

7-31-18
11:00

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Motions

LEE COLKER and
KEITH MARCON,

CIVIL DIVISION

NO.: GD 17-008399

Plaintiffs,

v.

**PRELIMINARY OBJECTIONS TO
AMENDED COMPLAINT OF PLAINTIFFS**

MONTGOMERY & RUST, INC.,

(JURY TRIAL DEMANDED)

Defendant,

v.

Filed on Behalf of Defendant,
Montgomery & Rust, Inc.

UFP PARKER, LLC and HELD
CONSTRUCTION, INC.,

Counsel of Record for this Party:

Additional Defendants.

Jeffrey C. Catanzarite
PA I.D. #72765

Paul D. Svirbel
PA I.D. #316395

**SUMMERS, McDONNELL, HUDOCK
GUTHRIE & RAUCH, P.C.**
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2018 JUN 26 PM 3:27
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ALLEGHENY COUNTY, PA

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LEE COLKER and
KEITH MARCON,

CIVIL DIVISION

GD 17-008399

Plaintiffs,

v.

MONTGOMERY & RUST, INC.,

Defendant.

v.

UFP PARKER, LLC and HELD
CONSTRUCTION, INC.,

Additional Defendants.

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT OF PLAINTIFFS

AND NOW, comes the Defendant, Montgomery & Rust, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Rauch, P.C. and Jeffrey C. Catanzarite, Esq. and Paul D. Svirbel, Esq., and files the foregoing Preliminary Objections to the Amended Complaint of Plaintiffs, averring as follows:

FACTUAL BACKGROUND

Procedural History

1. The instant matter was initiated by Writ of Summons on June 7, 2017.
2. A Complaint was filed on April 23, 2018.
3. Preliminary Objections were filed to the Complaint by the Defendant on May 11, 2018.

P.O.

4. The Amended Complaint, discussed herein, was subsequently filed on June 12, 2018.

Documents and Representations

5. This matter has its genesis in allegations of construction-related defects within a dwelling located at 1251 Parkview Boulevard, Pittsburgh, Allegheny County, 15217 (hereinafter, "the Dwelling"). See Amended Complaint of Plaintiffs, attached hereto as **Exhibit "A"** at ¶¶ 6, 7.

6. Per the Amended Complaint, in or about early 2007, the Plaintiffs and Defendant entered into negotiations for the Plaintiffs' purchase of a lot from the Defendant and the Defendant's construction of the Dwelling on the lot. Id. at ¶6.

7. An Agreement of Sale was entered into between the parties for the Plaintiffs' purchase of the aforesaid lot and construction of the Dwelling on or about March 23, 2007. Id. at ¶7.

8. The Agreement for Sale (with various Exhibits) was attached to the Amended Complaint as Exhibit "1." Id.

9. Plaintiffs alleged that various representations were made to them by Defendant in the Amended Complaint regarding the construction of the Dwelling, such as that the plans and specifications were sufficient to construct the Dwelling free of defects and the plans and specifications were approved and stamped by a registered structural engineer. Id. at ¶¶9, 10.

10. The Defendant constructed the Dwelling on the lot purchased by the Plaintiffs, with the closing occurring on or about February 21, 2008. Id. at ¶12.

Alleged Defects

11. In their Amended Complaint, Plaintiffs have alleged a number of defects with the Dwelling, which were discovered, per the Amended Complaint, on June 19, 2015. Id. at ¶¶ 13-15.

12. These defects included issues with the loads to the interior walls not being properly supported and issues with the floor trusses not being able to carry their loads. Id. at ¶¶ 14, 15.

13. Plaintiffs allegedly immediately notified the Defendant of these issues. Id. at ¶ 16.

14. Following this notification, multiple engineering firms provided opinions regarding the alleged defects within the Dwelling and proposed various forms of remediation. Id. at ¶¶ 17-30.

15. The Plaintiffs have averred in the Amended Complaint that the Defendant offered to perform various structural and cosmetic repairs to the Dwelling to correct the alleged deficiencies brought to light by the aforesaid engineering firms. Id. at ¶¶ 19, 20.

16. The Plaintiffs have also averred that they did not reject the offer of the Defendant, but informed the Defendant that they wished to retain an independent expert to review the structural issues and recommended course of action. Id. at ¶ 21.

17. The Plaintiffs retained Churches Engineering as their independent expert, with Churches providing their opinions regarding the source of the Plaintiff's alleged issues with the Dwelling. Id. at ¶¶ 22-27.

18. The opinions of Churches Engineering were provided to the Defendant by the Plaintiffs. Id. at ¶ 28.

19. The Defendant, per the Amended Complaint, retained Donan Engineering Co. to confirm the various structural issues with the Dwelling, with Donan Engineering offering several opinions and conclusions. Id. at ¶¶29, 30.

20. Following the expression of opinions by the aforesaid engineering firms, the Plaintiffs allegedly repeatedly requested that the Defendant remediate the defects found in the Dwelling. Id. at ¶31.

21. Plaintiffs alleged that Defendant has failed to perform what Plaintiffs consider to be the necessary work to remediate the defects within the Dwelling, despite requests and Defendant's alleged offer to do so. Id. at ¶32.

22. The Plaintiffs base their contention that Defendant made an offer to remediate the defects to the Dwelling based upon an e-mail from Defendant's principal, Mark Rust, to Lee Colker dated July 12, 2016, stating the following:

Lee,

We have received the report from our structural engineer and it is attached for your review.

We would propose raising and reinforcing the trusses that are under the decorative columns between the first floor hall and study as well as the truss under the wall between the master bedroom and second floor hall. This will reduce the slope in the floors, but not completely eliminate it. Cosmetic repairs, such as repairing drywall that may crack and painting, would be made if necessary. We are still in the process of determining the best method and contractor to raise the truss and will let you know when that has been determined.

Best regards,
R. Mark Rust

See Exhibit 2 to Amended Complaint.

LEGAL STANDARD

23. Preliminary Objections may be filed by any party to any pleading based upon the failure to conform to the rule of law of court or the inclusion of scandalous or impertinent matter; the legal insufficiency of a pleading (Demurrer) and the insufficient specificity contained within a pleading. Pa.R.C.P. 1028(a)(2)(3)(4).

24. In ruling on Preliminary Objections, this court must accept as true all well pleaded facts which are material and relevant. Erie County League of Women Voters v. Department of Environmental Resources, 525 A.2d 1290(Pa. Cmwlth. 1987).

25. The trial court, however, in determining whether to sustain Preliminary Objections, need not accept as true, unwarranted references of fact, argumentative of allegation, or expressions of opinion. Giffin v. Chronister, 616 A.2d 1070 (Pa. Cmwlth. 1990).

QUESTIONS PRESENTED

A. WHETHER THE CLAIMS OF FRAUD AND NEGLIGENT MISREPRESENTATION MUST BE DISMISSED PURSUANT TO THE GIST OF THE ACTION DOCTRINE.

Suggested Answer: Yes.

B. WHETHER THE CLAIM OF BREACH OF CONTRACT IN COUNT II FAILS AS A MATTER OF LAW AS NO LEGALLY COGNIZANT OFFER HAS BEEN ESTABLISHED IN THE AMENDED COMPLAINT.

Suggested Answer: Yes.

ARGUMENT

A. Count IV (Fraud) and Count V (Negligent Misrepresentation) are barred by the Gist of the Action Doctrine and must be dismissed per Pa.R.C.P. 1028(a)(4).

26. As noted above and discussed further in Counts IV and V, Plaintiffs have alleged that Defendant made multiple false, fraudulent and negligent misrepresentations regarding the Dwelling at issue. See generally Amended Complaint at ¶¶75-84; 85-94.

27. Where fraud and negligence claims are intertwined with breach of contract claims (i.e., Count I) and the duties allegedly breached are created and grounded in the contract itself, the gist of the action is breach of contract. Hart v. Arnold, 884 A.2d 316, 340 (Pa. Super. 2005).

28. Hart articulated the following regarding the gist of the action doctrine:

In general, courts are cautious about permitting tort recovery based on contractual breaches. In keeping with this principle, this Court has recognized the "gist of the action" doctrine, which operates to preclude a plaintiff from re-casting ordinary breach of contract claims into tort claims. The conceptual distinction between a breach of contract claim and a tort claim has been explained as follows:

Although they derive from a common origin, distinct differences between civil actions for tort and contractual breach have been developed at common law. Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals.... To permit a promisee to sue his promisor in tort for breaches of contract *inter se* would erode the usual rules of contractual recovery and inject confusion into our well-settled forms of actions.

Id. at 339. (citing Pittsburgh Const. Co. v. Griffith, 834 A.2d 572, 581-82 (Pa. Super. 2003), appeal denied, 852 A.2d 313 (Pa. 2004) (internal citations omitted).

29. It has also been recognized in Pennsylvania that the gist of the action doctrine bars tort claims: (1) arising solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; or 4) where the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of a contract. Id. at 340. (citing eToll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. 2002)).

30. Defendant asserts that the fraud and negligent misrepresentation allegations/claims of the Plaintiffs were created in and grounded in the Agreement of Sale attached to the Complaint of Plaintiffs:

31. In essence, the Plaintiffs are claiming that the Defendant falsely, fraudulently and negligently misrepresented several key elements concerning the construction of the Dwelling, which is the subject of the Agreement of Sale between the parties.

32. The same allegations appear in the breach of contract claim (Count I) that appear in the fraud and negligent misrepresentation claims (Counts IV and V, respectively), most notably that the Defendant made false representations regarding the construction of the Dwelling.

33. Specifically, in Count I, a breach of contract claim, it is alleged that the Defendant made several false representations regarding the Dwelling, including that the plans and specifications were sufficient to construct a defect-free home (§42); the design and/or construction of the Dwelling met the building code and expected

standards (§43); and that the plans and specifications were approved and stamped by a licensed structural engineer (§44).

34. In Count IV (Fraud), essentially the same allegations are made, i.e., that the Defendant made several false representations to the Plaintiffs regarding the Dwelling. Id. at §79.

35. Likewise, in Count V (Negligent Misrepresentation), the Plaintiffs averred similarly, stating “[t]he Defendant’s design and representations were negligently incorrect and false....” Id. at §91.

36. The Plaintiffs have, in the Amended Complaint, re-casted a contract claim into claims for fraud and negligent misrepresentation.

37. The Plaintiffs are taking contract claims and using the same factual basis and allegations to aver claims of fraud and negligent misrepresentation.

38. As such, the Gist of the Action doctrine bars Counts IV and V contained in the Amended Complaint of Plaintiffs.

WHEREFORE, Defendant respectfully requests that this Honorable Court grant the relief requested in the attached Order.

B. Count II of the Plaintiffs’ Amended Complaint must be dismissed per Pa.R.C.P. 1028(a)(4) as it fails to satisfy the elements of an enforceable contract in Pennsylvania.

39. The Plaintiffs assume that Exhibit 2 of the Amended Complaint constituted an offer from the Defendant, which they accepted, resulting in an enforceable contract to repair various defects in the Dwelling, which the Defendant allegedly breached. See generally Count II, §§47-58.

40. Defendant avers that Exhibit 2 did not rise to the level of an offer, as the text of Exhibit 2, on its face, insufficiently evidenced a manifestation of intent to enter into a contract.¹

41. The elements of contract formation are "offer, acceptance, and consideration or mutual meeting of the minds." Ribarchak v. Mun. Auth. of City of Monongahela, 44 A.3d 706, 708 (Pa. Cmwlth. 2012).

42. An offer has been defined as "a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Pacitti by Pacitti v. Macy's, 193 F.3d 766, 773 (3d Cir. 1999) (citing Cobaugh v. Klick-Lewis, Inc., 561 A.2d 1248, 1249 (Pa. Super. 1989)).

43. Defendant avers that no manifestation of intent was present in Exhibit 2, which did not invite acceptance or assent, but only discussed Defendant's plans for repair.

44. As such, without a communicated offer, no contract was formed and no breach can lie. See e.g., McShea v. City of Phila., 606 Pa. 88, 995 A.2d 334, 340 (Pa. 2010) ("To state a claim for breach of contract under Pennsylvania law, the plaintiffs are tasked with alleging facts showing that there was a contract, that the defendants breached it, and that the plaintiffs suffered damages from the breach.")

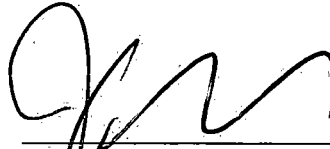
¹ Defendant notes that questions such as contract interpretation are questions of law and lie within the domain of the court to decide. Kardibin v. Associated Hardware, 426 A.2d 649, 654 (Pa. Super. 1981).

WHEREFORE, Defendant respectfully requests that this Honorable Court grant the relief requested in the attached Order.

JURY TRIAL DEMANDED

Respectfully submitted,

**SUMMERS, McDONNELL, HUDOCK
GUTHRIE & RAUCH, P.C.**



Jeffrey C. Catanzarite
Paul D. Svirbel
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LEE COLKER AND KEITH MARCON,

CIVIL DIVISION

Plaintiffs,

Case No. GD-17-8399

v.

**AMENDED COMPLAINT IN CIVIL
ACTION**

MONTGOMERY & RUST, INC.,

Defendant.

Filed on behalf of Plaintiffs,
Lee Colker and Keith Marcon

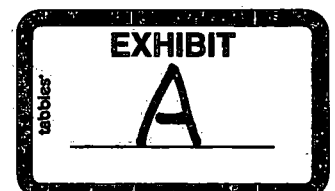
Counsel of Record for these Parties:

Danny P. Cerrone, Jr., Esquire
Pa. I.D. No. 201091

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LEE COLKER AND KEITH MARCON,

CIVIL DIVISION

Plaintiffs,

Case No. GD-17-8399

v.

MONTGOMERY & RUST, INC.,

Defendant.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LEE COLKER AND KEITH MARCON,

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v.

MONTGOMERY & RUST, INC.,

Defendant.

AMENDED COMPLAINT IN CIVIL ACTION

The Plaintiffs, Lee Colker ("Mr. Colker") and Keith Marcon ("Mr. Marcon") (collectively, the "Plaintiffs"), by and through their undersigned counsel, file the within Amended Complaint in Civil Action and, in support thereof, aver as follows:

1. Plaintiff, Mr. Colker, is an adult individual residing at 1251 Parkview Boulevard, Pittsburgh, Pennsylvania 15217.

2. Plaintiff, Mr. Marcon, is an adult individual residing at 1251 Parkview Boulevard, Pittsburgh, Pennsylvania 15217.

3. Defendant, Montgomery & Rust, Inc. (the "Defendant"), is a Pennsylvania corporation doing business at Castle Town Square, North Route 8, Allison Park, Pennsylvania 15101 and/or 4284 William Flynn Highway, Allison Park, Pennsylvania 15101.

4. In part, the Defendant is a corporation that constructs and sells high-end residences.

5. Jurisdiction and venue are proper in this County inasmuch as the claims underlying this action relate to the purchase of real property situated in Allegheny County, and the transaction out of which the causes of action occurred took place in Allegheny County.

6. In or about early 2007, the Plaintiffs and the Defendant entered into negotiations for the Plaintiffs' purchase of a lot from the Defendant and the Defendant's construction of a

new house for the Plaintiffs on property located at 1251 Parkview Boulevard, Pittsburgh, Pennsylvania 15217 (the "Property").

7. On or about March 23, 2007, the Plaintiffs entered into an Agreement of Sale (the "Agreement") with the Defendant for the Plaintiffs' purchase of the lot and construction of a new house on Property. A true and correct copy of the Agreement of Sale is attached hereto and incorporated herein as Exhibit 1.

8. Pursuant to the Agreement, the Defendant agreed to deliver a house in accordance with the agreed upon plans and specifications. See Exhibit 1.

9. The Defendant represented to the Plaintiffs that the plans and specifications were sufficient to construct a house free of defects and in accordance with the applicable design met the building code and standards expected for construction of residential property in the Commonwealth of Pennsylvania.

10. The Defendant represented to the Plaintiffs that, in compliance with Pennsylvania law, the plans and specifications were approved and stamped by a registered structural engineer.

11. The Defendant, individually or through its agents, designed and constructed the house built on the Property.

12. On or about February 21, 2008, the Plaintiffs and the Defendant closed on the Plaintiffs' purchase of the Property, including the newly constructed house, from the Defendant.

13. On or about June 19, 2015, the Plaintiffs discovered that the Defendant had failed to properly design and/or construct the house.

14. On or about June 19, 2015, the Plaintiffs discovered that the loads to the interior walls were not properly supported thereby causing structural issues with the Property.

15. On or about June 19, 2015, the Plaintiffs discovered that the lone engineered floor truss was not capable of supporting the loads placed on the truss, and that such issue was either caused by a design deficiency and/or construction defect.

16. The Plaintiffs immediately notified the Defendant.

17. The Defendant's retained R.F. Mitall & Associates, Inc., who confirmed that the design and/or construction of the Property had failed to account for the necessary support to the dead loads.

18. R.F. Mitall & Associates, Inc. recommended removing the flooring in the house, leveling the subfloor, reinforcing the floor truss and reinstalling the floor.

19. In an email dated July 12, 2016, the Defendant offered to raise and reinforce the trusses under the Property's decorative columns between the first floor hall and study and the master bedroom and second floor hall. A copy of the July 12, 2016 email from Mark Rust, from the Defendant, to the Plaintiffs is attached hereto and incorporated herein as Exhibit 2.

20. The Defendant offered to perform cosmetic repairs necessitated by the work to be performed at the Property. See Exhibit 2.

21. The Plaintiffs, while not rejecting the Defendant's offer, informed the Defendant that the Plaintiffs wanted to retain an independent expert to review the structural issues and recommended course of action.

22. The Plaintiffs retained Churches Engineering LLC to conduct an independent investigation into the cause of the structural issues at the Property.

23. Churches Engineering LLC determined that the structural issues were caused by the Defendant's inadequate design and/or construction of the Property.

24. Churches Engineering LLC proposed to expose structural members to determine whether such structural members were correctly designed and installed.

25. On April 8, 2017, Churches Engineering LLC informed the Plaintiffs, and the Plaintiffs discovered, that the Property was experiencing significant settlement issues.

26. In order to remediate such settlement issues, Churches Engineering LLC proposed to the install micropiles around the walls of the Property that had settled.

27. The Plaintiffs discovered that the Defendant failed to have the plans and specifications approved and stamped by a registered structural engineer.

28. The Plaintiffs provided the opinion of Churches Engineering LLC to the Defendant.

29. The Defendant retained Donan Engineering Co., Inc., who confirmed that the structural issues at the Property were caused by design and/or construction deficiencies.

30. Donan Engineering Co., Inc. confirmed that the lone engineered floor truss was not capable of supporting the loads placed on the truss, and that such issue was either caused by a design deficiency and/or construction defect.

31. The Plaintiffs repeatedly requested that the Defendant remediate the design and/or construction defects to the Property.

32. Despite such repeated requests, and the Defendant's offer to reinforce the floor truss (as recommended by Defendant's own expert, R.F. Mitall & Associates, Inc.), the Defendant has refused to and failed to perform the necessary work to remediate the Defendant's design and/or construction deficiencies.

33. On June 7, 2017, the Plaintiffs commenced the instant matter, through the filing of a Writ of Summons, in order to preserve its rights.

COUNT I - BREACH OF CONTRACT

34. The averments set forth in the above Paragraphs are incorporated herein by reference as if set forth in full.

35. On or about March 23, 2007, the Plaintiffs entered into the Agreement with the Defendant for the Plaintiffs' purchase of the lot and construction of a new house on Property. See Exhibit 1.

36. Pursuant to the Agreement, the Defendant's agreed to deliver a house in accordance with the agreed upon plans and specifications. See Exhibit 1.

37. The Defendant's represented that the plans and specifications were sufficient to construct a house free of defects and met the applicable building code and standards expected for construction of residential property in the Commonwealth of Pennsylvania.

38. The Defendant's represented that, consistent with Pennsylvania law, the plans and specifications were approved and stamped by a licensed structural engineer.

39. The Plaintiffs performed all of their obligations to Defendant.

40. The Plaintiff expected to receive a newly constructed house that they had contracted, and paid, the Defendant to provide.

41. As set forth herein, the Defendant's design and/or construction deficiencies created structural issues with the Property.

42. As set forth herein, the Defendant's representation that the plans and specifications were sufficient to construct a house free of defects was false.

43. The Defendant's representations that the design and/or construction met the building code and standards expected for construction of residential property in the Commonwealth of Pennsylvania were false.

44. The Defendant's representation that the plans and specifications were approved and stamped by a licensed structural engineer was false.

45. Despite the Plaintiffs' performance of their contractual obligations, the Defendant failed to comply with its obligations.

46. As a result of Defendant's breach of a valid contractual agreement, the Plaintiffs have been damaged.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in an excess of \$35,000.00, plus interest and costs of this action, and any other relief that the Court deems appropriate.

COUNT II - BREACH OF CONTRACT

47. The averments set forth in the above Paragraphs are incorporated herein by reference as if set forth in full.

48. After the Plaintiffs discovered that the Defendant had failed to properly design and/or construct the house, the Plaintiffs immediately notified the Defendant.

49. The Defendant's retained R.F. Mitall & Associates, Inc., who confirmed that the Defendant's design and/or construction of the Property had failed to account for the necessary support of the dead loads.

50. The Defendant's own expert, R.F. Mitall & Associates, Inc. recommended removing the flooring in the house, leveling the subfloor, reinforcing the floor truss and reinstalling the floor.

51. In an email dated July 12, 2016, the Defendant offered to raise and reinforce the trusses under the Property's decorative columns between the first floor hall and study and the master bedroom and second floor hall. See Exhibit 2.

52. The Defendant offered to perform cosmetic repairs necessitated by the work to be performed at the Property. See Exhibit 2.

53. The Defendant indicated, during a telephone conversation with the Plaintiffs, that such remedial work would be performed at the Defendant's sole cost and expense.

54. The Defendant offered to perform such recommended course of action in order to induce the Plaintiffs into not filing a lawsuit against the Defendant.

55. The Plaintiffs, while not rejecting the Defendant's offer, informed the Defendant that the Plaintiffs wanted to retain an independent expert to review the structural issues.

56. After confirming that the floor truss needed to be reinforced, the Plaintiffs requested that the Defendant remediate the Defendant's design and/or construction defects at the Property.

57. The Defendant refused to perform the previously offered floor truss reinforcement.

58. As a result of Defendant's breach of a valid contractual agreement, the Plaintiffs have been damaged.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in an excess of \$35,000.00, plus interest and costs of this action, and any other relief that the Court deems appropriate.

**COUNT III: VIOLATION OF THE PENNSYLVANIA
UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW**

59. The averments set forth in the above Paragraphs are incorporated herein by reference as if set forth in full.

60. The Plaintiffs are a "persons" as that term is defined by 73 P.S. §201-2(2).

61. The Defendant is also "persons" as that term is defined by 73 P.S. §201-2(2).

62. Pursuant to 73 P.S. §201-9.2(a), a private cause of action is authorized for any person who purchases goods or services primarily for personal, family or household purposes.

63. Individuals purchasing real estate may bring a private action to recover damages against another for acts declared impermissible under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

64. The Plaintiffs contracted with the Defendant for the Defendant to construct a new house on the Property.

65. The Property, which the Plaintiffs purchased and for which the Defendant provided services, was primarily purchased for personal, family or household purposes.

66. The Defendant made intentional and/or negligent misrepresentations to the Plaintiffs concerning the design and/or construction of the new house on the Property.

67. The Defendant made intentional and/or negligent misrepresentation that the plans and specifications were approved and stamped by a licensed structural engineer.

68. On each and every occasion when the Defendant made such misrepresentations, the Defendant knew or should have known that each of the misrepresentations was false and/or fraudulent and each of the misrepresentations was material to or arose from the very foundation of the Plaintiffs' purchase of the Property.

69. Each and every time that the Defendant made such misrepresentations, it did so with the specific intent that the Plaintiffs would rely upon them to the Plaintiffs' detriment.

70. If the Plaintiffs had known that the Defendant's misrepresentations were false and/or fraudulent, the Plaintiffs would not have entered into the agreement and the Plaintiffs would not have purchased the Property.

71. The Plaintiffs did, in fact, reasonably and justifiably rely to their detriment on the Defendant's misrepresentations.

72. The actions and misrepresentations of the Defendant fall within the definitions of "unfair or deceptive acts or practices" under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

73. If the Defendant had not engaged in the unfair or deceptive acts or practices, the Plaintiffs would not have entered into the agreement to purchase the Property and the Plaintiffs would not have sustained severe, serious, permanent and irreparable injuries, damages and harm.

74. The Pennsylvania Unfair Trade Practices and Consumer Protection Law authorizes the Court to enter an award up to three times the actual damages that the Plaintiffs sustained as a result of the Defendant's violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, as well as the award of costs and attorneys' fees.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in an amount in excess of the jurisdictional limits of arbitration, plus treble damages, attorneys' fees, interest, costs, and all other such relief as the Court deems necessary, just and proper.

COUNT IV: FRAUD

75. The averments set forth in the above Paragraphs are incorporated herein by reference as if set forth in full.

76. After the completion of construction of the Property, the Defendant fraudulently misrepresented to the Plaintiffs that the Property was completed in accordance with the plans and specification, building code and standards for new residential construction in Pennsylvania.

77. After the completion of construction of the Property, the Defendant fraudulently misrepresented to the Plaintiffs that there were not any issues with the design and/or construction of the Property.

78. After the completion of construction of the Property, the Defendant fraudulently misrepresented to the Plaintiffs that any noticed defects with the Property were caused by moisture content in the construction materials and/or at the Property.

79. The Defendant's misrepresentations were made knowingly, falsely and recklessly to the Plaintiffs in order to induce the Plaintiffs to refrain from obtaining a third party to inspect the Property and from filing a lawsuit against the Defendant.

80. The Defendant intended to mislead the Plaintiffs into believe such material misrepresentations, in order to influence their decision on not filing a lawsuit and to prevent the discovery of significant defects or omissions that existed in the Defendant's design and/or construction of the Property.

81. The Plaintiffs were not aware, at the time, that the Defendant was making representations about the Property.

82. Under these circumstances, the Plaintiffs' detrimental reliance upon the Defendant's misrepresentations was reasonable, justifiable, foreseeable and specifically intended to induce the Plaintiffs into not obtaining a third party from inspecting the Property and not filing a lawsuit against the Defendant.

83. As a proximate result of Defendant's fraudulent misrepresentations, the Plaintiffs sustained damages, including out of pocket losses for remediation and diminution of value of the Property, and will sustain further damages in connection with the necessary expense of repairing the Property to return it to the condition as initially represented by the Defendants.

84. As the result of the facts and claims alleged herein, the Plaintiffs are entitled to recover their damages suffered as a result of Defendant's conduct in an amount to be determined at trial.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in an amount in excess of \$35,000.00, plus interest, costs, and all other such relief as the Court deems necessary, just and proper.

COUNT V: NEGLIGENT MISREPRESENTATION (IN THE ALTERNATIVE)

85. The averments set forth in the above Paragraphs are incorporated herein by reference as if set forth in full.

86. The Defendant represented that it would provide architectural, structural and design services to properly construct a new house on the Property.

87. The Defendant was compensated to supply such information in connection with the Property.

88. The Defendants represented that their design could be successfully built as depicted.

89. The Defendant knew, should have known, intended or reasonable understood that the Plaintiffs would rely upon the Defendants' design and their representations about the effectiveness of that the design in the purchase of the Property.

90. The Plaintiffs reasonably relied upon the Defendant's design and specifications.

91. The Defendant's design and representations were negligently incorrect and false as set forth in detail in Paragraphs 13 through 28 of this Complaint.

92. The Defendant's design and representations were material in that the recommendations, designs and/or representations of the Defendants were intended to be and clearly were relied upon in the Plaintiffs' purchase of the Property.

93. At the time that the Defendant made such design and/or representations with respect to the new house to be constructed on the Property, the Defendant intended, knew and/or reasonably should have known that such representations were false, negligently incorrect and/or the overall design would not perform as represented.

94. As a direct and proximate result of the Plaintiffs' reliance upon the Defendant's design and representations, the Plaintiffs suffered pecuniary losses.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in an excess of \$35,000.00, plus interest and costs of this action, and any other relief that the Court deems appropriate.

COUNT VI - QUANTUM MERUIT (IN THE ALTERNATIVE)

95. The averments set forth in the above Paragraphs are incorporated herein by reference as if set forth in full.

96. The Defendant has benefited from the Plaintiffs' payment and purchase of the Property.

97. Inasmuch as the Defendant has benefited from the monies paid by the Plaintiffs, without delivering the Property in a non-deficient manner and consistent with the Defendant's representations, the Defendant has been unjustly enriched at the Plaintiffs' expense.

98. Inasmuch as the Defendant has benefited from the monies paid by the Plaintiffs, without delivering the Property in the condition in which it was described and represented the

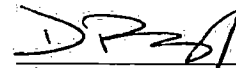
Plaintiffs prior to and at the time of purchase, the Defendant has been unjustly enriched at the Plaintiffs' expense.

99. It would be inequitable and unconscionable for the Defendant to retain monies representing the value of the Property in the condition described to the Plaintiffs prior to and at the time of purchase, when the Defendant delivered the Property in a condition with significantly lower value.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in an excess of \$35,000.00, plus interest and costs of this action, and any other relief that the Court deems appropriate.

Respectfully submitted,

CLARK HILL PLC



Danny P. Cerrone, Jr., Esquire
Pa. I.D. No. 201091
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
412-394-7711

Attorneys for Plaintiffs



Listing Broker: The Rubino Company

Selling Broker: The Rubino Company

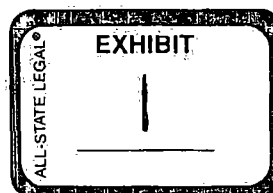
AGREEMENT OF SALE

THIS AGREEMENT, made this 23rd day of March, 2007, by and between MRRC Summerset II, L.P., a Pennsylvania General Partnership (hereinafter "Seller") and **Keith Marcon** who resides at **110 Crosswinds Lane, Murrysville, PA 15668-1201**, and **Lee Colker** (hereinafter "Buyer") Phone Keith-724-327-9671, Phone Lee-412-371-2519, Cell-Keith-412-398-4619, Cell Lee-412-736-5379, E-mail (Keith) Kmarcon@compunetix.com (Lee) Lcolker@edmc.edu

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

BACKGROUND:

A. Seller is the owner of real property, which is subject or will become subject to the terms and provisions of the Declaration of Covenants, Conditions, and Restrictions (the "Declaration") as a planned community known as Summerset at Frick Park. Such real property includes the Premises to be conveyed by Seller to Buyer pursuant to this Agreement.



B. Pursuant to the terms of the Declaration, by taking title to the premises hereby to be conveyed, Buyer shall automatically become a member of The Summerset Neighborhood Association, Inc. ("the Association"), an Association created for the operation, management and maintenance of certain Neighborhood Facilities owned or to be owned by the Neighborhood Association and available for the use and enjoyment of Buyer subject to the provisions of the Declaration and the By-Laws of the Association and any Rules and Regulations applicable to residents of the Neighborhood.

C. Various documents affect the rights, privileges and duties of Buyer. The documents (the "Documents") include the following:

1. Public Offering Statement
2. Declaration
3. By-Laws of The Summerset Neighborhood Association
4. Rules and Regulations applicable to all residential Dwelling Units and Lots in the Neighborhood. Such rules and regulations are not promulgated as of the date of this Agreement.

D. By taking title to the Premises hereby to be conveyed, Buyer becomes obligated to abide by all the terms, provisions and conditions of the Documents and, pursuant thereto, becomes obligated to pay all assessments for common expenses charged by the Association as they become payable.

Buyer acknowledges and represents that the aforesaid documents have been made available to Buyer for inspection and review by Buyer and Buyer's attorney, if any. Copies of the Documents shall be delivered to Buyer at settlement hereunder.

1. PREMISES AND SALE:

Seller agrees to sell and convey the Buyer and Buyer agrees to purchase from Seller the plot of land with the building(s) and improvements (to be) erected thereon, as described in the plans and specifications attached hereto as Exhibit "B", located in the 14Th Ward of the City of Pittsburgh, Allegheny County, Pennsylvania, and designated as **Lot 101** on the Final Plan of Summerset at Frick Park, (the "Premises").

2. PURCHASE PRICE AND PAYMENT:

A. Buyer agrees to pay and Seller to accept the total price of **\$650,000.00** which total price shall be payable as follows:

1. Cash or certified check on delivery of deed of **\$650,000.00**

B. Seller shall have no obligation to Buyer with respect to accruing and/or paying Interest on the Deposit Monies.

C. At settlement, Buyer shall pay all applicable closing costs, including, without limitation, conveyancing fees, title Insurance premiums, fees for recording the deed and mortgage (if any) and other necessary documents, all expenses relating to obtaining a mortgage on the Premises, notary fees, one-half of all realty transfer taxes imposed by any governmental authority upon this transaction, and all other miscellaneous expenses customarily borne by buyers of real estate in Allegheny County. Real estate taxes, current water and sewer rents applicable to the Premises either prepaid or unpaid and Association assessments, shall be apportioned as of the date of settlement. Real estate taxes shall be prorated on the basis of the last ascertainable tax bill and re-prorated when the actual bill is presented (even if such re-proration shall occur after the date of settlement hereunder). Meters for utilities will be read within (5) Five days prior to the date of settlement and the charge for utilities as of the date of such reading shall be paid by Seller and thereafter, by Buyer.

D. At settlement, Buyer shall contribute and pay to the order of the Association the sum of **\$150.00** (equal to two (2) months assessment charge) to be used by the Association as its initial capital fund, which sum shall be non-refundable.

E. The fixtures, equipment, hardware and other items of personal property described in Exhibit "B", attached hereto, represent the only items of personal property included in the purchase price as set out in Paragraph 2A hereof, notwithstanding the inclusion of other items used in any model residential unit for demonstration purposes, and subject to the rights reserved by Seller under the provision of Paragraph 7 hereof.

3. TITLE CONVEYANCE:

At settlement, Seller shall grant and convey, by delivery of a special warranty deed, good and marketable title to the Premises or such as will be insured at regular rates by any licensed title insurance company, free and clear of all liens, encumbrances and easements except; (a) existing restrictions, conditions and easements; (b) Declaration of the Summerset

Neighborhood Association, Inc. and other related documents; (c) restrictions, conditions and easements created by Seller at or prior to settlement necessary to the development in which the Premises is situated; (d) agreements necessary to the development in which the Premises is situated; (d) agreements with telephone, gas, water, electric and other public or private utility companies; (e) easements with respect to public or private sewers, storm sewers or surface water courses.

Seller acknowledges per previous Paragraph, Title Conveyance, the obligation to deliver a lien free property. If either Buyer or Buyer's mortgagee require mortgage lien insurance, Buyer shall pay such additional charges as may be imposed for the special insurance.

4. COMPLETION OF PREMISES BY SELLER:

A. At settlement the Premises will be delivered to Buyer completed substantially in accordance with the plans and specifications, together with those fixtures, appliances, and other items set forth on Exhibit "B" hereto (with the right reserved to Seller to make substitutions of comparable materials). Any decorating, wall covering, and installation of fixtures, equipment, and hardware not provided for in this Agreement shall be Buyer's obligation.

B. Anything herein contained to the contrary notwithstanding, Seller shall have complete discretion in "finishing details," landscaping amenities, beautification of the site of the Premises and improvements and the neighborhood facilities. In consequence of this provision, renderings and plans contained in brochures or sales material shall not be construed as representations of, or be deemed as binding upon, Seller.

C. Buyer agrees that all changes, deletions, additions or alterations desired by Buyer in the construction of the Premises shall be agreed upon in writing by Buyer and Seller at the time of execution of this Agreement. All additional costs or charges incurred due to such changes shall be paid according to the terms of the change order and such payment is not and shall not be construed to be a deposit or any part of a deposit for the purchase of the Premises, but is a separate consideration paid by Buyer to Seller to induce Seller to alter or amend its plans and procedures to accommodate the preferences of Buyer. In the event Buyer cancels this Agreement, Seller may, at its option, retain all sums paid by Buyer for changes or additions ordered by Buyer and installed in or otherwise made to the Premises. Buyer acknowledges that changes and alternations from the plans and specifications are likely to cause delays and considerable cost increases, and acknowledges Seller's right to limit or deny Buyer's requests for any such changes and/or alterations.

On all change orders requested by Buyer, Buyer acknowledges that the preparation of change orders involves professional time and can be disruptive to the orderly flow of the construction process. On all change orders requested by Buyer which are not on Seller's Commonly Requested Options List, there shall be a \$100 preparation fee attached which shall be chargeable whether or not the change order is accepted. Multiple items per change order

shall carry an additional \$50.00 per item charge. Buyer also acknowledges that requests for changes, other than those on Sellers Commonly Requested Options List, require professional time to research and prepare and that design requests require the attention of design professionals. Such time shall be charged to the Buyer at \$85.00/hour whether or not the change is ultimately accepted by Buyer.

Seller shall provide Buyer with a landscaping plan prepared by the site Landscape Architect, La Quatra Bonci. The plan shall direct Seller in the installation of Buyer's landscaping. Should Buyer request changes in the landscape plan or a consultation with the Landscape Architect, the professional fees of the landscape architect shall be borne by Buyer. Should Buyer's changes result in additional costs, they shall be subject of a change order.

D. Exhibit B contains allowances representing the dollar amount in the purchase price allocated to the specific item in question. It is the intent of this Agreement that the Buyer shall pay any overages above the allowed amount direct to the respective vendor and that the Seller pay the Vendor the allowed amount upon completion of the work by the Vendor. Should the allowed amount not be used, the underage shall be credited to the Buyer at closing. Should the allowed amount be exceeded and the Vendor not paid directly for the over run, that over run will be charged to the Buyer at closing.

5. INSPECTION AND SETTLEMENT:

A. Settlement shall occur on or before Seven (7) months after Seller has obtained a building permit from the City of Pittsburgh and Owner has selected cabinets, flooring, and affirmed the plumbing selections in the specifications, whichever is later. Seller shall immediately start the application process for the Building Permit. The above is subject to the right of Seller to extend same for delays caused by, but not limited to, circumstances beyond Seller's control such as strikes, shortage of labor or materials, weather conditions, Acts of God, acts of the Federal, state or Municipal government or any of its agencies, including building or other code inspections and approvals, governmental regulations, fire, or other similar occurrences (each of which is herein called an "Act of Unavoidable Delay"), in which event the Settlement Date will be extended for a period of time equivalent to the delay in the completion of the Premises occasioned by reason of any or all of said Acts of Unavoidable Delay. Seller shall also have the right to extend the date of settlement for up to ninety (90) days for delays other than those beyond Seller's control ("Extended Settlement Date"). Seller shall give Buyer at least ten (10) days notice prior to the scheduled settlement date that Seller is exercising the right to extend settlement. Said notice shall include the Extended Settlement Date. In the event that there are additional Acts of Unavoidable Delay occurring subsequently to the Extended Settlement Date shall be determined pursuant to the provisions herein set forth. Notwithstanding the foregoing, settlement shall not be extended because of delay, beyond Seller's reasonable control, in the furnishing of any item ordered by Buyer and not specified on Exhibit "B" however, a temporary substitution shall be furnished if the item is necessary for the essential habitability of the premises.

B. Seller shall notify Buyer in writing of the date for settlement which date shall not occur earlier than twenty (20) days after the date of such written notice. Prior to the date set for settlement, Buyer shall inspect the Premises with an authorized inspection representative of Seller. Seller and Buyer shall indicate those items in the Premises which may be in need of completion, repair and/or replacement. Such items as Seller believes, in Seller's sole judgment, will be completed, repaired or replaced prior to settlement, shall be noted by Seller's representative on an inspection statement. In addition, those items which shall be completed, repaired or replaced after settlement shall be noted. The inspection statement shall be executed by Buyer and on behalf of Seller and, upon execution, will constitute an addendum to this Agreement incorporated herein as if set forth in full. Any post-settlement services shall be provided by Seller in accordance with the terms and conditions of the provisions of Paragraph 8 hereof. The failure of Buyer to make such an inspection when requested by Seller shall not delay settlement and shall be deemed a waiver of Buyer's right to inspect. Except as provided with respect to the inspection herein described, Buyer agrees that all matters pertaining to construction will be discussed by Buyer with Seller's authorized representative and Buyer will not in any way interfere with workmen during the construction or completion of the Premises.

C. Buyer shall settle with Seller for the Premises in such place in the Pittsburgh Metropolitan area as shall be designated by notice from Seller to Buyer given at least twenty (20) days prior thereto. At settlement, Buyer shall execute all papers reasonably required by Seller (and the mortgage papers related to the Premises, if any) and make all payments necessary to carry out the terms and conditions hereof. Subject to the provisions of Paragraph 5A, time shall be of the essence of this Agreement.

6. POSSESSION AND WAIVER:

Possession is to be delivered at settlement by delivery of special warranty deed and keys delivered to a completed, vacant dwelling.

7. SELLER'S RESERVATION OF RIGHTS:

Seller shall have the right, at any time or times, to change the selling prices for Dwelling Units and Lots other than the Premises which is the subject of this Agreement, and any increases in the prices shall likewise belong to Seller; provided, however, that no changes in prices affect sales approved prior to the time of such changes.

8. WARRANTIES:

A. Provided settlement occurs hereunder, and subject to the limitations hereinafter contained in this Paragraph 8, Seller warrants that the dwelling constructed on the Premises sold to Buyer shall be warranted as provided in the Warranty Agreement attached hereto and incorporated herein as Exhibit "C". The Limited Warranty Agreement is expressly in lieu of any

other warranties by Seller or any other person or entity, express or implied, including by way of illustration and not limitation, implied warranted of merchantability and of fitness for a particular purpose. Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the sale or use of the premises sold hereunder, and there are no agreement or warranties either oral or written, collateral to or affecting this Agreement.

B. Except as may be provided in Exhibit "C" attached hereto, no warranty is given with respect to any appliance, apparatus, instrument, component or accessory (each of which is hereinafter called "Equipment"). To the extent that the manufacturer thereof is willing to warrant his product to Seller, Seller shall use its best efforts to obtain from such manufacturer its acknowledgement that said warranty shall be available to and run directly to Buyer with respect to Equipment installed in the dwelling.

C. Subject only to the foregoing warranties and to the completion of any insubstantial work remaining to be performed in or on the Premises as permitted by the terms hereof, the acceptance by Buyer of the deed to the Premises shall constitute a complete release and discharge of all warranties, obligations and liabilities of Seller and any parties claiming by or under Seller to Buyer, express or implied, with respect to the construction of (i) the Premises and (ii) the Lot and with respect to any injury, loss or damage to Buyer, to the Premises, or to property in, on or about the Premises resulting from any cause whatsoever.

D. The provision of this Paragraph shall survive settlement hereunder.

9. INSULATION:

Insulation will be installed in the homes as follows:

Ceiling will be insulated with Icynene spray foam insulation to a thickness of 5 inches which thickness according to the manufacturer will result in an R-Value of 30.

Exterior walls and party walls will be insulated with Icynene spray foam insulation to a thickness of 3-1/2 inches which thickness according to the manufacturer will yield an R-Value of R-13. In addition, the exterior walls will be insulated with styrofoam, having a thickness of one inch, which thickness, according to the manufacturer will yield an R-Value of 5.

These disclosures are made in accordance with the Federal Trade Commission Regulation 16 CFR 460.

10. DEFAULT BY BUYER:

A. In the event that Buyer is declared to be in default by Seller, Seller may elect either of the following remedies:

- (1) retain the earnest money and all monies paid on account of the purchase price as liquidated damages, in which event this Contract shall upon notice become null and void and both parties shall thereupon be released of all further liability hereunder. It is hereby agreed that, without resale, Seller's damages will be difficult of ascertainment and that the earnest money and all monies paid on account of the purchase price constitute a reasonable liquidation thereof and not a penalty.

B. Buyer hereby releases Seller from any liability for repayment to Buyer, in the event of a default by Buyer under any of the terms, covenants or conditions of this Agreement, of monies paid by Buyer for any extras or upgrades selected by Buyer and installed in, order for, or otherwise performed to the Premises by or for Seller. Buyer expressly acknowledges that the installation in, ordering for or performances to the Premises of any extras or upgrades does not benefit Seller, but, to the contrary, causes Seller to sustain damages by hindering Seller from selling the Premises to the general public after Buyer's default.

11. DEFAULT BY SELLER:

If, for any reason, Seller is unable to convey title at settlement in accordance with the requirements of this Agreement, or if, for any reason, Seller is unable to construct or complete the premises as required hereunder, as its sole remedy, Seller shall return to Buyer all sum(s) paid on account, including all sums paid for extras or upgrades and, thereupon, the parties shall be released and relieved from rights, duties and obligations hereunder and this Agreement shall become null and void.

12. CHANGE IN BUYER OR IN PROPERTY:

A. Buyer shall not, prior to settlement hereunder sell, assign or transfer, in any manner whatsoever, this Agreement or any right, title or interest herein or in the Premises without first obtaining the written consent of Seller. Any purported assignment, sale or transfer of any kind whatsoever by Buyer of this Agreement, or any right or interest herein, or in the Premises prior to settlement, shall be void unless consented to in writing, by Seller. Subject to this provision prohibiting such sale, assignment or transfer by Buyer, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, successors and assigns. Such an attempted assignment without Seller's consent may, at Seller's sole option, be deemed a default of this Agreement.

B. Any loss or damage to the Premises caused by fire or other casualty shall not in any way void or impair any of the conditions of this Agreement; provided, however, that if Seller, in Seller's sole discretion, shall determine that it is impractical to repair or rebuild the Premises then, within thirty (30) days after such casualty, Seller shall have the right to cancel this Agreement by returning all sums paid on account by Buyer, hereunder, including any sums paid by Buyer for extras or upgrades.

13. APPROVAL OF SALE:

This Agreement shall not be effective or binding on Seller until a duplicate hereof is executed by an officer of Seller, dated and delivered to Buyer but Buyer's offer to purchase shall remain open and irrevocable for ten (10) days. If this Agreement does not become effective as aforesaid within the ten-day period, all sum(s) paid on account and any sums paid by Buyer for any extras or upgrades, shall be returned to Buyer and this Agreement shall become null and void and neither party shall have further liability to the other hereunder.

14. RECORDING:

Buyer shall not cause this Agreement to be recorded in any place of public record and, should this Agreement be recorded by Buyer or anyone acting by, for or under Buyer, in violation hereof or if Buyer shall file or cause to be filed against the Premises any notice of lis pendens, this Agreement shall, at Seller's option, be and become void and of no further effect and, should Seller so elect, Buyer shall be entitled to receive back all sum(s) paid on account, including all sums paid by Buyer for any extras or upgrades not yet installed in, ordered for or otherwise performed to the Premises by or for Seller, upon delivery to Seller of a release in form acceptable to Seller of all rights of Buyer hereunder and in and to the Premises. Seller shall have the right and Buyer hereby irrevocably authorizes, and empowers any attorney, the Recorder or Deeds of any county, or the Prothonotary or Clerk of any court in the Commonwealth of Pennsylvania to strike from the record the recorded Agreement or any notice of lis pendens filed by or caused to be filed by Buyer against the Premises.

15. ENTIRE AGREEMENT:

A. This is the entire Agreement between the parties and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Agreement in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

B. Buyer acknowledges that Buyer is aware that any information received from Seller or Seller's agents or employees relating to carrying costs, tax benefits of ownership, or otherwise, was offered as an estimate only and Buyer declares that Buyer did not rely thereon in entering into this Agreement. No representation, claim, statement, advertising, promotional activity, brochure or plan of any kind made by Seller or Seller's agents or representatives shall be binding upon Seller unless fully set forth or expressly incorporated in this Agreement.

16. BROKERS:

Buyer represents to Seller that no broker or agent, other than the Listing Broker and

the Selling Broker whose names are set forth on the first page of this Agreement, brought about the sale hereunder, nor is anyone else entitled to a commission or brokerage fee by reason of the transaction hereunder. Buyer agrees to indemnify and save harmless Seller against and from any and all claims, demands and causes of action for commissions or brokerage fees from anyone other than the Listing Broker and the Selling Broker.

17. SEWAGE FACILITY:

The Pennsylvania Sewage Facilities Act of January 24, 1966, No. 537 P.L. 1535, as amended, requires that there be a statement regarding the availability of a community sewage system. The Property is serviced by a community sewage system.

18. COAL NOTICE:

NOTICE -- THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.)

19. CAPTIONS:

The captions contained herein are not a part of this Agreement. They are included solely for the convenience of the parties and do not in any way modify, amplify or give full notice of any of the terms, covenants or conditions of this Agreement.

20. CONSTRUCTION AND DEFINITION:

This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, including the choice of law rules thereof.

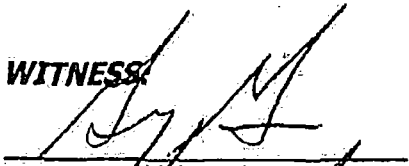
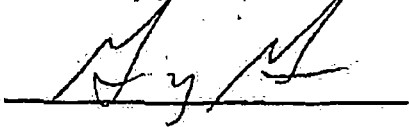
21. NOTICES:

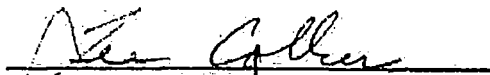
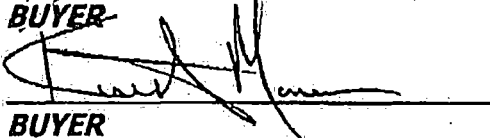
A. All notices intended for Seller shall be sent to MRRC Summerset II, Inc. c/o Montgomery & Rust, Inc., 4284 Route 8, Allison Park, PA 15101.

B. All notices intended for Buyer shall be sent to **110 Crosswinds Lane, Murrysville, PA 15668-1201.**

22. The unit shall be constructed in accordance with the attached plans and specifications, which are incorporated into this Agreement.

WITNESS:

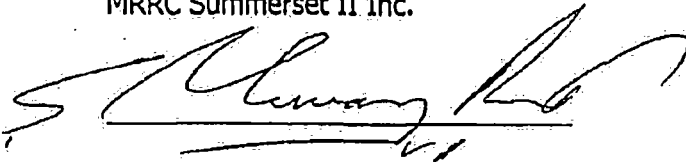

BUYER

BUYER

Accepted this 23rd day of March, 2007.

ATTEST:



MRRC Summerset II Inc.



Summerseat at Frick Park
(Lot 10)

Marcon/Coker Residence
1251 Parkway Blvd.
Pittsburgh, PA 15217

MRC II

Marcon & Coker, Inc.
1251 Parkway Blvd.
Pittsburgh, PA 15217
Tel: 412-261-1111

The Standard Company
1251 Parkway Blvd.
Pittsburgh, PA 15217
Tel: 412-261-1111

Architect: MRC II

Engineer: MRC II

Interior Designer: MRC II

Contractor: MRC II

General Contractor: MRC II

Architect: MRC II

Engineer: MRC II

Interior Designer: MRC II

Contractor: MRC II

General Contractor: MRC II

Project No. 1000000000

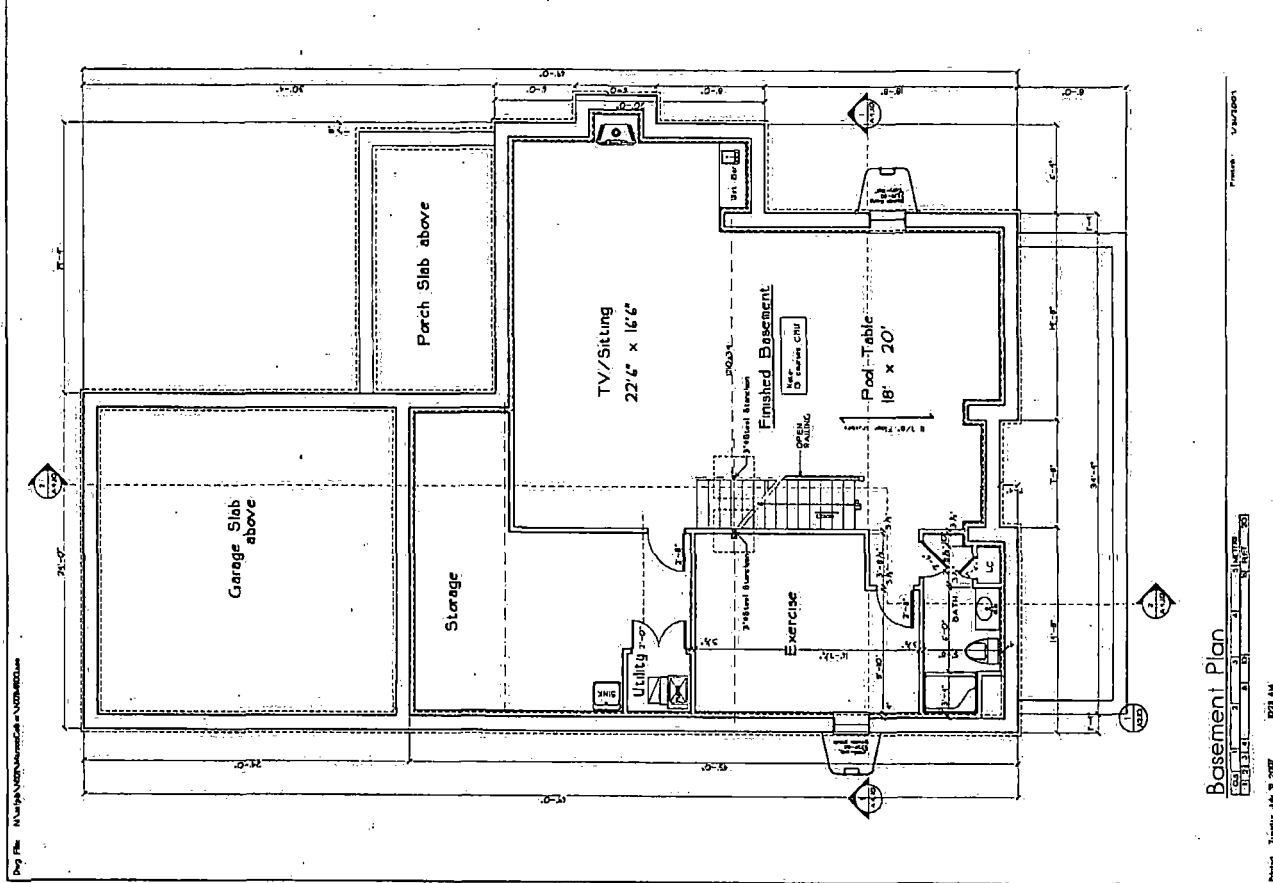
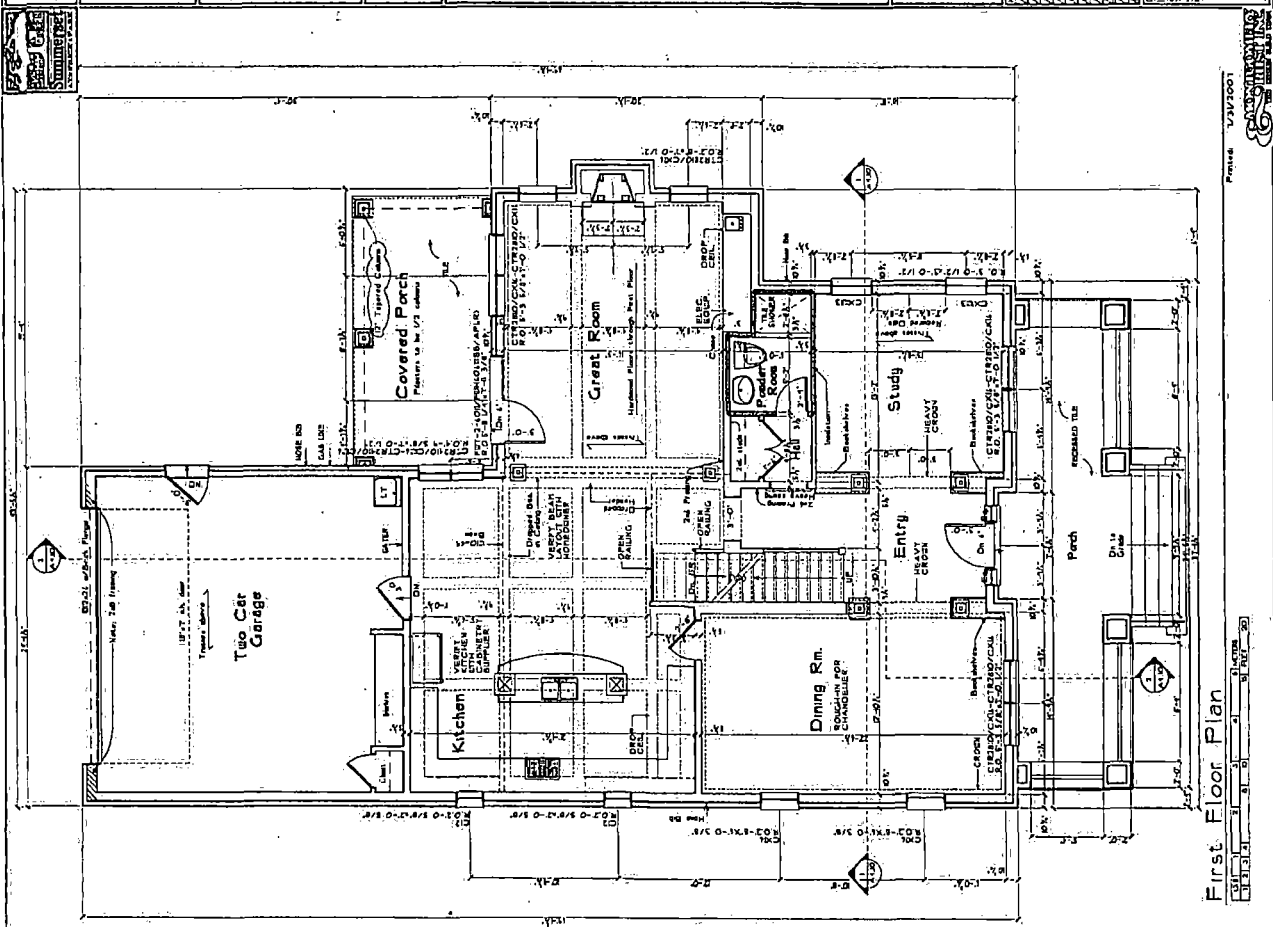
Drawn By: MRC II

Check By: MRC II

Date: 1/27/07

Scale: 1/8" = 1'-0"

Sheet: 10 of 10



Architect
Marcon/Coker Residence (Lot 10)
 1251 Parkway Blvd.
 Pittsburgh, PA 15227

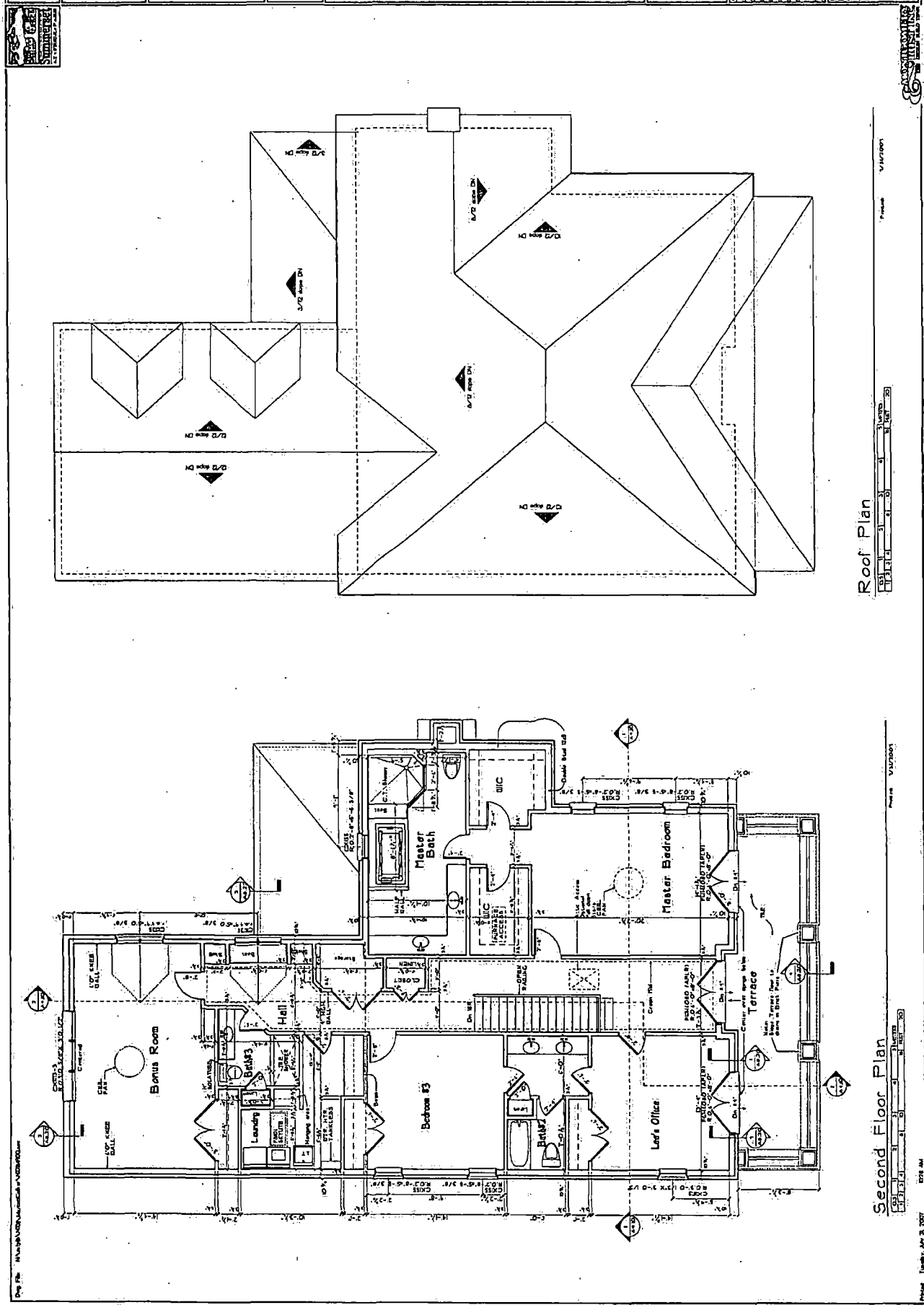
Developer
Marcon/Coker Residence (Lot 10)
 1251 Parkway Blvd.
 Pittsburgh, PA 15227

Engineer
MRCC II
 10000 Blvd Assoc. Inc.
 10000 Blvd Assoc. Inc.
 10000 Blvd Assoc. Inc.

Architect
Marcon/Coker Residence (Lot 10)
 1251 Parkway Blvd.
 Pittsburgh, PA 15227

Developer
Marcon/Coker Residence (Lot 10)
 1251 Parkway Blvd.
 Pittsburgh, PA 15227

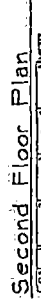
Engineer
MRCC II
 10000 Blvd Assoc. Inc.
 10000 Blvd Assoc. Inc.
 10000 Blvd Assoc. Inc.



Roof Plan



Second Floor Plan



1251 Parkway Blvd.
 Pittsburgh, PA 15227

1251 Parkway Blvd.
 Pittsburgh, PA 15227

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 Pittsburgh, PA 15227

1251 Parkway Blvd.
 Pittsburgh, PA 15227

1251 Parkway Blvd.
 Pittsburgh, PA 15227

1251 Parkway Blvd.
 Pittsburgh, PA 15227

David H. Montgomery, AIA
Montgomery & Paul, Inc.
Circle Seven Square South
234 E. 8
Canaan Park, PA 15071
(412) 473-8820 Mob. (412) 473-0042 Fax

Marquarry & Root, Inc.
13300 133rd Ave. S.
P.O. Box 13300
Plymouth, MN 55441
Tel: 763-453-1100
Fax: 763-453-1101
www.marquarry.com

MRC II

Landscape Architect
LaQuinta Band Assoc. Inc.

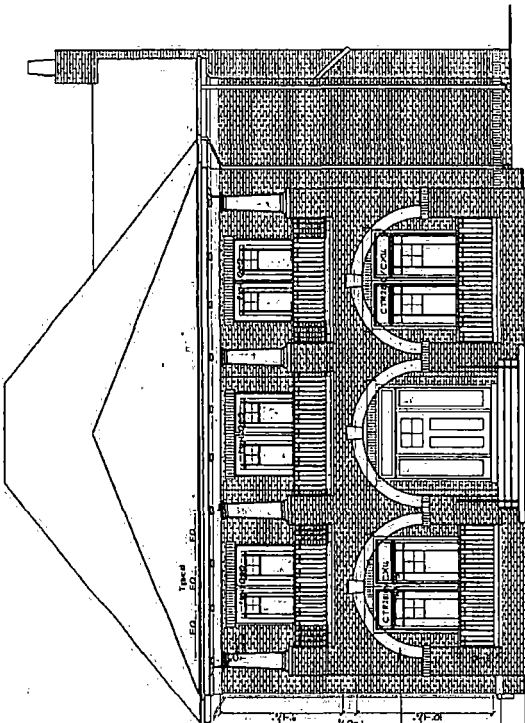
Summerset at Frick Park
Martcom/Colker Residence (Lot 101)
1251 Parkway Blvd.
Pittsburgh, PA 15217

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Issue Date:	5/22/07
Grader:	As Noted
Job No:	M101

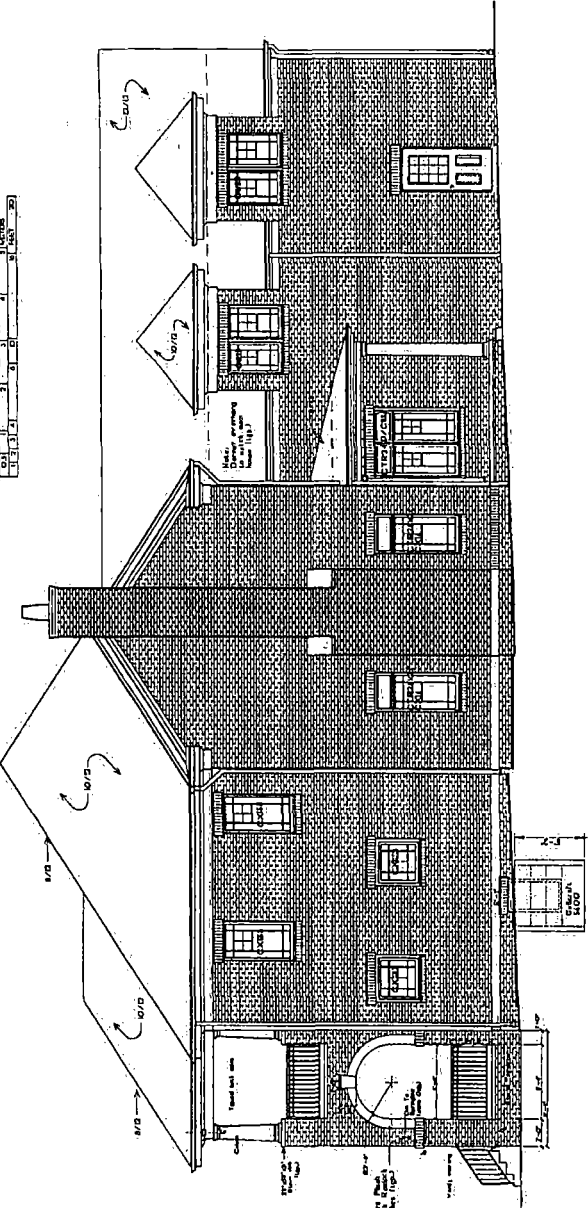
10310



Front Elevation



Printed: 1/31/2001



Right Side Elevation



117 80324

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MRC-1

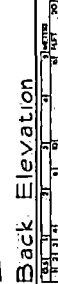
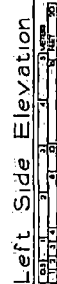
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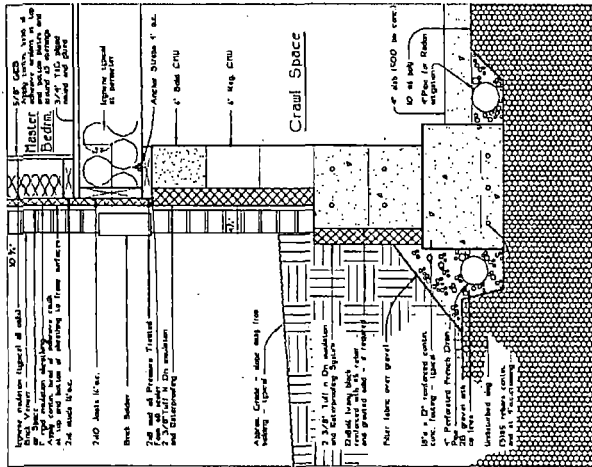
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Rec'd Date: 5/22/07
 As Noted
 Job No.: N001
 Right/Rear Elevation
 1st Floor External

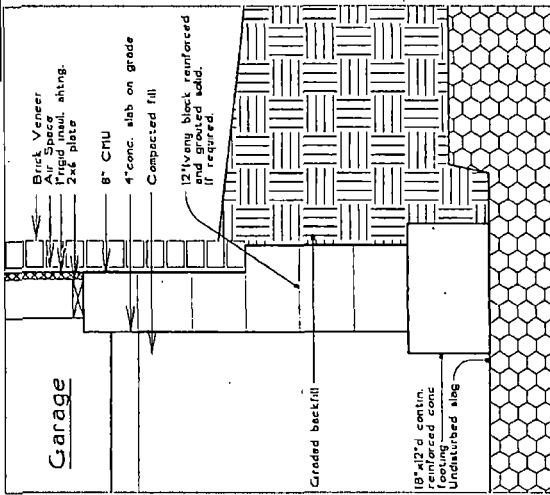
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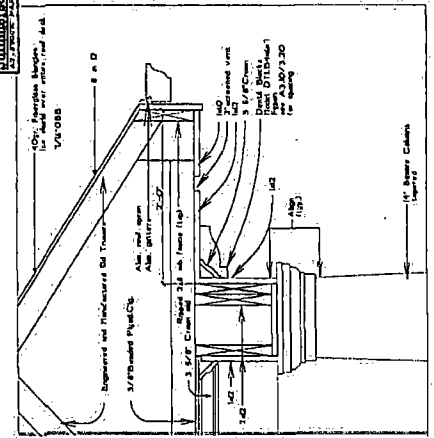
Back Elevation



Typical Wall at Crawl Space



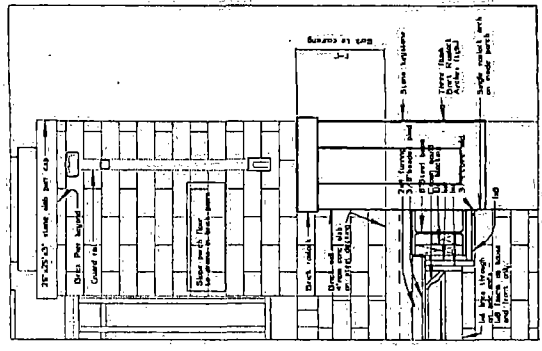
3 Foundation @ Garage
SCALE: 1-1/2" = 1'-0"
NO30FNO3

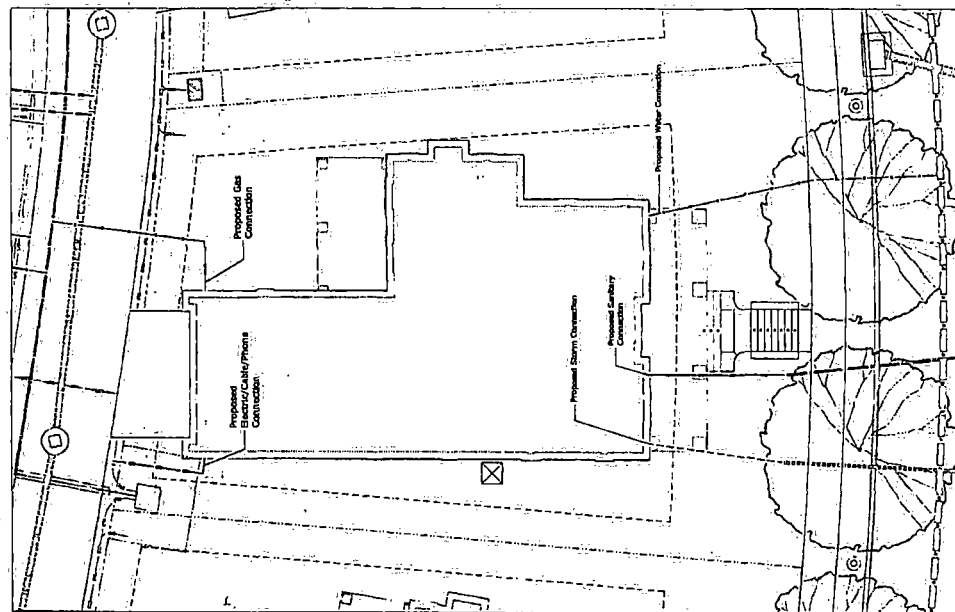


4

Cornice at Front Porch

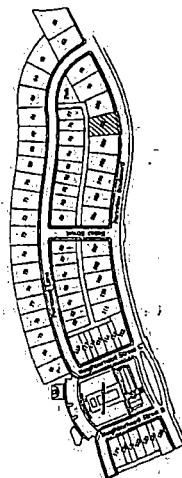
1 1/2" = 1'-0"

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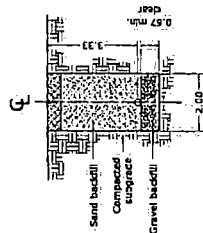


UTILITY PLAN

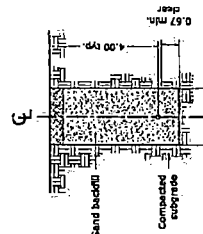
Note: Connections to houses are preliminary and subject to change. These are based on actual locations of stub-outs in the field.



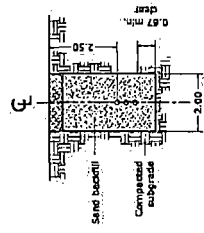
LOCATION PLAN



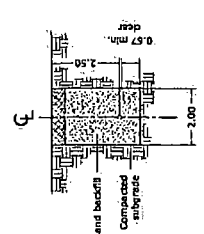
SOWER



WATER



Electric/TV/Telephone



GAS

TYPICAL UTILITY TRENCH DETAILS

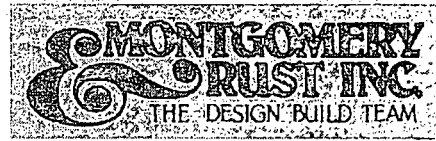


Project No.	Utility/Phase Lot 101
Scale	1/8" = 1'-0"
Date	09/19/07
Sheet	1 of 1

LaQuatra Bond Associates
 20 South 7th Street
 Suite 200
 Erie, PA 16501
 Tel: 814.464.2020
 Fax: 814.464.2020
 Website: www.laquatra.com
 Nature back at follow.

Summerset Land Development Associates
 10000 Summerset Lane
 Suite 100
 Pittsburgh, PA 15244
 Tel: 412.484.1111
 Fax: 412.484.1112
 Website: www.summersetland.com

Summerset at Frick Park
 Lot 101: 1351 Parkview Boulevard
 Allegheny County
 Pittsburgh, Pennsylvania



The
RUBINOFF
Company

03/23/07

Exhibit B
ESTATE HOME SPECIFICATIONS
Marcon and Colker – Lot 101

1. EXCAVATING AND GRADING

The Contractor shall do all necessary excavating and rough grading. The excavating shall be large enough to permit inspection of footings after the foundation has been completed. All excess dirt shall be distributed on site by the Contractor.

2. FOOTINGS

Concrete footings for walls and piers shall be mixed in proper proportions of one (1) part cement, two (2) parts sand, and four (4) parts gravel.

3. BLOCKWORK, DRAINS AND WATERPROOFING

Shall be concrete block construction, straight, plumb and level, and as shown on plans. All joints shall be struck flush on both sides and all brick shall be fully bedded. Block thickness shall be as shown on the contract drawings. Block shall be waterproofed with Tuff-N-Dri with 2 3/8" insulation board. **Basement to be 13 courses of block.**

4. STEEL BEAMS

Steel beams shall be as per contract drawings. Lintels to be steel with 4" bearing on each side of windows and doors, where there is masonry above.

5. BRICKWORK

All brick work shall be laid in mortar cement, with all bricks well bedded with both vertical and horizontal joints on straight lines. Brick shall be selected by Contractor.

6. FIREPLACE AND MANTEL

(2)Heat N' Glo 6000GLX IPI with Valencia doors and gas log. Mantel, hearth and surround allowance to be \$2,000.

7. BASEMENT AND GARAGE FLOOR

Shall be laid with sufficient slope to drain and shall be a 4" re-inforced supported slab. Concrete mixture to be one (1) part cement, two (2) parts sand and four (4) parts gravel. A concrete sealer and a moisture barrier shall be placed over the soil in crawl spaces.

8. CARPENTRY.

Contractor shall provide all necessary labor and material and perform all carpentry work. Contractor shall lay out work and be responsible for measurements. All work to be done in a neat workmanlike manner, level, straight, plumb and true, and strictly in accordance with the plans and specifications.

(a) Joists and Bridging

First floor and second floor joists to be 11 7/8" engineered trusses 16" centers, grade spruce or engineered floor trusses.

(b) Sub Flooring

Sub flooring shall be laid, glued and nailed to joists. All sub floor shall be 3/4" tongue and groove structure wood or equal except as noted.

(c) Studs and Partitions

Exterior studs shall be sized 2" x 6" and spaced 16" on centers. Interior partitions to be per plan. Single plate on bottom and double plate on top of each bearing wall or partition. First floor ceiling height shall be 10'. Second floor ceiling height shall be 9'.

(d) Sheathing

All outside walls shall be covered with 1" Owens Corning Styrofoam on 2" x 6" stud walls securely nailed. Roof sheathing shall be of 7/16" OSB or equal securely nailed on rafters.

9. SIDING, OUTSIDE TRIM, AND VENTILATING LOUVERS

Siding shall be Hardiplank smooth 5" to the weather. Fascia and window trim will be Pro-Trim or equal. Soffit under porches will be 3/8" painted bead board.

10. ROOFING

Roof material shall be Owens Corning dimensional 40 year.

11. GUTTERS, FLASHING, AND DOWNSPOUTS

Contractor shall and will provide all necessary labor and materials and perform gutter work under all eaves with suitable conductors connecting round aluminum downspouts with drain. The rain conductors shall be drained by PVC drains to sewer. Proper metal flashing shall be provided wherever necessary. Gutters shall be aluminum.

12. EXTERIOR DOORS

Front: \$4,000.00 allowance for design, fabrication, painting, install, and hardware
 Rear: Shown on drawings - Clad wood patio door by Andersen
 Garage: Steel insulated with operator with two (2) openers and keyless entry

Weatherstripping

Shall include outside doors weather stripped. Aluminum threshold under outside doors and weather strips on outside door jambs.

13. WINDOWS AND SCREENS

Manufacturer: Andersen 400 Series HP with high definition grilles per drawings
 Double glaze: Yes
 Vinyl clad: Yes
 Skylights: Velux FS106 in Laundry and 14" Solar tube in Bonus bath

All sliding door and window screens are included.

14. INSULATION

Flat Ceilings: **Icynene foam insulation**

Sloped ceiling: **Icynene foam insulation**

Walls: **Icynene foam insulation**

Basement Walls: R-10 2 3/8" compressed Fiberglass on exterior of block wall

15. STAIRS

First to second floor and stairs and stairs to back landing shall be mill made as shown on plans with maximum 7-3/4" or less primed pine risers and 9" **oak** treads sanded, stained, and sealed. Basement stairs shall be mill made with maximum 7-3/4" or less primed pine risers and 9" **oak** treads sanded, stained, and sealed.

Balusters to be square poplar painted with 6020 oak handrail. Boxed newels to be 4092 or 4094 Newel posts.

16. PLUMBING (As shown on plans)

Master Bath – White

	Model	Make
Tub:	Overture Whirlpool K-1231	Kohler
Shower:	Tile	
Commode:	Devonshire elong K-3457	Kohler
Tub faucet:	Devonshire K-T398-4-CP	Kohler
Lavatories (2):	Pennington K-2196-8	Kohler
Shower head & faucet:	Devonshire K-T396-4-CP	Kohler
Lavatory faucets (2):	Devonshire K-394-4-CP	Kohler
Vanity top:	Granite	

Bath #2 – White

	Model	Make
Tub:	Lakewood K-1685	Kohler
Commode:	Devonshire elong. K-3457	Kohler
Lavatory:	Pennington K-2196-8	Kohler
Tub and Shower faucet:	Devonshire K-T395-4S-CP	Kohler
Lavatory faucet:	Devonshire K-394-4-CP	Kohler
Vanity top:	Corian	

Bonus room bath-White

Tub/Shower:	Tile	Kohler
Commode:	Devonshire elong. K-3457	Kohler
Lavatory:	Devonshire K-2279-4	Kohler
Shower head:	Devonshire K-T396-4-CP	Kohler
Lavatory faucet:	Devonshire K-394-4-CP	Kohler
Vanity top:	Formica	

Powder Room-White

Tub/Shower:	Tile	Kohler
Shower head:	Devonshire K-T396-4-CP	Kohler
Commode:	Devonshire elong. K-3457	Kohler
Pedestal Lavatory:	Devonshire 27" K-2294-4	Kohler
Lavatory faucet:	Devonshire K-394-4-CP	Kohler

Basement Bath-White

Tub/Shower:	Cancun K-1598	Kohler
Shower head:	Devonshire K-T396-4-CP	Kohler
Commode:	Devonshire elong. K-3457	Kohler
Lavatory:	Devonshire K-2279-4	Kohler
Lavatory faucet:	Devonshire K-394-4-CP	Kohler
Vanity top:	Formica	

Included in plumbing is Upgrade Allowance of \$5,500.00

Services

Hot water heater:	Rinnai R85E tankless hot water heater/8.5 GPM
Gas logs:	Included
Laundry trays:	Fiberglass, single part in laundry and garage
Gas lines:	Furnace, range, hot water heater, and (2) fireplaces
Kitchen faucet:	Kohler Coralais K-15162-CP
Radon:	(2) fantech inline fans for each radon pipe

One (1) sill cock in garage, one in the front of the home, and one in patio area. All the above shall be properly installed and to local ordinances. Hot and cold water connections shall be made with bath tubs, shower, lavatory, kitchen sink and laundry trays. Utility lines will be run to the property line and to be paid by the Contractor. Supply lines to be 3/4" Aquapex by Wirsbo. Laterals and risers are 1/2" Aquapex. Waste lines shall be 4" schedule 40 PVC underground. Radon exhaust piping will be placed under the basement slab and extended through the roof.

17. HEATING AND DUCTWORK

Contractor shall provide all necessary labor and materials and perform all heating work of every nature whatsoever to be done, including the installation of heating system of sufficient size to properly heat all parts of the house. Heating system shall maintain 70 degrees F at 0 degrees F outside temperature. Registers of approved pattern and finish to be installed in all rooms. Thermostat to be provided. The heating system to be used shall consist of the following:

Furnace:	(2) Carrier Weathermaker 9200 Gas 92% 58MXA 80-12 Deluxe
Air conditioner:	(2) Carrier 13 SEER 2 1/2 ton 38EZA Puron Condensing Unit
Humidifier:	(2) HUMCCSBP By pass humidifier with humidistat
Air cleaner:	(2) Carrier Media air filters
Rough for air:	Included
Ducts for fans:	Included
Dryer vent:	Included
Zoning:	First and second floor and basement to be zoned separately
Thermostats:	(3) programmable thermostats

18. WIRING AND ELECTRICAL FIXTURES

Contractor shall provide all necessary labor and material and perform all electrical work of every nature whatsoever to be done. All work to comply with local ordinances. 200 AMP underground service **and 100 amp sub panel** shall be provided by contractor. Openings in excess of **300** shall be charged to the Owner at \$35 per opening. Special circuits shall be charged to the Owner at \$100/circuit. Openings added by Owner after rough-in phase shall be chargeable at actual cost plus 16%. Plugs, switches, and plates are almond. Floor plugs requested by Owner will be at a cost of \$275 per plug. Additional paddle fans requested by Owner will be assembled and installed at a cost of \$150 per fan. The following will be provided by Contractor as part of the base price:

Bath fan in hall second floor bath will be 120 CFM Panasonic two speed fan

Smoke detectors per code

Assemble and install paddle fan in Master bedroom and Bonus room

Bath fans in powder room and master bath will be included in Electrical Fixtures allowance.

Other electrical fixtures shall be selected by the Owner and installed by Contractor. Fixture cost is to be covered by an allowance which includes all interior fixtures, bath fans except hall bath, exterior fixtures, chimes and transformer. **Electrical fixture allowance to be \$10,200.**

Structural Wiring and integrated security system

Proprietary Guardian 147 Control panel with rechargeable gel cell battery back-up. Deluxe keypad with pushbutton arming and three emergency buttons for medical, fire and police

Multi-zone microprocessor-based control panel to break entire system into separate zones

Inside siren-120 decibel (40 watts)

(1) electronic siren driver and amplifier with built-in 5-minute cut off timer

All perimeter access doors protected including the door to garage

One passive infrared motion detector

Telephone connection device

(1) OnQ Service Center – hub for incoming services

(1) OnQ Telecom Module – supports (6) telephone outlets

(2) OnQ Video Modules – supports (4) dual TV outlets for total of (8)

(7) OnQ Outlets

High Performance OnQ Category 5 Cabling

19. PORCHES

Floor shall be 4" concrete where shown on drawings with aluminum railing.

Second floor balcony to have 4" concrete floor with appropriate slope to side drains and scuppers.

20. WALLS AND CEILING FINISH

Drywall shall be 5/8" gypsum finished smooth on walls and textured on ceilings of second floor. All joints and corners will be finished with tape and joint compound. All joints will be sanded smooth.

First and second floor ceilings to have smooth finish

21. FLOOR FINISH

Tile. All ceramic and vinyl tile shall be selected by Owner. All tile work shall be covered by an allowance. Ceramic tile on floors and showers shall be set over a cement backing board underlayment. All tile work in this section shall be in accordance with the "American Standard Specifications for Installation of Ceramic Tile" with water resistant organic adhesive, except as may be modified herein. Installation, underlayment, and tile backing board are part of the allowance.

Finish Schedule	Floor	Walls Ceiling 5/8" Drywall	Ceiling 5/8" Drywall
Entry	Hardwood	Smooth	Smooth
Great Room	Hardwood	Smooth	Smooth
Dining Room	Hardwood	Smooth	Smooth
Kitchen	Hardwood	Smooth	Smooth
Breakfast Area	Hardwood	Smooth	Smooth
Study	Hardwood	Smooth	Smooth
Master Bedroom	Hardwood	Smooth	Smooth
Bedroom 3	Carpet	Smooth	Smooth
Lee's Office	Hardwood	Smooth	Smooth
Bonus room	Carpet	Smooth	Smooth
2nd Floor Hall	Hardwood	Smooth	Smooth

Powder Room	Ceramic	Smooth	Smooth
Master Bath	Ceramic	Smooth	Smooth
Bath No. 2	Ceramic	Smooth	Smooth
Bonus room bath	Ceramic	Smooth	Smooth
Basement TV/Sitting	Carpet	Smooth	Textured
Basement bath	Ceramic	Smooth	Textured
Basement Exercise	Carpet	Smooth	Textured
Basement Storage	Concrete	Block-painted	Unfinished
Laundry	Ceramic	Smooth	Smooth
Garage	Concrete	Smooth	Textured

Flooring and tile allowance to be \$40,050.

22. INTERIOR TRIM AND DOORS

	5 1/4" Base Colonial Mould	5 1/2" Crown Mould	2 Panel Tru Stile Doors	3 1/2" Colonial Casing
Entry	X		X	X
Great Room	X		X	X
Dining Room	X	X	X	X
Kitchen	X		X	X
Breakfast Area	X		X	X
Study	X		X	X
Master Bedroom	X		X	X
Bedroom 3	X		X	X
Lee's Office	X		X	X
Bonus room	X		X	X
2nd Floor Hall	X	X	X	X
Powder Room	X		X	X
Master Bath	X		X	X
Bath No. 2	X		X	X
Bonus room bath	X		X	X
Basement TV/Sitting	X		X	X
Basement bath	X		X	X
Basement Exercise	X		X	X
Basement Storage				
Laundry	X		X	X
Garage	X		Steel door	X

**Great room and kitchen to have beamed ceiling with heavy crown moulding.
Study and Entry to have heavy crown moulding.**

Shelving allowance to be \$9,000.

23. HARDWARE

The Contractor shall furnish all rough hardware such as nails, hinges, window handles and locks.

Interior hardware: Schlage Accent, Satin Nickel Lever

Front door hardware: Schlage Camelot handleset, Satin Nickel with Accent Lever in Satin nickel on interior

25. CABINET AND APPLIANCES

Cabinets. Supply and install kitchen cabinets including kitchen base and wall units, kitchen sink and top, vanities and vanity tops shall be included in the **cabinet allowance of \$60,000.**

Appliances Appliances shall be General Electric and will include a refrigerator, range, microwave, disposal, and dishwasher. **These appliances will be covered by an allowance of \$12,500.**

Other appliances such as, but not limited to washer and dryer are to be furnished and installed by the Owner. The necessary plumbing and electrical connections for these items shall be by Contractor. Through-wall venting connections for the dryer is by Contractor.

26. DECORATING

Walls to be painted with one (1) coat of primer sealer and two (2) coats of Duron eggshell or equal. Ceilings will be flat finish. All wood trim will be Duron semi-gloss finish or equal. Up to three (3) different colors are considered standard. Any additional colors will be charged at \$125 per room to the Owner.

27. INTERIOR PAINTING

All woodwork to be carefully cleaned before any oil, filling or varnish is applied and all rough spots to be sandpapered before filled or varnished or painted, and all nail and brad holes to be filled with putty. Stain or paint color to be selected by Owner.

28. EXTERIOR PAINTING

All wood sash and trim to be neatly traced. All trim woodwork shall have a finish of two (2) coats of housepaint. All exterior windows, doors, and louvers sealed with gun-type caulking compound.

Siding, trim and door colors to be selected by Contractor.

29. MEDICINE CHESTS, MIRRORS, SHOWER DOOR AND BATH ACCESSORIES

Medicine chests and bath accessories shall be selected by Owner and installed by Contractor. Material shall be an allowance item. Installation shall be by Contractor as part of the base price. **Bath Accessories allowance to be \$750.**

Mirrors and shower doors shall be selected by Owner as part of an allowance. Installation is included in the allowance. **Shower doors and mirrors allowance to be \$4,500.**

30. DRIVEWAYS

Driveway material shall be 5" concrete slab.

31. LANDSCAPING

Landscaping shall encompass all exterior activities after Contractor has machine spread the topsoil and completed the walks and driveways. Contractors shall provide all landscaping. **Fence to be purchased and installed with \$2,000.00 allowance.**

32. CONSTRUCTION UTILITIES

The Contractor shall furnish all heat, light, water, and power needed for his operations during the construction period.

33. CLEAN-UP

General clean-up will be done during construction and prior to occupancy. Contractor will remove debris, broom clean the unit and dust all cabinets and woodwork prior to occupancy.

34. MISCELLANEOUS

The mail box shall be provided by Contractor.

35. EXTERIOR MATERIAL AND COLOR SELECTIONS

Siding Color:	Snowfall white-located on dormers
Trim Color:	Snowfall white
Brick Type:	Belle Glade by Boral
Mortar Color:	Dark Pink- 10-828
Window Color:	White exterior/white interior
Shingle Color:	Onyx Black
Accent Color:	TBD (front door)
Gutter Color:	White
Garage Door:	White

Summerset at Frick Park
Options list-Lot 101
Keith Marcon and Lee Colker

March 23, 2007

Base Price **\$650,000.00**

Lower level options

- | | |
|--|-------------|
| 1. Drywall, paint, and trim basement partitions walls. | \$19,050.00 |
| 2. Add full bathroom in basement. | \$7,500.00 |
| 3. Upgrade railing from basement to first floor from drywall half wall to square balusters with 6020 oak handrail. | \$1,250.00 |
| 4. Upgrade basement to first floor stair treads to oak treads with painted pine risers. | \$1,250.00 |

Total for lower level options **\$29,050.00**

First floor options

- | | |
|--|------------|
| 1. Add beamed ceiling in Kitchen and Great room with heavy crown moulding. | \$6,000.00 |
| 2. Add heavy crown moulding in Study and Entry. | \$2,000.00 |
| 3. Upgrade railing from first to second floor from drywall half wall to open square wood balusters with 6020 oak handrail. | \$1,250.00 |
| 4. Upgrade first to second floor stairs treads to oak treads with painted pine risers. | \$1,250.00 |

Total for first floor options **\$10,500.00**

Second floor options

- | | |
|--|------------|
| 1. Add 5" crown moulding in second floor hallway. | \$1,000.00 |
| 2. Upgrade master bath shower from molded unit to tile shower. | \$2,000.00 |
| 3. Upgrade bonus room shower from molded unit to tile shower. | \$2,000.00 |
| 4. Add FS106 fixed skylight in Laundry. | \$750.00 |
| 5. Add 14" Solar tube in Bonus room bath. | \$450.00 |

Total for Second floor options **\$6,200.00**

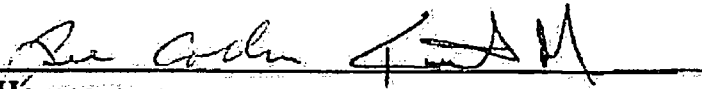
Miscellaneous options

1. Add \$60,000.00 cabinet and countertop allowance.	\$60,000.00
2. Add \$40,050.00 tile, hardwood, and carpet allowance.	\$40,050.00
3. Add \$5,250.00 mirror and shower door allowance.	\$5,250.00
4. Add \$750.00 bath accessory allowance.	\$750.00
5. Add \$10,200.00 electrical fixture allowance.	\$10,200.00
6. Add \$12,500.00 appliance allowance.	\$12,500.00
7. Add \$9,000.00 shelving allowance.	\$9,000.00
8. Add \$5,500.00 plumbing upgrade allowance.	\$5,500.00
9. Add \$4,000.00 front door and front door hardware allowance.	\$4,000.00
10. Add \$2,000.00 mantel, surround, and hearth allowance.	\$2,000.00
11. Upgrade insulation package from fiberglass to Icynene spray foam insulation.	\$8,400.00
12. Add \$2,000.00 fence allowance.	\$2,000.00
Total for miscellaneous options.	\$159,650.00
Total for all options	\$205,400.00
Total revised contract price	\$855,400.00

The Builder hereby acknowledges that they have provided the Owner with a Builder's Limited Warranty.


Montgomery & Rust, Inc.

The Owner hereby acknowledges that they have received a Builder's Limited Warranty.


Homeowner

The Warranty will begin on:

2/21/08
Date

The Owner hereby acknowledges receipt of the binder with product warranties, manuals, and other important information. This information is for their records and cannot be duplicated.

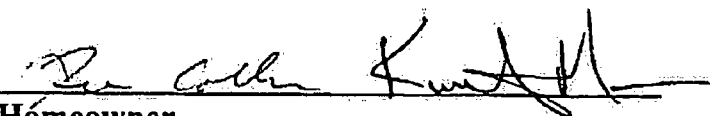

Homeowner

EXHIBIT "C"

BUILDER'S LIMITED WARRANTY

Throughout this Builder's Limited Warranty, hereinafter referred to simply as **LIMITED WARRANTY**, the words "YOU" and "YOUR" refer to the **HOMEOWNER**. The words "WE," "US," and "OUR" refer to the **BUILDER**. The other words and phrases that appear in boldface uppercase type also have special meaning. Refer to the Definition section, so that YOU will understand the special terminology applicable to this **LIMITED WARRANTY**.

This **LIMITED WARRANTY** document is accompanied by a Builder's Limited Warranty Verification form. That form identifies the dates on which the various warranty coverage periods begin and expire. Be sure to retain the Builder's Limited Warranty Verification Form with this **LIMITED WARRANTY** document.

SCOPE AND TERM OF WARRANTY

The scope of this **LIMITED WARRANTY** varies from the 1st year to the 2nd year following **OUR** transfer of the **HOME** (along with any **COMMON ELEMENTS** related thereto) to **YOU**.

WE hereby warrant that:

1st YEAR WARRANTY

Commencing with the **WARRANTY DATE**, and continuing for one year, the construction of **YOUR HOME** (along with any **COMMON ELEMENTS** related thereto) will conform to the **PERFORMANCE STANDARDS** applicable to the first year and the warranted tolerances for **SPECIFIED STRUCTURAL COMPONENT FAILURES**. This 1st Year Warranty terminates one year after the **WARRANTY DATE**. Written notice of an alleged **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE** under this portion of the **LIMITED WARRANTY** must be postmarked or received by **US** within thirty (30) after the expiration date of the coverage in order to be eligible thereunder.

2nd YEAR WARRANTY

During the second year following the **WARRANTY DATE**, the **SYSTEMS** of **YOUR HOME** (along with any **COMMON ELEMENTS** related thereto) will conform to the **PERFORMANCE STANDARDS** applicable to the second year and the construction of **YOUR HOME** will conform to the warranted tolerances for **SPECIFIED STRUCTURAL COMPONENTS FAILURES**. This 2nd Year Warranty

terminates two years after the **WARRANTY DATE**. Written notice of an alleged **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE** under this portion of the **LIMITED WARRANTY** must be postmarked or received by **US** within thirty (30) days after the expiration date of the coverage in order to be eligible thereunder.

Any disputes which may arise from or relate to this **LIMITED WARRANTY** will be resolved by binding arbitration, in the manner described in "Requesting Warranty Performance Under This Limited Warranty" below.

If **YOU** discover a **DEFECT** during the applicable period covered by this **LIMITED WARRANTY**, **WE**, or another third party designated by **US**, will repair, replace or pay **YOU** the actual cost of repairing or replacing the **DEFECT** within a reasonable time after **OUR** inspection or testing confirms the **DEFECT**. The choice among repair, replacement, or payment is solely **OURS**. If **YOU** discover a **SPECIFIED STRUCTURAL COMPONENT FAILURE** during the period covered by this **LIMITED WARRANTY**, **WE**, or another third party designated by **US**, will repair, replace, or pay **YOU** the actual cost of repairing or replacing the **SPECIFIED STRUCTURAL COMPONENT FAILURE** to meet the warranted tolerances for the specified structural component.

Please note: **YOU** must inform **US** of complaints under this **LIMITED WARRANTY** in writing. Complaints communicated only by telephone or in face-to-face discussions will not protect **YOUR** rights under this **LIMITED WARRANTY**.

OUR repair of any **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE** under this **LIMITED WARRANTY** shall include repair and cosmetic correction of only those surfaces, finishes and coverings, original with the **HOME**, which require removal and replacement in order to repair the **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE**, or to repair other damage to the **HOME**, as originally constructed, directly attributable to the **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE**. **OUR** repair under the **LIMITED WARRANTY** will restore damaged components of the **HOME**, original with the **HOME**, to a condition approximating the condition just prior to the **DEFECT** or **STRUCTURAL COMPONENT FAILURE**, but not necessarily to a like new condition. Such repair, when undertaken by **US**, will be performed utilizing materials of like kind and quality to those original with the **HOME**.

OUR repair of surfaces, finishes and coverings shall be done so as to achieve as close a match with the original surrounding surfaces, finishes and coverings, but, due to fading, aging, or unavailability of matching materials, **WE** cannot warrant an exact match with surrounding surface areas.

OUR repair obligation under this **LIMITED WARRANTY** does not require the refinishing of

all interior or exterior surfaces unless damaged by the **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE**.

This **LIMITED WARRANTY** shall not be considered breached by the existence of a **DEFECT** or a **SPECIFIED STRUCTURAL COMPONENT FAILURE**, but rather is only breached by our failure to correct a **DEFECT** or a **SPECIFIED STRUCTURAL COMPONENT FAILURE** in accordance with the terms and conditions of this **LIMITED WARRANTY**.

In no event will the **BUILDER** be liable for repair costs or other warranty obligations amounting in the aggregate to more than the purchase price of the house.

WHAT IS NOT COVERED BY THIS WARRANTY

A. OUR LIMITED WARRANTY does not cover:

1. any damage to personal property or bodily injury;
2. any **CONSEQUENTIAL DAMAGES**;
3. any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** caused by, contributed to, aggravated by, or resulting, in whole or in part, from:
 - a) changes of the grading of the ground by anyone other than **US** or **OUR** employees, agents, or subcontractors;
 - b) changes or alterations made to a **HOME** by anyone after the **WARRANTY DATE**, except those performed by **US** or **OUR** employees, agents, or subcontractors;
 - c) any deficiency in materials or work supplied by anyone other than **US** or **OUR** employees, agents, or subcontractors;
 - d) negligence, improper maintenance or improper use of a **HOME** by anyone;
 - e) dampness or condensation due to **YOUR** failure to maintain adequate ventilation;
- 4) any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** caused by, contributed to, aggravated by, or resulting, in whole or in part, from:
 - a) fire;
 - b) explosion;
 - c) riot and civil commotion;

- d) smoke;
- e) water escape;
- f) falling objects;
- g) aircraft;
- h) vehicles;
- i) Acts of God;
- j) lightning;
- k) hail;
- l) floods;
- m) wind driven water;
- n) insects, rodents or vermin;
- o) moisture, rot, corrosion, rust or mildew;

5. any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** caused by, contributed to, aggravated by, or resulting, in whole or in part, from any Earth Movement including, but not limited to:

- a) earthquake, landslide or mudslide;
- b) mine subsidence, sinkholes or changes in the level of the underground water table not reasonably foreseeable at the time of construction;
- c) any volcanic eruption, explosion or effusion;

6. any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** caused by, contributed to, aggravated by, or resulting, in whole or in part, from wind, including, but not limited to:

- a) hurricanes;
- b) tornadoes;
- c) tropical storms;
- d) gale force winds;

7. any costs or expenses arising from, or any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** caused by, contributed to, aggravated by, or resulting, in whole or in part, from:

- a) the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **POLLUTANTS**, including, without limitation, any liability arising from uninhabitability or health risk attributable to **POLLUTANTS**, contaminants or irritants (including, without limitation, the presence of or proximity to hazardous or toxic materials;

b) any governmental direction or request to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize **POLLUTANTS**;

8. any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** that become apparent after the **HOME** is no longer used primarily as a residence;
9. any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** caused by, contributed to, aggravated by, or resulting, in whole or in part, from abnormal loading on floors which exceeds design loads;
10. any damage to **CONSUMER PRODUCTS**;
11. any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** which **YOU** have not taken timely action to minimize after obtaining **OUR** written approval to take corrective measures;
12. any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** covered by any other express warranty or insurance coverage **YOU** may have, and;
13. any nonconformity with local building codes, regulations, or requirements which has not resulted in a **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE**. While **WE** acknowledge our responsibility to build in accordance with applicable building codes, this **LIMITED WARRANTY** does not cover building code violations in the absence of a **DEFECT** or a **SPECIFIED STRUCTURAL COMPONENT FAILURE**. In such instance, **YOUR** recourse is under the building code and other applicable laws and not under this **LIMITED WARRANTY**. This exclusion in no way mitigates or relieves **US** of **OUR** obligation to build in accordance with applicable building codes.

B. **OUR LIMITED WARRANTY** does not cover any loss or damage as a result of any **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** which would not have occurred in the absence of one or more of the events or conditions listed in 4, 5 or 6 in Section A. above. **OUR LIMITED WARRANTY** does not cover any such loss or damage regardless of:

1. the cause of the excluded event or condition; or
2. other causes of the loss or damage; or
3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

**REQUESTING WARRANTY PERFORMANCE UNDER
THIS LIMITED WARRANTY**

A. YOUR DUTIES UNDER THIS LIMITED WARRANTY:

If **YOU** believe that **YOUR HOME** contains a **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE**, **YOU** must advise **US** by written notice no later than 30 days after the warranty on the **DEFECT** or on the **SPECIFIED STRUCTURAL COMPONENT FAILURE** terminates. If such notice is not postmarked or received by **US** by that deadline, **WE** shall have no obligation to remedy the **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE**. Any notice involving a claimed **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE** in a **COMMON ELEMENT** may only be made by a representative designated by the Association to file such notice.

YOU must cooperate with **US** and **OUR** employees, agents and subcontractors in every effort to investigate **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES**, including without limitation, granting the right of reasonable access to **YOUR HOME** to monitor, investigate or correct **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES**, upon reasonable notification to **YOU**. In the event **YOU** withhold access to **YOUR HOME** from **US**, **WE** shall have no obligation to remedy **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES**.

Except at **YOUR** own cost, **YOU** will not voluntarily make any payment or assume any obligation or incur any expense for the correction of items which **YOU** believe to be covered by this **LIMITED WARRANTY** without **OUR** prior written approval. In the event of an **EMERGENCY SITUATION**, approval is granted to **YOU** to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the **HOME** from further damage and that **YOU** shall notify **US** as soon as possible, but no later than 5 days after the repairs are undertaken, and provided further that **YOU** shall keep an accurate record of such repair expenditures.

B. BINDING ARBITRATION:

If **WE** fail to respond to **YOUR** written notice or **WE** do not correct the **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** in the way **YOU** think this **LIMITED WARRANTY** requires, or **WE** do not agree that the alleged condition is covered by this **LIMITED WARRANTY**, or if any other disputes arise which relate in any way to this **LIMITED WARRANTY**, then such matters shall be submitted to binding arbitration. Any disputes arising under this **LIMITED WARRANTY** related to **COMMON ELEMENTS** in a multi-unit residential structure must be submitted to

binding arbitration by the Association or by its designated representative. Any and all disputes arising out of or in any way related to this **LIMITED WARRANTY** (including, without limitation, disputes as to what issues shall be submitted to arbitration; alleged breach of the **LIMITED WARRANTY**; and alleged violations of consumer protection, unfair trade practice, or other statutes) shall be submitted to binding arbitration.

Any such binding arbitration shall be conducted by an independent arbitration as designated through AAA commercial arbitration rules.

ASSIGNMENT OF MANUFACTURERS' WARRANTIES

WE hereby assign to YOU the manufacturers' warranties on all appliances and equipment installed in YOUR HOME. YOU should follow the procedure set forth in the applicable manufacturer's warranty should any appliance or item of equipment malfunction. OUR obligation under this **LIMITED WARRANTY** as to any appliances and equipment installed by US in YOUR HOME is limited to the workmanlike installation of such appliances and equipment, and further only applies where such appliances and equipment are not **CONSUMER PRODUCTS**.

GENERAL PROVISIONS

- A. Should any provision of **LIMITED WARRANTY** deemed unenforceable by a court of competent jurisdiction, that determination will not affect the enforceability of the remaining provisions.
- B. This **LIMITED WARRANTY** is to be binding on YOU and US and as to the arbitration provisions herein, and our heirs, executors, administrators, successors, and assigns.
- C. Use of one gender in this **LIMITED WARRANTY** includes all other genders, and the use of the plural includes the singular, as may be appropriate.
- D. The **LIMITED WARRANTY** is to be construed in accordance with the law of the state in which the **HOME** is located except insofar as its construction is governed by the United States Arbitration Act.

OTHER WARRANTIES OR INSURANCE

In the event WE repair, replace or pay YOU the reasonable cost to repair or replace a **DEFECT** or **SPECIFIED STRUCTURAL COMPONENT FAILURE**, or other related damage to the **HOME** covered by this **LIMITED WARRANTY**, which repair or replacement is covered by other warranties or insurance YOU may have, YOU must, upon OUR request, assign the proceeds of such warranties or insurance, or YOUR rights under such warranties or insurance to

US to the extent of **OUR** cost of such repair or replacement. This paragraph in no way modifies or amends sub-paragraph 12 of "What Is Not Covered By This Warranty."

DEFINITIONS

BUILDER means _____ and provides the **LIMITED WARRANTY**.

COMMON ELEMENTS means the structure, components of enclosure, and any portion of the **HOME**, as described in the condominium or cooperative documents, including, without limitation, corridors, lobbies, vertical transportation elements, rooms, or other spaces, which are provided for use in common by the residents of the **HOME**, with free or limited access. Limited access balconies are included. **COMMON ELEMENTS** also means **SYSTEMS** serving two or more **HOMES**, outbuildings containing parts of such **SYSTEMS**.

CONSEQUENTIAL DAMAGES means any loss or injury other than the actual cost to correct **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES**, including without limitation, costs of shelter, transportation, food, moving and storage; other incidental expenses related to inconvenience or relocation during repairs to a **HOME**; or diminished market value of a **HOME**.

CONSUMER PRODUCT means any appliance, item of equipment, or other item in the **HOME** which is a **CONSUMER PRODUCT** as defined in the Magnuson-Moss Warranty Act. The following are examples of **CONSUMER PRODUCTS**, although other items in the **HOME** may be **CONSUMER PRODUCTS**: refrigerator, trash compactor, range, dishwasher, garbage disposal, hot water heater, clothes washer and dryer, and thermostat.

DEFECT(S) means deficiencies in workmanship or materials used in constructing the **HOME**, which deficiencies fail to conform with the standards and tolerances set out in the **PERFORMANCE STANDARDS**. **OUR** failure to complete construction of the **HOME** or any portion of the **HOME**, in whole or in part, shall not constitute a **DEFECT**.

DEFLECTION means the difference in elevation of high and low points along a diagonal, horizontal, or vertical plane caused by stress induced deformation of a load bearing member. **DEFLECTION** is measured from any two end points and a third reference point. The reference point may be located at any distance between the two end points.

EMERGENCY SITUATION means an event or condition which creates imminent potential for damage to the **HOME** or the **COMMON ELEMENTS** related thereto, or creates an unsafe living condition due to **DEFECTS** or **SPECIFIED STRUCTURAL COMPONENT FAILURES** that become evident to **YOU** at a time other than **OUR** normal business hours and where **YOU** could not reasonably obtain **OUR** prior written approval to take corrective

measures.

HOME means a single family house (attached or detached) or a condominium or cooperative unit in a multi-unit residential building covered by this **LIMITED WARRANTY**. The term does not include the following, with limitation: outbuildings, including detached garages and detached carports (except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation **SYSTEMS** serving a **HOME**); swimming pools and other recreational facilities; driveways; walkways; patios; decks; porch stoops; boundary walls; retaining walls; bulkheads; fences; landscaping (including, without limitation, sodding, seeding, shrubs, trees and plantings); off-site improvement(s); or any other improvements that are not part of a **HOME**.

HOMEOWNER means the first person to whom a **HOME** (or unit in the case of a multi-unit residential structure) is sold, or for whom such **HOME** (or unit) is constructed, for occupancy by such person or his family, and such person's successors in title to the **HOME** (or unit) and/or mortgagee in possession provided a Home Buyer Acknowledgement is signed by the subsequent **HOMEOWNER**.

LIMITED WARRANTY means only this express warranty provided to **YOU** by **US**.

PERFORMANCE STANDARDS means those standards and tolerances for materials and workmanship incorporated into this **LIMITED WARRANTY**.

POLLUTANTS shall mean any solid, liquid, gaseous, or thermal irritant or contaminant, including petroleum products, radon gas, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste; waste shall include, without limitation, materials to be recycled, reconditioned, or reclaimed.

SPECIFIED STRUCTURAL COMPONENT FAILURE is limited to the failure of only the following specified structural components of the **HOME** (or **COMMON ELEMENTS** related thereto) to meet the warranted tolerances.

- | | |
|---------------------------------|--------------------------|
| 1. Foundation systems footings; | 5. Columns; |
| 2. Beams; | 6. Walls and partitions; |
| 3. Girders; | 7. Floor systems; and |
| 4. Lintels; | 8. Roof framing systems. |

Damage to the following non-load bearing portions of the home does not constitute a Major Structural Defect:

1. Roofing and sheathing;
2. Drywall and plaster;
3. Exterior siding;
4. Brick, stone or stucco veneer;
5. Floor covering material;

6. Wall tile and other wall coverings;
7. Non-load bearing walls/partitions;
8. Concrete floors in attached garages and basements that are built
9. Electrical, plumbing, heating, cooling, and ventilation systems.
10. Appliance, fixtures and items of equipment
11. Paint
12. Doors and windows
13. Trim
14. Cabinets
15. Hardware
16. Insulation separately from foundation walls or other structural elements of the home.

WARRANTY DATE means the occupancy date or closing date which ever is earlier.

Workmanship and Materials: FIRST YEAR ONLY

1. Site Work - Coverage: First Year Only - Area: Workmanship and Materials

Site Grading

Possible Deficiency	Settling of ground around foundation, utility trenches or other areas.
Performance Standard	Settling of ground around foundation walls, utility trenches or other filled areas shall not interfere with water drainage away from the home.
Responsibility	If the Builder has provided final grading: Upon request by the Home Owner, Builder shall fill settled areas affecting proper drainage, one time only, during the first year of the Limited Warranty period. Home Owner shall be responsible for removal and replacement of shrubs or other landscaping affected by placement of such fill.

Site Drainage

Possible Deficiency	Improper drainage of the site.
Performance Standard	The necessary grades and swales shall have been established by the Builder to insure proper drainage away from the Home. Standing or ponding water shall not remain for extended periods in the immediate area after a rain (generally no more than 24 hours), except that in swales which drain other areas, or in areas where sump pumps discharge, a longer period can be anticipated (generally no more than 48 hours). The possibility of standing water after an unusually heavy rainfall should be anticipated. No grading determination shall be made while there is frost or snow on the ground, or while the ground is saturated.

Responsibility	The Builder is responsible only for initially establishing the proper grades and swales once they have been properly established.
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2. Concrete – Coverage: First Year Only – Area: Workmanship and Materials

Expansion and Contraction Joints

Possible Deficiency	Separation or movement of concrete slabs within the structure at expansion and contraction joints.
Performance Standard	Concrete slabs within the structure and designed to move at expansion and contraction joints.

Responsibility	None
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Cast-In-Place Concrete

Possible Deficiency	Basement or foundation wall cracks.
Performance Standard	Shrinking cracks are not unusual in concrete foundation walls. Such cracks greater than 1/8 inch in width shall be repaired.

Responsibility	Builder will repair cracks in excess of 1/8 inch width
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Possible Deficiency	Cracking basement floor.
Performance Standard	Minor cracks in concrete basement floors are normal. Cracks exceeding 3/16 inch in width or 1/8 inch in vertical displacement shall be repaired.

Responsibility	Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required.
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Possible Deficiency	Cracking of slab in attached garage.
Performance Standard	Cracks in garage slabs in excess of 1/4 inch in width or 1/4 inch in vertical displacement shall be repaired.

Responsibility	Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required.
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Possible Deficiency	Uneven concrete floors/slabs.
Performance Standard	Except for basement floors or where a floor or portion of floor has been designed for specific drainage purposes, concrete floors in rooms designed for habitability shall not have pits, depressions or areas of unevenness exceeding 1/4 inch in 32 inches.

Responsibility	Builder will correct or repair to meet the Performance Standard.
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Possible Deficiency	Cracks in concrete slab on grade floors with finish flooring.
Performance Standard	Cracks which rupture the finish flooring material shall be repaired.
Responsibility	Builder will repair cracks, as necessary, so as not be readily apparent when the finish flooring material is in place.
Possible Deficiency	Pitting, scaling, or spalling of concrete work covered by this Limited Warranty.
Performance Standard	Concrete surfaces shall not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering use.
Responsibility	Builder will take whatever corrective action necessary to repair or replace defective concrete surfaces. Builder is not responsible for deterioration caused by salt, chemicals, mechanical implements and other factors beyond its control.
Possible Deficiency	Settling, heaving, or separating of stoops, steps or garage floors.
Performance Standard	Stoops, steps or garage floors shall not settle, heave or separate in excess of 1/8 inch from the house structures.
Responsibility	Builder will take whatever corrective action is required to meet the Performance Standard.
Possible Deficiency	Standing water on stoops.
Performance Standard	Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops for a short period after rain can be anticipated.
Responsibility	Builder shall take corrective action to assure drainage of steps and stoops.

3. Masonry – Coverage: First Year Only – Area: Workmanship and Materials

Unit Masonry

Possible Deficiency	Basement or foundation wall cracks.
Performance Standard	Small cracks not affecting structural stability are not unusual in mortar joints of masonry foundation walls. Cracks greater than 1/8 inch in width shall be repaired.
Responsibility	Builder will repair cracks in excess of 1/8 inch by pointing or patching. These deficiencies shall be reported and repairs made during the first year of the Limited Warranty period.
Possible Deficiency	Cracks in masonry walls or veneer.

Performance Standard	Small hairline cracks due to shrinkage are common in mortar joints in masonry construction. Cracks greater than 3/8 inch in width are considered excessive.
Responsibility	Builder will repair cracks in excess of Performance Standard by pointing or patching. These repairs shall be made during the first year of the Limited warranty period. Builder will not be responsible for color variation between old and new mortar

4. Wood and Plastic – Coverage: First Year Only – Area: Workmanship and Rough Carpentry

Possible Deficiency	Floors squeak or subfloor appears loose.
Performance Standard	Floor squeaks and loose subfloor are often temporary conditions common to new construction, and a squeak-proof floor cannot be guaranteed.
Responsibility	Builder will correct the problem only if caused by an underlying construction defect.
Possible Deficiency	Uneven wood floors.
Performance Standard	Floors shall not have more than 1/4 inch ridge or depression within any 32 inch measurement when measured parallel to the joists. Allowable floor and ceiling joist deflections are governed by the applicable building code.
Responsibility	Builder will correct or repair to meet Performance Standard.
Possible Deficiency	Bowed walls.
Performance Standard	All interior and exterior walls have slight variances on their finished surfaces. Bowing of walls should not detract from or blemish the wall's finished surface. Walls should not bow more than 1/4 inch out of line within any 32 inch horizontal or vertical measurement.
Responsibility	Builder will repair to meet the Performance Standard.
Possible Deficiency	Out-of-plumb walls.
Performance Standard	Walls should not be more than 1/4 inch out of plumb for any 32 inch vertical measurement.
Responsibility	Builder will repair to meet the Performance Standard.
Possible Deficiency	Poor quality of interior trim workmanship.
Performance Standard	Joints in moldings or joint between moldings and adjacent surface shall not result in open joints exceeding 1/8 inch in width.
Responsibility	Builder will repair defective joints, as defined. Caulking is acceptable.

Possible Deficiency	Poor quality of exterior trim workmanship.
Performance Standard	Joints between exterior trim elements, including siding and masonry, shall not result in open joints in excess of 3/8 inch. In all cases the exterior trim, masonry and siding shall be capable of performing its function to exclude the elements.
Responsibility	Builder will repair open joints, as defined. Caulking is acceptable.

5. Thermal and moisture – Coverage: First year only – Area: Workmanship and Materials

Waterproofing

Possible Deficiency	Leaks in basement.
Performance Standard	Leaks resulting in actual trickling of water shall be repaired. Leaks caused by improper landscaping or failure to maintain proper grades are not covered by this Limited Warranty. Dampness of the walls or floors may occur in new construction and is not considered a deficiency.
Responsibility	Builder will take such action as necessary to correct basement leaks except where the cause is determined to result from Home Owner action or negligence.

Insulation

Possible Deficiency	Insufficient Insulation.
Performance Standard	Insulation shall be installed in accordance with applicable energy and building code requirements.
Responsibility	Builder will install insulation in sufficient amounts to meet Performance Standard.

Louvers and Vents

Possible Deficiency	Leaks due to snow or rain driven into the attic through louvers or vents.
Performance Standard	Attic vents and or louvers must be provided for proper ventilation of the attic space of the structure.
Responsibility	None.

Roofing and Siding

Possible Deficiency	Ice build-up on roof.
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Performance Standard During prolonged cold spells, ice build-up is likely to occur at eaves of a roof. This condition occurs when snow and ice accumulate and gutters and downspouts freeze up.

Responsibility Prevention of ice-build-up on the roof is a Home Owner maintenance item.

Possible Deficiency Roof or flashing leaks.

Performance Standard Roofs or flashing shall not leak under normally anticipated conditions, except where cause is determined to result from ice build-up or Home Owner action or negligence.

Responsibility Builder will repair any verified roof or flashing leaks not caused by ice build-up or Home Owner action or negligence.

Possible Deficiency Standing water on flat roof.

Performance Standard Water shall drain from flat roof except for minor ponding immediately following rainfall or when the roof is specifically designed for water retention.

Responsibility Builder will take corrective action to assure proper drainage of roof.

Possible Deficiency Delamination of veneer siding or joint separation.

Performance Standard All siding shall be installed according to the manufacturer's and industry's accepted standards. Separations and delaminations shall be repaired or replaced.

Responsibility Builder will repair or replace siding as needed unless caused by Home Owner's neglect to maintain siding properly. Repaired area may not match in color and or texture. For surfaces requiring paint, Builder will paint only the new materials. The Home Owner can expect that the newly painted surface may not match original surface in color.

Sheet Metal

Possible Deficiency Gutters and or downspouts leak.

Performance Standard Gutters and downspouts shall not leak but gutters may overflow during heavy rain.

Responsibility Builder will repair leaks. It is a Home Owner responsibility to keep gutters and downspouts free of leaves and debris which could cause overflow.

Possible Deficiency Water standing in gutters.

Performance Standard When gutter is unobstructed by debris, the water level shall not exceed one (1)

inch in depth. Industry practice is to install gutters approximately level. Consequently, it is entirely possible that small amounts of water will stand in certain sections of gutter immediately after a rain.

Responsibility	Builder will correct to meet Performance Standard.
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Sealants

Possible Deficiency	Leaks in exterior walls due to inadequate caulking.
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Performance Standard	Joints and cracks in exterior wall surfaces and around openings shall be properly caulked to exclude the entry of water.
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Responsibility	Builder will repair and or caulk joints or cracks in exterior wall surfaces as required to correct deficiencies once, during the first year of the Limited Warranty period. Even properly installed caulking will shrink and must be maintained during the life of the Home.
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6. Doors and Windows – Coverage: First Year Only – Area: Workmanship and Materials

Wood and Plastic Doors

Possible Deficiency	Warping of exterior doors.
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Performance Standard	Exterior doors will warp to some degree due to temperature differential on inside and outside surfaces. However, they shall not warp to the extent that they become inoperable or cease to be weather resistant or exceed National Woodwork Manufacturers Association Standards (1/4 inch, measured diagonally from corner to corner).
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Responsibility	Builder will correct or replace and refinish defective doors, during the first year of the Limited Warranty period.
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Possible Deficiency	Warping of interior passage and closet doors.
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Performance Standard	Interior doors (full openings) shall not warp in excess of National Woodwork Manufacturers Association Standards (1/4 inch, measured diagonally from corner to corner).
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Responsibility	Builder will correct or replace and refinish defective doors to match existing doors as nearly as possible, during the first year of the Limited Warranty.
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Possible Deficiency	Shrinkage of insert panels show raw wood edges.
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Performance Standard	Panels will shrink and expand and may expose unpainted surface.
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Responsibility	None
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Possible Deficiency	Split in door panel.
Performance Standard	Split panels shall not allow light to be visible through the door.
Responsibility	Builder will, if light is visible, fill split and match paint or stain as closely as possible, one time in first year of the Limited Warranty period.

Glass

Possible Deficiency	Broken Glass.
Performance Standard	None.
Responsibility	Broken glass not reported to the Builder prior to closing is the Home Owner's responsibility.

Garage Doors on Attached Garages

Possible Deficiency	Garage doors fail to operate properly, under normal use.
Performance Standard	Garage doors shall operate properly.
Responsibility	Builder will correct or adjust garage doors as required, except where the cause is determined to result from Home Owner action or negligence.

Possible Deficiency	Garage doors allow entrance of snow or water.
Performance Standard	Garage doors shall be installed as recommended by the manufacturer. Some entrance of the elements can be expected under abnormal conditions.
Responsibility	Builder will adjust or correct garage doors to meet manufacturer's recommendations.

Wood, Plastic and Metal Windows

Possible Deficiency	Malfunction of windows.
Performance Standard	Windows shall operate with reasonable ease, as designed.
Responsibility	Builder will correct or repair as required.

Possible Deficiency	Condensation and or frost on windows.
Performance Standard	Windows will collect condensation on interior surfaces when extreme

temperature differences and high humidity levels are present. Condensation is usually the result of climatic/humidity conditions created by the Home Owner.

Responsibility Unless directly attributed to faulty installation, window condensation is a result of conditions beyond the Builder's control. No corrective action required.

Weather-stripping and Seals

Possible Deficiency Air infiltration around doors and windows.

Performance Standard Some infiltration is normally noticeable around doors and windows, especially during high winds. Poorly fitted weather-stripping shall be adjusted or replaced. It may be necessary for the Home Owner to have storm doors and windows installed to provide satisfactory solutions in high wind areas.

Responsibility Builder will adjust or correct poorly fitted doors, windows and poorly fitted weather-stripping.

7. Finishes – Coverage: First Year Only – Area: Workmanship and Materials

Lath and Plaster

Possible Deficiency Cracks in interior wall and ceiling surfaces.

Performance Standard Hairline cracks are not unusual in interior wall and ceiling surfaces. Cracks greater than 1/8 inch in width shall be repaired.

Responsibility Builder will repair cracks exceeding 1/8 inch in width as required one time only, during the first year of the Limited Warranty period.

Gypsum Wallboard

Possible Deficiency Defects which appear during first year of the Limited Warranty such as nail pops, blisters in tape, or other blemishes.

Performance Standard Slight "imperfections" such as nail pops, seam lines, and cracks not exceeding 1/8 inch in width are common in gypsum wallboard installations and are considered acceptable.

Responsibility Builder will repair only cracks exceeding 1/8 inch in width, one time only, during the first year of the Limited Warranty period.

Ceramic Tile

Possible Deficiency Ceramic tile cracks or becoming loose.

Performance Standard Ceramic tile shall not crack or become loose.

Responsibility	Builder will replace cracked tiles and re-secure loose tiles unless the defects were caused by the Home Owner action or negligence. Builder will not be responsible for discontinued patterns or color variations in ceramic tile.
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Possible Deficiency	Cracks appear in grouting of ceramic tile joints or at junctions with other materials such as a bathtub.
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Performance Standard	Cracks in grouting of ceramic tile joints are commonly due to normal shrinkage conditions.
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Responsibility	Builder will repair grouting if necessary one time only, during the first year of the Limited Warranty period. Builder will not be responsible for color variations or discontinued colored grout. Re-grouting of these cracks is a maintenance responsibility of the Home Owner within the life of the Home.
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Finished Wood Flooring

Possible Deficiency	Cracks developing between floor boards.
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Performance Standard	Cracks in excess of 1/8 inch in width shall be corrected.
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Responsibility	Builder will repair cracks in excess of 1/8 inch within the first year of the Limited Warranty period by filling or replacing, at Builder's option.
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Resilient Flooring

Possible Deficiency	Nail pops appear on the surface of resilient flooring.
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Performance Standard	Readily apparent nail pops shall be repaired.
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Responsibility	Builder will correct nail pops which have broken the surface. Builder will repair or replace, at Builder's sole option, resilient floor covering in the affected area with similar material. Builder will not be responsible for discontinued patterns or color variations in the floor covering.
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Possible Deficiency	Depressions or ridges appear in the resilient flooring due to subfloor irregularities.
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Performance Standard	Readily apparent depressions or ridges exceeding 1/8 inch shall be repaired. The ridge or depression measurement is taken as the gap created at one end of a six-inch straightedge placed over the depression or ridge with three inches of the straightedge on one side of the defect, held tightly to the floor.
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Responsibility	Builder will take corrective action as necessary, to bring the defect within acceptable tolerance so that the affected area is not readily visible. Builder will not be responsible for discontinued patterns or color variations in floor covering.
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Possible Deficiency	Resilient flooring loses adhesion.
Performance Standard	Resilient flooring shall not lift, bubble or become unglued.
Responsibility	Builder will repair or replace, at Builder's sole option, the affected resilient flooring as required. Builder will not be responsible for discontinued patterns or color variation of floor covering, or for problems caused by Home Owner neglect or abuse.

Possible Deficiency	Seams or shrinkage gaps show at resilient flooring joints.
Performance Standard	Gaps shall not exceed 1/16 inch in width in resilient floor covering joints. Where dissimilar materials abut, a gap not to exceed 1/8 inch is permissible.
Responsibility	Builder will repair or replace, at Builder's sole option, the affected resilient flooring as required. Builder will not be responsible for discontinued patterns or color variation of floor covering, or for problems caused by Home Owner neglect or abuse.

Painting

Possible Deficiency	Exterior paint or stain peels, deteriorates or fades.
Performance Standard	Exterior paints or stains should not fail during the first year of the Limited Warranty period. However, fading is normal and the degree is dependent on climatic conditions.
Responsibility	If paint or stain is defective, Builder will properly prepare and refinish affected areas, matching color as close as possible. Where finish deterioration affects the majority of the wall area, the whole area will be refinished.

Possible Deficiency	Painting required as corollary repair because of other work.
Performance Standard	Repairs required under this Limited Warranty shall be finished to match surrounding areas as closely as practicable.
Responsibility	Builder will finish repair areas as indicated.

Possible Deficiency	Deterioration of varnish or lacquer finishes.
Performance Standard	Natural finishes on interior woodwork shall not deteriorate during the first year of the Limited Warranty period. However, varnish type finishes used on the exterior will deteriorate rapidly and are not covered by the Limited Warranty.

Responsibility	Builder will retouch affected areas of natural finish interior woodwork, matching the color as closely as possible.
Possible Deficiency	Mildew or fungus on painted surfaces.
Performance Standard	Mildew or fungus will form on a painted surface if the structure is subject to abnormal exposures (i.e. rainfall, ocean, lake or river front).
Responsibility	Mildew or fungus formation is a condition the Builder cannot control and is a Home Owner maintenance item unless it is a result of noncompliance with other sections of the Performance Standard.
Wall Covering	
Possible Deficiency	Peeling of wall covering.
Performance Standard	Peeling of wall covering shall not occur.
Responsibility	Builder will repair or replace defective wall covering applications.
Possible Deficiency	Edge mismatching in pattern of wall covering.
Performance Standard	None.
Responsibility	None.
Carpeting	
Possible Deficiency	Open Carpet Seams.
Performance Standard	Carpet seams will show. However, no visible gap is acceptable.
Responsibility	Builder will correct.
Possible Deficiency	Carpeting becomes loose, seams separate or stretching occurs.
Performance Standard	Wall to wall carpeting, installed as the primary floor covering, when stretched and secured properly shall not come up, become loose, or separate from its point of attachment.
Responsibility	Builder will re-stretch or re-secure carpeting as needed, if original installation was performed by Builder.
Possible Deficiency	Spots on carpet, minor fading.

Performance Standard	Exposure to light may cause spots on carpet and or minor fading.
Responsibility	None.

Special Coatings

Possible Deficiency	Cracks in exterior stucco wall surfaces.
Performance Standard	Cracks are not unusual in exterior stucco wall surfaces. Cracks greater than 1/8 inch in width shall be repaired.
Responsibility	Builder will repair cracks exceeding 1/8 inch in width, one time only, during the first year of the Limited Warranty period.

8. Specialties – Coverage: 1st Year Only – Area: Workmanship and Materials

Louvers and Vents

Possible Deficiency	Inadequate ventilation of attics and crawl spaces.
Performance Standard	Attic and crawl spaces shall be ventilated as required by the approved building code.
Responsibility	The Builder shall provide for adequate ventilation. Builder will not be responsible for alterations to the original system.

Fireplaces

Possible Deficiency	Fireplace or chimney does not draw properly.
Performance Standard	A properly designed and constructed fireplace and chimney shall function properly. It is normal to expect that high winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. Some homes may need to have a window opened slightly to create an effective draft if they have been insulated and weatherproofed to meet high energy conservation criteria.
Responsibility	Builder will determine the cause of malfunction and correct, if the problem is one of design or construction of the fireplace.

Possible Deficiency	Chimney separation from structure to which it is attached.
Performance Standard	Newly built fireplaces will often incur slight amounts of separation. Separation shall not exceed 1/8 inch from the main structure in any 10 foot vertical measurement.

Responsibility	Builder will determine the cause of separation and correct if standard is not met. caulking is acceptable.
Possible Deficiency	Firebox paint changed by fire.
Performance Standard	None.
Responsibility	None. Heat from fires will alter finish.
Possible Deficiency	Cracked firebrick and mortar joints.
Performance Standard	None.
Responsibility	None. Heat and flames from "roaring" fires will cause cracking.

9. Equipment – Coverage: First Year Only – Area: Workmanship and Material

Residential Equipment

Possible Deficiency	Surface cracks, joint delaminations and chips in high pressure laminates on vanity and kitchen cabinet countertops.
Performance Standard	Countertops fabricated with high pressure laminate coverings shall not delaminate.
Responsibility	Builder will replace delaminated coverings to meet specified criteria. Builder will not be responsible for chips and cracks noted following first occupancy.
Possible Deficiency	Kitchen cabinet malfunctions.
Performance Standard	Warpage not to exceed ¼ inch as measured from face frame to point of furthest warpage with door or drawer front in closed position.
Responsibility	Builder will correct or replace doors or drawer fronts.
Possible Deficiency	Gaps between cabinets, ceiling or walls.
Performance Standard	Acceptable tolerance ¼ inch in width.
Responsibility	Builder will correct to meet Performance Standard.

10. Plumbing – Coverage: First Year Only – Area: Workmanship and Materials

Water Supply System

Possible Deficiency	Plumbing pipes freeze and burst.
Performance Standard	Drain, waste and vent, and water pipes shall be adequately protected, as required by applicable code, during normally anticipated cold weather, and as defined in accordance with ASHRAE design temperatures, to prevent freezing.
Responsibility	Builder will correct situations not meeting the code. It is the Home Owner's responsibility to drain or otherwise protect lines and exterior faucets exposed to freezing temperatures.

Plumbing System

Possible Deficiency	Facet or valve leak.
Performance Standard	No valve or faucet shall leak due to defects in workmanship and materials.
Responsibility	Builder will repair or replace the leaking faucet or valve.

Possible Deficiency	Defective plumbing fixtures, appliances, or trim fittings.
Performance Standard	Fixtures, appliances or fittings shall comply with their manufacturer's standard.
Responsibility	Builder will replace any defective fixture or fitting which does not meet acceptable standards, as defined by the manufacturer.

Possible Deficiency	Noisy water pipes.
Performance Standard	There will be some noise emitting from the water pipe system, due to the flow of water. However, water hammer shall be eliminated.
Responsibility	Builder cannot remove all noises due to water flow and pipe expansion. Builder will correct to eliminate "water hammer".

Possible Deficiency	Cracking or chipping of porcelain or fiberglass surfaces.
Performance Standard	Chips and cracks on surfaces of bathtubs and kitchen sinks can occur when surface is hit with sharp or heavy objects.
Responsibility	Builder will not be responsible for repairs unless damage has been reported to Builder prior to first occupancy.

11. Heating and Cooling – Coverage: First Year Only – Area: Workmanship and Materials

Heating

Possible Deficiency	Inadequate heating.
Performance Standard	Heating system shall be capable of producing an inside temperature of 70 degrees f. as measured in the center of each room at a height of 5 feet above the floor, under local outdoor winter design conditions as specified in ASHRAE handbook. Federal, state or local energy codes shall supersede this standard where such codes have been locally adopted.
Responsibility	Builder will correct heating system to provide the required temperatures. However, the Home Owner shall be responsible for balancing dampers, registers and other minor adjustments.

Refrigeration

Possible Deficiency	Inadequate cooling.
Performance Standard	Where air conditioning is provide, the cooling system shall be capable of maintaining a temperature of 78 degrees F. as measured in the center of each room at a height of 5 feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook. In the case of outside temperatures exceeding 95 degrees F., a differential of 15 Degrees F. from the outside temperature will be maintained. Federal, state, or local energy codes shall supersede this standard where such codes have been locally adopted.
Responsibility	Builder will correct cooling system to meet temperature conditions, in accordance with specifications.

Condensation Lines

Possible Deficiency	Condensation lines clog up.
Performance Standard	None.
Responsibility	Condensation lines will clog eventually under normal use. This is a Home Owner maintenance item. Builder shall provide unobstructed condensation lines at time of first occupancy.

Evaporative Cooling

Possible Deficiency	Improper mechanical operation.
Performance Standard	Equipment shall function properly at temperature standard set.
Responsibility	Builder will correct and adjust so that blower and water system operate as designed.

12. Ventilation – Coverage: First year Only – Area: Workmanship and Materials

Air Distribution

Possible Deficiency	Noisy Ductwork
Performance Standard	When metal is heated it expands and when cooled, it contracts. The result is "ticking" or "crackling" which is generally to be expected.
Responsibility	None.

Possible Deficiency	Oilcanning.
Performance Standard	The stiffening of the ductwork and the gauge of the metal used shall be such that ducts do not "oilcan". The booming noise caused by "oilcanning" is not acceptable.
Responsibility	Builder will correct to eliminate this sound.

13. Electrical – Coverage: First Year Only – Area: Workmanship and Materials

Electrical Conductors, Fuses and Circuit Breakers

Possible Deficiency	Fuses blow or circuit breakers (excluding ground fault interruptors) "kick out".
Performance Standard	Fuses and circuit breakers shall not activate under normal usage.
Responsibility	Builder will check wiring circuits for conformity with local, state, or approved national electrical code requirements. Builder will correct circuitry not conforming to code specifications.

Outlets, Switches and Fixtures

Possible Deficiency	Drafts from electrical outlets.
Performance Standard	Electrical junction boxes on exterior walls may produce air flow whereby the cold air can be drawn through the outlet into a room. The problem is normal in new home construction.
Responsibility	None.

Possible Deficiency	Malfunction of electrical outlets, switches or fixtures.
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Performance Standard	All switches, fixtures and outlets shall operate as intended.
Responsibility	Builder will repair or replace defective switches, fixtures and outlets.

Service and Distribution

Possible Deficiency	Ground fault interruptor trips frequently.
Performance Standard	Ground fault interruptors are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped very easily.
Responsibility	Builder shall install ground fault interruptor in accordance with approved electrical code. Tripping is to be expected and is not covered, unless due to a construction defect.

Systems: First and Second Years

14. Plumbing System – Coverage: First and Second Years – Area: Systems

Water Supply

Possible Deficiency	Water supply system fails to deliver water.
Performance Standard	All on-site service connections to municipal water main and private water supply shall be the Builder's responsibility. Private systems shall be designed and installed in accordance with all approved building, plumbing and health codes.
Responsibility	Builder will repair if failure is the result of defective workmanship or materials. If conditions beyond Builder's control disrupt or eliminate the sources of the supply, the Builder has no responsibility.

Piping

Possible Deficiency	Leakage from any piping.
Performance Standard	No leaks of any kind shall exist in any soil, waste, vent or water pipe. Condensation on piping does not constitute leakage, and is not covered.
Responsibility	Builder will make repairs to eliminate leakage.

Possible Deficiency	Stopped up sewers, fixtures and drains.
Performance Standard	Sewers, fixtures, and drains shall operate properly.

Responsibility	Builder will not be responsible for sewers, fixtures and drains which are clogged through the Home Owner negligence. If a problem occurs, the Home Owner should consult Builder for a proper course of action. Where defective construction is shown to be the cause, Builder will assume the cost of the repair; where Home Owner negligence is shown to be the cause, the Home Owner shall assume all repair costs.
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Possible Deficiency	Refrigerant Lines Leak.
Performance Standard	Refrigerant lines shall not develop leaks during normal operation.

Responsibility	Builder will repair leaking refrigerant lines and re-charge unit, unless damage was caused by the Home Owner.
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15. Ventilation System – Coverage: First and Second Years – Area: Systems

Air Distribution

Possible Deficiency	Ductwork separates or becomes unattached.
Performance Standard	Ductwork shall remain intact and securely fastened.
Responsibility	Builder will re-attach and re-secure all separated or unattached ductwork.

16. Electrical System – Coverage: First and Second Years – Area: Systems

Wiring

Possible Deficiency	Failure of wiring to carry its designed load.
Performance Standard	Wiring should be capable of carrying the designed load for normal residential use.
Responsibility	Builder will check wiring for conformity with local, state, or approved national electrical code requirements. Builder will repair wiring not conforming to code specifications.

Ricoh

From: Mark Rust <mark@montgomeryrust.com>
Sent: Tuesday, July 12, 2016 8:06 AM
To: lee.colker@gmail.com
Cc: Keith Marcon; Greg Green
Subject: Summerset at Frick Park Lot 101
Attachments: SKM_C22716070712540.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

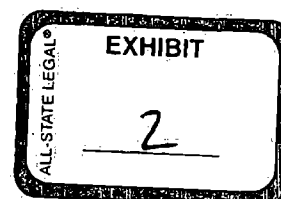
Lee,

We have received the report from our structural engineer and it is attached for your review.

We would propose raising and reinforcing the trusses that are under the decorative columns between the first floor hall and study as well as the truss under the wall between the master bedroom and second floor hall. This will reduce the slope in the floors, but not completely eliminate it. Cosmetic repairs, such as repairing drywall that may crack and painting, would be made if necessary. We are still in the process of determining the best method and contractor to raise the truss and will let you know when that has been determined.

Best Regards,

R. Mark Rust
Principal
Montgomery & Rust, Inc.
4284 Route 8
Allison Park, PA 15101
(412) 487-6990, ext. 118
(412) 487-4942 (fax)
(412) 728-7750 (mobile)





R.F. Mitall & Associates, Inc.

ENGINEERS • CONSULTANTS • SURVEYORS

117 Sagamore Hill Road • Pittsburgh, PA 15239

Tel: 724/327-7474 • Fax: 724/325-2734

July 5, 2016

Mr. Mark Rust
Montgomery & Rust, Inc.
4284 Route 8
Allison Park, PA 15101

Re: 1251 Parkview Blvd
Summerset at Frick Park

Dear Mr. Rust:

As you have requested, I have made an analysis of the interior stairwell wall loading in the above home. As I understand the complaint, the first and second floors slope in the vicinity of an interior wall running parallel with the interior stairs. Several theories have been advanced by others regarding the course of the floors sloping.

From the documents I have examined, it appears that the primary floor system was constructed of 12-inch-deep manufactured wood trusses on 24 inch centers. The layout drawings furnished by the truss manufacturer indicates that the trusses under this interior wall are the same as all the common trusses used throughout the floor systems on both floors.

As I have verbally indicated, I believe that the problem with this floor is the dead load caused by the partition wall parallel to the stairway. The actual dead load of a wall is dependent upon the material used in construction. In this case, the wall was constructed from 2 X 4 studs with 5/8-inch drywall on each side. But drywall weights vary by manufacturer and lumber weights vary by species. Different reference sources suggest various values to be used in estimating the weights of these types of walls. The ASCE Standard 7-0.0005 "Minimum Design Loads for Buildings" indicate a 2 X 4 wood stud wall plastered on both sides would have a design dead load of 20 pounds per square foot (PSF), other sources indicated this load may be as light as 10 PSF.

For my calculations, I have used 2 X 4 studs on 16 inch centers (Dry WT 30#/CF), 5/8-inch drywall (Dry WT 2.5#/SF), 3/4 inch sub-floor (38#/CF) and a wall height of 10 feet.

Thus the load per linear foot of the wall on each floor truss is calculated as follows:

Drywall 2 sides X 2.5#/PSF X 10 Ft	=	50#/LF
Studs & Plates	=	11#/LF
Subfloor	=	<u>4.8#/LF</u>
		65.8#/LF

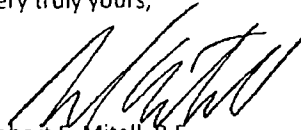
Since most residential floor loading is estimated to be between 10 and 20 PSF, I suspect that the loading on a single floor truss would be higher than estimated and therefore cause excessive deflection.

Because of the present conditions of the floors, there are two possible options. The first would be to jack up the trusses under the wall and reinforce the trusses. This solution may cause unintended consequences; such as, causing adjacent floors to slope, cracked drywall and broken trim.

Since the only complaint appears that the floors in the hallways are the only ones to have an adverse slope, I would consult with the flooring company as to how to remove the flooring, level the subfloor, and reinstall the flooring. This should be undertaken with reinforcing the floor truss by either adding plywood plates or an LVL.

Should you have further questions, please call.

Very truly yours,

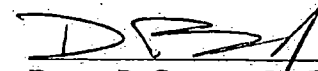


Robert F. Mitall, P.E.

RFM:jam

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents:




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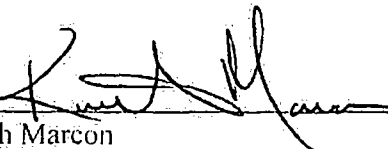
VERIFICATION

We, Lee Colker and Keith Marcon, have read the foregoing Amended Complaint in Civil Action. The statements therein are true and correct to the best of my personal knowledge, information and belief. This statement and verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, which provides that, if I make knowingly false averments, I may be subject to criminal penalties.

Date: June 11, 2018

By: 
Lee Colker


Date: June 11, 2018

By: 
Keith Marcon

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
AMENDED COMPLIANT IN CIVIL ACTION has been served upon counsel of record this
12th day of June, 2018, by U.S. Mail, first class, postage prepaid, as follows:

Jeffrey C. Catanzarite, Esquire
Summers, McDonnell, Hudock, Guthrie & Rauch, PC
707 Grant Street, Suite 2400
Pittsburgh, PA 15219

A handwritten signature in black ink, appearing to read 'JC Catanzarite', is written over a horizontal line.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LEE COLKER and
KEITH MARCON,

Plaintiffs,

v.

MONTGOMERY & RUST, INC.,

Defendant,

v.

UFP PARKER, LLC and HELD
CONSTRUCTION, INC.,

Additional Defendants.

CIVIL DIVISION

NO.: GD 17-008399

**BRIEF IN SUPPORT OF PRELIMINARY
OBJECTIONS TO AMENDED COMPLAINT
OF PLAINTIFFS**

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant,
Montgomery & Rust, Inc.

Counsel of Record for this Party:

Jeffrey C. Catanzarite
PA I.D. #72765

Paul D. Svirbel
PA I.D. #316395

**SUMMERS, McDONNELL, HUDOCK
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LEE COLKER and
KEITH MARCON,

CIVIL DIVISION

GD 17-008399

Plaintiffs,

v.

MONTGOMERY & RUST, INC.,

Defendant.

v.

UFP PARKER, LLC and HELD
CONSTRUCTION, INC.,

Additional Defendants.

**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT
OF PLAINTIFFS**

AND NOW, comes the Defendant, Montgomery & Rust, Inc., by and through its attorneys, Summers, McDonnell, Hudock, Guthrie & Rauch, P.C. and Jeffrey C. Catanzarite, Esq. and Paul D. Svirbel, Esq., and files the foregoing Brief in Support of Preliminary Objections to the Amended Complaint of Plaintiffs, averring as follows:

FACTUAL BACKGROUND

Procedural History

The instant matter was initiated by Writ of Summons on June 7, 2017. A Complaint was filed on April 23, 2018. Preliminary Objections were filed to the Complaint by the Defendant on May 11, 2018. The Amended Complaint, discussed herein, was subsequently filed on June 12, 2018.

Documents and Representations

This matter has its genesis in allegations of construction-related defects within a dwelling located at 1251 Parkview Boulevard, Pittsburgh, Allegheny County, 15217 (hereinafter, "the Dwelling"). See Amended Complaint of Plaintiffs, attached hereto as **Exhibit "A"** at ¶¶ 6, 7. Per the Amended Complaint, in or about early 2007, the Plaintiffs and Defendant entered into negotiations for the Plaintiffs' purchase of a lot from the Defendant and the Defendant's construction of the Dwelling on the lot. *Id.* at ¶6.

An Agreement of Sale was entered into between the parties for the Plaintiffs' purchase of the aforesaid lot and construction of the Dwelling on or about March 23, 2007. *Id.* at ¶7. The Agreement for Sale (with various Exhibits) was attached to the Amended Complaint as Exhibit "1." *Id.* Plaintiffs alleged that various representations were made to them by Defendant in the Amended Complaint regarding the construction of the Dwelling, such as that the plans and specifications were sufficient to construct the Dwelling free of defects and the plans and specifications were approved and stamped by a registered structural engineer. *Id.* at ¶¶9, 10. The Defendant constructed the Dwelling on the lot purchased by the Plaintiffs, with the closing occurring on or about February 21, 2008. *Id.* at ¶12.

Alleged Defects

In their Amended Complaint, Plaintiffs have alleged a number of defects with the Dwelling, which were discovered, per the Amended Complaint, on June 19, 2015. *Id.* at ¶¶ 13-15. These defects included issues with the loads to the interior walls not being properly supported and issues with the floor trusses not being able to carry their loads.

Id. at ¶¶14, 15. Plaintiffs allegedly immediately notified the Defendant of these issues. Id. at ¶16. Following this notification, multiple engineering firms provided opinions regarding the alleged defects within the Dwelling and proposed various forms of remediation. Id. at ¶¶17-30.

The Plaintiffs have averred in the Amended Complaint that the Defendant offered to perform various structural and cosmetic repairs to the Dwelling to correct the alleged deficiencies brought to light by the aforesaid engineering firms. Id. at ¶¶19, 20. The Plaintiffs have also averred that they did not reject the offer of the Defendant, but informed the Defendant that they wished to retain an independent expert to review the structural issues and recommended course of action. Id. at ¶21.

The Plaintiffs retained Churches Engineering as their independent expert, with Churches providing their opinions regarding the source of the Plaintiff's alleged issues with the Dwelling. Id. at ¶¶22-27. The opinions of Churches Engineering were provided to the Defendant by the Plaintiffs. Id. at ¶28. The Defendant, per the Amended Complaint, retained Donan Engineering Co. to confirm the various structural issues with the Dwelling, with Donan Engineering offering several opinions and conclusions. Id. at ¶¶29, 30. Following the expression of opinions by the aforesaid engineering firms, the Plaintiffs allegedly repeatedly requested that the Defendant remediate the defects found in the Dwelling. Id. at ¶31.

Plaintiffs alleged that Defendant has failed to perform what Plaintiffs consider to be the necessary work to remediate the defects within the Dwelling, despite requests and Defendant's alleged offer to do so. Id. at ¶32. The Plaintiffs base their contention that Defendant made an offer to remediate the defects to the Dwelling based upon an e-

mail from Defendant's principal, Mark Rust, to Lee Colker dated July 12, 2016, stating the following:

Lee,

We have received the report from our structural engineer and it is attached for your review.

We would propose raising and reinforcing the trusses that are under the decorative columns between the first floor hall and study as well as the truss under the wall between the master bedroom and second floor hall. This will reduce the slope in the floors, but not completely eliminate it. Cosmetic repairs, such as repairing drywall that may crack and painting, would be made if necessary. We are still in the process of determining the best method and contractor to raise the truss and will let you know when that has been determined.

Best regards,
R. Mark Rust

See Exhibit 2 to Amended Complaint.

LEGAL STANDARD

Preliminary Objections may be filed by any party to any pleading based upon the failure to conform to the rule of law of court or the inclusion of scandalous or impertinent matter; the legal insufficiency of a pleading (Demurrer) and the insufficient specificity contained within a pleading. Pa.R.C.P. 1028(a)(2)(3)(4). In ruling on Preliminary Objections, this court must accept as true all well pleaded facts which are material and relevant. Erie County League of Women Voters v. Department of Environmental Resources, 525 A.2d 1290 (Pa. Cmwlth. 1987). The trial court, however, in determining whether to sustain Preliminary Objections, need not accept as true, unwarranted references of fact, argumentative of allegation, or expressions of opinion. Giffin v. Chronister, 616 A.2d 1070 (Pa. Cmwlth. 1990).

QUESTIONS PRESENTED

- A. WHETHER THE CLAIMS OF FRAUD AND NEGLIGENT MISREPRESENTATION MUST BE DISMISSED PURSUANT TO THE GIST OF THE ACTION DOCTRINE.

Suggested Answer: Yes.

- B. WHETHER THE CLAIM OF BREACH OF CONTRACT IN COUNT II FAILS AS A MATTER OF LAW AS NO LEGALLY COGNIZANT OFFER HAS BEEN ESTABLISHED IN THE AMENDED COMPLAINT.

Suggested Answer: Yes.

ARGUMENT

- A. Count IV (Fraud) and Count V (Negligent Misrepresentation) are barred by the Gist of the Action Doctrine and must be dismissed per Pa.R.C.P. 1028(a)(4).**

As noted above and discussed further in Counts IV and V, Plaintiffs have alleged that Defendant made multiple false, fraudulent and negligent misrepresentations regarding the Dwelling at issue. See generally Amended Complaint at ¶¶75-84; 85-94. Where fraud and negligence claims are intertwined with breach of contract claims (i.e., Count I) and the duties allegedly breached are created and grounded in the contract itself, the gist of the action is breach of contract. Hart v. Arnold, 884 A.2d 316, 340 (Pa. Super. 2005).

Hart articulated the following regarding the gist of the action doctrine:

In general, courts are cautious about permitting tort recovery based on contractual breaches. In keeping with this principle, this Court has recognized the "gist of the action" doctrine, which operates to preclude a plaintiff from re-casting ordinary breach of contract claims into tort claims. The conceptual distinction between a breach of contract claim and a tort claim has been explained as follows:

Although they derive from a common origin, distinct differences between civil actions for tort and contractual breach have been developed at common law. Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals.... To permit a promisee to sue his promisor in tort for breaches of contract *inter se* would erode the usual rules of contractual recovery and inject confusion into our well-settled forms of actions.

Id. at 339. (citing Pittsburgh Const. Co. v. Griffith, 834 A.2d 572, 581-82 (Pa. Super. 2003), appeal denied, 852 A.2d 313 (Pa. 2004) (internal citations omitted).

It has also been recognized in Pennsylvania that the gist of the action doctrine bars tort claims: (1) arising solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; or 4) where the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of a contract. Id. at 340. (citing eToll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. 2002)). Defendant asserts that the fraud and negligent misrepresentation allegations/claims of the Plaintiffs were created in and grounded in the Agreement of Sale attached to the Complaint of Plaintiffs.

In essence, the Plaintiffs are claiming that the Defendant falsely, fraudulently and negligently misrepresented several key elements concerning the construction of the Dwelling, which is the subject of the Agreement of Sale between the parties. The same allegations appear in the breach of contract claim (Count I) that appear in the fraud and negligent misrepresentation claims (Counts IV and V, respectively), most notably that the Defendant made false representations regarding the construction of the Dwelling.

Specifically, in Count I, a breach of contract claim, it is alleged that the Defendant made several false representations regarding the Dwelling, including that the plans and specifications were sufficient to construct a defect-free home (¶42); the design and/or construction of the Dwelling met the building code and expected standards (¶43); and that the plans and specifications were approved and stamped by a licensed structural engineer (¶44). In Count IV (Fraud), essentially the same allegations are made, i.e., that the Defendant made several false representations to the Plaintiffs regarding the Dwelling. *Id.* at ¶79. Likewise, in Count V (Negligent Misrepresentation), the Plaintiffs averred similarly, stating “[t]he Defendant’s design and representations were negligently incorrect and false....” *Id.* at ¶91.

The Plaintiffs have, in the Amended Complaint, re-casted a contract claim into claims for fraud and negligent misrepresentation. The Plaintiffs are taking contract claims and using the same factual basis and allegations to aver claims of fraud and negligent misrepresentation. As such, the Gist of the Action doctrine bars Counts IV and V contained in the Amended Complaint of Plaintiffs.

WHEREFORE, Defendant respectfully requests that this Honorable Court grant the relief requested in the attached Order.

B. Count II of the Plaintiffs’ Amended Complaint must be dismissed per Pa.R.C.P. 1028(a)(4) as it fails to satisfy the elements of an enforceable contract in Pennsylvania.

The Plaintiffs assume that Exhibit 2 of the Amended Complaint constituted an offer from the Defendant, which they accepted, resulting in an enforceable contract to repair various defects in the Dwelling, which the Defendant allegedly breached. See generally

Count II, ¶¶47-58. Defendant avers that Exhibit 2 did not rise to the level of an offer, as the text of Exhibit 2, on its face, insufficiently evidenced a manifestation of intent to enter into a contract.² The elements of contract formation are "offer, acceptance, and consideration or mutual meeting of the minds." Ribarchak v. Mun. Auth. of City of Monongahela, 44 A.3d 706, 708 (Pa. Cmwlth. 2012).

An offer has been defined as "a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Pacitti by Pacitti v. Macy's, 193 F.3d 766, 773 (3d Cir. 1999) (citing Cobaugh v. Klick-Lewis, Inc., 561 A.2d 1248, 1249 (Pa. Super. 1989)). Defendant avers that no manifestation of intent was present in Exhibit 2, which did not invite acceptance or assent, but only discussed Defendant's plans for repair. As such, without a communicated offer, no contract was formed and no breach can lie. See e.g., McShea v. City of Phila., 606 Pa. 88, 995 A.2d 334, 340 (Pa. 2010) ("To state a claim for breach of contract under Pennsylvania law, the plaintiffs are tasked with alleging facts showing that there was a contract, that the defendants breached it, and that the plaintiffs suffered damages from the breach.")

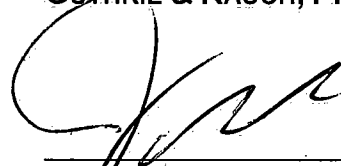
² Defendant notes that questions such as contract interpretation are questions of law and lie within the domain of the court to decide. Kardibin v. Associated Hardware, 426 A.2d 649, 654 (Pa. Super. 1981).

WHEREFORE, Defendant respectfully requests that this Honorable Court grant the relief requested in the attached Order.

JURY TRIAL DEMANDED

Respectfully submitted,

**SUMMERS, McDONNELL, HUDOCK
GUTHRIE & RAUCH, P.C.**

A handwritten signature in black ink, appearing to read 'Jeffrey C. Catanzarite', written over a horizontal line.

Jeffrey C. Catanzarite
Paul D. Svirbel
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT OF PLAINTIFFS AND BRIEF IN SUPPORT** has been served via first-class U.S. mail, postage prepaid, this 26th day of June, 2018, addressed as follows:

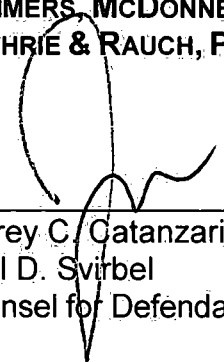
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149 Novinger Road
Leechburg, PA 15656

Respectfully submitted,

**SUMMERS, McDONNELL, HUDOCK
GUTHRIE & RAUCH, P.C.**



Jeffrey C. Catanzarite
Paul D. Svirbel
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LEE COLKER and
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GD 17-008399

Plaintiffs,

v.

MONTGOMERY & RUST, INC.,

Defendant.

v.

UFP PARKER, LLC and HELD
CONSTRUCTION, INC.,

Additional Defendants.

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2018, it is
hereby ORDERED, ADJUDGED and DECREED that the Preliminary Objections of the
Defendant are GRANTED such that:

1. Count IV (Fraud) and Count V (Negligent Misrepresentation) are hereby
DISMISSED with prejudice; and
2. Count II (Breach of Contract) is hereby DISMISSED with prejudice.

BY THE COURT:

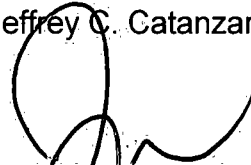
_____, J.

ORDER

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Jeffrey C. Catanzarite



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