

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



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DESIGN BASICS, LLC,

Plaintiff,

vs.

BLUE RIBBON BUILDERS INC

Defendant.

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Case No.: 3:18-cv-01004

**JURY DEMANDED**

**COMPLAINT**

Design Basics, LLC (“Design Basics” or “Plaintiff”), files this Complaint against Blue Ribbon Builders Inc (“Blue Ribbon” or “Defendant”), 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. Blue Ribbon is a corporation organized under the laws of the State of Indiana with its principal place of business in St. Joseph County, Indiana. Blue Ribbons may be served through its registered agent, Michael Rinehart, 52327 Lilac Road, South Bend, Indiana 46628.

### **Jurisdiction and Venue**

4. 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.*

5. 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. Design Basics has provided, and continues to provide, a multitude of services, including licensing and marketing home designs to builders, home centers, home designers, and drafting services.**

6. Design Basics is a building design firm that creates, markets, and licenses 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 owns copyrights protecting the architectural works and technical drawings it has created.

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

8. Design Basics has never purchased copyrights in works created by others and then sought out infringers to sue.

9. Design Basics is a long-standing, legitimate, and successful home design firm.

10. In recent years, Design Basics has, unfortunately, had to pursue multiple lawsuits to protect its valuable intellectual property.

11. Design Basics does not issue construction licenses for simple floor plans, but rather complete sets of construction drawings that can be modified to meet the customer's design needs.

12. Design Basics currently offers single-build licenses for any home design in its 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.

13. Since 2009, Design Basics has sold and issued more than 9200 construction licenses for the home plans in its collection, including more than 2,500 licenses in the last three years alone, for a total of over \$6 Million in licensing revenue.

14. For just the five (5) copyrighted home designs listed in Paragraph 57 of this Complaint, Design Basics has earned more than \$54,957 in licensing revenue since 2009.

15. Design Basics has always designed their home plans from scratch, including those listed in Paragraph 57 of this Complaint.

16. 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.

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

18. In creating their home designs from scratch, Design Basics' 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.

19. Design Basics has won numerous awards for its home designs.

20. But, in the ordinary course of its business, Design Basics does far more than simply creating and licensing home designs.

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

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

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

24. Design Basics also offers plan alteration, custom home design, and professional marketing and publishing services to its builder, developer, lumberyard, home center, home design, and drafting service customers.

**II. Over the past 30 years, Design Basics has made tens of millions of dollars licensing its plans to customers across the country.**

25. Design Basics has been extremely successful in marketing and licensing its home designs to builders.

26. Design Basics has 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 Design Basics.

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

28. Design Basics has earned tens of millions of dollars in the last quarter century licensing its home plans to builders, homeowners, developers, lumberyards, home designers, and drafting service companies.

29. In order to make its licensing business successful, Design Basics has always worked hard to disseminate its name and home designs as widely as possible.

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

31. 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.

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

33. Design Basics has also placed its copyrighted home designs in hundreds of other third-party publications, such as Builder Magazine.

34. Design Basics' 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.

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

36. Within the last 20 years, Design Basics' home designs—including all five (5) of the copyrighted designs listed in Paragraph 57 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](http://www.designbasics.com).

37. 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 Paragraph 57 of this Complaint, including on brokers' websites like [www.CoolHousePlans.com](http://www.CoolHousePlans.com), [www.MonsterHousePlans.com](http://www.MonsterHousePlans.com), and [www.ArchitecturalDesigns.com](http://www.ArchitecturalDesigns.com).

38. 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.

39. Design Basics used its own name for its URL, [www.designbasics.com](http://www.designbasics.com), so that a search for "Design Basics" on the internet will bring up Design Basics' website.

40. 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.

41. 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 Design Basics' designs.

42. 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.

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

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

45. 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 five (5) designs listed in Paragraph 57 of this Complaint.

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

46. Because Design Basics' website made it easy for a customer to access all of its 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.

47. 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.

48. These digital efforts have led to millions of visits to Design Basics' website since 2009.

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

50. Instead, the opposite has happened: Design Basics has 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.

51. Corresponding with that massive drop in revenue was an equally massive drop in the number of licenses customers purchased from Design Basics.

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

**IV. Design Basics discovers massive piracy of its copyrighted home designs by a small number of builders, developers, lumberyards, home centers, home designers, and drafting service companies across the country.**

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

- A. a prominent lumberyard's employees admitting to copying Design Basics' 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 Design Basics;
- C. draftsmen at a building supply company admitting to using photocopies of Design Basics' 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.

54. Because of this rampant piracy, Design Basics has filed lawsuits to discourage theft and to protect their companies and employees, who rely on Design Basics' intellectual property to make their livelihood.

55. Design Basics has sued several companies in Indiana, which historically has been one of Design Basics' top-selling states in terms of home plan licenses.

**V. Design Basics discovers Defendant's infringing activity.**

56. In late-December 2015, Design Basics' Director of Business Development, Paul Foresman, was conducting research related to infringing homes constructed by builders in the Bridlewood subdivision near South Bend, Indiana, in connection with another lawsuit when Mr. Foresman discovered from public building records and documents produced in that lawsuit that Blue Ribbon constructed several homes in that subdivision from plans that appeared to have been copied from Design Basics' copyright-protected designs.

57. 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. 8096 – Pine Ridge	VA 729-287 & 729-256
Plan No. 2761 – Mayberry	VA 1-926-488 & 513-792
Plan No. 1752 – Lancaster	VA 371-204 & 756-041
Plan No. 8053 – Stevens Woods	VA 729-267 & 729-256
Plan No. 2638 – Linden	VA 1-921-734 & 540-030

58. The foregoing works described in Paragraph 57 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 5*.

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

60. 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 57 and Exhibits 1 through 5 above.

61. The Copyrighted Works were created from scratch by Design Basics. 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.

62. 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, and in marketing, advertising, constructing, and selling homes built according to such designs.

63. Defendant has regularly and systematically infringed Design Basics' 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 Design Basics' copyrights in their original architectural works, to the profit of Defendant and those entities, and to Design Basics' detriment.

64. Defendant has been actually aware of Design Basics and the works that Design Basics markets. At all times material to this case, Defendant has had a reasonable opportunity to have viewed the Copyrighted Works.

65. 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.

66. 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.

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

68. 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 at the following locations, among others to be determined in discovery: Bridlewood Lots 1, 42, 45, 50, 59, 60, 62, 65, 67, 90, 93, 100, 104, 106, 114, 117, 119, 120, 121, 124, 128, 134, 138, 144, 146, 147, 148, 159, 170, 180, 182, 185, 215, 217, 219, and 232 in Granger, Indiana; Chicago Trails Lots 13, 14, 16, 17, 18, 22,

24, 23, and 35 in Edwardsburg, Michigan; Harris Crossing Lots 111 and 122 in Granger, Indiana; Nature's Gate Lot 153 in South Bend, Indiana; Northshore Landing Lots 1 and 2 in Elkhart, Indiana; Royal Oaks Lots 4, 44, and 98 in South Bend, Indiana; and Woods Trail Lots 1, 5, 9, 10, 11, and 20 in Granger, Indiana.

69. Defendant has violated and continues to violate Design Basics' 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 plans used to advertise and construct the homes located at Bridlewood Lots 1, 45, 62, 67, 90, 106, 117, 124, 138, 148, 159, 170, and 185, and Chicago Trails Lots 13, 16, 22, and 23 (and any predecessors, copies, or derivatives of those models under the same names or different names) infringe Design Basics' Plan No. 8096 – Pine Ridge (and any predecessor or derivative thereof). Defendant's plans are substantially and strikingly similar to Design Basics' Pine Ridge 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' Pine Ridge, 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, flue chases, fireplaces, 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, cabinets, and pantry in the kitchen;
  - viii. The arrangement and placement of closets and other storage type areas in the plan;

- ix. The arrangement, placement, locations, and spatial relationships between and among toilets, showers/tubs, vanities, and lavatories in the bathrooms;
- x. Locations of porches, entryways, patios, and front and rear or patio doors;
- xi. The manner in which the traffic flows through the home;
- xii. The location, design, and layout of the kitchen;
- xiii. The layout of the rooms on the first floor;
- xiv. The layout of the rooms on the second floor;
- xv. The location, size, and shape of the front covered stoop, between the formal dining room and first-floor master suite;
- xvi. The location of the main entry, between the formal dining room and first-floor master suite;
- xvii. The location, size, and shape of the garage at the front right of the home, adjacent to the formal dining room and laundry room;
- xviii. The location of the powder bath off of the great room at the entrance to the master suite;
- xix. The location, shape, and size of the foyer between the formal dining room and master suite leading to the stairs to the second floor and great room;
- xx. The location, shape, and size of the formal dining room at the front center of the design adjacent to the foyer, garage, and stairs to the second floor;
- xxi. The location and design of the stairs to the second floor between the formal dining room and the great room;
- xxii. The location of the entry to the home from the garage;
- xxiii. The location, shape, and size of the great room at the rear center of the home adjacent to the stairs to the second floor, master suite, kitchen, and breakfast nook;
- xxiv. The location, shape, and size of the breakfast nook at the rear-right of the design adjacent to the great room and kitchen;
- xxv. The location, size, and shape of the first-floor master suite at the left of the design adjacent to the great room, powder bathroom, and foyer;
- xxvi. The locations, sizes, and shapes of bedrooms 2 and 3 on the second floor, including the locations of the bedroom closets, and the same offset front walls of the bedrooms at the front of the home;
- xxvii. The location and shape of the second floor hallway;
- xxviii. The locations of the entrances to the second-floor bedrooms;

- xxix. The location, shape, size, and layout of the second-floor bathroom next to bedroom 3;
  - xxx. The location, shape, size, and layout of the laundry room adjacent to the garage and kitchen;
  - xxxi. The location of the second-floor linen closet at the top of the stairs;
  - xxxii. The location of the entrance to the basement stairs across from the kitchen and laundry room; and
  - xxxiii. The overall shape of the foundation and the foundation jogs.
- B. Defendant's plans used to advertise and construct the homes located at Bridlewood Lots 50, 93, 100, 104, 120, 121, 128, 134, 144, 146, 180, 182, 215, 217, 219, and 232, Chicago Trails Lots 14, 17, 18, 24, and 35, Harris Crossing Lot 122, Northshore Landing Lot 1, Royal Oaks Lots 4, 44, and 98, and Woods Trail Lots 1, 5, 9, 10, 11, and 20 (and any predecessors, copies, or derivatives of those models under the same names or different names) infringe Design Basics' Plan No. 2761 – Mayberry (and any predecessor or derivative thereof). Defendant's plans are substantially and strikingly similar to Design Basics' Mayberry 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' Mayberry, 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, flue chases, fireplaces, 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, placement, locations, and spatial relationships between and among toilets, showers/tubs, vanities, and lavatories in the bathrooms;
  - ix. Locations of porches, entryways, patios, and front patio door;
  - x. The manner in which the traffic flows through the home;
  - xi. The location, size, and shape of the kitchen at the right of the design between the garage, breakfast nook, and great room;

- xii. The layout of the rooms on the first floor;
  - xiii. The location, size, and shape of the front covered stoop between the garage and bedroom 2;
  - xiv. The location of the main entry to the home between the garage and bedroom 2;
  - xv. The location, size, and shape of the 2-car garage at the front right of the design adjacent to the kitchen and foyer;
  - xvi. The location, size, shape, and layout of the bathroom for bedrooms 2 and 3 between the master suite and bedroom 3 on the left of the design;
  - xvii. The location, shape, and size of the foyer between the garage and bedroom 2 leading to the stairs to the basement, great room, and bedroom hallway;
  - xviii. The location and design of the stairs to the basement between the great room, foyer, garage, and kitchen;
  - xix. The location, shape, and size of the great room at the rear center of the home between the stairs to the basement, master bathroom, breakfast nook, and kitchen;
  - xx. The location and shape of the breakfast nook at the rear-right of the home adjacent to the great room and kitchen;
  - xxi. The location, size, shape, and layout of the master suite at the rear-left of the design adjacent to the great room, bedroom hallway, and bathroom for bedrooms 2 and 3;
  - xxii. The design of the master suite with the master bedroom at the rear-left corner of the design, with the master bathroom at the rear-center of the home between the great room and master bedroom, and the walk-in closet at the rear-center of the home between the master bedroom, master bathroom, great room, and bedroom hallway;
  - xxiii. The locations, sizes, and shapes of bedrooms 2 and 3 at the front of the home, including the locations of the closets, and the same offset walls at the front of the home;
  - xxiv. The location of the entry to the bedroom hallway across from the stairs to the basement;
  - xxv. The location and shape of the bedroom hallway, including the location of the hallway linen closet;
  - xxvi. The locations of the entrances to bedrooms 2 and 3 and the master suite; and
  - xxvii. The overall shape of the foundation and the foundation jogs.
- C. Defendant's plans used to advertise and construct the homes located at Bridlewood Lots 59, 60, 114, 119, and 147 (and any predecessors, copies, or derivatives of those models under the same names or different names) infringe Design Basics' Plan No. 1752 – Lancaster (and any predecessor

or derivative thereof). Defendant's plans are substantially and strikingly similar to Design Basics' Lancaster 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' Lancaster, 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 in the kitchen;
- 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-left of the home adjacent to the breakfast nook, powder bathroom, and laundry room;
- xii. The layout of the rooms on the first floor;
- xiii. The location, size, and shape of the L-shaped, front covered porch;
- xiv. The location of the main entry at the right of the home between the foyer closet and flex room;
- xv. The location, size, and shape of the garage at the front left of the home adjacent to the laundry room, powder bathroom, and formal dining room;
- xvi. The location, size, and shape of the powder bath between the laundry room, garage, kitchen, formal dining room, and breakfast nook;
- xvii. The location, shape, and size of the foyer between the formal dining room and foyer closet, leading to the U-shaped stairs to the second floor and great room;
- xviii. The location, shape, and size of the formal dining room at the front-center of the design adjacent to the foyer, stairs to the second floor, breakfast nook, and garage;



- xix. The location and U-shaped design of the stairs to the second floor between the foyer closet and the great room;
- xx. The location of the entry to the home from the garage;
- xxi. The location, shape, and size of the great room at the rear-right of the home adjacent to the stairs to the second floor, formal dining room, and breakfast nook;
- xxii. The location, shape, and size of the breakfast nook at the rear-center of the home adjacent to the great room, powder bathroom, and kitchen, with the same bay window;
- xxiii. The location of the great room fireplace on the right wall;
- xxiv. The locations, sizes, and shapes of bedrooms 2, 3, and 4 on the second floor;
- xxv. The location of the entry to the master suite between bedroom 2 and the second floor hallway bathroom;
- xxvi. The location and shape of the first floor hallway;
- xxvii. The location and shape of the second floor hallway;
- xxviii. The locations of the entrances to the second-floor bedrooms;
- xxix. The location, shape, and size of the second-floor hallway bathroom;
- xxx. The design of the open-to-below area on the second floor above the foyer;
- xxxi. The location of the second-floor bedroom closets
- xxxii. The location of the second-floor linen closet across the hall from the hallway bathroom;
- xxxiii. The same angled entrances to the rear bedrooms on the second floor, with the same angled walls in the closets to those bedrooms; and
- xxxiv. The overall shape of the foundation and the foundation jogs.

D. Defendant's plans used to advertise and construct the homes located at Bridlewood Lot 65 and Harris Crossing Lot 111 (and any predecessors, copies, or derivatives of those models under the same names or different names) infringe Design Basics' Plan No. 8053 – Stevens Woods (and any predecessor or derivative thereof). Defendant's plans are substantially and strikingly similar to Design Basics' Stevens Woods 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' Stevens Woods, 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, flue chases, fireplaces, 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, cabinets, and pantry in the kitchen;
- viii. The arrangement and placement of closets and other storage type areas in the plan;
- ix. The arrangement, placement, locations, and spatial relationships between and among toilets, showers/tubs, vanities, and lavatories in the bathrooms;
- x. Locations of porches, entryways, patios, and front and rear or patio doors;
- xi. The manner in which the traffic flows through the home;
- xii. The location, size, and shape of the kitchen between the laundry room, breakfast nook, and great room;
- xiii. The layout of the rooms on the first floor;
- xiv. The layout of the rooms on the second floor;
- xv. The location, size, and shape of the front covered porch, between the formal dining room and first-floor master suite;
- xvi. The location of the main entry, between the formal dining room and first-floor master suite;
- xvii. The location, size, and shape of the garage at the front right of the home, adjacent to the formal dining room and laundry room;
- xviii. The location of the powder bath off of the great room at the entrance to the master suite;
- xix. The location, shape, and size of the foyer between the formal dining room and master suite leading to the stairs to the second floor and great room;
- xx. The location, shape, and size of the formal dining room at the front center of the design adjacent to the foyer, garage, and stairs to the second floor;
- xxi. The location and design of the stairs to the second floor between the formal dining room and the great room;
- xxii. The location of the entry to the home from the garage;
- xxiii. The location, shape, and size of the great room at the rear center of the home adjacent to the stairs to the second floor, master suite, kitchen, and breakfast nook;
- xxiv. The location of the great room fireplace at the rear of the home;

- xxv. The location, shape, and size of the breakfast nook at the rear-right of the design adjacent to the great room and kitchen;
  - xxvi. The location, size, and shape of the first-floor master suite at the left of the design adjacent to the great room, powder bathroom, and foyer;
  - xxvii. The locations, sizes, and shapes of bedrooms 2, 3, and 4 on the second floor, including the locations of the bedroom closets, and the same offset front walls of the bedrooms at the front of the home;
  - xxviii. The location and shape of the second floor hallway;
  - xxix. The locations of the entrances to the second-floor bedrooms;
  - xxx. The location, shape, size, and layout of the second-floor bathroom between the bedrooms on the right side of the design;
  - xxxi. The location, shape, size, and layout of the laundry room adjacent to the garage and kitchen;
  - xxxii. The location of the entrance to the basement stairs across from the kitchen and laundry room; and
  - xxxiii. The overall shape of the foundation and the foundation jogs.
- E. Defendant's plans used to advertise and construct the home located at Nature's Gate Lot 153 (and any predecessors, copies, or derivatives of those models under the same names or different names) infringe Design Basics' Plan No. 2638 – Linden (and any predecessor or derivative thereof). Defendant's plans are substantially and strikingly similar to Design Basics' Linden 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' Linden, 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, flue chases, fireplaces, 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, placement, locations, and spatial relationships between and among toilets, showers/tubs, vanities, and lavatories in the bathrooms;
- 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 laundry room;
- 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;
- xv. The location of the main entry to the home between the parlor and formal dining room;
- xvi. The location, size, and shape of the garage at the front right of the home adjacent to the laundry room and formal dining room;
- xvii. The location, shape, and size of the L-shaped foyer between the formal dining room and parlor, leading to the stairs to the second floor, parlor, and great room;
- xviii. The location, shape, and size of the formal dining room at the front-center of the design adjacent to the foyer, stairs to the second floor, breakfast nook, and garage;
- xix. The location of the stairs to the second floor between the formal dining room, parlor, family room, and breakfast nook;
- 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-left of the home adjacent to the stairs to the second floor and breakfast nook;
- xxii. The location and size of the breakfast nook at the rear-center of the home adjacent to the family room, kitchen, stairs to the second floor, and formal dining room;
- xxiii. The location of the family room fireplace on the left wall;
- xxiv. The location, size, and shape of the second-floor master suite at the right of the home above the kitchen and garage;
- xxv. The locations, sizes, and shapes of bedrooms 2, 3, and 4 on the second floor;
- xxvi. The location of the entry to the master suite between bedroom 4 and the stairs;
- xxvii. The location and shape of the second floor hallway;
- xxviii. The locations of the entrances to the second-floor bedrooms;

- xxix. The location, shape, size, and layout of the second-floor hallway bathroom at the left of the design between bedrooms 2 and 3;
- xxx. The design of the open-to-below area on the second floor above the foyer;
- xxxi. The location of the second-floor bedroom closets;
- xxxii. The location of the second-floor linen closet across from bedroom 4 at the entrance to the master suite;
- xxxiii. The location, shape, size, and design of the first-floor parlor with the same angled entrance from the foyer/family room
- xxxiv. The location, shape, and size of the master bedroom at the rear right of the home next to bedroom 4;
- xxxv. The location of the master walk-in closet at the front right of the design;
- xxxvi. The location, shape and size of the master bathroom between the walk-in closet and stairs; and
- xxxvii. The overall shape of the foundation and the foundation jogs.

70. Defendant has advertised, marketed, constructed, and sold homes using plans that are virtually identical to the Copyrighted Works, including those described in Paragraph 69 above.

71. 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 69 above.

72. 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.

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

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

75. 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 69 above, that are not found in many other home designs.

76. Defendant copied the Copyrighted Works without permission or license from Design Basics, in violation of Design Basics' exclusive copyrights in said works. Defendant also removed Design Basics' 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, and (2) the copyright notices affixed to the technical drawings found in Exhibits 1 through 5. 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. Design Basics routinely affixes copyright notices to its works to prevent the inducement, facilitation, and/or concealment of infringement of Design Basics' copyrighted works. Once the copyright notices are removed from Design Basics' 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 Design Basics' 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. Design Basics has discovered many instances in which copyright notices have been removed from Design Basics'

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.

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

**Cause of Action for Non-Willful Copyright Infringement**  
**Count 1**

78. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.

79. Defendant, without knowledge or intent, infringed Design Basics' 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 Design Basics' works which are as yet undiscovered.

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

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

82. 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.

83. 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**

84. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.

85. Defendant, without knowledge or intent, infringed Design Basics' 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 Design Basics' works which are as yet undiscovered.

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

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

88. 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.

89. 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**

90. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.



91. Defendant, without knowledge or intent, infringed Design Basics' 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 Design Basics' works which are as yet undiscovered.

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

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

94. 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.

95. 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**

96. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.

97. Defendant, without knowledge or intent, infringed Design Basics' 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 Design Basics' works which are as yet undiscovered.

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

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

100. 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.

101. 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**

102. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.

103. Alternatively, Defendant willfully infringed Design Basics' 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 Design Basics' works which are as yet undiscovered.

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

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

106. 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.

107. 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**

108. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.

109. Alternatively, Defendant willfully infringed Design Basics' 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 Design Basics' works which are as yet undiscovered.

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

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

112. 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.

113. 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**

114. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.

115. Alternatively, Defendant willfully infringed Design Basics' 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 Design Basics' works which are as yet undiscovered.

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

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

118. 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.

119. 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**

120. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.

121. Alternatively, Defendant willfully infringed Design Basics' 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 Design Basics' works which are as yet undiscovered.

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

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

124. 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.

125. 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**

126. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 77 above.

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

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

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

130. At the time Defendant removed and/or omitted Design Basics’ 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 Design Basics’ copyrighted works.

131. Design Basics is entitled to and seeks to recover from Defendant statutory damages not exceeding \$25,000 for each act committed in violation of Design Basics’ rights under 17 U.S.C. § 1202, *et seq.*

132. Pursuant to 17 U.S.C. § 1203(b)(5), Design Basics is entitled to and seeks to recover Design Basics’ reasonable attorneys’ fees.

**Jury Demand**

133. Pursuant to Federal Rule of Civil Procedure 38, Design Basics respectfully demands a trial by jury of all issues so triable.

WHEREFORE, Design Basics demands that judgment be entered in Design Basics' favor and against Defendant as follows:

- a. For an accounting by Defendant of its activities in connection with its infringements of Design Basics' copyrights in and to the above-described works, as well as of the gross profits and revenue attributable to its infringement(s);
- b. For Design Basics' 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 Design Basics' option, post-verdict, Design Basics seeks an award of statutory damages in lieu of actual damages for the infringement of any one or more of Design Basics' works, described above, in an amount to be determined at trial;
- e. Design Basics' 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 Design Basics' copyrights in any manner whatsoever, including the advertising, marketing, construction, and sale of infringing structures, and further barring Defendants from publishing through any visual media, and from selling, marketing or otherwise distributing copies of Design Basics' 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 Design Basics' 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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