

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



Provided by:
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DESIGN BASICS, LLC,

Plaintiff,

vs.

VAN PROOYEN BUILDERS, INC.,

Defendant.

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Case No.: 2:19-cv-00100

JURY DEMANDED

COMPLAINT

Design Basics, LLC (“Design Basics” or “Plaintiff”), files this Complaint against Van Prooyen Builders, Inc. (“Van Prooyen” 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. Van Prooyen is a corporation organized under the laws of the State of Indiana with its principal place of business in Lake County, Indiana. Van Prooyen may be served through its registered agent, Timothy R. Kuiper, 130 N. Main Street, Crown Point, Indiana 46307.

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 the copyrighted home designs listed in Paragraph 57 of this Complaint, Design Basics has earned more than \$23,318.00 in licensing revenue since 2009.

15. Design Basics has always designed its 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, W.L. Martin Home Designs, 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 builder and developer members of local home builders’ associations and other home builders and developers.

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 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.

37. At least fourteen of the leading plan broker sites that have been around since at least the early 2000s advertise and sell the copyrighted designs listed in Paragraph 57 of this Complaint, including on brokers' websites like www.CoolHousePlans.com, www.MonsterHousePlans.com, and 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, 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' 2,700-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 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' websites 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 Design Basics' plans in a drafter's "drawing files" 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 May 2016, Design Basics' Director of Business Development, Paul Foresman, was conducting research related to infringing homes constructed by builders in the Madison Meadows subdivision in Lake County, Indiana, in connection with another lawsuit when Mr.

Foresman discovered from public records that Defendant constructed several homes in that subdivision from plans that appeared to have been copied from Design Basics' copyright-protected designs. Foresman then viewed Defendant's website, www.vanprooyenbuilders.com, and discovered two of Defendant's floor plans that appeared to have been copied from two of Design Basics' copyright-protected home 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. 6788 – Coleton	VA 1-119-320 & 1-144-694
Plan No. 7605 – Millington	VA 1-070-137 & 1-116-190

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 and 2*.

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 and 2.

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. 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.

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 its 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 under the following names, among others to be determined in discovery: Rainier and Abby.

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 Rainier (and any predecessors, copies, or derivatives of that model under the same name or different names) infringes Design Basics' Plan No. 6788 – Coleton (and any predecessor or derivative thereof). Defendant's Rainier is substantially and strikingly similar to Design Basics' Coleton 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' Coleton, 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 elevation 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 and size of the kitchen at the center-left of the home adjacent to the breakfast nook, great room, and bedroom 2, including the location of the range and refrigerator;

- xii. The location, size, and shape of the front covered porch;
- xiii. The location of the main entry between bedroom 3 and the garage;
- xiv. The location and shape of the 2-car garage at the front-right of the home adjacent to the master suite and foyer;
- xv. The location of the powder bathroom adjacent to the great room, foyer, bedroom hallway, and bedroom 2;
- xvi. The location, shape, and size of the foyer between the bedroom hallway and powder bathroom on one side and the garage on the other, leading to the great room;
- xvii. The entry to the home from the garage into the foyer;
- xviii. The location, shape, and size of the great room at the rear-center of the home adjacent to the breakfast nook, kitchen, foyer, powder bathroom, and master bedroom;
- xix. The location, shape, and size of the breakfast nook at the rear-left of the home adjacent to the great room and kitchen;
- xx. The location, size, shape, and layout of the master suite at the rear-right of the home adjacent to the great room, laundry room, and garage;
- xxi. The design of the master suite with the master bedroom at the rear of the home, master bathroom between the master bedroom and walk-in closet, and walk-in closet between the garage and master bathroom;
- xxii. The design of the master bathroom, including the locations of the shower/tub, vanity, and lavatory;
- xxiii. The location of bedroom 2, adjacent to the kitchen, powder bathroom, bedroom 3, and the full bathroom;
- xxiv. The location of bedroom 3, adjacent to the foyer, bedroom 2, and the full bathroom;
- xxv. The location and shape of the first floor bedroom hallway;
- xxvi. The location of the laundry room adjacent to the master suite and great room;
- xxvii. The location of the closet between bedroom 3 and the foyer; and
- xxviii. The overall shape of the foundation and the foundation jogs.

B. Defendant's Abby and Defendant's plans used to advertise and construct homes at Lots 1, 2, 3, 7, 8, 9, 10, 11, 12, and 34 Madison Meadows in Merrillville, Indiana (and any predecessors, copies, or derivatives of those models under the same names or different names) infringe Design Basics' Plan No. 7605 – Millington (and any predecessor or derivative thereof). Defendant's plans are substantially and strikingly similar to Design Basics' Millington 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' Millington, 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. Arrangements, locations, and spatial relationships between and among appliances, countertops, and cabinets 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, shape, and layout of the kitchen at the center of the design adjacent to the breakfast nook, great room, and powder bathroom;
- xiii. The location, size, and shape of the front covered stoop;
- xiv. The location of the main entry set back at the side of the garage;
- xv. The location and shape of the 2-car garage at the front of the home adjacent to the powder bathroom and foyer, and below bedrooms 2 and 3;
- xvi. The location of the powder bathroom between the garage and kitchen;
- xvii. The location, shape, and size of the foyer between the garage and great room, leading to the great room and stairs to the second floor;
- xviii. The location, shape, and size of the great room at the rear of the design adjacent to the breakfast nook, kitchen, foyer, and stairs to the second floor;
- xix. The location and size of the breakfast nook at the rear of the design adjacent to the great room and kitchen;

- xx. The location and design of the stairs to the second floor, including the distance that they extend into the first-floor design between the foyer and great room;
- xxi. The location, size, shape, and layout of the second-floor master suite at the rear of the home adjacent to the laundry room and stairs to the first floor, above the great room, kitchen and breakfast nook;
- xxii. The design of the second-floor master suite with the master bedroom at the rear of the home, walk-in closet between the master bedroom and stairs to the first floor, and L-shaped master bathroom at the center of the design between the master bedroom and laundry room;
- xxiii. The design of the L-shaped master bathroom, including the locations of the showers/tubs, vanities, and lavatories;
- xxiv. The location, size, shape, and layout of bedrooms 2 and 3 on the second floor at the front of the design above the garage, including the location, shape, and size of the bedroom closets, and with the bumped-out windows at the front of the home;
- xxv. The location, size, and shape of the second-floor hallway;
- xxvi. The design of the closets for bedrooms 2 and 3, with the same angled wall in the closet of bedroom 2 due to the shape of the hallway bathroom and the angled entrance to the hallway bathroom;
- xxvii. The angled entrances to bedrooms 2 and 3 and the second-floor hallway bathroom;
- xxviii. The location, shape, size, and design of the second-floor hallway bathroom between bedroom 2 and the open-to-below area overlooking the foyer;
- xxix. The open-to-below area on the second-floor over the foyer;
- xxx. The location of the second-floor laundry room between the master bathroom and the closet for bedroom 3; and
- xxxi. 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 and 2. 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 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 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 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 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 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 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 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 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 Defendant 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

John D. LaDue (19039-71)

Sean J. Quinn (29441-71)

SOUTHBANK LEGAL: LADUE | CURRAN | KUEHN

100 East Wayne Street, Suite 300

South Bend, Indiana 46601

Telephone: (574) 968-0760

Facsimile: (574) 968-0761

jladue@southbank.legal

squinn@southbank.legal

ATTORNEYS FOR DESIGN BASICS, LLC