

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



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DESIGN BASICS, LLC, and
PLAN PROS, INC.,

Plaintiffs,

vs.

LIFEHOUSE HOMES, LLC,

Defendant.

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Case No.: 2:19-cv-00012

JURY DEMANDED

COMPLAINT

Design Basics, LLC (“Design Basics”) and Plan Pros, Inc. (“PPI”) (collectively, “Plaintiffs”), file this Complaint against Lifehouse Homes, LLC (“Lifehouse”), and for their causes of action allege 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. PPI is a Nebraska corporation with its principal place of business in Omaha, Nebraska.

4. PPI 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 AWCPA) and technical drawings depicting such architectural works.

5. Lifehouse is a limited liability company organized under the laws of the State of Indiana with its principal place of business in Lake County, Indiana. Lifehouse may be served through its registered agent, Todd Harbrecht, 207 W. 163rd Ave., Lowell, Indiana 46356.

Jurisdiction and Venue

6. This Court has subject matter jurisdiction of this case under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under federal copyright law, 17 U.S.C. § 101 *et seq.*

7. Venue is proper in this District under 28 U.S.C. § 1400(a) because Defendant 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 Defendant resides and does business in this District.

Factual Background

I. Plaintiffs have provided, and continue to provide, a multitude of services, including licensing and marketing home designs to builders, home centers, home designers, and drafting services.

8. Plaintiffs are building design firms that 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. Plaintiffs own copyrights protecting the architectural works and technical drawings they have created.

9. Plaintiffs have designed thousands of home designs from scratch, including approximately 350 new plans since 2009, which Plaintiffs have registered as architectural works and technical drawings with the United States Copyright office before publishing and marketing the plans.

10. Plaintiffs have never purchased copyrights in works created by others and then sought out infringers to sue.

11. Plaintiffs are long-standing, legitimate, and successful home design firms.

12. In recent years, Plaintiffs have, unfortunately, had to pursue multiple lawsuits to protect their valuable intellectual property.

13. Plaintiffs do not issue construction licenses for simple floor plans, but rather complete sets of construction drawings that can be modified to meet the customers’ design needs.

14. Plaintiffs currently offer single-build licenses for any home design in their inventory of more than 2,700 plans for fees ranging from \$700 to \$6,000—usually less than a tenth of the cost of hiring a private architect to design a home from scratch.

15. Since 2009, Plaintiffs have sold and issued more than 9,300 construction licenses for the home plans in their collections, including more than 2,700 licenses in the last three years alone, for a total of over \$6 Million in licensing revenue.

16. For just the four (4) copyrighted home designs listed in Paragraphs 60 and 61 of this Complaint, Plaintiffs have earned more than \$30,086 in licensing revenue since 2009.

17. Plaintiffs have always designed their home plans from scratch, including those listed in Paragraphs 60 and 61 of this Complaint.

18. The process to develop these designs included: creating a preliminary sketch, followed by a redline, then creating a plan, and then drafting the necessary construction drawings to build each designs.

19. This process took between 55 and 90 hours per design.

20. In creating their home designs from scratch, Plaintiffs' designers do not have many design constraints other than a few building code requirements, like a three-foot hallway width, thirty-inch doors in a bedroom, and egress windows of 5.7 square feet of opening.

21. Plaintiffs have won numerous awards for their home designs.

22. But, in the ordinary course of its business, Plaintiffs do far more than simply creating and licensing home designs.

23. Design Basics also acts as an advertising, marketing, and sales agent for several other home design firms, including PPI, Prime Designs, Scholz Design, WLM, TPK and Associates, Home Builders Network, and Carmichael & Dame Designs.

24. One of the principals of Carmichael & Dame Designs, Patrick Carmichael, purchased Design Basics with Myles Sherman in 2009.

25. Design Basics has marketed and sold the home designs of Mr. Carmichael's company, Carmichael & Dame, since 1994, and continues to market and sell those plans today, having licensed more than 1000 of Carmichael & Dame's home plans since 2009.

26. Design Basics has marketed and sold the home designs of PPI since 2002, and continues to market and sell those plans today, having licensed more than 800 of PPI's home plans since 2009.

27. Plaintiffs also offer plan alteration, custom home design, and professional marketing and publishing services to their builder, developer, lumberyard, home center, home design, and drafting service customers.

II. Over the past 30 years, Plaintiffs have made tens of millions of dollars licensing their plans to customers across the country.

28. Plaintiffs have been extremely successful in marketing and licensing their home designs to builders.

29. Plaintiffs have more than 164,000 customers across the country that have purchased over 135,000 construction licenses to build homes from plans marketed and/or designed by Plaintiffs.

30. At its peak in the late 1990s and early 2000s, Design Basics was earning more than \$4 Million annually from licensing revenues.

31. Plaintiffs have earned tens of millions of dollars in the last quarter century licensing their home plans to builders, homeowners, developers, lumberyards, home designers, and drafting service companies.

32. In order to make their licensing business successful, Design Basics has always worked hard to disseminate Plaintiffs' names and home designs as widely as possible.

33. Since 1990, Design Basics has published more than 180 home plan catalogs and other publications containing Plaintiffs' home designs and has circulated more than 4.2 million copies of those publications to builders, lumberyards, and other customers across the country, including to Defendant.

34. To get those publications directly in the hands of potential customers, like Defendant, Design Basics rented targeted lists from the National Association of Home Builders ("NAHB") of NAHB builder members, Dunn & Bradstreet, and American Business Information ("ABI"), now *InfoUSA*, which included the contact information of members of local home builders' associations and other home builders.

35. Design Basics (with the help of a mail-list managing company CAS and various printing and publishing companies) sent Plaintiffs' publications to everyone on those lists.

36. Design Basics has also placed Plaintiffs' copyrighted home designs in hundreds of other third-party publications, such as *Builder Magazine*.

37. Plaintiffs' home plans, plan catalogs, and other publications have also been prominently displayed at Carter Lumber's and Menard's combined 446 locations across the Midwest.

38. Design Basics has also distributed Plaintiffs' home plan publications as handouts at home shows, conventions, and trade shows across the country.

39. Within the last 20 years, Plaintiffs' home designs—including all four of the copyrighted designs listed in Paragraphs 60 and 61 of this Complaint—have become widespread and readily available on the internet, both on plan broker websites and on Design Basics' website, www.designbasics.com.

40. At least fourteen of the leading plan broker sites that have been around since at least the early 2000s advertise and sell all of the copyrighted designs listed in Paragraphs 60 and 61 of this Complaint, including on popular brokers' websites like www.CoolHousePlans.com, www.MonsterHousePlans.com, and www.ArchitecturalDesigns.com.

41. With respect to its own website, to maximize licensing revenue, Design Basics has tried to make it as easy as possible for a customer to find exactly the design it needs.

42. Design Basics used its own name for its URL, www.designbasics.com, so that a search for "Design Basics" on the internet will bring up Design Basics' website.

43. Since 1999, Design Basics has included its website address on the bottom of alternating pages of every one of its home plan publications described above.

44. Design Basics also added dynamic database search to its website in the late 1990s to make it easy for customers to sort through thousands of Plaintiffs' designs.

45. That search functionality allows users to search by a variety of criteria, including square footage, number of floors, number of bedrooms, design layouts, design footprints, themes, home styles, rooms, and other features and construction methods.

46. Using this search capability and the search criteria to winnow results, a customer of Plaintiffs can pull up in a matter of seconds any one of Plaintiffs' 2,800-plus designs to fit the customer's needs.

47. The customer can then call or click to order a construction license, construction drawings, and several other documents associated with the design.

48. Additionally, for no charge, a customer can print out a PDF containing the front elevation and floor plan artwork for each home design, including the four designs listed in Paragraphs 60 and 61 of this Complaint.

III. Plaintiffs suffer a precipitous decline in licensing revenue after making their plans widely available through the internet, requiring Design Basics to lay off most of its employees.

49. Because Design Basics' website made it easy for a customer to access all of Plaintiffs' home plans by size, number of floors, and a host of other criteria—and because it was much cheaper for Design Basics to maintain a website rather than printing and mailing millions of individual glossy and full-color plan catalogs and other publications—Design Basics discontinued the bulk of its mailing program somewhere between 2006 and 2008 and focused primarily on its website.

50. Design Basics has spent more than \$410,000 on capital improvements since 2009, including updating Design Basics' database system, purchasing and building two new websites, and performing search-engine optimization on its websites.

51. These digital efforts have led to millions of visits to Design Basics' websites since 2009.

52. Unfortunately, however, these digital efforts have not led to increased licensing revenue.

53. Instead, the opposite has happened: Plaintiffs have seen licensing revenue drop precipitously from around \$4 Million a year in 2004 to under \$1 Million per year starting in 2009 and continuing to the present day.

54. Corresponding with that massive drop in revenue was an equally massive drop in the number of licenses customers purchased from Plaintiffs.

55. As a result of this considerable decline in licensing revenue, Design Basics had to lay off more than 50% of its employees.

IV. Plaintiffs' discover massive piracy of their copyrighted home designs by a small number of builders, developers, lumberyards, home centers, home designers, and drafting service companies across the country.

56. With the ready availability of Plaintiffs' copyrighted designs both in print and on the internet, piracy of its home plans has been rampant, and Plaintiffs has identified numerous instances of theft of their home designs, including:

- A. a prominent lumberyard's employees admitting to copying Plaintiffs' works, acknowledging that it "[t]echnically . . . is illegal. But we have done it before" and "do it all the time[;]"
- B. employees of builders and lumberyards not even bothering to change the names of plans that the companies had stolen from Plaintiffs;
- C. draftsmen at a building supply company admitting to using photocopies of Plaintiffs' protected works to create derivatives and even acknowledging that such activity constituted copyright infringement; and
- D. photocopies of two Design Basics' plans in a drafter's "drawing file," each containing redline markings for suggested insignificant modifications, with the drafter testifying that his bosses had instructed him to copy Design Basics' plans.

57. Because of this rampant piracy, Plaintiffs have filed lawsuits to discourage theft and to protect their companies and employees, who rely on Plaintiffs’ intellectual property to make their livelihood.

58. Plaintiffs have sued several companies in Indiana, which historically has been one of Plaintiffs’ top-selling states in terms of home plan licenses.

V. Plaintiffs discover Defendant’s infringing activity.

59. In late-January 2016, Design Basics’ Director of Business Development, Paul Foresman, was conducting research related to infringing homes constructed by builders in the Schmidt Farms subdivision in Crown Point, Indiana, in connection with another lawsuit when Mr. Foresman discovered from public building records that Defendant constructed a home in that subdivision at 12776 Massachusetts Street from plans that appeared to have been copied from a Design Basics’ copyright-protected design. Foresman then viewed Defendant’s website, www.lifehousehomes.com, and discovered several homes and floor plans that appeared to have been copied from Plaintiffs’ copyright-protected home designs.

60. 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. 2408 – Crawford	VA 1-921-776 & 485-123
Plan No. 8618 – Nashua	VA 1-293-874 & 1-251-186
Plan No. 43038 – Tillamook	VA 1-289-266 & 1-291-186

61. PPI 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. 29079 – Wistrom	VA 1-239-675

62. The foregoing works described in Paragraphs 60 and 61 above will be referred to collectively as the “Copyrighted Works.” Genuine and authentic copies of the Copyrighted Works (architectural works and technical drawings) are attached hereto and incorporated as if fully stated herein as *Exhibits 1 through 4*.

63. The Copyrighted Works constitute original material that is copyrightable under federal law.

64. 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 60 and Exhibits 1 through 3 above.

65. PPI is currently, and at all relevant times has been, the sole owner of all right, title and interest in and to the work described in Paragraph 61 and Exhibit 4 above.

66. The Copyrighted Works were created from scratch by Plaintiffs. Excluding individual standard features as individual features, all of the elements and features, and selections, combinations, and arrangements of those elements and features of are original, non-standard, and protected by copyright law.

67. Defendant has 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, and in marketing, advertising, constructing, and selling homes built according to such designs.

68. Defendant has regularly and systematically infringed Plaintiffs’ copyrights and those of other designers and architects in original architectural works, and has induced others, including individual homeowners, contractors, developers, and other entities and individuals

engaged in the business of home building to infringe Plaintiffs' copyrights in their original architectural works, to the profit of Defendant and those entities, and to Plaintiffs' detriment.

69. Defendant has been actually aware of Plaintiffs and the works that Plaintiffs market. At all times material to this case, Defendant has had a reasonable opportunity to have viewed the Copyrighted Works.

70. Design Basics mailed plan catalogs and other publications containing the Copyrighted Works directly to Defendant, who then copied, built, advertised, and sold homes and related services from Defendant's infringing plans.

71. Defendant also had a reasonable possibility to access the Copyrighted Works because they were widely disseminated both in print and online, as described in detail above.

72. Defendant has infringed the copyrights in other original architectural works and technical drawings of Plaintiffs, the scope and breadth of which infringing activities will be ascertained during the course of further discovery.

73. Defendant has published, distributed, marketed, and advertised certain architectural designs for single family residential homes, each consisting of a floor plan and exterior elevations, that Defendant has identified and marketed under the following names, among others to be determined in discovery: The Adams, The Adams II, The Washington, and The Middleton.

74. Defendant has violated and continues to violate Plaintiffs' exclusive rights in 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, examples of which include:

- A. Defendant's "The Adams" (and any predecessors, copies, or derivatives of that model under the same name or different names) infringes Design Basics' Plan No. 2408 – Crawford (and any predecessor or derivative thereof). Defendant's The Adams is substantially and strikingly similar to Design Basics' Crawford plan as Defendant has copied the following non-exhaustive list of elements and features, and the selection, arrangement, and composition of elements and features of Design Basics' Crawford, all of which are original, non-standard, and protectable:
 - i. The overall look and feel of the design;
 - ii. The sizes and shapes of the rooms;
 - iii. The spatial relationship of the rooms to each other;
 - iv. The overall program of the design;
 - v. The size, including length, width, and height, as well as the arrangement and shapes of walls (angled, curved, and/or partial walls), mechanical chases, drop downs, windows and doors within the floor plan, and the relationships between and among these features;
 - vi. The arrangement and placement of closets and other storage type areas in the plan;
 - vii. The arrangement, placement, locations, and spatial relationships between and among toilets, showers/tubs, vanities, and lavatories in the bathrooms;
 - viii. Locations of entryways to home;
 - ix. The manner in which the traffic flows through the home;
 - x. The location, size, shape, and layout of the kitchen at the rear-right of the home adjacent to the breakfast nook and laundry room;
 - xi. The layout of the rooms on the first floor;
 - xii. The layout of the rooms on the second floor;
 - xiii. The location of the main entry at the left of the design next to the formal dining room;
 - xiv. The location, size, and shape of the garage at the front right of the home adjacent to the laundry room, powder bathroom, and formal dining room;
 - xv. The location, size, and shape of the powder bath between the laundry room, garage, dining room, and breakfast nook;
 - xvi. The location, shape, and size of the foyer next to the formal dining room leading to the U-shaped stairs to the second floor and great room;

- xvii. The location, shape, and size of the formal dining room at the front-center of the design between the foyer, great room, breakfast nook, and garage;
- xviii. The location and design of the U-shaped stairs to the second floor between the foyer and great room;
- xix. The location of the entry to the home from the garage;
- xx. The location, shape, and size of the great room at the rear left of the home adjacent to the U-shaped stairs to the second floor, formal dining room, and breakfast nook;
- xxi. The location of the breakfast nook at the rear-center of the home between the great room, formal dining room, and kitchen;
- xxii. The location, size, shape, and layout of the second-floor master suite at the rear-left of the home adjacent to the U-shaped stairs to the first floor and rear-right bedroom;
- xxiii. The design of the second-floor master suite with the master bedroom at the left of the design, master bath at the rear of the design, and walk-in closet between the master bath and bedroom hallway;
- xxiv. The locations, sizes, and shapes of bedrooms 2, 3, and 4 on the second floor;
- xxv. The locations and designs of the angled entrances to the right-side bedrooms;
- xxvi. The locations and designs of the closets to the right-side bedrooms, with the same angled walls;
- xxvii. The location of the entry to the master suite at the top of the U-shaped stairs;
- xxviii. The location and shape of the second floor hallway;
- xxix. The design of the open-to-below area on the second floor above the U-shaped stairs and foyer; and
- xxx. The location of the laundry room adjacent to the garage, kitchen, and powder bathroom.

- B. Defendant's "The Middleton" (and any predecessors, copies, or derivatives of that model under the same name or different names) infringes Design Basics' Plan No. 8618 – Nashua (and any predecessor or derivative thereof). Defendant's The Middleton is substantially and strikingly similar to Design Basics' Nashua plan as Defendant has copied the following non-exhaustive list of elements and features, and the selection, arrangement, and composition of elements and features of Design Basics' Nashua, all of which are original, non-standard, and protectable:
- i. The overall look and feel of the design;
 - ii. The sizes and shapes of the rooms;
 - iii. The spatial relationship of the rooms to each other;

- iv. The overall program of the design;
- v. The size, including length, width, and height, as well as the arrangement and shapes of walls (angled, curved, and/or partial walls), mechanical chases, drop downs, windows and doors within the floor plan, and the relationships between and among these features;
- vi. The front, rear, and side elevations of the plan;
- vii. Arrangements, locations, and spatial relationships between and among appliances, countertops, islands, and cabinets;
- viii. The arrangement and placement of closets and other storage type areas in the plan;
- ix. Locations of porches, entryways, patios, and front and rear or patio doors;
- x. The manner in which the traffic flows through the home;
- xi. The location, size, shape, and layout of the kitchen at the rear-right of the home adjacent to the breakfast nook and den, with the same location of appliances, island, and pantry, including the same angled door to the pantry;
- xii. The layout of the rooms on the first floor;
- xiii. The layout of the rooms on the second floor;
- xiv. The location, size, shape, and design of the front covered porch;
- xv. The location of the main entry at the left of the home between the stairs to the second floor and garage;
- xvi. The location, size, and shape of the garage at the front right of the home adjacent to the den, laundry room, mechanical chase to the second floor, and foyer;
- xvii. The location, size, and shape of the powder bath adjacent to the laundry room, foyer closet, family room, and breakfast nook, and across the hallway from the den;
- xviii. The location, shape, and size of the foyer between the garage and stairs to the second floor, leading to the family room;
- xix. The location of the mechanical chase to the second floor between the garage, foyer, laundry room, and foyer closet;
- xx. The location of the foyer closet between the mechanical chase to the second floor, laundry room, powder bathroom, and foyer;
- xxi. The location, shape, and size of the den at the right-center of the design adjacent to the kitchen, garage, and laundry room, across the hallway from the powder bathroom;
- xxii. The location of the stairs to the second floor at the left of the home adjacent to the foyer and family room;

- xxiii. The location, shape, and size of the family room at the rear-left of the home adjacent to the stairs to the second floor, powder bathroom, and breakfast nook;
 - xxiv. The location, shape, and size of the breakfast nook at the rear-center of the home adjacent to the family room, powder bathroom, and kitchen;
 - xxv. The location of the entryway to the home from the garage;
 - xxvi. The location, shape, size, and design of the second-floor master suite at the rear of the home above the breakfast nook and kitchen, including the walk-in closet at the rear right and the master bathroom at the right center of the design;
 - xxvii. The location of the entrance to the master suite at the top of the stairs from the first floor;
 - xxviii. The location of the entrance to the master walk-in closet;
 - xxix. The location and design of the angled entrance to the master bathroom;
 - xxx. The location, shape, size, and design of the second-floor hallway bathroom, with the same angled entrance caused by the shape of the angled hallway;
 - xxxi. The location and angled design of the second-floor hallway to bedrooms 2 and 3;
 - xxxii. The location and triangular design of the second-floor hallway linen closet across from the hallway bathroom;
 - xxxiii. The location of the entrances to bedrooms 2 and 3;
 - xxxiv. The locations, shapes, sizes, and designs of bedrooms 2 and 3, including the locations of closets;
 - xxxv. The design of the open-to-below area on the second floor above the foyer; and
 - xxxvi. The overall shape of the foundation and the foundation jogs.
- C. Defendant's The Washington (and any predecessors, copies, or derivatives of that model under the same name or different names) infringes Design Basics' Plan No. 43038 – Tillamook (and any predecessor or derivative thereof). Defendant's The Washington is substantially and strikingly similar to Design Basics' Tillamook plan as Defendant has copied the following non-exhaustive list of elements and features, and the selection, arrangement, and composition of elements and features of Design Basics' Tillamook, all of which are original, non-standard, and protectable:
- i. The overall look and feel of the design;
 - ii. The sizes and shapes of the rooms;
 - iii. The spatial relationship of the rooms to each other;
 - iv. The overall program of the design;

- v. The size, including length, width, and height, as well as the arrangement and shapes of walls (angled, curved, and/or partial walls), mechanical chases, drop downs, windows and doors within the floor plan, and the relationships between and among these features;
- vi. Arrangements, locations, and spatial relationships between and among appliances, countertops, and cabinets in the kitchen;
- vii. Locations of porches, entryways, patios, and front and rear or patio doors;
- viii. The manner in which the traffic flows through the home;
- ix. The location, size, shape, and layout of the kitchen at the rear-right of the home adjacent to the dining room and split-level family room, including the location of appliances and island;
 - x. The layout of the rooms on the first floor;
 - xi. The layout of the rooms on the second floor;
 - xii. The location of the main entrance to the home between the family room and garage;
- xiii. The location, size, and shape of the garage at the front left of the home on the same floor as the family room and adjacent to the foyer, laundry room, and hallway to the master suite;
- xiv. The location, size, layout, and shape of the powder bath off of the hallway to the master suite between the dining room, and master suite;
- xv. The location, shape, and size of the foyer a half-floor down from the dining room, kitchen, and master suite, between the garage and family room;
- xvi. The location of the mechanical chase at the rear right corner of the garage next to the stairs between the master suite hallway and second floors;
- xvii. The location, shape, size, and design of the family room at the right-front of the design on the same floor as the garage and adjacent to the foyer, dining room, and kitchen, including how the wall of the family room juts into the kitchen and dining room a half-floor above the family room;
- xviii. The location of the three sets of stairs: one connecting the foyer to the dining room, one connecting the master suite hallway to the second floor, and one connecting the foyer to the basement;
- xix. The location, shape, and size of the dining room at the rear-center of the home between the master suite and kitchen and a half-floor up from the foyer and family room;

- xx. The location of the entryway to the home from the garage by the stairs from the master suite hallway to the second floor;
- xxi. The location, shape, size, and design of the master suite a half-floor up from the foyer/family room at the rear left of the home, with the bedroom at the rear left, the master bathroom at the rear right, and the walk-in closet at the front right of the master suite;
- xxii. The location of the entrance to the master suite next to the entrance to the laundry room;
- xxiii. The location of the entrance to the master bathroom;
- xxiv. The location, shape, size, and layout of the second-floor hallway bathroom at the top of the stairs from the master suite hallway;
- xxv. The locations, sizes, shapes, and layouts of bedrooms 2 and 3 on the second floor, including the locations of the walk-in closets;
- xxvi. The locations of the entrances to bedrooms 2 and 3;
- xxvii. The location, shape, size, and design of the laundry room between the master suite and garage, including the layout of counters and appliances; and
- xxviii. The overall shape of the foundation and the foundation jogs.

D. Defendant's The Adams II (and any predecessors, copies, or derivatives of that model under the same name or different names) infringes PPI's Plan No. 29079 – Wistrom (and any predecessor or derivative thereof). Defendant's The Adams II is substantially and strikingly similar to PPI's Wistrom as Defendant has copied the following non-exhaustive list of elements and features, and the selection, arrangement, and composition of elements and features of PPI's Wistrom, all of which are original, non-standard, and protectable:

- i. The overall look and feel of the design;
- ii. The sizes and shapes of the rooms;
- iii. The spatial relationship of the rooms to each other;
- iv. The overall program of the design;
- v. The size, including length, width, and height, as well as the arrangement and shapes of walls (angled, curved, and/or partial walls), drop downs, windows and doors within the floor plan, and the relationships between and among these features;
- vi. The front, rear, and side elevations of the plan;
- vii. The arrangement and placement of closets and other storage type areas in the plan;

- viii. The arrangement, locations, and spatial relationships between and among toilets, showers/tubs, vanities, and lavatories in the bathrooms;
- ix. Locations of porches, entryways, and patios;
- x. The manner in which the traffic flows through the home;
- xi. The location, size, shape, and design of the kitchen at the middle-left of the home between the breakfast nook, family room, and rear hallway, including the locations of all appliances;
- xii. The layout of the rooms on the first floor;
- xiii. The layout of the rooms on the second floor;
- xiv. The location, size, and shape of the front covered porch at the right of the home next to the garage;
- xv. The location of the main entry at the right of the home next to the garage;
- xvi. The location of the garage at the front-left of the home, adjacent to the foyer, powder bathroom, and rear hallway;
- xvii. The location, shape, and layout of the powder bath between the garage, stairs to the second floor, and foyer;
- xviii. The location, shape, and size of the foyer at the front right of the design leading to the stairs to the second floor and family room;
- xix. The location and design of the stairs to the second floor between the powder bathroom and family room;
- xx. The location of the entry to the home from the garage;
- xxi. The location, shape, and size of the family room at the rear-right of the home adjacent to the stairs to the second floor, breakfast nook, and kitchen;
- xxii. The location, shape, and size of the breakfast nook at the rear-left of the design adjacent to the family room and kitchen;
- xxiii. The location of the foyer closet between the foyer, garage, and powder bathroom;
- xxiv. The location, size, shape, and layout of the second-floor master suite, with the master bedroom at the rear-right, walk-in closet at the rear-center, and master bathroom at the rear-left;
- xxv. The location of the entrance to the master suite at the right of the top of the stairs from the first floor;
- xxvi. The location of the entrance to the master walk-in closet;
- xxvii. The location of the entrance to the master bathroom;
- xxviii. The location, size, shape, and layout of the second floor hallway bathroom between the master bathroom and the front-left bedroom;

- xxix. The locations, sizes, and shapes of bedrooms 2 and 3 on the second floor, including how the front left bedroom extends beyond the front right bedroom at the front of the home;
- xxx. The location of the closet for the front left bedroom;
- xxxi. The location and shape of the second-floor hallway;
- xxxii. The locations of the entrances to the second-floor bedrooms;
- xxxiii. The second-floor open-to-below area above the stairs and foyer; and
- xxxiv. The overall shape of the foundation and the foundation jogs.

75. Defendant has advertised, marketed, constructed, and sold homes using plans that are virtually identical to the Copyrighted Works, including those described in Paragraph 74 above.

76. Defendant's infringing designs include dozens of elements and features, and the selection, arrangement, and composition of those elements and features, that are directly copied from the Copyrighted Works, including many of the non-standard elements and features, and the selection, arrangement, and composition of those elements and features described in Paragraph 74 above.

77. Defendant's infringing home plans are so similar to the Copyrighted Works as to make it highly probable that Defendant's plans are copies of the Copyrighted Works, which precludes any realistic possibility that Defendant's plans were independently created.

78. Defendant's infringing plans and the Copyrighted Works are unlike anything that is in the public domain.

79. The Copyrighted Works preexisted Defendant's infringing plans.

80. The similarities between the Copyrighted Works and Defendant's infringing plans include many non-standard and original elements and features, and the selection, arrangement, and composition of those elements and features, including those described in Paragraph 74 above, that are not found in many other home designs.

81. Defendant copied the Copyrighted Works without permission or license from Plaintiffs, in violation of Plaintiffs' exclusive copyrights in said works. Defendant also removed Plaintiffs' copyright management information from the Copyrighted Works, including but not limited to (1) Design Basics' "© design basics inc." that is affixed to Design Basics' architectural designs, (2) PPI's "© plan pros inc." that is affixed to PPI's architectural designs, and (2) the copyright notices affixed to the technical drawings found in Exhibits 1 through 4. Affixing copyright notices like these is common practice in the home design and home building industries to prevent the unlawful distribution, use, and copying of designers' and drafters' copyright-protected architectural works and technical drawings. Plaintiffs routinely affix copyright notices to their works to prevent the inducement, facilitation, and/or concealment of infringement of Plaintiffs' copyrighted works. Once the copyright notices are removed from Plaintiffs' works, as Defendant has done here, persons who later view the works are unlikely to appreciate or understand the identity of the rightful owner and/or author of the works, making it more likely that the works will be unlawfully distributed, modified, copied, sold, and otherwise used without Plaintiffs' permission or license. Defendant's removal of the copyright management information substantially increases the likelihood of illegal distribution, modification, copying, selling, and use of the Copyrighted Works. Plaintiffs have discovered many instances in which copyright notices have been removed from Plaintiffs' plans and used, modified, and shared by several builders all constructing infringing homes in the same neighborhoods, which appears to have been what Defendant did.

82. Defendant has had access to Plaintiffs' home designs as they received and viewed copies of Plaintiffs' plan catalogs and other publications, which included copies of the Copyrighted Works.

Cause of Action for Non-Willful Copyright Infringement
Count 1

83. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

84. Defendant, without knowledge or intent, infringed Plaintiffs' copyrights in one or more of the works identified and described above, by scanning, copying, and/or reproducing unauthorized copies thereof, in violation of 17 U.S.C. §106(1), and on information and belief, has done so with others of Plaintiffs' works which are as yet undiscovered.

85. Defendant's infringing plans are strikingly similar to the Copyrighted Works.

86. Defendant had access to the Copyrighted Works, as described in detail above.

87. Defendant's infringing plans are substantially and/or strikingly similar to the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

88. Defendant's infringing plans are the result of very close copying of the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

Count 2

89. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

90. Defendant, without knowledge or intent, infringed Plaintiffs' copyrights in one or more of the works identified and described above, by publicly displaying, on web site(s) and elsewhere, for purposes of advertising and marketing, unauthorized copies and/or or derivatives thereof, in violation of 17 U.S.C. §106(5), and on information and belief, has done so with others of Plaintiffs' works which are as yet undiscovered.

91. Defendant's infringing plans are strikingly similar to the Copyrighted Works.

92. Defendant had access to the Copyrighted Works, as described in detail above.

93. Defendant's infringing plans are substantially and/or strikingly similar to the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

94. Defendant's infringing plans are the result of very close copying of the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

Count 3

95. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

96. Defendant, without knowledge or intent, infringed Plaintiffs' copyrights in one or more of the works identified and described above, by creating derivatives therefrom, in violation of 17 U.S.C. §106(2), and on information and belief, has done so with others of Plaintiffs' works which are as yet undiscovered.

97. Defendant's infringing plans are strikingly similar to the Copyrighted Works.

98. Defendant had access to the Copyrighted Works, as described in detail above.

99. Defendant's infringing plans are substantially and/or strikingly similar to the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

100. Defendant's infringing plans are the result of very close copying of the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

Count 4

101. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

102. Defendant, without knowledge or intent, infringed Plaintiffs' copyrights in one or more of the works identified and described above, by inducing others to build one or more houses based upon copies or derivatives of said works, in violation of 17 U.S.C. §106(1), and on information and belief, has done so with others of Plaintiffs' works which are as yet undiscovered.

103. Defendant's infringing plans are strikingly similar to the Copyrighted Works.

104. Defendant had access to the Copyrighted Works, as described in detail above.

105. Defendant's infringing plans are substantially and/or strikingly similar to the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

106. Defendant's infringing plans are the result of very close copying of the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

Alternative Causes of Action for Willful Copyright Infringement
Count 5

107. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

108. Alternatively, Defendant willfully infringed Plaintiffs' copyrights in one or more of the works identified and described above, by scanning, copying, and/or reproducing unauthorized copies thereof, in violation of 17 U.S.C. §106(1), and on information and belief, has done so with others of Plaintiffs' works which are as yet undiscovered.

109. Defendant's infringing plans are strikingly similar to the Copyrighted Works.

110. Defendant had access to the Copyrighted Works, as described in detail above.

111. Defendant's infringing plans are substantially and/or strikingly similar to the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

112. Defendant's infringing plans are the result of very close copying of the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

Count 6

113. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

114. Alternatively, Defendant willfully infringed Plaintiffs' copyrights in one or more of the works identified and described above, by publicly displaying, on its web site(s) and elsewhere, for purposes of advertising and marketing, unauthorized copies or derivatives thereof, in violation of 17 U.S.C. §106(5), and on information and belief, has done so with others of Plaintiffs' works which are as yet undiscovered.

115. Defendant's infringing plans are strikingly similar to the Copyrighted Works.

116. Defendant had access to the Copyrighted Works, as described in detail above.

117. Defendant's infringing plans are substantially and/or strikingly similar to the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

118. Defendant's infringing plans are the result of very close copying of the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

Count 7

119. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

120. Alternatively, Defendant willfully infringed Plaintiffs' copyrights in one or more of the works identified and described above, by creating derivatives there from in violation of 17 U.S.C. §106(2), and on information and belief, has done so with others of Plaintiffs' works which are as yet undiscovered.

121. Defendant's infringing plans are strikingly similar to the Copyrighted Works.

122. Defendant had access to the Copyrighted Works, as described in detail above.

123. Defendant's infringing plans are substantially and/or strikingly similar to the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

124. Defendant's infringing plans are the result of very close copying of the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

Count 8

125. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

126. Alternatively, Defendant willfully infringed Plaintiffs' copyrights in one or more of the works identified and described above, by inducing others to build one or more houses based

upon copies or derivatives of said works, in violation of 17 U.S.C. §106(1), and on information and belief, has done so with others of Plaintiffs' works which are as yet undiscovered.

127. Defendant's infringing plans are strikingly similar to the Copyrighted Works.

128. Defendant had access to the Copyrighted Works, as described in detail above.

129. Defendant's infringing plans are substantially and/or strikingly similar to the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

130. Defendant's infringing plans are the result of very close copying of the Copyrighted Works, including the copying of original, non-standard features and elements, and the selection, arrangement, and composition of those feature and elements, that are found in the Copyrighted Works and Defendant's infringing designs.

Violations of DMCA § 1202

Count 9

131. Plaintiffs re-allege and incorporate, as if fully set forth herein, Paragraphs 1 through 82 above.

132. Additionally and alternatively, Defendant violated § 1202 *et seq.* of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202.

133. In creating the floor plans and elevations identified above, Defendant intentionally removed and/or omitted Plaintiffs' copyright management information, or had them removed and/or omitted from copies of Plaintiffs' works. Defendant removed Plaintiffs' copyright management information from the body or area around the Copyrighted Works.

134. Defendant thereafter distributed copies and/or derivatives of such works, knowing that such copyright management information had been removed and/or omitted without authorization.

135. At the time Defendant removed and/or omitted Plaintiffs' copyright management information from copies of the works, and at the time Defendant distributed copies of the works from which the copyright management information had been removed and/or omitted, Defendant knew or had reasonable grounds to know that such behavior would induce, enable, facilitate, and/or conceal the infringement of Plaintiffs' copyrighted works.

136. Plaintiffs are entitled to and seek to recover from Defendant statutory damages not exceeding \$25,000 for each act committed in violation of Plaintiffs' rights under 17 U.S.C. § 1202, *et seq.*

137. Pursuant to 17 U.S.C. § 1203(b)(5), Plaintiffs are entitled to and seek to recover Plaintiffs' reasonable attorneys' fees.

Jury Demand

138. Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs respectfully demand a trial by jury of all issues so triable.

WHEREFORE, Design Basics and PPI demand that judgment be entered in their favor and against Defendant as follows:

- a. For an accounting by Defendant of its activities in connection with its infringements of Plaintiffs' copyrights in and to the above-described works, as well as of the gross profits and revenue attributable to its infringement(s);
- b. For Plaintiffs' actual damages, in an amount to be determined at trial;

- c. For Defendant's direct and indirect profits attributable to its infringements, including but not limited to those direct and indirect profits derived from the construction, advertising, promotion, marketing, and sale of infringing structures, in an amount to be determined at trial;
- d. In the alternative and at Plaintiffs' option, post-verdict, Plaintiffs seek an award of statutory damages in lieu of actual damages for the infringement of any one or more of Plaintiffs' works, described above, in an amount to be determined at trial;
- e. Plaintiffs' actual attorney fees, court costs, taxable costs, and the cost associated with the retention, preparation and testimony of expert witnesses;
- f. For both temporary and permanent injunctions barring Defendant, its agents, employees and/or servants, from infringing Plaintiffs' copyrights in any manner whatsoever, including the advertising, marketing, construction, and sale of infringing structures, and further barring Defendant from publishing through any visual media, and from selling, marketing or otherwise distributing copies of Plaintiffs' plans and/or derivatives thereof;
- g. An order requiring Defendant to produce, for impounding during the pendency of this action and for destruction thereafter, all house plans and elevations which infringe Plaintiffs' copyrights, including all photographs, blueprints, film negatives, magnetic tapes, digitally scanned and/or stored images, and all machines and devices by which such infringing copies may be reproduced, viewed or disseminated, which are in the possession of, or under the direct or indirect control of Defendant;

- h. An award of statutory damages for each and every violation by Defendant of the DMCA, 17 U.S.C. § 1202, *et seq.*;
- i. For such other relief as the Court determines to be just and equitable.

Respectfully submitted,

/s/ Sean J. Quinn

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