Basics is currently, and at all relevant times has been, the sole owner of all right, title and interest in and to the works described in paragraph 10 above.

16. WLM is currently, and at all relevant times has been, the sole owner of all right, title and interest in and to the works described in paragraph 11 above.

17. Defendants have been engaged, at least in part, in the business of creating, publishing, distributing and advertising residential home designs through traditional print media, on the internet on sites such as www.hellersite.com, and in marketing, advertising, constructing and selling homes built according to such designs.

18. Defendants have published, distributed, marketed and advertised certain architectural designs for single family residential homes, each consisting of a floor plan and exterior elevations, that Defendants have identified and marketed under the following model names: Arthur Williams, David Mathew 2, Greyson, David Mathew 1, and Spencer 5.

19. Design Basics' and WLM's home designs, including the Copyrighted Works, have been marketed for years on a nationwide basis, including in this District, by means of plan books and other publications and also on the internet, including many websites.

20. Defendants have been actually aware of Design Basics and WLM and the works that Design Basics and WLM market. At all times material to this case, Defendants have had a reasonable opportunity to have viewed the Copyrighted Works.

21. Defendants have violated and continue to violate Design Basics' and WLM's exclusive rights in each of the Copyrighted Works (including the right to reproduce, the right to prepare derivative works and the right to sell), by copying, publishing, distributing, advertising, marketing, selling and/or constructing in the marketplace, plans, drawings and houses which were copied or otherwise derived from the Copyrighted Works, as detailed by the following examples:

- a. Defendants' "Arthur Williams" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 1032 – Monte Vista (and any predecessor or derivative thereof).
- b. Defendants' "David Mathew 2" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 1380 – Patterson (and any predecessor or derivative thereof).
- c. Defendants' "Greyson" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 1748 – Sinclair (and any predecessor or derivative thereof).
- d. Defendants' "David Mathew 1" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 1752 – Lancaster (and any predecessor or derivative thereof).
- e. Defendants' "Spencer 5" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the WLM Plan No. 24077 – Baisden (and any predecessor or derivative thereof).

Cause of Action
Copyright Infringement

22. Design Basics and WLM complain of Defendants for copyright infringement and incorporate paragraphs 1 through 21 above by reference.

23. Defendants' construction and sale of houses, and creation of associated design and construction drawings based on Design Basics' and WLM's Copyrighted Works has infringed and continues to infringe Design Basics' and WLM's copyrights in the Copyrighted Works.

24. Defendants' creation and publication of non-pictorial representations based on Design Basics' and WLM's Copyrighted Works has infringed and is infringing Design Basics' and WLM's copyrights in the Copyrighted Works.

25. Design Basics and WLM are entitled to recover the actual damages they suffered as a result of the foregoing infringement, and all of Defendants' profits from such infringement, pursuant to 17 U.S.C. § 504(b).

26. In the alternative to the actual damages and infringer profits sought above, Design Basics and WLM are entitled to an award of statutory damages for all infringements of Design Basics' and WLM's Copyrighted Works, as permitted by 17 U.S.C. § 504(c).

27. Pursuant to 17 U.S.C. § 505, Defendants are liable for Design Basics' and WLM's costs and reasonable attorneys' fees incurred in this action.

28. In addition, Design Basics and WLM are entitled to preliminary and permanent injunctions pursuant to 17 U.S.C. § 502 prohibiting Defendants from further infringement of Design Basics' and WLM's copyrights, including but not limited to the further use of infringing plans, creation or use of derivative plans, and construction, sale or rental of infringing structures.

29. Furthermore, this Court should issue an order pursuant to 17. U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works, in possession of Defendants or their agents or contractors in violation of Design Basics'

and WLM's exclusive rights, and (b) upon final hearing of this case, to destroy or otherwise dispose of those copies.

Conditions Precedent

30. With respect to all counts, Design Basics and WLM generally aver that all conditions precedent to their rights of recovery have occurred or been performed, or have been waived or excused by Defendants.

Jury Demand

31. Pursuant to Federal Rule of Civil Procedure 38, Design Basics and WLM respectfully demand a trial by jury of all issues so triable.

WHEREFORE, Design Basics, LLC, and W.L. Martin Home Designs LLC pray that Defendants be cited to appear and answer; and that upon final trial have and recover from Defendants as set forth above, that they have permanent injunctive relief against Defendants as requested herein, and that they have such and other relief as they may show themselves to be entitled.

Respectfully submitted,

/s/ John D. LaDue

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