

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re: Detail Design Builders, LLC Debtor	)	
	)	Chapter 11
	)	Bk. No. 22-10577-BAH
	)	
Joseph M. and Katherine Machado Movant	)	
	)	
v.	)	Hearing Date: May 25, 2023
	)	Hearing Time: 10:00 a.m.
Detail Design Builders, LLC Respondent	)	
	)	

**MOTION OF JOSEPH M. MACHADO AND KATHERINE MACHADO
FOR RELIEF FROM THE AUTOMATIC STAY**

Joseph M. Machado and Katherine Machado, creditors in this proceeding (together, the “**Machados**”), by and through their attorneys, Preti Flaherty Beliveau & Pachios, PLLP, respectfully request that this Court grant relief from the automatic stay against Detail Design Builders, LLC, (the “**Debtor**”). In support of its Motion, the Machados state as follows:

A. THE PROCEEDING

1. This is a Bankruptcy proceeding under Chapter 7 of Title 11 of the United States Code (the “**Bankruptcy Code**”). This proceeding was commenced by a Petition for Relief filed with this Court on November 22, 2022 (the “**Petition Date**”) under Chapter 11 of the Bankruptcy Code and converted to a proceeding under Chapter 7 on January 4, 2023. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157(2)(G).

2. This is a contested matter brought pursuant to Bankruptcy Rule 9014 and § 362(d) of the Bankruptcy Code.

B. THE PARTIES

3. The Machados are individuals with a mailing address at 16 Finn Avenue, Newfields, NH 03856.

4. The Debtor is a limited liability corporation with its principal place of business located at 13 Columbia Drive, Unit 7, Amherst, NH 03031.

5. Robert L. MacDonald, Jr. (“**MacDonald**”) is the Debtor’s principal and sole member.

C. FACTS

6. On August 20, 2021, the Machados filed a complaint in the York County Superior Court (Maine) against the Debtor and Brian Stefano (the “**Superior Court Action**”). That complaint is attached hereto as **Exhibit A**.

7. The Complaint includes the following counts against the Debtor and Stefano: Count I (breach of contract); Count II (home construction contract per 10 M.R.S. § 1486 et seq.); Count III (unfair trade practices act per 5 M.R.S. § 205-A et seq.); and Count IV (Fraud). The Machados brought all counts against both the Debtor and Stefano because as partners or joint venturers, the Debtor and Stefano are jointly and severally liable for injury caused by their partnership or joint venture.

8. The Machados are owed more than \$260,000 from the Debtor and Stefano arising out of the purchase of real estate and new construction of their home in Kittery, Maine because: (1) the Project-related billings of Debtor and Stefano significantly exceeded the agreed-upon, fixed contract price; (2) the Debtor improperly obtained \$110,000 from the Machados’ construction account lender and improperly used those funds to pay for materials/expenses for Stefano’s home renovation, thereby forcing the Machados to pay \$110,000 to unpaid materialmen

and suppliers from their own funds ; and (3) the Debtor's work is faulty and incomplete.

MacDonald and Stefano each acknowledged to the Machados that the Debtor used the \$110,000 obtained from the Machados' lender to install a home theater and make other renovations to Stefano's home so that Stefano could realize his anticipated economic benefit from the Machado deal.

9. In October 2019, Machado entered into a two-part agreement with Stefano and the Debtor to acquire the land and build a home to be completed by September 2020 (the "Project"). Stefano and the Debtor were partners or joint venturers on the Project and represented such to Machado. Specifically, the agreement required the Machados to purchase the land from Stefano and hire the Debtor to build their home on that property. It was a package deal. Machado purchased the property for a \$1 million from Stefano., and the purchase and sale agreement for the real estate made reference to and incorporated the construction contract with the Debtor. Comp. ¶ 17 ("Stefano, Machado, and Detail Design have reached an agreement . . . in Addendum 1 Construction Services Contract...Addendum 3 Specifications"). All the parties executed the Construction Services Contract (the "**Contract**"). The Contract was originally \$1.775 million and increased through three written change orders to \$1.956 million. The Debtor mismanaged the project which never stood a chance of meeting the September 2020 completion deadline. In January 2021, the Machados then learned that the Debtor had withdrawn \$110,000 from the construction account (after obtaining disbursement approvals) to work on Stefano's renovation. Stefano was evidently frustrated that he had yet to realize a benefit from the Machado agreement. By February 2021, the construction account was depleted and the Debtor was unable to finish. Machado already overpaid the fixed contract price by \$61,600. But, the Machados (while reserving their rights) had no choice but to pay those unpaid materialmen and suppliers

personally simply to get the project finished. The Debtor had no money for materials and subcontractors were owed. Machado made these payments to keep the project going. When it came time to get paid back, the Debtor and Stefano refused which prompted a May 2021 demand. (Compl. Ex. C).

10. On September 16, 2021, Machado, the Debtor, and Stefano consented to staying the Superior Court Action so that the parties in that proceeding could complete mediation and arbitration in accordance with the Contract.

11. Mediation was conducted and unsuccessful. The parties moved to arbitration (the “**Arbitration**”) with Jerrol A. Crouter serving as arbitrator (the “**Arbitrator**”). The Arbitrator issued a schedule governing the Arbitration. That schedule is attached hereto as **Exhibit B**.

12. On April 29, 2022, Machado served Plaintiff’s First Set of Interrogatories to Defendant Detail Design Builders, LLC and Plaintiff’s First Request for Production of Documents to Defendant Detail Design Builders, LLC (together, “**Machados’ Discovery Requests**”). Machados’ Discovery Requests are attached hereto as **Exhibit C**.

13. On November 9, 2022, the Arbitrator issued the Arbitrator’s Order Compelling Discovery Responses (the “**Order Compelling Discovery**”). The Order Compelling Discovery is attached hereto as **Exhibit D**. The Order Compelling Discovery ordered that the Debtor provide complete responses to Machados’ Discovery Requests on or before Friday November 18, 2022.

14. As of the date of this Motion, the Debtor has not provided complete responses to Machados’ Discovery Requests.

15. On November 22, 2022, the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code.

16. On January 4, 2023, the case converted to one under Chapter 7 of the Bankruptcy Code and Timothy P. Smith was appointed interim Chapter 7 Trustee.

17. At the meeting of creditors on January 31, 2023, Debtor's counsel confirmed that the company's non-debtor principal, MacDonald, has possession of the books and records of the Debtor and that he also has possession of the Debtor's computer.

18. Upon information and belief, the books and records and computer contain information that the Arbitrator ordered the Debtor to produce to the Machados in response to the Machados' Discovery Requests.

D. BASIS FOR RELIEF

I. The Automatic Stay

19. The filing of a bankruptcy petition acts as a stay of the commencement or continuation of all judicial actions or proceedings against the debtor and property of the estate that could have been commenced before the bankruptcy case. 11 U.S.C. § 362. "The purpose of the stay is to protect debtors and property of debtors from lawsuits by creditors and to give debtors an opportunity to organize their affairs." *Bezanson v. First Nat. Bank of Bos.*, 633 A.2d 75, 77 (Me. 1993).

20. The stay only applies to actions against the debtor and does not apply to co-defendants. *Austin v. Unarco Indus., Inc.*, 705 F.2d 1, 4 (1st Cir. 1983); *In re Two Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 994 F.2d 956, 969 (1st Cir. 1993) ("As a general rule, section 362(a)'s automatic stay provisions apply only to the debtor in bankruptcy.")

21. Pursuant to § 362(d), "on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . such as by terminating, annulling,

modifying, or conditioning such stay—(1) for cause, including lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. § 362(d)(1).

22. “[G]enerally speaking, ‘cause’ is said to exist when the harm that would result from a continuation of the stay would outweigh any harm that might be suffered by the debtor or the debtor’s estate if the stay is lifted.” *Peerless Ins. Co. v. Rivera*, 208 B.R. 313, 315 (D.R.I. 1997)(citing *In re Turner*, 161 B.R. 1, 3 (Bankr. D. Me. 1993)); *see also In re Shaughnessy*, 2007 WL 2403280, at *3 (B.A.P. 1st Cir. Aug. 17, 2007)(“Under § 362(d)(1), cause exists when the harm that would result from a continuation of the stay would outweigh any harm that might be suffered by the debtor or the debtor’s estate if the stay is lifted.”)

23. Courts consider the following factors when determining if the stay should be lifted for cause:

(1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the foreign proceeding involves the debtor as fiduciary; (4) whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases; (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question; (7) whether litigation in another forum would prejudice the interest of other creditors, the creditors’ committee and other interested parties; (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c); (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor; (10) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; (12) the impact of the stay on the parties and the “balance of hurt”.

In re Unanue-Casal, 159 B.R. 90, 95–96 (D.P.R. 1993), *aff’d*, 23 F.3d 395 (1st Cir. 1994). Not all of the factors need to be present for “cause” to exist. *Id.* Courts have relied on only a few factors to determine that sufficient cause existed to lift the stay. *Id.*

II. Arbitration and the Stay

24. When arbitration arises in a bankruptcy proceeding, “there is a strong federal policy favoring arbitration which can only be overridden if the party opposing arbitration makes a showing of a clear conflict with another federal statute.” *In re Chorus Data Sys., Inc.*, 122 B.R. 845, 850 (Bankr. D.N.H. 1990). This Court has stated that “the Arbitration Act is a statute that is to be enforced unless the trustee or debtor in the bankruptcy proceeding can show a clear conflict with a specific provision or underlying purpose of the Bankruptcy Code.” *In re Livingston*, 204 B.R. 306, 307 (Bankr. D.N.H. 1997).

25. In *Chorus Data Systems*, this Court granted relief from the automatic stay in a Chapter 11 case to allow a claim asserted against a debtor and the debtor’s counterclaim to be adjudicated in an arbitration proceeding. *In re Chorus Data Sys., Inc.*, 122 B.R. 845, 855 (Bankr. D.N.H. 1990). However, in *Livingston*, this Court declined to grant relief from the automatic stay in an individual Chapter 7 case where fraud was an essential element of the proceedings before an arbitrator because § 523(c) of the Bankruptcy Code provides the Bankruptcy Court exclusive jurisdiction to determine the dischargeability or dischargeability of fraud-type claims. *In re Livingston*, 204 B.R. 306, 307 (Bankr. D.N.H. 1997) (“This exclusive jurisdiction and time limitation regarding the determination of dischargeability of fraud-type claims differs from dischargeability determinations concerning other types of claims, which determinations share concurrent jurisdiction with the state courts or other federal courts.”)

E. REQUEST FOR RELIEF

26. In this matter, the Machados seek relief from the automatic stay to obtain from the Debtor information concerning the business dealings between the Debtor and Stefano, the financial arrangements between the Debtor and Stefano concerning the Machado project,

communications between the Debtor and Stefano concerning the \$110,000 that the Debtor wrongfully received from the Machados' construction lender, and to obtain copies of all communications, agreements, and financial transactions between the Debtor and Stefano. This information is necessary to the Machados' ongoing claim against Stefano and they are materials that the Debtor was ordered to produce in the pre-bankruptcy arbitration. The Machados also anticipate conducting the 30(b)(6) deposition of the Debtor's principal, McDonald, who was intimately involved in the Machado Project.

27. The responses to the Machados' Discovery Requests are essential to the Arbitration and the resolution of the claims brought by the Machados against Stefano. Although the Machados are not asking for the stay to be lifted in order for the Arbitrator to arbitrate the claim against the Debtor, the Debtor's documents and responses to interrogatories are key to continuing the Arbitration with respect to the claim against Stefano.

28. Furthermore, the Machados intend to issue a subpoena *duces tecum* to MacDonald requesting documents and files from MacDonald. The Machados also intend to take his deposition to obtain all pertinent information relating to their claims against Stefano.

29. MacDonald has not personally sought bankruptcy protection and therefore the automatic stay in the Debtor's pending Chapter 7 case does not preclude the Machados from requiring MacDonald to appear at a deposition and produce any and all documents in his possession relating to the subject matter of the Machados' ongoing litigation. The Machados, however, acknowledge that some documents, books and records of the Debtor and the computer in McDonald's possession may be property of the bankruptcy estate of the Debtor.

30. The Machados herein seek relief from the automatic stay in this case to extent required to permit the Machados to: a) schedule a deposition of MacDonald; b) serve MacDonald

with a subpoena duces tecum compelling him to produce all information in his possession responsive to the Machados' outstanding discovery requests, as required by the Arbitrator's order; and c) authorize the Machados to obtain access to the Debtor's computer and make copies of any documents and information pertaining to the Machados' claims.

31. Although the underlying claim against the Debtor (and Stefano) does include fraud, with this Motion the Machados do not seek to have the stay lifted to have to claim against the Debtor adjudicated by the Arbitrator, but only seek to have the Debtor comply with its discovery obligations in the Arbitration and orders of the Arbitrator, including the Order Compelling Discovery.

32. The Machados further request that, given the circumstances described above, said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

33. No memorandum of law is being submitted by the Machados, because this motion adequately sets forth the applicable law.

WHEREFORE, the Movants, Joseph M. Machado and Katherine Machado, respectfully request:

- A. that they be granted relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (2), authorizing the Machados to
 - i. schedule and take the 30(b)(5) deposition of MacDonald;
 - ii. serve MacDonald with a subpoena duces tecum compelling him to produce all information in his possession responsive to subpoena; and
 - iii. authorize the Machados to obtain access to the Debtor's computer and make copies of any documents and information pertaining to the Machados' claims.

B. that the Court waive the 14-day stay requirement under Bankruptcy Rule 4001(a)(3) such that relief shall be effective immediately upon entry; and

C. that they be granted such other relief as is just and appropriate.

Respectfully submitted,

JOSEPH M. MACHADO and
KATHERINE MACHADO

By Their Attorneys,
PRETI FLAHERTY BELIVEAU
& PACHIOS PLLP

Date: April 24, 2023

By: /s/ Gregory A. Moffett
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Exhibit A

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. ALFSC-CV-2021-_____

JOSEPH M. MACHADO and)
KATHERINE MACHADO,)
)
Plaintiffs,)
v.)
)
DETAIL DESIGN BUILDERS, LLC)
and)
BRIAN M. STEFANO,)
)
Defendants.)
)

COMPLAINT

Plaintiffs Joseph M. Machado and Katherine Machado, by and through their undersigned counsel, complain against Defendants Detail Design Builders, LLC and Brian M. Stefano as follows:

PARTIES

1. Plaintiffs Joseph M. Machado and Katherine Machado (together “Machado”) are individuals residing in the Town of Kittery, County of York, State of Maine.
2. Defendant Detail Design Builders, LLC (“Detail Design”) is a New Hampshire limited liability company with a place of business in Amherst, New Hampshire.
3. Brian M. Stefano is an individual residing in Westford, Massachusetts.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105.
5. Venue is proper in York County by virtue of 14 M.R.S. § 501 insofar as, for example, Machado resides in Kittery, York County and the subject property is in Kittery, York County.

BACKGROUND

6. In October 2019, Machado entered into a two-part agreement with Stefano and Detail Design to buy land and build a new home (the “Agreement”).

7. Stefano and Detail Design were in business together.

8. Stefano and Detail Design represented to Machado they were “50/50” partners.

9. Stefano owned a buildable lot at 77 Tower Road, Kittery, Maine (the “Property”).

10. Detail Design is a construction company.

11. Robert MacDonald is the principal of Detail Design.

12. Stefano would find a buyer for the Property who, at the same time, would agree to enter a construction contract with Stefano and Detail Design to build a new, custom home.

13. Stefano and Detail Design, as described, were partners on the venture.

14. Pursuant to the Agreement, on October 9, 2019, Stefano and Machado executed a purchase and sale agreement for the Property in the amount of \$1,000,000. A copy of the Purchase and Sale Agreement is attached hereto as **Exhibit A**.

15. The Purchase and Sale Agreement had no financing contingency.

16. On October 9, Machado paid cash in-full.

17. The Purchase and Sale Agreement provided that “Stefano, Machado, and Detail Design have reached an agreement **attached** to this purchase and sale in ADDENDUM 1 CONSTRUCTION SERVICES CONTRACT...ADDENDUM 3 SPECIFICATIONS” (the “Construction Contract”). (emphasis added). A copy of the Construction Contract is attached hereto as **Exhibit B**.

18. The Purchase and Sale Agreement further provided the “purchase of the land at 77 Tower Road is **contingent** upon the buyers signing the Construction Contract (emphasis added).

19. Machado, Stefano, and Detail Design executed the Construction Contract. Ex. B.

20. The Construction Contract provided for an initial fixed price of \$1,775,000 (“Contract Price”). Ex. B.

21. The Construction Contract was subject to three change orders which increased the Contract Price to \$1,956,068.44.

22. The Construction Contract provided for a project completion date of September 1, 2020. Ex. B at § 1.6.

23. The Construction Contract provided for Detail Design to perform the work reflected in Addendum 2 (drawings) and Addendum 3 (specifications) (the “Project”).

24. The Construction Contract provided for Detail Design to fully manage the Project including but not limited to management of all subcontractor services. Ex. B at § 2.2.

25. Machado paid \$200,000 up front towards the Contract Price.

26. Machado obtained a construction loan from Citizen’s Bank to help pay for the remainder of the Project (“Machado Construction Loan Account”).

27. The Construction Contract provided Detail Design to request periodic disbursements from Citizen’s Bank out of the Machado Construction Loan Account for work completed.

28. Upon receipt of the disbursement request, Citizen’s Bank would schedule an inspection and disburse loan proceeds consistent with the work completed.

29. The Project suffered delays due to Detail Design’s mismanagement.

30. For example, Detail Design ordered wrong materials.
31. As a further example, Detail Design made errors in the construction work which needed to be fixed.
32. As a further example, Detail Design had disputes with subcontractors.
33. The Project was not complete by September 1, 2020.
34. Upon information and belief, Stefano had yet to realize a satisfactory profit on the Agreement.
35. Upon information and belief, Stefano became frustrated he had yet to realize a satisfactory profit on the Agreement.
36. On or around January 2021, Machado became aware that Detail Design made disbursement requests for approximately \$110,000 from the Machado Construction Loan Account.
37. Upon inspection, the disbursement requests were approved.
38. Instead of using the approximately \$110,000 for the Project (e.g. payment of subcontractors) it was used to pay for materials and other expenses used for a project at Stefano's home in Westford, Massachusetts ("Stefano's Home" or "Stefano/Stefano's Project").
39. Detail Design and Stefano renovated Stefano's Home using money from the Machado Construction Loan Account.
40. For example, Detail Design built a theater room.
41. As a further example, Detail Design built an outdoor swimming pool.
42. Detail Design had yet to complete the Project.
43. Subcontractors on the Project had not been paid.

44. Upon information and belief, the Stefano Project was how Stefano and Detail Design delivered an economic benefit to Stefano arising out of the Agreement.

45. Still, the Project was incomplete.

46. As of February 2021, Machado had overpaid the Contract Price by approximately \$61,600.

47. As of February 2021, the Machado Construction Loan Account had been fully drawn down due, in part, to the \$110,000 diverted to the renovation at Stefano's Home.

48. Robert MacDonald (Detail Design) informed Machado financial resources were unavailable to finish the Project.

49. Without any alternative and expressly reserving all rights including but not limited to repayment, Machado agreed to advance more money (up to \$220,000, if necessary) for the sole purpose of completing the Project.

50. Machado paid amounts beyond the Contract Price to keep the Project going.

51. For example, Machado paid subcontractors.

52. In March 2021, Machado received a certificate of occupancy.

53. In March and April 2021, Machado sought repayment from Detail Design and Stefano.

54. Both refused.

55. By letter dated May 21, 2021, Machado provided notice of claim and written demand under Maine's Unfair Trade Practices Act ("UTPA") and Maine's Home Construction Contract Act ("Notice of Claim"). A copy of the Notice of Claim is attached hereto as **Exhibit C**.

56. The Project remains incomplete.

57. For example, the front door installation is unfinished.
58. As a further example, the master bathroom is incomplete.
59. As a further example, the master closet millwork is incomplete.
60. As a further example, the painting is unfinished.
61. Detail Design refuses to finish the job.
62. As a consequence of the conduct described herein, Machado has suffered monetary damages in the minimum amount of \$260,000.
63. As a consequence of the conduct described herein, Machado is continuing to incur monetary damages insofar as other construction services must be engaged to finish the Project.

COUNT I – BREACH OF CONTRACT

64. Machado repeats and re-alleges the allegations set forth above as if fully set forth herein.
65. Machado entered into the Agreement with Detail Design and Stefano.
66. Pursuant to the Agreement, Machado purchased the Property. Ex. A.
67. Pursuant to the Agreement, Machado entered the Construction Contract. Ex. B.
68. The Construction Contract provided for a fixed Contract Price of \$1,775,000 increased by written change orders to \$1,956,068.44.
69. Machado fulfilled all obligations under the Agreement.
70. As described herein, Defendants breached the Agreement through the breach of the Construction Contract.
71. For example, Detail Design ordered incorrect products.
72. For example, Detail Design provided faulty construction work which needed to be corrected and, as a result, delayed the Project.

73. For example, the Project is incomplete despite it being beyond the Completion Date.

74. For example, subcontractors went unpaid.

75. For example, Defendants used money from Machado Construction Loan Account for Stefano's Project.

76. The Project remains incomplete.

77. As a consequence, Machado has suffered monetary damages in the minimum amount of \$260,000 which continue to accrue.

COUNT II – HOME CONSTRUCTION CONTRACT (10 M.R.S. § 1486 et seq.)

78. Machado repeats and re-alleges the allegations set forth above as if fully set forth herein.

79. The Agreement includes the Construction Contract.

80. Maine's Home Construction Contract Act, 10 M.R.S. § 1486 et seq. (the "Home Construction Act"), governs the Construction Contract.

81. The Construction Contract is a "Home construction contract" within the meaning of 10 M.R.S. § 1486(4).

82. The Construction Contract violates the Home Construction Act.

83. For example, the Construction Contract fails to include the correct warranty statement. § 1487(7).

84. For example, the Construction Contract fails to include the correct consumer protection information. § 1487(13)&(14).

85. As a consequence, Machado is entitled to civil penalties. § 1490(2).

COUNT III – UNFAIR TRADE PRACTICES ACT (5 M.R.S. § 205-A et seq.)

86. Machado repeats and re-alleges the allegations set forth above as if fully set forth herein.

87. Machado is entitled to recovery under Maine’s Unfair Trade Practices Act, 5 M.R.S. § 205-A et seq. (“UTPA”).

88. Machado purchased services and property from Defendants by virtue of the Agreement.

89. Machado purchased services and property from Defendants by virtue of the Agreement which was primarily for personal, family or household purposes.

90. Machado entered into the Agreement to have a new home built for his family.

91. Defendants engaged in unfair or deceptive practices.

92. For example, Defendants diverted money from the Machado Construction Loan Account for the benefit of Stefano’s home.

93. The diverted money from the Machado Construction Loan Account came after Citizen’s Bank inspected the Project for work completed.

94. Machado was falsely led to believe that subcontractors and other Project obligations were being paid with the loan proceeds.

95. In addition, a violation of the Home Construction Act (Count II) constitutes an UTPA violation. 10 M.R.S. § 1490(1).

96. By letter dated May 21, 2021, Machado made written demand for relief, 5 M.R.S. § 213(1-A). Ex C.

97. The Project remains incomplete.

98. As a consequence, Machado suffered monetary damages and is entitled to recovery including attorneys' fees and costs.

COUNT IV - FRAUD

99. Machado repeats and re-alleges the allegations set forth above as if fully set forth herein.

100. Defendants made fraudulent misrepresentations to Machado.

101. For example, it was falsely represented to Machado that the disbursement requests to Citizen's Bank were to obtain inspections to then make payments for the Project.

102. As a further example, it was falsely represented to Machado that the loan proceeds from the Machado Construction Loan Account were being used, as expressly intended, for the Project.

103. The Machado Construction Loan Account was to be exclusively used for the Project.

104. Disbursement of the loan proceeds was subject to strict protocol including disbursement requests and inspection for work completed.

105. The false representations regarding the use of the loan proceeds were material and made to induce Machado to rely on said representations.

106. Machado justifiably relied on said representations insofar as believing subcontractors and other obligations of the Project were being fulfilled.

107. But, at least approximately \$110,000 from the Machado Construction Loan Account was diverted to benefit Stefano's Project.

108. As a consequence, subcontractors and other obligations went unpaid.

109. As a consequence, Machado suffered monetary damages having to make-up the shortfall due to the diverted loan proceeds and is entitled to recovery.

RELIEF REQUESTED

WHEREFORE, Plaintiffs Joseph M. Machado and Katherine Machado respectfully request the Court enter judgment in its favor and against Defendants Detail Design Building, LLC and Brian M. Stefano and award it the following relief:

- (a) Damages to be proven in a minimum amount of \$260,000;
- (b) Award of reasonable attorneys' fees and costs; and
- (c) Such other relief as this Court deems just and proper.

Dated: August 10, 2021

Respectfully submitted,



Adam J. Shub, Bar No. 4708
Attorney for Plaintiffs
Joseph M. Machado & Katherine Machado

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PURCHASE AND SALE AGREEMENT - LAND ONLY

("days" means business days unless otherwise noted, see paragraph 20)

October 9, 2019
Offer Date

_____, _____ Effective Date
Effective Date is defined in Paragraph 20 of this Agreement.

1. PARTIES: This Agreement is made between Joseph M. Machado, Katherine Machado ("Buyer") and Brian M. Stefano ("Seller").

2. DESCRIPTION: Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and Buyer agrees to buy ☒ all ☐ part of (if "part of" see para. 22 for explanation) the property situated in municipality of Kittery Point, County of York, State of Maine, located at 77 Tower Road and described in deed(s) recorded at said County's Registry of Deeds Book(s) 17333, Page(s) 760.

3. PURCHASE PRICE/EARNEST MONEY: For such Deed and conveyance Buyer agrees to pay the total purchase price of \$1,000,000.00. Buyer ☐ has delivered; or ☐ will deliver to the Agency within _____ days of the Effective Date, a deposit of earnest money in the amount of \$_____. Buyer agrees that an additional deposit of earnest money in the amount of \$_____ will be delivered _____. If Buyer fails to deliver the initial or additional deposit in compliance with the above terms Seller may terminate this Agreement. This right to terminate ends once Buyer has delivered said deposit (s). The remainder of the purchase price shall be paid by wire, certified, cashier's or trust account check upon delivery of the Deed.

This Purchase and Sale Agreement is subject to the following conditions:

4. ~~ESCROW AGENT/ACCEPTANCE:~~ _____ ("Agency") shall hold said earnest money and act as escrow agent until closing; this offer shall be valid until _____ (date) ☐ AM ☐ PM; and, in the event of non-acceptance, this earnest money shall be returned promptly to Buyer.

5. TITLE AND CLOSING: A deed, conveying good and merchantable title in accordance with the Standards of Title adopted by the Maine Bar Association shall be delivered to Buyer and this transaction shall be closed and Buyer shall pay the balance due and execute all necessary papers on October 11, 2019 (closing date) or before, if agreed in writing by both parties. If Seller is unable to convey in accordance with the provisions of this paragraph, then Seller shall have a reasonable time period, not to exceed 30 calendar days, from the time Seller is notified of the defect, unless otherwise agreed to in writing by both Buyer and Seller, to remedy the title. Seller hereby agrees to make a good-faith effort to cure any title defect during such period. If, at the later of the closing date set forth above or the expiration of such reasonable time period, Seller is unable to remedy the title, Buyer may close and accept the deed with the title defect or may terminate this Agreement in which case the parties shall be relieved of any further obligations hereunder and any earnest money shall be returned to the Buyer.

6. DEED: The property shall be conveyed by a Warranty deed, and shall be free and clear of all encumbrances except covenants, conditions, easements and restrictions of record which do not materially and adversely affect the continued current use of the property.

7. POSSESSION: Possession of premises shall be given to Buyer immediately at closing unless otherwise agreed in writing.

8. RISK OF LOSS: Until the closing, the risk of loss or damage to said premises by fire or otherwise, is assumed by Seller. Buyer shall have the right to view the property within 24 hours prior to closing for the purpose of determining that the premises are in substantially the same condition as on the date of this Agreement.

9. PRORATIONS: The following items, where applicable, shall be prorated as of the date of closing: rent, association fees, (other) _____. Real estate taxes shall be prorated as of the date of closing (based on municipality's fiscal year). Seller is responsible for any unpaid taxes for prior years. If the amount of said taxes is not known at the time of closing, they shall be apportioned on the basis of the taxes assessed for the preceding year with a reapportionment as soon as the new tax rate and valuation can be ascertained, which latter provision shall survive closing. Buyer and Seller will each pay their transfer tax as required by State of Maine.

10. DUE DILIGENCE: Buyer is encouraged to seek information from professionals regarding any specific issue or concern. Neither Seller nor Licensee makes any warranties regarding the condition, permitted use or value of Sellers' real property. This Agreement is subject to the following contingencies, with results being satisfactory to Buyer:

Exhibit A

CONTINGENCY	YES	NO	FULL RESOLUTION	OBTAINED BY	TO BE PAID FOR BY
1. SURVEY Purpose: _____	☐	☐	within _____ days	_____	_____
2. SOILS TEST Purpose: _____	☐	☐	within _____ days	_____	_____
3. SEPTIC SYSTEM DESIGN Purpose: _____	☐	☐	within _____ days	_____	_____
4. LOCAL PERMITS Purpose: _____	☐	☐	within _____ days	_____	_____
5. HAZARDOUS WASTE REPORTS Purpose: _____	☐	☐	within _____ days	_____	_____
6. UTILITIES Purpose: _____	☐	☐	within _____ days	_____	_____
7. WATER Purpose: _____	☐	☐	within _____ days	_____	_____
8. SUB-DIVISION APPROVAL Purpose: _____	☐	☐	within _____ days	_____	_____
9. DEP/LUPC/ACOE APPROVALS Purpose: _____	☐	☐	within _____ days	_____	_____
10. ZONING VARIANCE Purpose: _____	☐	☐	within _____ days	_____	_____
11. HABITAT REVIEW/ WATERFOWL Purpose: _____	☐	☐	within _____ days	_____	_____
12. REGISTERED FARMLAND Purpose: _____	☐	☐	within _____ days	_____	_____
13. MDOT DRIVEWAY/ ENTRANCE PERMIT Purpose: _____	☐	☐	within _____ days	_____	_____
14. DEED RESTRICTION Purpose: _____	☐	☐	within _____ days	_____	_____
15. TAX STATUS* Purpose: _____	☐	☐	within _____ days	_____	_____
16. BUILD PACKAGE Purpose: _____	☐	☐	within _____ days	_____	_____
17. OTHER Purpose: _____	☐	☐	within _____ days	_____	_____

* If the land is enrolled in the Maine Tree Growth Tax program, Seller agrees to provide Buyer with the current Forest Management and Harvest Plan within _____ days. ☐ Yes ☒ No

Further specifications regarding any of the above: **Refer to ADDENDUM 1 CONSTRUCTION SERVICES CONTRACT, ADDENDUM 2 ARCHITECTURAL PLANS and ADDENDUM 3 SPECIFICATIONS.**

Unless otherwise specified above, all of the above will be obtained and paid for by Buyer. Seller agrees to cooperate with Buyer and shall give Buyer and Buyer's agents and consultants reasonable access to the property in order to undertake the above investigations. If the result of any investigation or other condition specified herein is unsatisfactory to Buyer, Buyer will declare the Agreement null and void by notifying Seller in writing within the specified number of days, and any earnest money shall be returned to Buyer. If the result of any investigation or other condition specified herein is unsatisfactory to Buyer, and Buyer wishes to pursue remedies other than voiding the Agreement, Buyer must do so to full resolution within the time period set forth above; otherwise this contingency is waived. If Buyer does not notify Seller that an investigation is unsatisfactory within the time period set forth above, this contingency is waived by Buyer. In the absence of inspection(s) mentioned above, Buyer is relying completely upon Buyer's own opinion as to the condition of the property.

11. FINANCING: Buyer's obligation to close:

- ☒ is not subject to a financing contingency. Buyer has provided Seller with acceptable proof of the funds.
- ☐ is not subject to a financing contingency. Buyer shall provide proof of the funds acceptable to Seller within _____ days. If such proof is unacceptable to Seller, Seller may terminate this Agreement no later than _____ days from receipt. If proof of funds is not provided within such time period, Seller may terminate this Agreement which right shall end once such proof is received, however Seller retains the agreed upon time period to terminate if such proof is unacceptable. If Seller terminates in either case, the earnest money shall be returned to Buyer.
- ☐ is subject to financing as follows:
- a. Buyer's obligation to close is subject to Buyer obtaining a _____ loan of _____ % of the purchase price, at an interest rate not to exceed _____ % and amortized over a period of _____ years. Buyer is under a good faith obligation to seek and obtain financing on these terms. If such financing is not available to Buyer as of the closing date, Buyer is not obligated to close and may terminate this Agreement in which case the earnest money shall be returned to Buyer.
- b. Buyer to provide Seller with letter from lender showing that Buyer has made application for loan specified in (a) and, subject to verification of information, is qualified for the loan requested within _____ days from the Effective Date of the Agreement. If Buyer fails to provide Seller with such letter within said time period, Seller may terminate this Agreement and the earnest money shall be returned to Buyer. This right to terminate ends once Buyer's letter is received.
- c. Buyer hereby authorizes, instructs and directs its lender to communicate the status of the Buyer's loan application to Seller, Seller's licensee and Buyer's licensee.
- d. After (b) is met, if the lender notifies Buyer that it is unable or unwilling to provide said financing, Buyer is obligated to provide Seller with written documentation of the loan denial within two days of receipt. After notifying Seller, Buyer shall have _____ days to provide Seller with a letter from another lender showing that Buyer has made application for loan specified in (a) and, subject to verification of information, is qualified for the loan requested. If Buyer fails to provide Seller with such letter within said time period, Seller may terminate this Agreement and the earnest money shall be returned to Buyer. This right to terminate ends once Buyer's letter is received.
- e. Buyer agrees to pay no more than _____ points. Seller agrees to pay up to \$ _____ toward Buyer's actual pre-pays, points and/or closing costs, but no more than allowable by Buyer's lender.
- f. Buyer's ability to obtain financing ☐ is ☐ is not subject to the sale of another property. See addendum ☐ Yes ☐ No.
- g. Buyer may choose to pay cash instead of obtaining financing. If so, Buyer shall notify Seller in writing including providing proof of funds and the Agreement shall no longer be subject to financing, and Seller's right to terminate pursuant to the provisions of this paragraph shall be void and Seller's obligations pursuant to it shall remain in full force and effect.

12. BROKERAGE DISCLOSURE: Buyer and Seller acknowledge they have been advised of the following relationships:

Allen Berube (018894) of RE/MAX Realty One (1050)
 Licensee MLS ID Agency MLS ID

is a ☐ Seller Agent ☐ Buyer Agent ☒ Disc Dual Agent ☐ Transaction Broker

Allen Berube (018894) of RE/MAX Realty One (1050)
 Licensee MLS ID Agency MLS ID

is a ☐ Seller Agent ☐ Buyer Agent ☒ Disc Dual Agent ☐ Transaction Broker

If this transaction involves Disclosed Dual Agency, the Buyer and Seller acknowledge the limited fiduciary duties of the agents and hereby consent to this arrangement. In addition, the Buyer and Seller acknowledge prior receipt and signing of a Disclosed Dual Agency Consent Agreement.

13. PROPERTY DISCLOSURE FORM: Buyer acknowledges receipt of Property Disclosure Form.

14. DEFAULT/RETURN OF EARNEST MONEY: Buyer's failure to fulfill any of Buyer's obligations hereunder shall constitute a default and Seller may employ all legal and equitable remedies, including without limitation, termination of this Agreement and forfeiture by Buyer of the earnest money. Seller's failure to fulfill any of Seller's obligations hereunder shall constitute a default and Buyer may employ all legal and equitable remedies, including without limitation, termination of this Agreement and return to Buyer of the earnest money. Agency acting as escrow agent has the option to require written releases from both parties prior to disbursing the earnest money to either Buyer or Seller. In the event that the Agency is made a party to any lawsuit by virtue of acting as escrow agent, Agency shall be entitled to recover reasonable attorney's fees and costs which shall be assessed as court costs in favor of the prevailing party.

15. MEDIATION: Earnest money or other disputes within the jurisdictional limit of small claims court will be handled in that forum. All other disputes or claims arising out of or relating to this Agreement or the property addressed in this Agreement (other than requests for injunctive relief) shall be submitted to mediation in accordance with generally accepted mediation practices. Buyer and Seller are bound to mediate in good faith and to each pay half of the mediation fees. If a party fails to submit a dispute or claim to mediation prior to initiating litigation (other than requests for injunctive relief), then that party will be liable for the other party's legal fees in any subsequent litigation regarding that same matter in which the party who failed to first submit the dispute or claim to mediation loses in that subsequent litigation. This clause shall survive the closing of the transaction.

16. PRIOR STATEMENTS: Any representations, statements and agreements are not valid unless contained herein. This Agreement completely expresses the obligations of the parties and may only be amended in writing, signed by both parties.

17. HEIRS/ASSIGNS: This Agreement shall extend to and be obligatory upon heirs, personal representatives, successors, and assigns of the Seller and the assigns of the Buyer.

18. COUNTERPARTS: This Agreement may be signed on any number of identical counterparts, such as a faxed copy, with the same binding effect as if the signatures were on one instrument. Original, faxed or other electronically transmitted signatures are binding.

19. NOTICE: Any notice, communication or document delivery requirements hereunder may be satisfied by providing the required notice, communication or documentation to or from the parties or their Licensee. Only withdrawals of offers and counteroffers will be effective upon communication, verbally or in writing.

20. EFFECTIVE DATE/BUSINESS DAYS: This Agreement is a binding contract when the last party signing has caused a paper or electronic copy of the fully executed agreement to be delivered to the other party which shall be the Effective Date. Licensee is authorized to fill in the Effective Date on Page 1 hereof. Except as expressly set forth to the contrary, the use of the term "days" in this

Agreement, including all addenda made a part hereof, shall mean business days defined as excluding Saturdays, Sundays and any observed Maine State/Federal holidays. Deadlines in this Agreement, including all addenda, expressed as "within x days" shall be counted from the Effective Date, unless another starting date is expressly set forth, beginning with the first day after the Effective Date, or such other established starting date, and ending at 5:00 p.m. Eastern Time on the last day counted. Unless expressly stated to the contrary, deadlines in this Agreement, including all addenda, expressed as a specific date shall end at 5:00 p.m. Eastern Time on such date.

21. CONFIDENTIALITY: Buyer and Seller authorize the disclosure of the information herein to the real estate licensees, attorneys, lenders, appraisers, inspectors, investigators and others involved in the transaction necessary for the purpose of closing this transaction. Buyer and Seller authorize the lender and/or closing agent preparing the entire closing disclosure and/or settlement statement to release a copy of the closing disclosure and/or settlement statement to the parties and their licensees prior to, at and after the closing.

22. OTHER CONDITIONS: A. Seller, Buyer and DETAIL DESIGN BUILDERS LLC have reached an agreement attached to this purchase and sale in ADDENDUM 1 CONSTRUCTION SERVICES CONTRACT, ADDENDUM 2 ARCHITECTURAL PLANS and ADDENDUM 3 SPECIFICATIONS.

B. On October 9, 2019 Buyer's Joseph M. Machado and Katherine Machado will pay \$1,000,000.00 to Seller Brian M. Stefano. Once the \$1,000,000.00 payment is made there will be a title transfer of the land parcel 77 Tower road from Seller to Buyer.

C. The purchase of the land at 77 Tower Road is contingent upon the buyers SIGNING ADDENDUM 1 CONSTRUCTION SERVICES CONTRACT with Detail Design Builders LLC for a custom home to be built at this property.

23. GENERAL PROVISIONS:

- A copy of this Agreement is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. If not fully understood, contact an attorney. This is a Maine contract and shall be construed according to the laws of Maine.
- Seller acknowledges that State of Maine law requires buyers of property owned by non-resident sellers to withhold a prepayment of capital gains tax unless a waiver has been obtained by Seller from the State of Maine Revenue Services.
- Buyer and Seller acknowledge that under Maine law payment of property taxes is the legal responsibility of the person who owns the property on April 1, even if the property is sold before payment is due. If any part of the taxes is not paid when due, the lien will be filed in the name of the owner as of April 1 which could have a negative impact on their credit rating. Buyer and Seller shall agree at closing on their respective obligations regarding actual payment of taxes after closing. Buyer and Seller should make sure they understand their obligations agreed to at closing and what may happen if taxes are not paid as agreed.
- Buyer acknowledges that Maine law requires continuing interest in the property and any back up offers to be communicated by the listing agent to the Seller.
- Whenever this Agreement provides for earnest money to be returned or released, agency acting as escrow agent must comply with Maine Real Estate Commission rules which may require written notices or obtaining written releases from both parties.

24. ADDENDA: ☐ Yes ☒ No Explain: _____

25. ELECTRONIC SIGNATURES: Pursuant to the Maine Uniform Electronic Transactions Act and Digital Signature Act, the parties authorize and agree to the use of electronic signatures as a method of signing/initialing this Agreement, including all addenda. The parties hereby agree that either party may sign electronically by utilizing an electronic signature service.

Buyer's Mailing address is _____.

Joseph M. Machado 
BUYER _____ DATE
Joseph M. Machado

Katherine Machado  10/09/2019
BUYER _____ DATE
Katherine Machado

BUYER _____ DATE

BUYER _____ DATE

Seller accepts the offer and agrees to deliver the above-described property at the price and upon the terms and conditions set forth and agrees to pay agency a commission for services as specified in the listing agreement.

Seller's Mailing address is _____.

Brian M. Stefano  10/09/2019
SELLER _____ DATE
Brian M. Stefano

SELLER _____ DATE

SELLER _____ DATE

SELLER _____ DATE

COUNTER-OFFER

Seller agrees to sell on the terms and conditions as detailed herein with the following changes and/or conditions:

The parties acknowledge that until signed by Buyer, Seller's signature constitutes only an offer to sell on the above terms and the offer will expire unless accepted by Buyer's signature with communication of such signature to Seller by (date) _____ (time) _____ ☐ AM ☐ PM.

SELLER _____ DATE _____

SELLER _____ DATE _____

SELLER _____ DATE _____

SELLER _____ DATE _____

The Buyer hereby accepts the counter offer set forth above.

BUYER _____ DATE _____

BUYER _____ DATE _____

BUYER _____ DATE _____

BUYER _____ DATE _____

EXTENSION

The time for the performance of this Agreement is extended until _____ DATE _____

SELLER _____ DATE _____

SELLER _____ DATE _____

SELLER _____ DATE _____

SELLER _____ DATE _____

BUYER _____ DATE _____

BUYER _____ DATE _____

BUYER _____ DATE _____

BUYER _____ DATE _____



AB



ADDENDUM 1

CONSTRUCTION SERVICES AGREEMENT

This Fixed Price Construction Services Agreement (this "Agreement") is made and entered into as of this October 11, 2019 (the "Effective Date"), by and between **Detail Design Builders, LLC**, 13 Columbia Drive, Unit 7, Amherst, New Hampshire ("Builder" or "DDB"), and **Joseph M. Machado and Katherine Machado**, 15 Finn Avenue, Newfields, NH ("Owners") (together, the "Parties").

RECITALS

A. The Owners wish to engage DDB to build a custom-built home per the plans attached, (Addendum 2) and the specifications attached, (Addendum 3) according to the agreement outlined herein. This together will be known as the "Project".

B. DDB will provide construction services in accordance with a design reflected in certain drawings and specifications provided by DDB and approved by Owners.

C. DDB is prepared to provide such building services, for a total price of **\$1,775,000** (the "Contract Sum") for construction of the Property.

D. The Parties wish to memorialize their agreement as to the provision of such services by DDB, the compensation to DDB by the Owners for such services.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the Parties agree as follows:

Article 1: Definitions1.1 Work

The "Work" means the scope of construction and related services required to complete the Project in accordance with the Drawings and the Specifications listed or described in Section 2.1. The Work includes all labor, materials, equipment and services provided or to be provided by DDB.

1.2 Project

The "Project" means the complete construction of the Work to be performed at the Property.

1.3 Drawings

The "Drawings" are the graphic representations of the design of the Work, including plans, elevations, sections, sketches, details, schedules and diagrams, as listed in Section 2.1 below.

1.4 Specifications

The "Specifications" are the written requirements for materials, equipment, systems, standards and workmanship for the Work listed in Section 2.1 below.

1.5 Submittals

A "Submittal" is any submission to the Owners for review and approval, demonstrating how DDB proposes to conform the Work to the Drawings and Specifications. Submittals may include, but are not limited to, shop drawings, product data, cut sheets, models, mock-ups, and samples.

1.6 Completion Date

Subject to extension or modification as provided herein, the date by which the Work will be Substantially Complete is **September 1, 2020** ("Completion Date").

1.7 Substantial Completion

"Substantial Completion" is the stage in the progress of the Work when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Drawings and Specifications so that the Owners can utilize the Work for its intended purpose, it being understood that issuance of a Certificate of Occupancy by the Town of Kittery shall constitute "Substantial Completion" of the Work.

1.8 Contract Sum

The "Contract Sum" is **One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000.00)**, to be paid by the Owners to DDB for all Work completed in connection with the Project. The Contract Sum shall be subject to adjustment for changes in the scope of the Work and for other reasons as set forth below.

1.9 Change Order

A "Change Order" is a written amendment between the Owners and DDB which reflects agreed revisions to the scope of the Work, the Contract Sum, and/or the Completion Date.

1.10 Punch List

A "Punch List" is a written list of outstanding Work items remaining to be completed after Substantial Completion of the Work.

1.11 Allowance

An "Allowance" is an amount included in the Specifications as an estimate of the cost of completing a particular item or category of the Work. An Allowance is intended as a place-holder within the Contract Sum, to be adjusted to the actual costs of such item or category of Work once the actual cost is known. Costs in excess of the Allowance shall be added to the Contract Sum, while costs less than the Allowance shall be deducted from the Contract Sum.

1.12 Assumptions and Clarifications

"Assumptions and Clarifications" are written narratives by DDB which disclose or explain the basis of the Contract Sum or any portion thereof, including any limitations, parameters or suppositions that DDB has applied. Assumptions and Clarifications may be included in this Agreement, in the Drawings, the Specifications, or in a separate writing submitted to the Owners at or before the Effective Date.

1.13 Owners Selection List

The "Owners Selection List" is a list of materials, products, finishes or other items which require the Owners to make selections or other decisions before DDB may complete or finalize a particular aspect of the Work.

1.14 Claim

A "Claim" is a demand or assertion by one of the Parties seeking, as a matter of right, payment of money or other relief with respect to the terms of the Agreement. A Claim may arise in contract or tort or under applicable law. The responsibility to substantiate a Claim by a preponderance of the evidence rests with the party making the Claim.

1.15 Requisition Payments

Notwithstanding anything else in this agreement to the contrary, a "Requisition Payment" is a payment request that DDB will make to the construction lender, who is providing construction financing, for Work completed to date.

Article 2: Scope of Work

2.1 DDB agrees to perform the Work reflected in the Drawings contained or listed in Addendum 2 and the Specifications, dated as of 10/09/2019, contained or listed in Addendum 3, both of which are incorporated into this Agreement by reference. The Drawings and Specifications reflect a ~4518 sq. ft. home with 2-car garage and finished basement.

2.2 DDB agrees to build a ~4518 sq. ft. home with 2-car garage and finished basement per the Plans and Specifications as defined in Addendum 2 and Addendum 3. This also includes the following services;

- A.The complete project management for the Work to be performed.
- B.Obtaining all State and Local Building Permits required for construction of the Property.
- C.Excavation, foundations and masonry services as described in the Specifications, including labor and material.
- D.Carpentry and Building services as described in the Specifications including labor and material.
- E.Mechanicals and electrical work as described in the Specifications including labor and material.
- F.In-house woodworking and custom millwork as described in the Specifications including labor and material.
- G.Management of all subcontractor services needed for the project.
- H. (Intentionally Blank)
- I. (Intentionally Blank)
- J.All landscaping and property development as described in the Specifications, including labor and material.
- K.Site maintenance and safety control per OSHA rules and regulations.
- L.Control of all necessary insurance certificates per Maine State Law.

M.IRC Building Code management and enforcement.

N.Meetings with Owners and any key personal throughout the project.

Article 3: General Responsibilities of DDB

3.1 DDB shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

3.2 DDB shall perform the Work in accordance with the Drawings and Specifications, as modified by any Assumptions and Clarifications, and comply with all applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities having jurisdiction over aspects of the Work.

3.3 DDB shall keep the Owners informed of the progress and quality of the Work by meeting or communicating regularly with the Owners.

3.4 DDB shall submit written progress reports to the Owners on at least a monthly basis, reflecting Work completed to date, any necessary adjustments to the Contract Time or the Contract Sum, any pending Change Orders and any additional information required to keep the Owners informed.

3.5 DDB shall apply for and obtain all necessary governmental permits approvals and inspections for the Project, the cost of which shall be included in the Contract Sum.

3.6 DDB shall provide to the Owners any and all Submittals reasonably required in order for the Owners to select and approve products and materials related to the Work. DDB shall deliver the Owners Selection List in a timely fashion and include the date by which such selections must be made by the Owners.

3.7 DDB shall supervise and direct the Work, using its best skill and attention. DDB shall have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

3.8 DDB shall provide all necessary documentation to the construction lender providing funding (including, without limitation, any lien waivers required by the construction lender), which will facilitate necessary payments to subcontractors and suppliers to complete this contract in a timely manner.

3.9 Unless otherwise provided in this Agreement, or the Drawings and Specifications, DDB shall obtain and furnish the labor, materi-

als, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

3.10 DDB shall enforce discipline and good order among DDB's employees, subcontractors and other persons carrying out the Work. DDB shall not permit employment of unfit persons or persons not skilled in the tasks assigned to them.

3.11 DDB shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, DDB shall remove its tools, equipment, machinery and surplus material; and shall properly dispose of waste materials.

3.12 DDB shall carry, and keep current, all Liability, and Workman's Comp coverage for the entirety of the project.

3.13 DDB shall ensure that it shall not cause, nor permit to be caused, any contamination of the environment or any breach of any local, state, or federal environmental ordinance, code, statute, or other law, and shall hold Owner harmless from, and shall indemnify Owner against any claim by any person for any such environmental contamination proximately resulting from DDB's completion of the Work, including any such contamination caused by any officer, subcontractor, or agent of DDB. Further, DDB covenants with Owner that it is familiar with, and shall specifically comply with, all Shoreland Zone and Resource Protection Zone requirements imposed as a result of the location and zoning of the Project.

Article 4: General Responsibilities of the Owners

4.1 The Owners shall select products and materials required to complete the Work within the timeframes reasonably requested by DDB or, if no such timeframe is requested, within a reasonable timeframe which will not result in material delay or disruption to the Work.

4.2 The Owners shall promptly provide DDB with any reports, tests, correspondence or other information in its possession or control which may impact the Work and shall respond promptly to requests for information by DDB.

4.3 Upon Substantial Completion of the Project, the Owners shall cooperate with DDB in preparing a Punch List. DDB will complete the agreed upon Punch List in a timely and expeditious manner.

4.4 The Owners shall sign all documentation needed by DDB in a timely manner in connection with all Payment Requisitions.

Article 5: Contract Time

5.1 DDB shall perform the Work with reasonable diligence and promptness, taking into account the circumstances of the Project as a whole. Contract Time is subject to extension for changes in the scope of the Work (e.g. Change Order) or other circumstances impacting DDB's ability to complete the Project.

5.2 If DDB is delayed at any time in performing the Work, by (1) the Owners or anyone for whom it is legally responsible, (2) changes in the Work made by the Owner, (3) Site conditions which could not reasonably have been foreseen by a prudent and competent developer, (4) weather not reasonably anticipated given the location of the Project and the time of year when the Work is performed, (5) labor disputes, fire, delay in deliveries outside of the regional custom, unavoidable casualties, or other causes beyond DDB's control, DDB shall be entitled to a commensurate extension of the Completion Date in the form of a change order to be signed by Owner reflecting the change in the time for completion, which approval Owner shall not unreasonably withhold, condition, or delay. Weather not reasonably anticipated will only reflect added time to completion date, but not increase the Contract Sum.

Article 6: Contract Sum and Progress Payments

6.1 The Owners, upon signing this agreement, shall pay an initial deposit payment to DDB in the amount of **(\$200,000.00) Two Hundred Thousand Dollars**, which shall be applied against the Contract Sum.

6.2 The Owners shall pay DDB the Contract Sum for DDB's completion of the Work, and shall cause their construction lender to make payments based on Payment Requisitions submitted by DDB during the course of the Project.

6.3 DDB shall apply for progress payments by Payment Requisitions submitted to the Owners and the construction lender based on work completed during the preceding period. DDB's Payment Requisitions shall be supported by all documentation reasonably required by the construction lender. DDB's Payment Requisitions shall be due and payable within fifteen (15) days from the date of their submission to the construction lender. Notwithstanding the foregoing, however, nothing in this Agreement shall be construed as relieving the Owners from responsibility for payment of the Contract Sum and all Payment Requisitions properly submitted by DDB.

6.4 Upon payment by the construction lender, but in no event later than the date due under any subcontractor agreement between DDB and any subcontractor or supplier, DDB shall timely pay each subcontractor or supplier for the work performed or materials supplied.

Article 7: Completion and Final Payment

7.1 Upon Substantial Completion of the Work, the Owners shall cooperate in the timely preparation of a Punch List. When the Punch List has been finalized and signed by DDB and Owner, DDB shall proceed to complete the items of Work set forth on the Punch List.

7.2 Upon completion of the Work, but subject to completion of any Punchlist items, DDB will submit a final application for payment to the construction lender. DDB and Owner agree that Owner or construction lender shall hold back \$50,000 as retainage against completion of the punchlist. Upon receipt of the final application for payment, the Owners and any construction manager hired by the construction lender will inspect the Project as a whole. When the Owners and construction lender find the Punchlist is complete, and DDB's obligations under this Agreement fully performed, then construction lender will promptly release said \$50,000 retainage to DDB.

Article 8: Warranties and Representations

8.1 DDB represents that it has visited the site of the Work and represents to Owner that it has not discovered any conditions which would significantly impair the Work or the Project, or successful, timely completion of the Work or Project.

8.2 DDB warrants to the Owners that:

- A. Materials and equipment furnished under this Agreement will be new and of good quality unless otherwise required or permitted by the Drawings and Specifications.
- B. The Work will be free from defects not inherent in the quality required or permitted.
- C. The Work will conform to the requirements of the Drawings and Specifications.
- D. "In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Building and Energy Code apply to this contract";

8.3 The Owners represents that it will cooperate with DDB, as well as its subcontractors, vendors, suppliers and design professionals, to avoid delays, disruptions or other interference with the progress of the Work.

8.4 DDB warrants that for a period of one (1) year after the Substantial Completion and Certificate of Occupancy, it shall correct Work not conforming with the Drawings and Specifications. If DDB fails to correct nonconforming Work within a reasonable time, the Owners may correct it and charge the reasonable costs of correction to DDB, including any reasonable attorney's fees or costs of court associated with any enforcement action against DDB.

8.5 DISCLAIMER OF OTHER WARRANTIES: EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, DDB HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR GOOD WORKMANSHIP OR OF FITNESS FOR A PARTICULAR PURPOSE. For the avoidance of doubt, this waiver shall not constitute a waiver of any obligation or warranty given by DDB elsewhere in this agreement.

Article 9: Indemnification

9.1 DDB agrees to defend, indemnify and hold the Owners harmless from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from performance of the Work, and including any third party claim arising at the property during DDB's possession and control of the work site, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of DDB, its agents or contractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

9.2 The Owners shall defend, indemnify and hold DDB harmless from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Owners, their agents or contractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable hereunder.

Article 10: Changes in the Work

10.1 The Owners and DDB, without invalidating this Agreement, may agree to implement changes in the scope of the Work consisting of additions, deletions or other revisions. Changes necessitating an

adjustment of the Contract Time or the Contract Sum, together with other changes of significant scope, shall be reflected in a Change Order.

10.2 If any Change Order results in an increase (or decrease), in the Contract Sum, the Owners shall pay the amount (or receive credit) of such increase (or decrease) in full before the added scope of Work is performed.

10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Drawings and Specifications or from those conditions previously known by DDB to exist after diligent inspection, then appropriate adjustments to the Contract Time and the Contract Sum will be made in the form of a change order to be signed by DDB and Owner.

Article 11: Safety

11.1 DDB shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with the performance of the Work. DDB shall take reasonable precautions to prevent damage, injury, or loss, to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. DDB shall promptly remedy damage and loss to property caused in whole or in part by DDB, or by anyone for whose acts DDB is liable.

11.2 The Owners shall indemnify and hold DDB, its subcontractors, suppliers, consultants, agents and employees, or any of them, harmless from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from performance of the Work in an area where hazardous substances are discovered, except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

Article 12: Default by the Owners; Rights of DDB

12.1 The occurrence of any of the following events will constitute an Event of Owners Default under this Agreement:

- A. The failure of the Owners, or the construction lender to make any payment required by Article 6 above when due, if such failure is not cured by the Owners within ten (10) days after receipt of written notice of such default given by DDB;

- B. The Owners are responsible for repeated (more than two) work suspensions, or unreasonable delays (beyond one week after receipt of information from DDB) in providing information or selections necessary to the orderly progress of the Work;
- C. The material failure of the Owners to perform any other covenant or promise hereunder, or to comply with the Owners obligations, if such failure is not cured by the Owners within thirty (30) days after receipt of written notice of such default given by DDB;
- D. The filing by the Owners of a voluntary petition for bankruptcy, or the filing of an involuntary petition for bankruptcy against the Buyers, which petition is not dismissed within sixty (60) days of its filing;

12.2 Upon the occurrence of any Event of Owners Default, DDB may, without prejudice to any other rights or remedies of DDB under applicable law, terminate this Agreement by written notice to the Owners. Upon such termination, DDB shall be entitled to recover payment for, (a) all Work performed, (b) all materials and equipment ordered by DDB, but not yet incorporated into the Project (provided DDB shall deliver such materials to the Property in a timely fashion, or shall waive any right to payment for such materials), and (c) all costs associated with delay, shutdown, demobilization and return of materials, provided that DDB must exercise duty to mitigate any such costs associated with this subsection (c).

12.3 Notwithstanding any other provision of this Agreement, upon the occurrence of an Event of Owners Default under Section 12.1(a) above, DDB may suspend the Work until all overdue amounts as well as any costs associated with delay, shutdown, demobilization and remobilization arising out of the suspension have been paid in full by the Owners.

Article 13: Default by DDB; Rights of the Owners

13.1 The occurrence of any of the following events will constitute an Event of DDB Default under this Agreement:

- A. DDB refuses or fails to perform the Work with reasonable diligence and promptness or to supply enough properly skilled workers or proper materials to complete the Work, or a phase or portion thereof, in accordance with Section 4.1 above, if such failure is not cured by DDB within ten

(10) days after receipt of written notice of such default given by the Owners;

- B. DDB fails to make payment to subcontractors and suppliers for materials or labor in accordance with their respective agreements with DDB, if such failure is not cured by DDB within five (5) days after receipt of written notice of such default given by the Owners (it being understood that any late payment by DDB which causes any subcontractor or supplier to file a mechanic's lien under 10 MRSA Sec. 3251, et seq, shall be an incurable material breach of this Agreement if not discharged at DDB's sole expense within five days of such lien being filed);
- C. DDB violates or fails to strictly comply with all laws, ordinances, rules, regulations or orders, including those of a public authority having jurisdiction, if such failure is not cured by DDB within thirty (30) days after receipt of written notice of such default given by the Owners (it being understood that any cost of remediating such violation or failure to comply with such laws, ordinances, rules, regulations, or orders shall be born solely by DDB, and shall not be included as a cost to Owner);
- D. The material failure of DDB to perform any other covenant or promise hereunder, or to comply with DDB's obligations, if such failure is not cured by DDB within thirty (30) days after receipt of written notice of such default given by the Owners;
- E. The filing by DDB of a voluntary petition for bankruptcy, or the filing of an involuntary petition for bankruptcy against DDB, which petition is not dismissed within sixty (60) days of its filing;

13.2 Upon the occurrence of an Event of DDB Default which is not timely cured, this Agreement shall be, without prejudice to any other rights or remedies of the Owners under applicable law, terminated without the need for further notice, it being the intent of the Owners that DDB's failure to timely cure any such default constitutes termination of this Agreement. After such termination, the Owners may finish the Work by whatever reasonable method the Owners may deem expedient. DDB shall not be entitled to receive further payment.

Article 14: Claims and Disputes

14.1 Written notice of any defect claim asserted by the Owners, DDB, shall be given within twelve (12) months from the date of Substantial Completion. In the absence of such timely notice, the defect claim shall be deemed waived.

14.2 Any Claim or dispute arising out of this Agreement or the performance thereof shall be resolved in the following manner:

- A. The Parties shall first endeavor in good faith to resolve the dispute through private negotiations.
- B. In the event that such negotiations are not successful, the Parties shall engage in private mediation before a mutually acceptable mediator. If the Parties are not able to agree on a mediator, the Parties will refer the dispute to the American Arbitration Association ("AAA") for mediation in accordance with AAA's Construction Mediation Rules. Completion of mediation shall be a condition precedent to pursuit of any other dispute resolution process.
- C. In the event that mediation is not successful, the Claim or dispute will be determined by binding arbitration before a single arbitrator in accordance with AAA's Construction Arbitration Rules. The arbitration hearing will be conducted at a location in Maine within thirty (30) miles from Kittery, Maine. The substantially prevailing Party in the arbitration will be entitled to recover its costs and reasonable attorney's fees.

Article 15: Insurance

15.1 From the outset of the Project until the expiration of the warranty period set forth in Section 7.5, DDB shall maintain the following insurance coverage with the following limits:

- A. Commercial general liability coverage with limits of at least \$1 million per occurrence and \$2 million in the aggregate per Project;
- B. Workers compensation coverage that complies with the requirements of the jurisdiction where the Project is located;
- C. Automobile liability coverage with limits of at least \$1 million per occurrence and \$2 million in the aggregate per Project.
- D. DDB shall also ensure that its subcontractors cover adequate insurance, or, in the absence of such adequate insurance, DDB's general liability insurance policies will cover actions of its subcontractors.

15.2 Unless otherwise agreed, Owners shall obtain and maintain builder's risk property insurance at the Owners sole expense. Such insurance shall be written on a builder's risk "all-risk" or equivalent policy form in the amount of the Contract Sum, as adjusted from time to time, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained until final payment has been made by the construction lender to DDB. This insurance shall provide coverage for the interests of the Owners, DDB and its Subcontractors and shall cover, without limitation, the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall include reasonable compensation for DDB's services and expenses required as a result of such insured loss.

15.3 15.3 The Owner shall be responsible for purchasing and maintaining the Owners' liability insurance in amounts reasonably satisfactory to the construction lender.

15.4 Certificates of insurance confirming that such insurance is in place shall be provided by each Party to the other before Work is commenced.

Article 16: Consumer Protection Information

16.1 As an addendum to this contract, a copy of the Attorney General's consumer protection information on home construction and repair, which includes information of contractors successfully sued by the State, as provided on the Attorney General's publicly accessible website.

Article 17: Attorney General's Publicly Accessible Website

17.1 A clear and conspicuous notice that states that consumers are strongly advised to visit the Attorney General's publicly accessible website to gather current information on how to enforce their rights when constructing or repairing their homes, as well as the Attorney General's publicly accessible website address and telephone number.

Article 18: General

18.1 Entire Agreement. This Agreement, together with the documents referenced or incorporated herein, constitutes the entire agreement

between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, with respect to the subject matter hereof.

18.2 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of either party.

18.3 Counterparts and Facsimile or Electronic Signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile or electronic signatures and any signature created or transmitted by facsimile or electronically shall be as effective as the original thereof, including, without limitation, signatures via DocuSign.

18.4 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

18.5 Notices. All notices, requests, demands, Claims, and other communications hereunder shall be in writing. Any such notice, request, demand, Claim, or other communication shall be deemed duly delivered four business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent for next business day delivery via a reputable nationwide overnight carrier. Either Party may give any notice, request, demand, Claim, or other communication hereunder by any other means (including personal delivery, facsimile or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the Party for whom it is intended. Any notice sent by DDB shall be simultaneously sent to Owner's counsel at PretiFlaherty, Attn: Jason G. Howe, Esq., One City Center, Portland, Maine 04101.

18.6 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Maine, without giving effect to any choice or conflict of law provision or rule (whether of the State of Maine or any other jurisdiction) that would cause the application of the law of any other jurisdiction.

18.7 Amendments and Waivers. No amendment or modification of this Agreement shall be valid and enforceable unless it is in writing and signed by each of the Parties. No waiver by either Party of any right or remedy hereunder shall be valid and enforceable unless it is in writing and signed by the Party giving such waiver. No waiver by either Party with respect to any Event of Default shall be deemed

to extend to any prior or subsequent Event of Default, or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

18.8 Severability. Any term or provision of this Agreement that is held invalid or unenforceable in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other jurisdiction. If an arbitrator rules that any term or provision hereof is invalid or unenforceable, the Parties agree that the arbitrator shall have the power to limit or modify the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Detail Design Builders, LLC
(Builder)

Brian M. Stefano

 10/09/2019
10:59 PM GMT

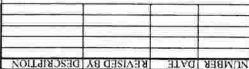
By: Robert MacDonald  10/09/2019
11:54 PM GMT

Robert MacDonald, Manager

(Owners)

By: Joseph M. Machado  10/09/2019
11:38 PM GMT
Joseph Machado

By: Katherine Machado  10/09/2019
11:41 PM GMT
Katherine Machado



Joseph and Katherine Machado
of
15 Finn Avenue
Newfields, NH 03856

13 COLUMBIA DRIVE, SUITE 20, AMHERST, NH 03001

DETAIL DESIGN BUILDERS

DRAWINGS PROVIDED BY:

DATE:	10/1/19	SCALE:	SHEET:	A.1.0
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LAYOUT PAGE TABLE	
LABEL	TITLE
A.1.0	PROJECT OVERVIEW
A.2.0	FASSETMENT PLAN
A.3.1	SECOND FLOOR PLAN
A.4.0	FRONT ELEVATION
A.4.1	RIGHT SIDE ELEVATIONS
A.4.2	LEFT SIDE ELEVATIONS
A.4.3	RIGHT SIDE ELEVATION

SPECIAL NOTE: THE ABOVE CONDITIONS ARE CONSISTENT WITH THESE PLANS AND THE CONTRACT. THE CONTRACTOR SHALL NOT BE RESPONSIBLE FOR THE SAME QUALITY AS WORK THAT IS DETECTED. ALL WORK SHALL BE DONE IN ACCORDANCE WITH FEDERAL, NATIONAL, CODES AND LOCAL CODES. FOR DIMENSIONS AND GENERAL NOTES, THE ENGINEER'S NOTES SHALL BE CONSULTED FOR CLARIFICATION. IF THE CONDITIONS ARE DIFFERENT THAN SHOWN ON THE PLANS, THE CONTRACTOR SHALL VERIFY AND BE RESPONSIBLE FOR ALL DATA (NOT INCLUDING SCOOP OPENING).

PLEASE SEE ADDITIONAL NOTES CALLED OUT ON OTHER SHEETS

BEFORE PERFORMANCE:

BEFORE CALCULATIONS SHALL COMPLY WITH THE REQUIREMENTS OF REGIONAL AND LOCAL CODES. SEE CALCULATIONS, INDICES, DETAILS, FOUNDATION, REFERENCE AND NOTES. ALL CALCULATIONS SHALL BE SUBMITTED TO THE ENGINEER FOR REVIEW AND APPROVAL. ALL INFORMATION TO THE EXTERIOR, ALL FOUNDATIONS OF THE FOUNDATIONS DEVELOPED SHALL BE SUBMITTED DIRECTLY TO THE EXTERIOR. ALL FOUNDATIONS OF THE FOUNDATIONS DEVELOPED SHALL BE SUBMITTED DIRECTLY TO THE EXTERIOR.

PLEASE SEE ADDITIONAL NOTES

STRUCTURAL ENGINEER: Hood Distribution/Logistics Group

DESIGNER: Robert L. MacDonald

BUILDER: Detail Design Builders, LLC
15 Columbia Drive, Unit 7
Amherst, NH 03031

mm Km RM



NUMBER	DATE	REVISION BY	DESCRIPTION

Joseph and Kathleen Machado
15 Elm Avenue
Newfield, NH 03956

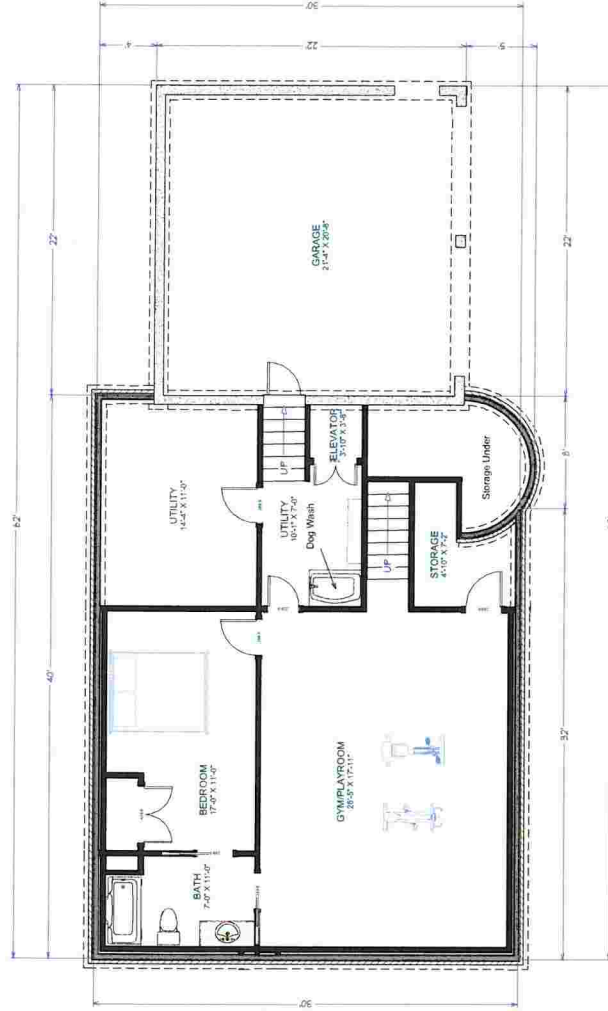
DRAWINGS PROVIDED FOR:

Basement Plan

11 CHURCH STREET, SUITE 100, NEWTON, MA 02459
DETAIL DESIGN
BUILDERS

DRAWINGS PROVIDED BY:

DATE:	10/1/18
SCALE:	1/4" = 1'-0"
SHEET:	A.20



BASMENT PLAN
188.50' x 11'

FOUNDATION NOTES:

ALL FOOTINGS TO REST ON CLEAN, FIRM UNDISTURBED SOIL.
REINFORCING BARS TO BE LAP SPICED TO MAINTAIN REQUIRED DEPTH
BELOW FINISH GRADES.

CONCRETE STRENGTH:

3,000 PSI AT 28 DAYS FOR ALL SLABS. FOUNDATION DESIGN
3,000 PSI AT 28 DAYS FOR ALL OTHER CONCRETE.
MAXIMUM SLUMP: 4"

USE ASTM A615 GRADE 60 DEFORMED REINFORCING BARS
UNLESS NOTED OTHERWISE.

CONCRETE EXPANSION JOINTS SHALL BE SUPPORTED WIDOW
BRACKETS OR OTHER MEANS TO MAINTAIN REQUIRED DEPTH
AND BE SMOOTH "BET" ADHESIVE OR APPROVED EQUAL.

INfiltration, ALL OPENINGS IN THE EXT. BLDG. ENVELOPE SHALL
BE SEALED AGAINST AIR INFILTRATION. THE FOLLOWING AREAS
SHALL BE SEALED:

- * JOINTS AROUND WINDOW AND DOOR FRAMES.
- * JOINTS BETWEEN WALL CAVITY AND WINDOW/DOOR FRAME.
- * JOINTS BETWEEN WALL AND FOUNDATION.
- * JOINTS BETWEEN WALL PANELS.
- * UTILITY PENETRATIONS THROUGH EXTERIOR WALLS.



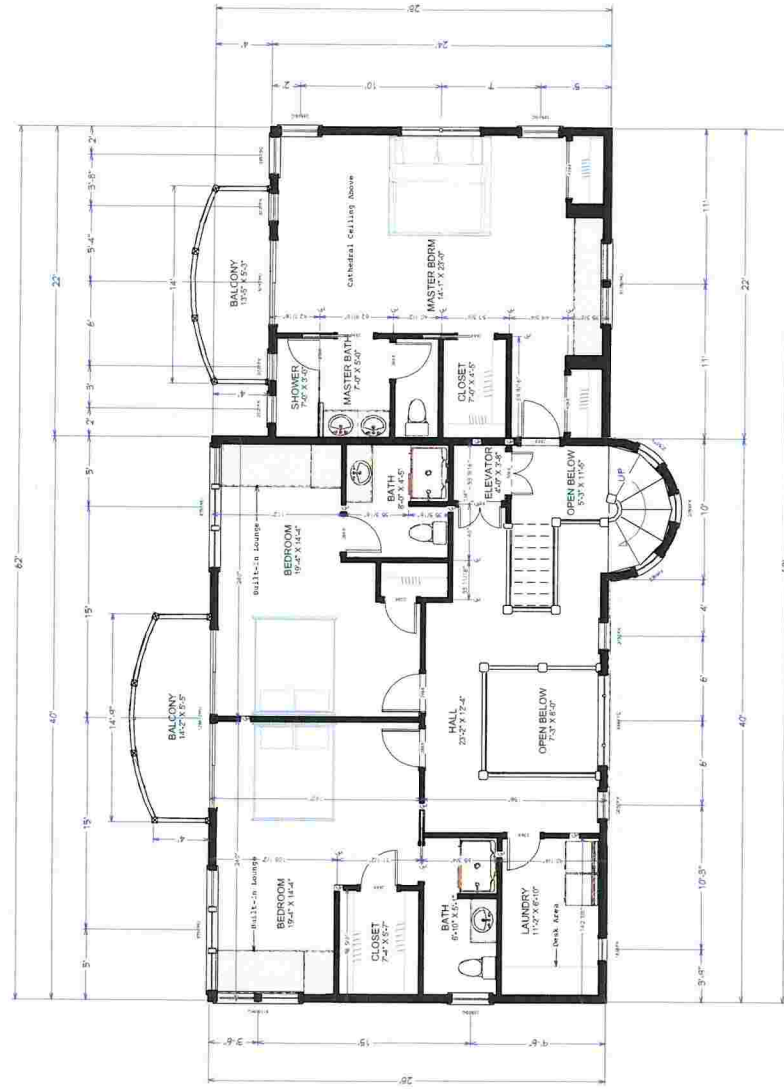
NUMBER	DATE	REVISION	DESCRIPTION

Drawings provided for:
Joseph and Katherine Machado
15 Elm Avenue
Brockton, MA 01906

Second Floor Plan

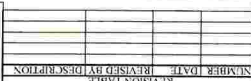
DETAIL DESIGN
BUILDERS
11 Columbia Drive, Suite 1, Norwalk, CT 06851

DRAWINGS PROVIDED BY:
DATE: 10/1/19
SCALE: 1/8" = 1'-0"
SHEET: A.3.1
18'-11 1/2"



SECOND FLOOR PLAN
10'-0" x 20'-0"

Subfloor to Rough Ceiling Height = 8'-1 1/8"

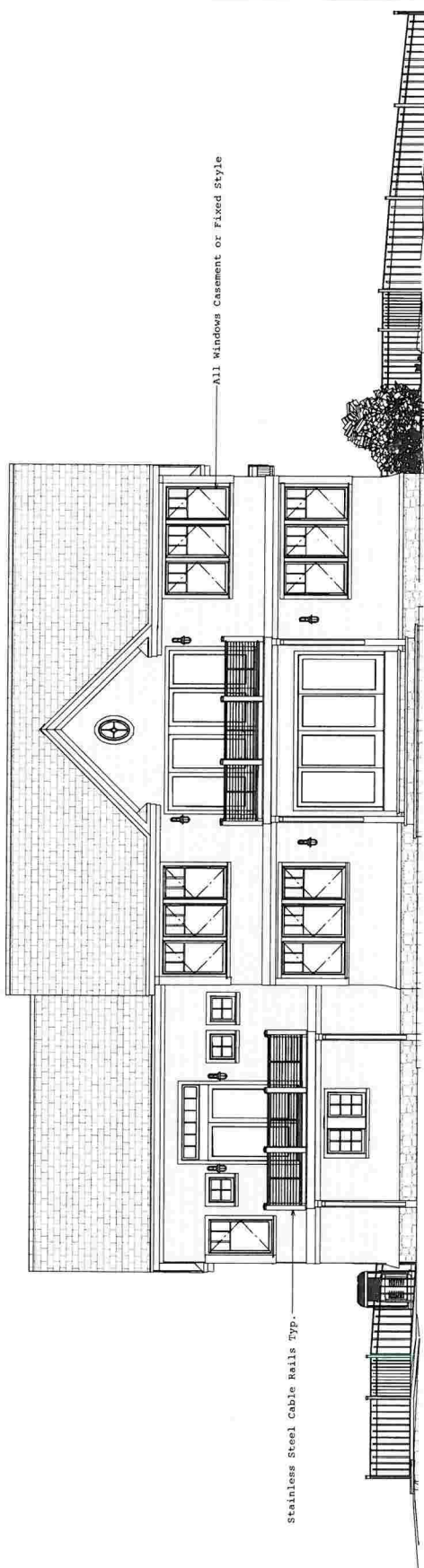


Joseph and Katherine Machado
of
15 Elm Avenue
Newfields, NH 03856

Rear Elevation

13 Columbia Drive, Suite 7, Amherst, MA 01001

DATE:	10/1/19	SCALE:	1"=50'	SHEET:	A.4.1
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Rear Elevation



NUMBER	DATE	REVISION BY	DESCRIPTION

Joseph and Katherine Machado
of
15 Elm Avenue
Newfield, NH 03856

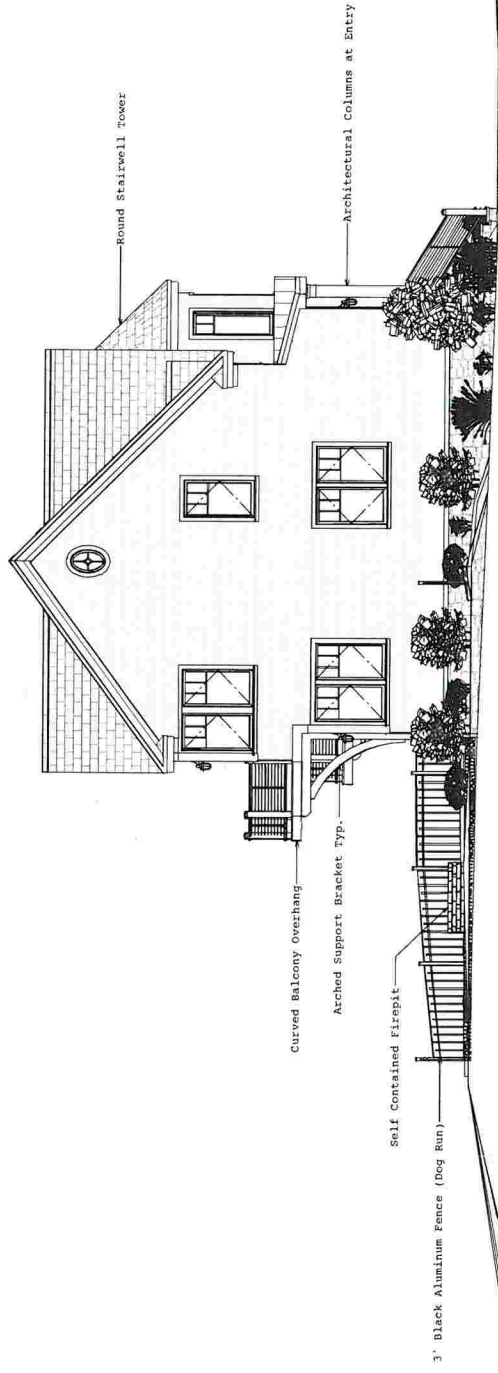
DRAWINGS PROVIDED FOR:

Left Side Elevations

13 COLUMBIA DRIVE, SUITE 7, ANDOVER, NH 03824
DETAIL DESIGN BUILDERS
DRAWINGS PROVIDED BY:

DATE:	10/1/19
SCALE:	1/4" = 1'-0"
SHEET:	A.4.2

Left Side Elevation
1/4" = 1'-0"





NUMBER	DATE	REVISION	DESCRIPTION

Joseph and Katherine Machado
of
15 Elm Avenue
Newfield, NH 03856

DRAWINGS PROVIDED FOR:

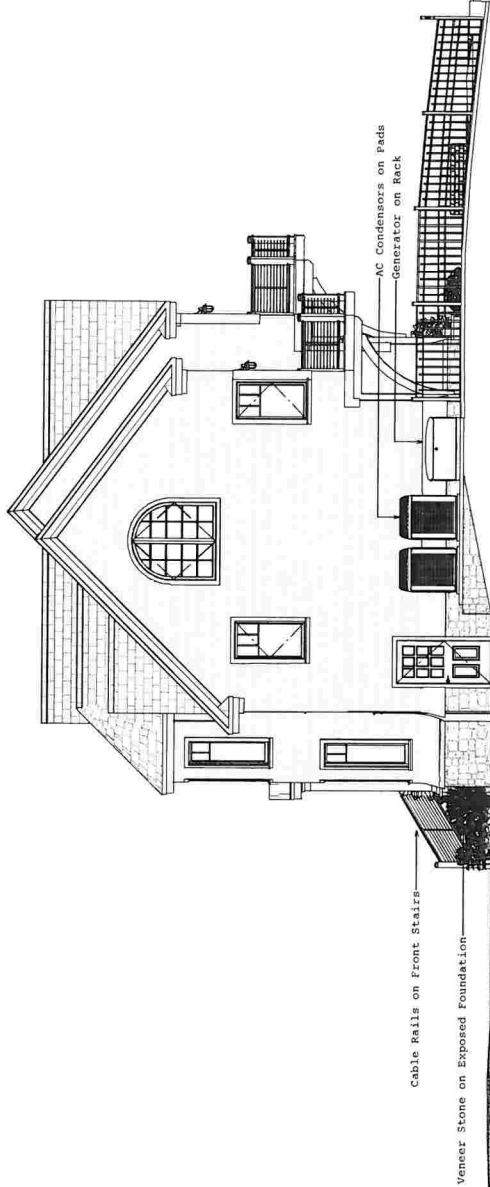
Right Side Elevation

DETAIL DESIGN
BUILDERS
13 DUNDAS DRIVE, SUITE 72, DUNDAS, ON L9H 0B1

DRAWINGS PROVIDED BY:

DATE: 10/1/19
SCALE: 1/4" = 1'-0"
SHEET: A.4.3

Right Side Elevation
1/4" = 1'-0"



ADDENDUM 3

Machado Specification List

Dated 10/09/2019

First Floor (1537 Sq. Ft.)
Second Floor (1537 Sq. Ft.)
Finished Basement (915 Sq. Ft.)
Garage (529 Sq. Ft.)

Section 101 {Excavation}

- Install and setup erosion control per Town regulations
- Strip and stockpile existing topsoil.
- Excavate for new foundation and backfill as necessary with Bank Run Gravel.
- Supply and install PVC footing and perimeter drains.
- Supply and install mechanical sump pump system for backup. (Recommended on Ocean Front)
- Remove and dispose of existing septic system.
- Install new four bedroom septic system per engineered drawings.
- Provide a 12" compacted gravel base under all concrete slabs.
- Supply and install new driveway with gravel sub-base.
- Supply and install all necessary clean fill to achieve sub-grade per plan.
- Radon Pipe under slab capped off for future use if needed.
- Upon completion of the home Radon Test.

Section 102 {Well and Water Hookups}

- Re-use existing Drilled Well (Will be tested at DDB Expense)
- Pressure tank with and well water hookups.
- Hookup town water system with necessary bypass valves (Seasonal)
- In-line sediment filter
- Water Quality test
- \$2,400.00 Water Softener System Allowance

Section 103 {Concrete}

- 8" x 16" Concrete foundation footings w/rebar (3000 PSI) where required by design.
- 8" Concrete foundation walls w/rebar (3000 PSI) where required by design.
- 4" Concrete Slab w/6x6 W.W.F. (3500 PSI) or equivalent fibermesh additive.
- 12" Concrete Piers where required by design.
- Patented Horizontal Foundation Finishing system (Tuff-N-Dri) applied below grade.

Section 104 {Framing}

- 11.875" TJI Wood I-Joists w/ 3/4" Advantech Floor Sheathing.
- LVL Structural Beams, Ridge and Headers.
- Steel I-Beam carrying beams to accommodate clear span on first floor.
(Stamped by PE)
- 2x6 SPF Exterior Wall Studs
- 1/2" Huber Zip-system exterior wall sheathing. (Taped Joints)
- 2x4 SPF Interior Wall Studs
- 2x8 SPF Ceiling Joists on Flat Ceilings
- 2x12 SPF Roof Rafters

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- 5/8" Huber Zip-system roof sheathing. (Taped Joints)

Section 105 {Exterior Windows and Doors}

- Marvin Integrity Series or Equivalent impact rated windows sized per plan.
- Two (2) 9' x 8' garage door by Fimbal Garage Doors (With Silent Opener)
- \$40,000.00 Exterior Window and Door Allowance

Section 106 {Exterior Trim and Siding} Samples to be provided

- 1x10 Windsor Pre-primed Pine fascia trim.
- 1x4 Windsor Pre-primed Pine shadow board fascia trim.
- Double 1x5 Windsor Pre-primed soffit trim with continuous aluminum soffit vent.
- 5/4 x 5 Windsor Pre-primed window and door trim with pediment head detail.
- Benjamin Obdyke Home Slicker Rainscreen System on all exterior walls.
- 5" Exposure Eastern White Cedar Shake Siding by Maibec (Color by client)
- All fasteners to be stainless steel.
- 1x6 Windsor T&G Pre-primed Beadboard under ceiling boards.
- All low lying and/or abutting decking trim will be made of PVC.
- Commercial Grade aluminum gutters above garage doors only.

Section 107 {Roofing} Color Samples to be provided

- Supply and install Blueskin Pro 200 high temp ice and water shield with coverage to code.
- Supply and install Roof Top guard II synthetic underlayment with full coverage.
- Supply and install .024" Slate Rock Oxford aluminum wind rated shingle roof to factory specifications.
- All aluminum fasteners.
- Install Standing Seam Aluminum Metal roof over shed roof with Kynar finish.
- This installation includes all flashing details and penetrations through the roof.

Section 108 {Masonry}

- Supply and install 1-1/4" Stone Veneer (Real Stone) to exposed exterior foundation.
- Supply and install front entry stairs and landing with stone facing and granite treads.
- stoneyard.com (Color and texture by client)

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Section 109 {Electrical}

- Wire new home per 2017 NEC Electrical Code to include:
- Underground service from pole to house per code.
- 40 Circuit Panel 200AMP UG Service.
- All necessary 15 or 20A Arc Fault protected circuits.
- One (1) dedicated 30A 120/220V 4 wire Dryer Receptacle.
- One (1) 40A 120/240V 4 wire range outlet (grounded type)
- All necessary tamperproof duplex receptacles. Use 20A wiring. Decora Style Devices.
- All necessary 15A single pole and 3-way switches. Decora Style Devices
- All necessary 15A single pole 3-way switches. Decora Style Devices
- Eight (8) 15A dimmer switches. Lutron Maestro
- Six (6) Weather Proof 15A outdoor GFCI receptacles.
- All necessary 120V AC/DC interconnected smoke detectors.
- All necessary Recessed Lights within reason for the space and size.
- Navian wiring
- AC wiring
- 5/ CATV Jacks
- 1/ Cat 5E
- Pendants wiring over island.
- All Panasonic Exhaust fans for bathrooms. (CFM per bathroom size)
- 4/ Paddle fan wiring.
- Kohler Whole House Generator Backup System sizes as required on elevated stand.
- \$5,000.00 AV (Audio Video) Wiring Allowance to include security system.
- \$10,000.00 Electrical Fixture Allowance
- \$25,000.00 In-home elevator system

Section 110 {Plumbing}

- One (1) Kitchen
- Four (4) Full Baths, One (1) Half Bath
- One (1) Laundry
- Two (2) Bar Sink
- One (1) Plumbing for a dog wash in basement.
- Navian On-Demand Gas Hot Water Heater with recirculating lines.
- Four (4) Exterior Sillcocks
- One (1) One piece fiberglass Tub/Shower units (Brand selected by Buyer).
- Two (2) Tiled glass shower door units (Brand selected by Buyer).
- One (1) Masterbath shower with Kohler DTV Digital Shower System.
- All rough plumbing to be per and copper combination per plumbing code.
- \$14,000.00 Plumbing Fixture Allowance

ADDENDUM 3

Machado Specification List

Dated 10/09/2019

First Floor (1537 Sq. Ft.)
Second Floor (1537 Sq. Ft.)
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Garage (529 Sq. Ft.)

Section 111 {HVAC}

- 4-zone Heating and Air Conditioning
- Two (2) Rheem R95PA0701317MSA, 95% AFUE, 75,000 BTU, Propane Gas Furnace and Flue. (Basement and Attic.)
- Rheem RCF3617STAMCA 3-ton, R-410a 13 SEER Evaporator Coil
- RHEEM RA1330AJ1NA 2.5 ton, R-410a, 13 SEER Condenser, Recycled plastic pad, AC and condensate piping
- All necessary registers and grills
- Insulated Supply Ducts
- Low Voltage Wiring
- Four (4) Electronic Digital Programable Thermostats
- De-humidifier system in basement hard plumbed to perimeter drainage.
- Aprilaire M#1610 Air Cleaner
- Aprilaire Humidifier System
- Note: Any mini splits in garage will be by Chang Order only and not part of this contract.

Section 112 {Insulation}

- Supply and Install all home insulation per current energy code including:
- R-24 Rock Wool bib system in walls and ceilings.
- R-40 Fiberglass blown in insulation in attic.
- R-40 Fiberglass blown in insulation in garage ceiling.
- R-24 Rock Wool Batt in floors.
- Closed Cell Foam insulation in all Rim joists.

Section 113 {Wall and Ceiling Finish}

- 1/2" Blueboard on walls and ceilings
- 5/8" Drywall in garage (Fire code)
- 1x8 Nickel Gap on Master Bedroom Beamed Ceiling.
- 1x8 Nickel Gap Wainscot in foyer, mudroom and parts of kitchen.
- Veneer Plaster throughout
- Smooth finish throughout

Section 114 {Cabinetry & Appliances}

- Appliances to be chosen at State Street Discount (Ashley Dickerson)
- Installation of all cabinetry, built-ins, vanities and appliances.
- Build all custom kitchen, vanities and builtins. (By DDB in shop)
- All cabinetry to have high quality soft close hardware on doors and drawers.
- All drawers to be solid maple dovetail.

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Dated 10/09/2019

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 Second Floor (1537 Sq. Ft.)
 Finished Basement (915 Sq. Ft.)
 Garage (529 Sq. Ft.)

- All cabinetry boxes made from Veneer Core Maple Plywood.
- All fronts to be made from hardwood.
- \$20,000.00 Appliance Allowance
- \$50,000.00 Whole House Cabinetry Allowance (Custom Kitchen by DDB)
- \$5,500.00 Gas Fireplace Allowance (Architectural Fireplaces)

Section 115 {Countertops}

- \$18,000.00 Whole House Countertop Allowance (With Install)

Section 116 {Interior Doors}

- Installation of all interior doors and hardware.
- 1-3/8" x 3-Panel Flat recessed interior doors on 4" ballbearing butt hinges.
- \$4,600.00 Interior Door Allowance
- \$2,500.00 Door Hardware Allowance

Section 117{Interior Trim & Millwork}

- Installation of all interior running trim.
- 3.5" Painted Pine Window and Door casing.
- 5.5" Painted Pine Pediment Head casing.
- 7.25" Painted Pine baseboard.
- White Oak Treads and Painted Risers on staircase and balcony.
- 1.5" square painted poplar balusters and mahogany handrails and fittings. (6310 Profile)
- 5.5" Square box style newels posts.
- 4.5" Painted Pine Crown on 5.5" OG trim throughout
- Custom coffered ceiling throughout first floor.
- Custom "Beamed" ceiling in Master Bedroom Cathedral.
- Solid Closet shelving in all closets
- Custom designed and built closet cabinetry in Master Closet.

Section 118 {Painting}

- Spray prime all walls and ceilings with Ben. Moore Primer
- All interior walls and ceiling to be latex paint by Ben. Moore (Flat Enamel)
- All interior trim and doors to be latex paint by Ben. Moore (Satin Enamel)
- Exterior siding to be pre-dipped from factory with H2O finish (Maibec)
- Exterior siding to have final field coating with H2O finish
- Exterior trim to be primed oil with latex topcoat by Ben. Moore
- Epoxy Coating applied to garage floor. (Color by Buyer)

Section 119{Flooring,Tile and Glass}

- Install wood flooring throughout all public areas, master and second floor bedrooms and closets.
- Install all tile in bathrooms, mudroom and master shower.

ADDENDUM 3

Machado Specification List

Dated 10/09/2019

First Floor (1537 Sq. Ft.)
 Second Floor (1537 Sq. Ft.)
 Finished Basement (915 Sq. Ft.)
 Garage (529 Sq. Ft.)

- Install all carpet in basement and carpet runner on stairs.
- If vinyl is chosen for basement there will be an added cost to this contract of \$3.50/per/sq. ft. install price.
- \$7.00 per/sq. ft. Wood Flooring Material Allowance
- \$3.33 per/sq. ft. Carpet Allowance (Installed)
- \$5.50 per/sq. ft. Flooring Tile Allowance
- \$7.00 per/sq. ft. Master Shower Allowance
- \$3.50 per/sq. ft. Kitchen Backsplash Allowance
- \$4,500.00 Master Shower Glass Door Allowance

Section 120 {Landscaping}

- Mechanically screen and re-grade existing stockpiled loam throughout entire property.
- Install sod 30' out from house around house perimeter.
- Hydro-seed as necessary all loamed areas outside of sod areas.
- Install all mulching and planting beds per plan.
- Plant two (2) trees in front left area of yard.
- Install loose stone driveway per plan.
- Install single cobblestone border around driveway perimeter and cobblestone apron at end of driveway.
- Build stone tapered terrain wall to left side of house per drawing. (Approx. 30')
- Build stone tapered terrain wall to right side of house per drawing. (Approx. 12')
- Build stone tapered terrain wall to right side of house next to fence per drawing. (Approx. 12')
- Build stone terrain steps from driveway to front walkway per drawing.
- Install black aluminum 3' high fence with three (3) gates per plan. (Color TBD)
- Install Blu 60 4' wide front walkway and garage side door per plan. (Color TBD)
- Install Blu 60 large arched patio per plan. (Color TBD)
- Install Blu 60 rounded fire pit patio area with natural stone fire pit. (Color TBD)
- Install granite light post at end of driveway with etched house number and lantern.
- Install all necessary Heads with Rainbird Irrigation system with timers and WIFI control.
- Place driveway stone per drawing.
- \$2,500.00 Landscape Lighting Allowance
- \$5,000.00 Tree Allowance
- \$5,000.00 Planting Allowance

Adam J. Shub
ashub@preti.com
Direct Dial: 207.791.3077

May 21, 2021

***Certified Mail w/Return Receipt Requested
First Class Mail w/Certificate of Mailing
Electronic Mail as stated***

Detail Design Builders, LLC
13 Columbia Drive, Unit 7
Amherst, NH 03031
Email: bob@detaildesignbuilders.com

Brian M. Stefano
8 Priscilla Lane
Westford, MA 01886
Email: bmstefano@gmail.com

Detail Design Builders, LLC
c/o Robert L. McDonald, Jr.
Registered Agent
37 Thornton Road West
Merrimack, NH 03054
Email: bob@detaildesignbuilders.com

**RE: Joseph and Katherine Machado; 77 Tower Road, Kittery, Maine
Construction Services Agreement dated October 11, 2019
Notice of Claim & Written Demand (5 M.R.S. § 213(1-A))
Notice of Claim (10 M.R.S. § 1486 et seq.)**

All:

This firm represents Joseph and Katherine Machado (together "Machado") in connection with Machado's acquisition of the above referenced property and construction services agreement dated October 11, 2019 between Machado on the one hand, and Detail Design Builders, LLC ("DDB") and Brian M. Stefano on the other hand (along with and its addendums, the "Construction Agreement").

Pursuant to Maine's Unfair Trade Practices Act, this is Machado's written demand. Pursuant to Maine's Home Construction Contract Act, this also is Machado's notice of claim. Machado further provides notice of other claims as detailed below. Machado hereby demands immediate payment of \$236,500 which represents Machado's actual monies paid to DDB and its subcontractors as of May 4, 2021 ("Demand Amount").

I. Background

In October 2019, Machado entered into a two-pronged agreement with Stefano and his business partner, DDB (the "Agreement").¹ First, Machado purchased the real property (land

¹ Stefano and DDB are general partners. 31 M.R.S. § 1001 et seq.

PRETI FLAHERTY

May 21, 2021

Detail Design Builders, LLC

Brian M. Stefano

Page 2

only) commonly known as 77 Tower Road, Kittery Point, Maine (the "Property") from Stefano for \$1.2 million ("Land Sale"). Second, Machado entered into the Construction Agreement with Stefano and DDB for the home construction. Stefano was adamant the Agreement include both the Land Sale and Construction Agreement. Stefano was unwilling to sell the Property without the Construction Agreement.

DDB is a New Hampshire limited liability company. DDB does not have on file a statement of foreign qualification to conduct activities in the State of Maine. The Construction Agreement is executed by DDB member Robert MacDonald and Stefano. It was explained to Machado that MacDonald would serve as the general contractor with Stefano and DDB "50/50" partners.

The Construction Agreement provided a fixed price of \$1,775,000 for a new home construction with a completion date of September 1, 2020 (the "Project"). To finance construction, Machado obtained a construction loan from Citizen's Bank. Machado also contributed \$200,000 of cash as an upfront payment to DDB.

The Project suffered a series of delays due to DDB's mismanagement including ordering incorrect products, faulty construction and installation problems, acrimonious disputes between DDB and its various subcontractors, and extremely poor project management. As a consequence, DDB failed to meet the September 1, 2020 completion deadline. Roughly four months ago, Machado discovered that DDB utilized a draw against Machado's construction loan to pay for approximately \$110,000 worth of improvements to Stefano's private residence in Westford, Massachusetts. DDB, through McDonald, provided labor and materials for Stefano's home renovation which included a theater room and an outdoor pool. At the time, DDB and Stefano had completed only approximately 70% of the Project. Equally concerning, DDB submitted draw requests from the Citizen's Bank construction loan and then failed to remit those proceeds to third party subcontractors for work completed on the Project. Instead, DDB and Stefano diverted the money for Stefano's home renovation project. MacDonald and Stefano acknowledged that DDB used Machado's construction loan to fund Stefano's home renovation because Stefano was becoming impatient and "wanted to receive a profit from the Project." MacDonald stated that the money funneled from Citizen's Bank to Stefano was "robbing Peter to pay Paul."

As of February 2021, MacDonald informed Machado that he overpaid the Project amount, inclusive of all change orders, by \$61,600 – yet the Project was incomplete and DDB and Stefano had fully depleted the construction loan account. MacDonald also informed Machado that his business was "teetering on the edge of bankruptcy" and he was unable to pay for materials and labor to finish the Project. Without any alternative for moving the Project towards completion, Machado agreed to make additional, interim payments while expressly reserving his rights to recover those payments at a later date. In so doing, Machado agreed to pay DDB and its subcontractors directly up to \$220,000. Although Machado received a certificate of occupancy in March 2021, the Project remains incomplete as described below.

PRETI FLAHERTY

May 21, 2021

Detail Design Builders, LLC

Brian M. Stefano

Page 3

Throughout March and April of 2021, Machado requested from DDB and Stefano repayment for the Project overruns taking into account DDB having gone overbudget, mismanaging the Project, DDB's diversion of Machado's construction loan to Stefano's personal benefit, and Machado's direct payments to subcontractors.

The Project remains incomplete including a laundry list of finishes to the garage/exterior, basement, first floor, second floor, and attic. As examples, to name a few, the balcony gutters and master bedroom cabinets are not installed. The fireplace is not working. The air conditioning condenser units have not been commissioned due to ongoing disputes between DDB and its subcontractors. As such, the house has no air conditioning. Kitchen cabinetry is incomplete. The windows and sliders are leaking water and have not been repaired in over two months, despite persistent requests from Machado. The front door does not function properly as the dimensions are out of plumb and the door lacks weather stripping. Cold air penetrates the house from multiple points due to improper caulking and sealing during the construction phase.

II. Claims

As an initial matter, DDB is in violation of Maine's Limited Liability Act for failing to file a statement of foreign qualification to conduct business activities in Maine. 31 M.R.S. § 1622. Further, Stefano and DDB are in violation of Maine's Home Construction Contract statute ("Home Construction Act"). 10 M.R.S. § 1486 et seq. For example, the Construction Agreement fails to provide the correct language relating to warranty and information regarding the Attorney General's publicly accessible website. *Id.* at §1487(7)&(14). These are per se violations of Maine's Unfair Trade Practices Act.

More concerning are DDB and Stefano's breach of the Construction Agreement and tortious conduct. First, DDB and Stefano breached the Construction Agreement by mismanaging and failing to complete the Project (including the three written change orders) within the contracted cost budget and time frame. As a direct consequence, Machado overpaid by \$61,600. Second, making matters worse, DDB and Stefano engaged in a level of self-dealing that constitutes fraud. Machado's construction loan proceeds were to be used exclusively for the Project. Nevertheless, DDB and Stefano saw fit to drain the construction loan proceeds for Stefano's construction on his personal residence. Inexplicably, this came at the expense of the Project and subcontractors left without pay. Not only is this fraudulent conduct but also a clear violation of Maine's Unfair Trade Practices Act, 5 M.R.S. § 205-A, et seq. ("UTPA") which protects consumers against unfair and deceptive practices. *See State v. Weinschenk*, 2005 ME 28, ¶ 16 (setting forth the standard for a finding of unfairness and deceptive acts). As a direct consequence, Machado had no alternative but to agree on an interim basis to paying subcontractors already owed for work and in order to finish the Project. Despite Machado's multiple requests to DDB and Stefano to be paid back he was refused even though Stefano has acknowledged Machado's claims.

PRETI FLAHERTY

May 21, 2021

Detail Design Builders, LLC

Brian M. Stefano

Page 4

DDB and Stefano's misconduct is a classic case of self-dealing not tolerated by the law. *See* 31 M.R.S. § 1044 (setting forth standards of partner's conduct). Even if the misconduct were not so egregious, Stefano still is personally liable for the Demand Amount *See* 31 M.R.S. §§ 1034 (providing all partners are liable jointly and severally for all obligations of the partnership).

In sum, Machado hereby makes immediate demand for (1) the Demand Amount and (2) completion of the Project to their satisfaction. Please recognize the Demand Amount does *not* include attorneys' fees and costs, future payments for materials and subcontractors likely required to complete the Project, expenses Machado has incurred due to the non-performance of DDB and Stefano (e.g. construction loan interest incurred beyond the original completion date, construction loan inspection fees incurred by DDB and paid by Machado, and temporary hotel and accommodation fees).

Please be assured that if the Demand Amount is not timely paid Machado is prepared to pursue legal remedies under Maine's civil justice system including the amounts owed which are not included in the Demand amount such as recovery of attorneys' fees and costs.

We appreciate your attention to this matter.

Thank you.

Very truly yours,



Adam J. Shub

AJS

cc: Joseph and Karen Machado (via email only)

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Portland, ME 04112

To:

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13 Columbia Drive, Unit 7

Amherst, NH 03031

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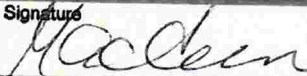
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MAINE JUDICIAL BRANCH

This summary sheet and the information it contains do not replace or supplement the filing and service of pleadings or other papers as required by the Maine Rules or by law. This form is required for the Clerk of Court to initiate or update the civil docket. The information on this summary sheet is subject to the requirements of M. R. Civ. P. 11.

I. COUNTY OF FILING OR DISTRICT COURT JURISDICTION ("X" the appropriate box and enter the County or location)

☒ Superior Court County: York

☐ District Court Location (city/town): _____

II. NATURE OF THE FILING

☒ Initial Complaint

☐ Third-Party Complaint

☐ Cross-Claim or Counterclaim

☐ Reinstated or Reopened case: Docket Number: _____

If filing a second or subsequent Money Judgment Disclosure, give the docket number of the first disclosure.)

III. ☐ REAL ESTATE OR TITLE TO REAL ESTATE IS INVOLVED

IV. MOST DEFINITIVE NATURE OF ACTION

("X" in ONE box. If the case fits more than one nature of action, select the one that best describes the cause of action.)

GENERAL CIVIL

Constitutional/Civil Rights

☐ Constitutional/Civil Rights

Contract

☒ Contract

Declaratory/Equitable Relief

☐ Declaratory Judgment

☐ General Injunctive Relief

☐ Other Equitable Relief

Non-Personal Injury Torts

☐ Auto Negligence

☐ Libel/Defamation

☐ Other Negligence

☐ Other Non-Personal Injury Tort

Personal Injury Torts

☐ Assault/Battery

☐ Auto Negligence

☐ Domestic Tort

☐ Medical Malpractice

☐ Other Negligence

☐ Other Personal Injury Tort

☐ Product Liability

☐ Property Negligence

Statutory Actions

☐ Freedom of Access

☐ Other Statutory Action

☐ Unfair Trade Practice

Miscellaneous Civil

☐ Administrative Warrant

☐ Appointment of Receiver

☐ Arbitration Awards

☐ Common Law Habeas Corpus

☐ Debt Collection

☐ Brought by a debt collector as defined by 32 M.R.S. § 11002

☐ Drug Forfeiture

☐ Foreign Deposition

☐ Foreign Judgments

☐ HIV Testing

☐ Land Use Enforcement (80K)

☐ Minor Settlements

☐ Other Civil

☐ Other Forfeiture/Property Libel

☐ Pre-Action Discovery

☐ Prisoners Transfers

☐ Shareholders' Derivative Action

REAL ESTATE

Foreclosures

☐ Foreclosure (ADR exempt)

☐ Foreclosure (Diversion eligible)

☐ Foreclosure (Other)

Title Actions

☐ Boundary

☐ Easement

☐ Eminent Domain

☐ Quiet Title

Miscellaneous Real Estate

☐ Abandoned Road

☐ Adverse Possession

☐ Equitable Remedy

☐ Mechanics Lien

☐ Nuisance

☐ Other Real Estate

☐ Partition

☐ Trespass

APPEALS (ADR EXEMPT)

☐ Administrative Agency (80C)

☐ Governmental Body (80B)

☐ Other Appeal

CHILD PROTECTIVE CUSTODY

☐ Non-DHHS Protective Custody

SPECIAL ACTIONS

☐ Money Judgment Disclosure

Initial Complaint: A complaint filed as an original proceeding. A filing fee is required.

Third-Party Complaint: An original defendant's action against a third party that was not part of the original proceeding. A filing fee is required.

Cross-Claim: An original defendant's claim against another original defendant. No additional fee is required.

Counterclaim: An original defendant's claim against an opposing party. No additional fee is required.

Reinstated or Reopened Case: Money Judgment Disclosures or post-judgment motions.

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MAINE JUDICIAL BRANCH

V. M.R. Civ. P. 16B ALTERNATIVE DISPUTE RESOLUTION (ADR)

☐ I certify that pursuant to M.R. Civ. P. 16B(b), this case is exempt from a required ADR process because ("X" one box below):

☐ It falls within an exemption listed above (it is an appeal or an action for non-payment of a note in a secured transaction).

☐ The plaintiff or defendant is incarcerated in a local, state, or federal facility.

☐ The parties have participated in a statutory pre-litigation screening panel process with (name of panel chair) _____ that concluded on (date of panel finding - mm/dd/yyyy) _____.

☐ The parties have participated in a formal ADR process with (name of neutral) _____ on (date - mm/dd/yyyy) _____.

☐ The plaintiff's likely damages will not exceed \$30,000, and the plaintiff requests an exemption.

☐ The action does not include ADR pursuant to M.R. Civ. P. 16(a)(1).

☐ There is other good cause for an exemption and the plaintiff has filed a motion for exemption.

VI. PARTY AND ATTORNEY CONTACT INFORMATION

If you need additional space, list additional parties on an attachment and note "see attachment" in the appropriate section.

Please note: If a party is a government agency, use the full agency name or the standard abbreviation. If the party is an official within a government agency, identify the agency first and then the official, giving both name and title.

(a) PLAINTIFF(S)

("X" the box below to indicate the party type associated with the filing)

☒ Plaintiff(s)

☐ Third-Party Plaintiff(s)

☐ Counterclaim Plaintiff(s)

☐ Cross-Claim Plaintiff(s)

Is the plaintiff a prisoner in a local, state, or federal facility? ☐ Yes ☒ No

Name (first, middle initial, last): Joseph M. Machado & Katherine Machado

Mailing address (include county): 77 Tower Road York County
Kittery, ME

Telephone: _____

Email: jmachado@mpepartners.com

Name (first, middle initial, last): _____

Mailing address (include county): _____

Telephone: _____

Email: _____

(b) ATTORNEY(S) FOR PLAINTIFF(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL plaintiffs, specify which plaintiff(s) the listed attorney(s) represents.

Name and bar number: Adam J. Shub, Esq. Bar No. 4708

Firm name: Preti Flaherty

Mailing Address: P.O. Box 9546/One City Center
Portland, ME 0412

Telephone: (207) 791-3000

Email: ashub@preti.com

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MAINE JUDICIAL BRANCH

Name and bar number: _____
 Firm name: _____
 Mailing Address: _____
 Telephone: _____
 Email: _____

(c) DEFENDANT(S)

("X" the box below to indicate the party type associated with the filing)

- ☒ Defendant(s)
☐ Third-Party Defendant(s)
☐ Counterclaim Defendant(s)
☐ Cross-Claim Defendant(s)

Is the defendant a prisoner in a local, state, or federal facility? ☐ Yes ☒ No

Name *(first, middle initial, last)*: Detail Design Builders, LLC
 Mailing address *(include county)*: c/o Robert L. McDonald, Jr., Registered Agent
37 Thornton Road West, Merrimack, NH 03054
 Telephone: _____
 Email: bob@detaildesignbuilders.com

Name *(first, middle initial, last)*: Brian M. Stefano
 Mailing address *(include county)*: 8 Priscilla Lane
Westford, MA 01886
 Telephone: _____
 Email: bmmstefano@gmail.com

(d) ATTORNEY(S) FOR DEFENDANT(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL defendants, specify which defendant(s) the listed attorney(s) represents.

Name and bar number: _____
 Firm name: _____
 Mailing Address: _____
 Telephone: _____
 Email: _____

Name and bar number: _____
 Firm name: _____
 Mailing Address: _____
 Telephone: _____
 Email: _____

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.

Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

MAINE JUDICIAL BRANCH

(e) PARTIES IN INTEREST

Name (first, middle initial, last): _____
 Mailing address (include county): _____

Telephone: _____
 Email: _____

Name (first, middle initial, last): _____
 Mailing address (include county): _____

Telephone: _____
 Email: _____

(f) ATTORNEY(S)

If there are multiple attorneys, indicate the lead attorney. *If all counsel do not represent ALL parties in interest, specify which parties in interest the listed attorney(s) represents.*

Name and bar number: _____
 Firm name: _____
 Mailing Address: _____

Telephone: _____
 Email: _____

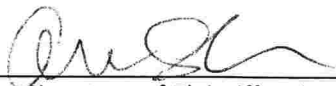
Name and bar number: _____
 Firm name: _____
 Mailing Address: _____

Telephone: _____
 Email: _____

VII. RELATED CASE(S) IF ANY

Case name: _____
 Docket Number: _____
 Assigned Judge/Justice: _____

Date (mm/dd/yyyy): August 20, 2021

► 
 Signature of Plaintiff or Lead Attorney of Record

Adam J. Shub, Esq.
 Printed Name of Plaintiff or Attorney

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.

Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

MAINE JUDICIAL BRANCH

Joseph M. Machado and Katherine
Machado

Plaintiff

"X" the court for filing:

☒ Superior Court ☐ District Court

County: York

Location (Town): Alfred

Docket No.:

V.

Brian M. Stefano

Defendant

8 Priscilla Lane

Address

Westford, MA 01886

SUMMONS

M. R. Civ. P. 4(d)

The Plaintiff has begun a lawsuit against you in the ☐ District ☒ Superior Court, which holds sessions at (street address) 45 Kennebunk Road, in the Town/City of Alfred, County of York, Maine. If you wish to oppose this lawsuit, you or your attorney **MUST PREPARE AND SERVE A WRITTEN ANSWER** to the attached Complaint **WITHIN 20 DAYS** from the day this Summons was served upon you. You or your attorney must serve your Answer by delivering a copy of it in person, by mail, or by email to the Plaintiff's attorney, whose name and address, including email address appear below, or by delivering a copy of it in person or by mail to the Plaintiff, if the Plaintiff's name and address appear below. You or your attorney must also file the original of your Answer with the court by mailing it to: Clerk of ☐ District ☒ Superior Court, P.O. Box 160, Alfred, Maine 04002-0160

(Mailing Address) (Town, City) (Zip)

before, or within a reasonable time after, it is served. Court rules governing the preparation and service of Answers are found at www.courts.maine.gov.

IMPORTANT WARNING: If you fail to serve an answer within the time stated above, or if, after you answer, you fail to appear at any time the Court notifies you to do so, a judgment by default may be entered against you in your absence for the money damages or other relief demanded in the Complaint. If this occurs, your employer may be ordered to pay part of your wages to the Plaintiff or your personal property, including bank accounts and your real estate may be taken to satisfy the judgment. If you intend to oppose this lawsuit, do not fail to answer within the requested time.

If you believe the plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the clerk of court for information as to places where you may seek legal assistance.

Date (mm/dd/yyyy): August 10, 2021

Adam J. Shub, Esq.

☒ Attorney for) Plaintiff

(Seal of Court)

Preti Flaherty

Address

P.O. Box 9546/One City Center

Portland, ME 04112-9546

(207) 791-3000

Telephone

ashub@preti.com

Email Address



Jessie M. Flaherty
Clerk

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.

Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

MAINE JUDICIAL BRANCH

STATE OF MAINE



Middlesex Sheriff's Office • 400 Mystic Ave, 3rd Floor, Medford, MA 02155 • 617-547-1171
Middlesex, ss.

August 16, 2021

I hereby certify and return that on 8/13/2021 at 9:15 AM I served a true and attested copy of the SUMMONS AND COMPLAINT, NOTICE REGARDING ELECTRONIC SERVICE, EXHIBITS in this action in the following manner: To wit, by delivering in hand to BRIAN M. STEFANO at 8 PRISCILLA LANE WESTFORD, MA 01886 . Fees: Out of State Service (\$100.00) Total: \$100.00



Gerard Whitman

Deputy Sheriff

SUBSCRIBED AND SWORN TO
THIS 17th DAY OF August 2021
Nancy M. Parziale
NOTARY PUBLIC
MY COMMISSION EXPIRES Nov. 12, 2021



Date (mm/dd/yyyy): _____

Deputy Sheriff Signature

Printed Name

Agency

Costs of Service:

Service:	\$ _____
Travel:	\$ _____
Postage:	\$ _____
Other:	\$ _____
Total	\$ _____

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.

Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

21088127

Exhibit B

IN THE ARBITRATION MATTER OF	)	
	)	
JOSEPH M. MACHADO and	)	
	)	
KATHERINE MACHADO,	)	
	)	ARBITRATION SCHEDULING ORDER
Complainants	)	
	)	
v.	)	
	)	
DETAIL DESIGN BUILDERS, LLC and	)	
	)	
BRIAN STEFANO,	)	
	)	
Respondents	)	

This case, which has been referred to me by agreement of the parties for arbitration, involves allegations arising out of a real estate acquisition and construction of a personal residence. Complainants are represented by Adam Shub. Respondent Detail Design Builders is represented by Richard Gagliuso and Patrick Brady. Respondent Brian Stefano is represented by Larry Gormley. There is a court action that has been stayed pending arbitration.

Counsel and I held a telephonic scheduling conference on March 18, 2022. By agreement of the parties, this Order sets forth the schedule governing the arbitration:

1. Complainants have provided me a copy of the Complaint that initiated the court action.
Respondents have provided general denials, affirmative defenses, and any counterclaims.
2. Each side may issue up to 25 document requests and 25 interrogatories. The deadline for issuing document requests and interrogatories is **May 1, 2022**.
3. The Complainants will designate any expert witnesses by **August 1, 2022**. Respondents will designate any expert witnesses by **September 15, 2022**.

4. A reasonable number of depositions may be taken. All discovery is to be completed by **December 1, 2022**.
5. On or before **January 25, 2023**, each side will submit a prehearing memo summarizing the facts and addressing applicable law. At the same time, the parties will stipulate to any facts agreed upon.
6. The parties will collaborate and submit a set of exhibits to the arbitrator by **January 18, 2023**. All exhibits will be deemed admitted unless objection is noted by **January 25, 2023**.
7. Any motions in limine, including those related to experts, will be filed by two weeks before hearing. Objections to motions will be filed by one week before hearing.
8. This matter is scheduled for four days of hearing on **January 30, 2023 through February 2, 2023** at Drummond Woodsum, 84 Marginal Way, Suite 600, Portland, Maine, beginning at 9:00 AM each day.
9. Any party may, at such party's expense, provide for a stenographic record of the hearing.
10. The parties may request from the arbitrator subpoenas for hearing, as permitted by 14 M.R.S. § 5933.
11. All filings with the arbitrator, except for the set of exhibits, may be made electronically by email attachment, with electronic signatures.
12. The parties may bring other issues to the attention of the arbitrator as they arise.

Dated: April 8, 2022

/s/ Jerrol A. Crouter
Jerrol A. Crouter, Arbitrator

DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, ME 04101
Tel: (207) 772-1941
jcrouter@dwmlaw.com

Exhibit C

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. ALFSC-CV-2021-164

JOSEPH M. MACHADO and)
KATHERINE MACHADO,)
)
Plaintiffs/Counterclaim)
Defendants,)
v.)
)
DETAIL DESIGN BUILDERS, LLC)
)
Defendant/Counterclaim)
Plaintiff,)
)
and)
)
BRIAN M. STEFANO,)
)
Defendant.)

**PLAINTIFFS' INTERROGATORIES
TO DETAIL DESIGN BUILDERS
IN ARBITRATION**

Plaintiffs/Counterclaim Defendants Joseph M. Machado and Katherine Machado (together “Machado”), by and through their undersigned counsel, and pursuant to Maine Rules of Civil Procedure 26 and 33 hereby propounds the following interrogatories to Defendant/Counterclaim Plaintiff Detail Design Builders, LLC’s (“Detail Design”) to be answered personally, in writing, under oath, within thirty (30) days of service of this request, according to any and all knowledge or information available to it, its attorneys, or other representatives. These interrogatories are continuing and require supplemental answers if and when Defendant obtains additional responsive information between the time answers are served and the time of trial.

INSTRUCTIONS

A. Terms not defined herein shall have the respective meanings ascribed to such terms in the Complaint.

B. If you refuse to answer any interrogatory in whole or in part, describe the basis for such refusal to produce, including any claim of privilege, in sufficient detail to permit the Court to adjudicate the validity of your refusal, and identify each document and oral communication for which a privilege is claimed.

C. To the extent that a full and complete answer to any of the following interrogatories is given in response to any other of the following interrogatories, a cross-reference to the specific response where such information is fully set forth may be used in lieu of such repetitions.

D. If any matter referred to in answer to any interrogatory is evidenced by, represented by, reflected by, recorded in or otherwise referred to in any document or oral communications, identify each such document or oral communication in your answer to such interrogatory.

DEFINITIONS

1. “DOCUMENT” or “DOCUMENTS” means information stored in any physical form, whether paper, electronic media or storage devices, microfilm, or microfiche, magnetic or audio tape, magnetic disks, optical storage media, transparencies, photographic film, computer disks or drives, or any other materials of any nature. For example, these terms encompass, but are not limited to, all non-identical copies (i.e., those bearing marginal notations should be produced as separate documents) and drafts of memoranda, notes, messages, letters, electronic or voice mail, books, records, telephone records, calendars, diaries, computer printouts, bills, telephone bills, agendas, telegrams and teletypes, voice mail, charts, graphs, illustrations or drawings, technical or owner’s manuals, user guides, press releases, photographs, contracts,

agreements, flow charts, spreadsheets, mathematical calculations, and any other data compilations. Further, **this expressly includes email, text messages, and social media.**

2. “ANY” should be read as including “ALL” and “ALL” should be read as including “ANY,” where doing so would make the applicable request more inclusive.

3. “AND” should be read as including “OR,” and “OR” should be read as “AND,” where doing so would make the applicable request more inclusive.

4. The terms “RELATING,” “RELATING TO,” “RELATES TO,” or “RELATE TO” are used interchangeably, and mean constituting, comprising, containing, setting forth, showing, disclosing, reflecting, describing, explaining, summarizing, concerning, pertaining to, or referring to, directly or indirectly.

5. “PERSON” includes, but is not limited to, individuals, fiduciaries, partnerships, and corporations or other organization or legal or business entity.

6. “IDENTIFY,” when used with respect to a person or entity means to produce the following information for each and every person to be identified: (a) full name, occupation, last known home address and telephone number, and last known employer and place of employment; and (b) with respect to any entity, the full name of the entity or organization and the address and telephone number of such entity.

7. “IDENTIFY,” when used with respect to a document, means to provide the date, author(s), and recipient(s) of the document, together with a summary of its contents.

8. “PLAINTIFF” refers to Machado and all agents, representatives, contractors, and counsel thereof or therefore.

9. “DEFENDANT” refers to Detail Design.

10. “YOU” and “YOUR” refers to Detail Design and all its agents, representatives, contractors, and counsel thereof or therefore.

11. “COMPLAINT” refers to the Complaint in this action dated August 10, 2021.

12. “ANSWER” refers to Detail Design’s Answer in this action dated April 1, 2022.

INTERROGATORIES

1. Provide the full name, address, and e-mail address(es) for the person(s) answering these interrogatories.

2. Please explain in detailed narrative fashion Detail Design and Stefano’s relationship, if any, including but not limited to all past and current business/financial ventures.

3. Please state whether Detail Design and Stefano were in a business relationship related to the Agreement (as defined in Compl. ¶ 6) and/or Project (as defined in Compl. ¶ 23) and, if not, explain in detailed fashion their respective roles.

4. Please explain why Stefano executed the Construction Contract (as defined in Compl. ¶ 17).

5. Please state whether Detail Design and Stefano had an agreement for Stefano to receive a financial benefit from the Construction Contract and, if so, describe the financial benefit.

6. Please state the total amount of the Construction Contract.

7. Please state how much Machado has paid Detail Design for the Project (citing all documentation).

8. Please state whether Machado owes you money for the Project and, if so, how much money and all facts (citing all documentation) in support of same.

9. Please state how much Machado has paid to other entities, individuals (e.g. subcontractors and vendors) for purposes of the Project (citing all documentation).
10. Please state whether other entities, individuals (e.g. subcontractors and vendors) for purposes of the Project are owed money and, if so, list the names and amounts owed (citing all documentation).
11. Please state whether the Project is complete and, if so, all facts in support of same including but not limited to your last day of work.
12. Please state whether the Project is incomplete and, if so, all facts in support of same including all outstanding items of work in need of completion (citing all documentation).
13. Please state whether you made any monetary payments to Stefano during the Project and through present, if so, please list the date, amount, and source of said payments (citing all documentation).
14. Please state whether Stefano has made any monetary payments to you or provided you with any type of financial benefit whatsoever during the Project and through present, if so, please list the date, amounts, and purpose of same (citing all documentation).
15. Please state whether you requested disbursements from the Machado Construction Loan Account (as defined in Compl. ¶ 26) and, if so, how much money in disbursements you requested over the course of the Project (citing all documentation).
16. Please state whether all the disbursements to you from the Machado Construction Loan Account were used for purposes of the Project and, if not, please state how much and for what other purpose(s) disbursements were used (citing all documentation).

17. Please state whether you performed construction related services for Stefano over the course of the Project and, if so, please list the work performed including when (month/year) and where it was performed.

18. For the work listed in the preceding Interrogatory, please state how much money Stefano paid you for labor and/or materials (citing all documentation).

19. For the work listed in Interrogatory No. 18, please state whether you paid for materials/supplies and, if so, how much did you /or whether you provided free or discounted labor/services and, if so, the fair market value of same.

20. Please state all facts (citing all documentation) in support of your denial in your Answer ¶ 38 to “using construction loan proceeds for any other project.”

21. Please state all facts (citing all documentation) not already listed above in support of your claims (Counts I-III) against Machado.

22. Please state all facts (citing all documentation) in support of your defenses and affirmative defenses, if any.

23. Please identify all person(s) or entities (and provide contact information) with knowledge related to the foreclosure action.

24. Please identify all witnesses you anticipate testifying at trial.

25. Please identify all exhibits you anticipate offering into evidence at trial.

Dated: April 29, 2022

Respectfully submitted,



Adam J. Shub, Bar No. 4708

Attorney for Plaintiffs/Counterclaim Defendants

Joseph M. Machado & Katherine Machado

PRETI, FLAHERTY, BELIVEAU & PACHIOS, LLP

One City Center

P.O. Box 9546

Portland, ME 04112-9546

(207) 791-3000

ashub@preti.com

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. ALFSC-CV-2021-164

JOSEPH M. MACHADO and)
KATHERINE MACHADO,)
)
Plaintiffs/Counterclaim)
Defendants,)
v.)
)
DETAIL DESIGN BUILDERS, LLC)
)
Defendant/Counterclaim)
Plaintiff,)
)
and)
)
BRIAN M. STEFANO,)
)
Defendant.)

**PLAINTIFFS' REQUESTS FOR
PRODUCTION TO DETAIL DESIGN
BUILDERS IN ARBITRATION**

Plaintiffs/Counterclaim Defendants Joseph M. Machado and Katherine Machado (together “Machado”), by and through their undersigned counsel, and pursuant to Maine Rules of Civil Procedure 26 and 34 hereby request that Defendant/Counterclaim Plaintiff Detail Design Builders, LLC’s (“Detail Design”) produce for inspection and copying within thirty (30) days at Preti Flaherty Beliveau & Pachios, LLP, located at One City Center, Portland, Maine, the following specified items which are in his possession, custody or control. These Requests for Production are continuing and require supplemental answers if and when Defendant obtains additional responsive information between the time answers are served and the time of trial.

INSTRUCTIONS

A. This request for production of documents applies to all documents in your possession, custody, or control, including all attachments and enclosures. In responding to this Request for Production of Documents, you should furnish any document which is available to you,

not merely those which you now have in your own personal possession. This means that you are to furnish documents which are in the possession of any of your agents, employees, attorneys, investigators for your attorneys, or which are otherwise subject to your custody or control.

B. If you refuse to produce any documents requested, describe the basis for such refusal to produce, including any claim of privilege, in sufficient detail so as to permit the Court to adjudicate the validity of your refusal, and identify such document for which a privilege is claimed by producing an accompanying privilege log.

C. This request for production of documents should be considered a continuing request for supplementation of information up to and including the date of the trial. It is specifically requested that any additional documents hereafter received or found by you be provided to Plaintiff in a timely manner.

D. If the requested documents do not exist, describe whether the requested documents existed at one time, and, if so, whether such documents were lost or destroyed.

E. In the event a requested document has been destroyed, that document should be identified by indicating the date, subject matter, number of pages, originator, all persons to whom it was distributed, date of destruction, reason for destruction, person authorizing destruction, person destroying the document, and the custodian of the document at the time of the destruction.

F. In the event that a requested document has been lost, indicate the date, subject matter, number of pages, originator, all persons to whom it was distributed, and the custodian of the document at the time of the loss.

G. All documents produced pursuant hereto are to be produced so as to correspond with the categories of each numbered request hereof.

DEFINITIONS

1. “DOCUMENT” or “DOCUMENTS” means information stored in any physical form, whether paper, electronic media or storage devices, microfilm, or microfiche, magnetic or audio tape, magnetic disks, optical storage media, transparencies, photographic film, computer disks or drives, or any other materials of any nature. For example, these terms encompass, but are not limited to, all non-identical copies (i.e., those bearing marginal notations should be produced as separate documents) and drafts of memoranda, notes, messages, letters, electronic or voice mail, books, records, telephone records, calendars, diaries, computer printouts, bills, telephone bills, agendas, telegrams and teletypes, voice mail, charts, graphs, illustrations or drawings, technical or owner’s manuals, user guides, press releases, photographs, contracts, agreements, flow charts, spreadsheets, mathematical calculations, and any other data compilations. Where a document exists in audio, electronic, or computer-readable form, or is in any way stored electronically, Defendant should translate it into a form readable. Further, **this expressly includes email, text messages, and social media.**

2. “ANY” should be read as including “ALL” and “ALL” should be read as including “ANY,” where doing so would make the applicable request more inclusive.

3. “AND” should be read as including “OR,” and “OR” should be read as “AND,” where doing so would make the applicable request more inclusive.

4. The terms “RELATING,” “RELATING TO,” “RELATES TO,” or “RELATE TO” are used interchangeably, and mean constituting, comprising, containing, setting forth, showing, disclosing, reflecting, describing, explaining, summarizing, concerning, pertaining to, or referring to, directly or indirectly.

5. “PERSON” includes, but is not limited to, individuals, fiduciaries, partnerships, and corporations or other organization or legal or business entity.

6. “IDENTIFY,” when used with respect to a person or entity means to produce the following information for each and every person to be identified: (a) full name, occupation, last known home address and telephone number, and last known employer and place of employment; and (b) with respect to any entity, the full name of the entity or organization and the address and telephone number of such entity.

7. “IDENTIFY,” when used with respect to a document, means to provide the date, author(s), and recipient(s) of the document, together with a summary of its contents.

8. “PLAINTIFF” refers to Machado and all agents, representatives, contractors, and counsel thereof or therefore.

9. “DEFENDANT” refers to Detail Design.

10. “YOU” and “YOUR” refers to Detail Design and all its agents, representatives, contractors, and counsel thereof or therefore.

11. “COMPLAINT” refers to the Complaint in this action dated August 10, 2021.

12. “ANSWER” refers to Detail Design’s Answer in this action dated April 1, 2022.

REQUESTS FOR PRODUCTION

1. All documents that you referred to or relied upon, directly or indirectly, to prepare and/or finalize your answers to Machado’s Interrogatories.

2. All documents that support or you intend to rely upon to defend this action including for your affirmative defenses.

3. All documents relating in any way whatsoever to business/financial dealings between you and Brian Stefano including but not limited to loan agreements and other construction projects.
4. All documents relating in any way whatsoever to Brian Stefano and the Agreement (as defined in Compl. ¶ 6) and/or Project (as defined in Compl. ¶ 23).
5. All documents relating in any way whatsoever to the Construction Contract (as defined in Compl. 17).
6. Detail Design's entire file for the Project.
7. All documents relating in any way whatsoever to payments made by Machado to you for the Project including but not limited to checks, monthly bank statements, transaction summaries, accounting of any kind, and disbursements from the Machado Construction Loan Account (as defined in Compl. ¶ 26).
8. All documents relating in any way whatsoever to the Machado Construction Loan Account including but not limited to communication with Citizen's Bank.
9. All documents relating in any way whatsoever to requests for payment made by third parties to you relating to the Project.
10. All documents relating to contracts and/or work orders for subcontractors/vendors who provided services/materials for the Project.
11. All documents relating to all communications between Detail Design and anyone on its behalf and Machado and anyone on their behalf related to the subject of this action.
12. All documents relating to all communications between Detail Design and anyone on its behalf and Stefano and anyone his behalf related to the subject of this action.

13. All documents relating to all communications between Detail Design and anyone on its behalf and any third party related to the subject of this action.

14. All communication between you and Brian Stefano relating to the Project and/or Machado.

15. All documents relating to any and all work you performed for Stefano individually.

16. All monthly bank statements (including list and images of checks written and deposited) for all of Detail Design's bank accounts from September 2019 thru the present.

17. All of Detail Design's financial statements including but not limited to balance sheets, income statements, cash flow statements, and statements of members' ownership interest.

18. Detail Design's federal and state income tax returns for tax years 2019 through 2021.

19. Any document that you provide to any testifying expert in this litigation.

20. Any document that you intend to introduce into evidence at trial.

21. All documents constituting, referring or relating to any admission of any of the parties to the pending action related to the subject matter of the pending action.

22. All documents related to the allegations in the Complaint and/or Counterclaim not produced in response to the foregoing requests.

Dated: April 29, 2022

Respectfully submitted,



Adam J. Shub, Bar No. 4708
Attorney for Plaintiffs/Counterclaim Defendants
Joseph M. Machado & Katherine Machado

PRETI, FLAHERTY, BELIVEAU & PACHIOS, LLP
One City Center
P.O. Box 9546
Portland, ME 04112-9546
(207) 791-3000
ashub@preti.com

Exhibit D

IN THE ARBITRATION MATTER OF)
)
 JOSEPH M. MACHADO and)
)
 KATHERINE MACHADO,)
)
 Complainants)
)
 v.)
)
 DETAIL DESIGN BUILDERS, LLC and)
)
 BRIAN STEFANO,)
)
 Respondents)

**ARBITRATOR’S ORDER
 COMPELLING DISCOVERY
 RESPONSES**

Counsel and I held a telephonic conference this afternoon to discuss discovery and scheduling issues. After discussion, it is ordered that Respondent Detail Design Builders (“DDB”) must provide complete responses to the Machados’ discovery requests (including interrogatory responses signed under oath and production of documents) on or before Friday, November 18, 2022. Failure to comply with this order may subject DDB to sanctions.

Counsel agreed that the arbitration hearing scheduled to begin on January 31 will be continued to a later date. Counsel and I will reconvene shortly after November 18 to discuss a revised schedule, and to address any other matters that may arise. Attorney Gormley advised counsel and me that he will be unavailable from late February, 2023 into March.

Dated: November 9, 2022

/s/ Jerrol A. Crouter
 Jerrol A. Crouter, Arbitrator

DRUMMOND WOODSUM
 84 Marginal Way, Suite 600
 Portland, ME 04101
 Tel: (207) 772-1941
jcrouter@dwmlaw.com

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re: Detail Design Builders, LLC	)	
Debtor	)	Chapter 11
	)	Bk. No. 22-10577-BAH
	)	
Joseph M. and Katherine Machado	)	
Movant	)	
	)	
v.	)	Hearing Date: May 25, 2023
	)	Hearing Time: 10:00 a.m.
Detail Design Builders, LLC	)	
Respondent	)	
	)	

NOTICE OF HEARING

Please take notice that a hearing will be held:

DATE: May 25, 2023

TIME: 10:00 a.m.

LOCATION: Bankruptcy Courtroom A, Warren B. Rudman, United States Courthouse,
55 Pleasant St, Concord, NH 03101

To consider and act upon the following:

Motion of Joseph M. and Katherine Machado for Relief From the Automatic Stay

Last day for Objection: May 18, 2023

IF NO OBJECTIONS ARE FILED by the answer date and the movant has complied with Local Bankruptcy Rule 4001-1, an Order granting the relief sought will be entered without a hearing.

Date: April 24, 2023

By: /s/ Gregory A. Moffett
Gregory A. Moffett, Esq. (BNH 01998)
P.O. Box 1318
Concord, NH 03302-1318
(603) 410-1525

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re: Detail Design Builders, LLC	)	
Debtor	)	Chapter 11
	)	Bk. No. 22-10577-BAH
	)	
Joseph M. and Katherine Machado	)	
Movant	)	
	)	
v.	)	
	)	
Detail Design Builders, LLC	)	
Respondent	)	
	)	

CERTIFICATE OF SERVICE

I, Gregory A. Moffett, Esquire, of Preti Flaherty Beliveau & Pachios PLLP, as counsel for **Joseph M. Machado and Katherine Machado**, hereby certify that on April 24, 2023, copies of the: (1) Motion of Joseph M. and Katherine Machado for Relief From the Automatic Stay; and (2) Notice of Hearing were served electronically upon the following parties:

Office of the U.S. Trustee
James C. Cleveland Building
53 Pleasant Street, Suite 2300
Concord, NH 03301

Chapter 7 Trustee:
Timothy P. Smith, Trustee
102 Middle Street
Manchester, NH 03101

Debtor's Attorney:
Eleanor Wm Dahar
20 Merrimack Street
Manchester, NH 03101

Counsel to Trustee:
James S. LaMontagne
Sheehan, Phinney, Bass & Green
P.O. Box 3701
1000 Elm Street
Manchester, NH 03105-3701

And all other parties entitled to notice via the Court's ECF system.

The following parties, with interest in the property, were served via U.S. Certified Mail/Return Receipt Requested:

Debtor:

Detail Design Builders, LLC
13 Columbia Drive, Unit 7
Amherst, NH 03031

Debtor's Attorney:

Eleanor Wm Dahar
20 Merrimack Street
Manchester, NH 03101

I certify under penalty of perjury that the foregoing is true and correct.

Date: April 24, 2023

By: /s/ Gregory A. Moffett

Gregory A. Moffett, Esq. (BNH 01998)
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Concord, NH 03302-1318
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