Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

Montgomery County

For Prothonotary Use Only:	
Docket No: 16-23891	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:
- [x] Complaint
- [ ] Writ of Summons
- [ ] Petition
- [ ] Transfer from Another Jurisdiction
- [ ] Declaration of Taking

Lead Plaintiff's Name: Commonwealth of PA, Office of Attorney General	Lead Defendant's Name: The Cutler Group Inc., d/b/a The David Cutler Group
Are money damages requested? [x] **Yes** [ ] **No**	Dollar Amount Requested: (check one) [ ] within arbitration limits [x] outside arbitration limits
Is this a *Class Action Suit*? [ ] **Yes** [x] **No**	**Is this an *MDJ Appeal*?** [ ] **Yes** [x] **No**

Name of Plaintiff/Appellant's Attorney: SARAH A. E. FRASCH, Chief Deputy Attorney General

[ ] **Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)**

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your ***PRIMARY CASE.*** If you are making more than one type of claim, check the one that you consider most important.

SECTION B

TORT *(do not include Mass Tort)*
- [ ] Intentional
- [ ] Malicious Prosecution
- [ ] Motor Vehicle
- [ ] Nuisance
- [ ] Premises Liability
- [ ] Product Liability *(does not include mass tort)*
- [ ] Slander/Libel/ Defamation
- [ ] Other: _____

CONTRACT *(do not include Judgments)*
- [ ] Buyer Plaintiff
- [ ] Debt Collection: Credit Card
- [ ] Debt Collection: Other _____
- [ ] Employment Dispute: Discrimination
- [ ] Employment Dispute: Other

CIVIL APPEALS
Administrative Agencies
- [ ] Board of Assessment
- [ ] Board of Elections
- [ ] Dept. of Transportation
- [ ] Statutory Appeal: Other _____
- [ ] Zoning Board _____

2016-23891-0000 10 5 2016 10:27 AM = 10985756
Complaint Civil Action
Rcpt=2016-8-03174 Fee:$270.00
Mark Levy - MontCo Prothonotary

MASS TORT
- [ ] Asbestos
- [ ] Tobacco
- [ ] Toxic Tort - DES
- [ ] Toxic Tort - Implant
- [ ] Toxic Waste
- [ ] Other: _____

PROFESSIONAL LIABLITY
- [ ] Dental
- [ ] Legal
- [ ] Medical
- [ ] Other Professional: _____

REAL PROPERTY
- [ ] Ejectment
- [ ] Eminent Domain/Condemnation
- [ ] Ground Rent
- [ ] Landlord/Tenant Dispute
- [ ] Mortgage Foreclosure: Residential
- [ ] Mortgage Foreclosure: Commercial
- [ ] Partition
- [ ] Quiet Title
- [ ] Other: _____

MISCELLANEOUS
- [ ] Common Law/Statutory Arbitration
- [ ] Declaratory Judgment
- [ ] Mandamus
- [ ] Non-Domestic Relations Restraining Order
- [ ] Quo Warranto
- [ ] Replevin
- [x] Other:

Action pursuant to PA *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.*

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA **Office of Attorney General** **Plaintiff** **v.** **THE CUTLER GROUP, INC.** **d/b/a The David Cutler Group** **5 Apollo Road, Suite One** **Plymouth Meeting, Pennsylvania 19462** **Defendant**	: : : : : : : : : : : : : :	**_____Term, 2016** **No.** 16-23891 **CIVIL ACTION - EQUITY**

NOTICE TO DEFEND

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

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

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

LAWYER REFERENCE SERVICE
MONTGOMERY BAR ASSOCIATION
100 West Airy Street (REAR)
NORRISTOWN, PA 19401
(610) 279-9660, EXTENSION 201

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Attorneys for Plaintiff

THIS IS NOT A COMPULSORY ARBITRATION CASE - This case has been brought by the Commonwealth of Pennsylvania under the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.*
AN ASSESSMENT OF DAMAGES HEARING IS REQUIRED

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Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
Office of Attorney General	:	**_____Term, 2016**
	:	
Plaintiff	:	
v.	:	**No.** 16-23891
	:	
	:	**CIVIL ACTION - EQUITY**

THE CUTLER GROUP, INC. :
d/b/a The David Cutler Group :
5 Apollo Road, Suite One :
Plymouth Meeting, Pennsylvania 19462 :
:
Defendant :
:

COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, acting by Attorney General Bruce R. Beemer, through the Bureau of Consumer Protection, which brings this action on behalf of the Commonwealth pursuant to the provisions of the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201, *et seq.*, (herein referred to as the "Consumer Protection Law") to restrain by permanent injunction unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by the Consumer Protection Law.

The Commonwealth seeks restitution pursuant to Section 201-4.1 of the Consumer Protection Law. Additionally, the Commonwealth seeks appropriate civil penalties pursuant to Section 201-8(b) of the Consumer Protection Law for all violations of said law, and other equitable relief as authorized by law.

In support thereof, the Commonwealth respectfully represents the following:

JURISDICTION

1. This Court has original jurisdiction over this action pursuant to Section 931 of the Judicial Code, 42 Pa. C.S.A. § 931(a).

VENUE

2. Venue lies with this Court pursuant to Pa. R.C.P. 1006(a)(1).

THE PARTIES

3. Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Bruce R. Beemer, through the Bureau of Consumer Protection (herein referred to as the "Commonwealth" and/or "Plaintiff"), with offices located at 21 South 12th Street, Second Floor, Philadelphia, Pennsylvania 19107.

4. Defendant, The Cutler Group, Inc. (herein referred to as "Cutler" and/or "Defendant Cutler" and/or "Defendant") is a Pennsylvania for-profit business corporation registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section (herein referred to as "Corporations Bureau"), with a registered business address of and principal place of business located at 5 Apollo Road, Suite 1, Plymouth Meeting, Pennsylvania 19462.

BACKGROUND

5. This case involves Defendant Cutler failing to comply with relevant building codes, manufacturers' recommendations, and industry standards in Defendant Cutler's installation of stucco, either by itself or in connection with brick and/or stone (herein referred to collectively as "Cladding"), flashings, and other parts of construction of new homes in the Commonwealth of Pennsylvania, where stucco was used as part of the exterior finish of the homes, which Defendant Cutler's failures led to water infiltration into the homes and caused damage such as rot, decay, and mold in the homes.

6. At all times relevant and material hereto, Defendant Cutler engaged in trade and commerce within the Commonwealth of Pennsylvania under the name "The David Cutler Group" by developing, constructing, and selling residential homes to Pennsylvania consumers from a business address of 5 Apollo Road, Suite 1, Plymouth Meeting, Pennsylvania 19462.

7. According to its current website, Defendant Cutler advertises itself as "the largest

privately held residential builder in the Delaware Valley. A leader in the home building industry, David Cutler Group has constructed thousands of exquisite homes in Pennsylvania's most coveted locations. Old world fabrication. Meticulous attention to detail. Exceptional customer service. David Cutler Group weaves these elements together to provide an unsurpassed home-buying experience. At the David Cutler Group we make the American dream of home ownership possible." A true and correct copy of the website is attached hereto and incorporated herein as Exhibit A.

8. The name "The David Cutler Group" is registered with the Corporations Bureau as a fictitious name owned by Defendant Cutler.

9. At all times relevant and material hereto, Defendant Cutler acted, approved, endorsed, directed, ratified, controlled and/or otherwise participated in the conduct alleged herein.

10. At all times relevant and material hereto, Defendant Cutler acted through agents, contractors, and employees, all of whom were acting within the course and scope of their agency, contractor and/or employment relationship with Defendant Cutler, to develop and construct the homes.

FACTS

11. At all times relevant and material hereto, an employee of Defendant Cutler was to be on the premises during construction, and was to oversee the construction to ensure that the development plans were being followed and that the construction was being performed properly.

12. Stucco is a building material that is not watertight. As such, water will transfer through the stucco-exterior of the home to the weather-resistant underlayment or barrier (herein referred to as "WRB"), which serves as the last line of defense between water and the interior

structure of the home. If the stucco system is not installed correctly or is too thin, the homeowner will be left with an inferior wall finish that is easier for water to infiltrate, and the longevity of the stucco will be reduced. When more water infiltrates than the WRB is designed to handle, water infiltration to the interior environment of the house can occur. Conversely, if the exterior stucco itself is properly applied, but the WRB protection beneath that stucco is deficient, water infiltration to the interior of the home can also occur.

13. Southeast Pennsylvania's typical climate includes humidity, rain, snow, and sleet, unlike dryer parts of the country.[1]

14. When building homes with stucco exteriors in Southeastern Pennsylvania, it is essential to prevent bulk water from entering into the home and also to prevent water entrapment in the home; as such, correct installation of the Cladding and the WRB is necessary in order to withstand the weather and to ensure that proper draining and drying will occur (herein referred to as "Perform").

15. Certain building and installation methods that are acceptable for stucco homes in drier or more temperate climates will not withstand the excess moisture of Southeastern Pennsylvania weather, where such excess moisture leads to a higher rate of stress on the stucco, a higher incidence of cracks in the stucco, and higher destructive levels of water infiltration.

16. In particular, construction details that allow the stucco to expand and contract, and that allow for proper sealing of dissimilar Cladding, such as the proper use of expansion joints and control joints to reduce cracking or separating from adjacent building materials, are of the utmost importance to construction in this area, are crucial, and require attention to detail to avoid

[1] The average precipitation for Horsham, Pennsylvania is 48.18 inches of rain per year and 26 inches of snow. http://www.usclimatedata.com/climate/horsham/pennsylvania/united-states/uspa3470. In comparison, the average precipitation for Phoenix, Arizona is 8.04 inches. http://www.usclimatedata.com/climate/arizona/united-states/3172.

infiltration of water.

17. In addition, stucco systems in Southeastern Pennsylvania will inevitably have some water entering the system, so it is essential that there exist continuity of the WRB and unobstructed flow of water, there exist properly installed flashings around windows, doors, and utility penetrations; at intersections of dissimilar Cladding; at the intersection of chimneys or other masonry construction with frame or stucco walls; under and at the ends of masonry, wood or metal copings and sills; continuously above all projecting wood trim; at the intersection of exterior walls and porches and decks; at wall and roof intersections; and at built-in gutters (herein collectively referred to as "Flashings"), and there exist a means for the moisture to escape the system, such as a weep screed, in order to provide a weather-resistive envelope and to prevent entrapment of water.

18. The aforementioned construction details were understood to be requirements of the industry-accepted standards and accepted engineering practices of stucco construction in Southeastern Pennsylvania during the relevant time period.

19. In many instances, Defendant Cutler, independently and/or through its agents, contractors, and/or employees, failed to provide a weather-resistant exterior, failed to properly install the stucco, failed to install a means of drainage or weep screeds, failed to properly install the WRB, and failed to properly install Flashings. Such failures were contrary to building codes, manufacturers' recommendations, and industry standards, which are defects that caused damage such as mold, rot, and decay in consumer homes.

20. While the International Residential Code (herein referred to as "IRC"), the Building Officials and Code Administrators International, Inc. Code (herein referred to as "BOCA"), and the Council of American Building Officials Code (herein referred to as "CABO")

have changed over the relevant time period, Defendant Cutler's building practices and methods of Cladding, installation of the WRB, and installation, or lack thereof, of flashings as described above herein consistently constituted noncompliance with the applicable building codes and industry standards, including, but not limited to, the following:

a. The failure to design and construct the exterior wall to prevent wind and rain. For example, Section 1403.3 of the 1996 BOCA requires that "the exterior walls shall be faced with an approved weather-resistant covering that is properly attached to resist wind and rain. The cellular spaces shall be so ventilated as not to vitiate the *fireblocking* at floor, *attic* and roof levels, or shall be provided with an approved interior noncorrodible *vapor retarder*, or other approved means to avoid condensation and leakage of moisture." Another example, Section R703.1 General of the 2006 IRC states, "the exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer as required by Section R703.2 and a means of draining water that enters the assembly to the exterior."

b. The failure to construct homes in compliance with referenced standards. For example, Section 102.4 of the 1996 BOCA incorporates the referenced standards into the Code by stating "The standards referenced in this code and listed in Chapter 35 shall be considered part of the requirements of this code to the prescribed extent of each such reference," and more specifically, Section 2506.3 of the 1996 BOCA incorporates the American

Society for Testing and Materials (herein referred to as "ASTM") C926 and ASTM C1063 into the Code, by stating "Installation of these materials shall be in compliance with ASTM C926," Standard Specification for Application of Portland Cement-Based Plaster "and ASTM C1063," Standard for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster, listed in Chapter 35 and Section 2506.4. Another example can be found in the 2006 IRC Section R703.6 Exterior Plaster, "Installation of these materials shall be in compliance with ASTM C926 and ASTM C1063 and the provisions of this code."

c. Failure to provide a means of drainage. For example, 1996 BOCA Section 2506.3 references ASTM C926 which requires a means of drainage. Another example can be found under the 2006 IRC Section R703.6.2.1where it is required that "a minimum 0.019-inch (0.5 mm) (No. 26 galvanized sheet gage), corrosion-resistant weep screed or plastic weep screed, with a minimum vertical attachment flange of 3½ inches (89 mm) shall be provided at or below the foundation plate line on exterior stud walls in accordance with ASTM C 926. The weep screed shall be placed a minimum of 4 inches (102 mm) above the earth or 2 inches (51 mm) above paved areas and shall be of a type that will allow trapped water to drain to the exterior of the building."

d. Failure to have appropriate flashings. For example, Section 1405.3.10 of the 1996 BOCA states, "Approved corrosion-resistant flashings shall be provided at the top and sides of all exterior window and door openings in

such a manner as to be leakproof. Approved corrosion-resistant flashings shall be installed at the intersection of chimneys or other masonry construction with frame or stucco walls, with projecting lips on both sides under stucco copings; under and at the ends of masonry, wood or metal copings and sills; continuously above all projecting wood trim; at the intersection of exterior walls and porches and decks; at wall and roof intersections; and at built-in gutters.." Another example can be found in the 2006 IRC Section R703.8 where it is required to have, "approved corrosion-resistant flashing shall be applied shingle-fashion in such a manner to prevent entry of water into the wall cavity or penetration of water to the building structural framing components... Flashing at exterior window and door openings shall extend to the surface of the exterior wall finish or to the water-resistive barrier for subsequent drainage."

21. Defendant Cutler's defective construction as stated above herein led to failure of certain consumers' homes' Cladding systems, resulting in damage to homes, compromise of structural integrity, impairment of home values, infiltration of water reaching behind the WRB and/or the interior of the homes, moisture penetration, and water entrapment in and through the Cladding system, leading to mold, rot, decay and other water damage within the home.

22. Defendant Cutler impliedly warranted that the homes were constructed in a workmanlike manner and in accordance with industry standards.

23. Defendant Cutler impliedly warranted that the homes would be constructed in a way that was habitable and free of latent defects that would affect habitability.

24. In many cases, Defendant Cutler issued an express warranty to the purchasers

who bought the homes from Defendant Cutler, warranting that, "your home has been constructed by skilled tradesmen, using both modern methods and materials," "your home has been constructed in accordance with the accepted home building practice of this locality," and the, "premises [shall be] free of structural or mechanical defects for a period of one (1) year from the date of settlement, and Seller shall be responsible for the correction of such defects found at the premises during said one (1) year period, and shall act with reasonable promptness to repair, reconstruct or otherwise correct [such defects]." A true and correct copy of a redacted warranty of Defendant Cutler is attached hereto and incorporated herein as Exhibit B. The same or a similar warranty was used by Defendant Cutler at all times relevant and material hereto.

25. Defendant Cutler consistently failed to comply with its warranty in that Defendant Cutler's work was not performed using modern methods in accordance with accepted building practice or certain homes were not free of structural defects.

26. Consumers reasonably relied on Defendant Cutler's warranty that the home was constructed using modern methods and materials and in accordance with accepted building practice.

27. Based upon the conduct and representations of Defendant Cutler, consumers reasonably believed that new homes constructed by Defendant Cutler would be built in compliance with the building code, manufacturers' recommendations, and industry practices, to be habitable, and in a workmanlike manner, when the consumers agreed to purchase the homes from Defendant Cutler.

28. The consumers who purchased homes Defendant Cutler which included defective or inferior workmanship, were not aware of Defendant Cutler's defects in the homes at the time they purchased the homes.

29. The consumers would not have purchased the homes from Defendant Cutler if they had known of defects in the construction of the homes.

30. Various defects of Defendant Cutler's construction are not readily seen or noticeable by the consumers, as the damage caused by such defects is often hidden and only discovered once the Cladding is removed, and/or the mold, rot, and decay have time to manifest; and as such, in many instances, the consumers are not aware of the defects and damage for many years after they purchased the homes from either Defendant Cutler, or as a subsequent purchaser.

31. In some cases, the defects of Defendant Cutler's construction are so severe that the consumers experience noticeable effects within weeks of taking possession of their homes.

32. In one case, a consumer who purchased a home from Defendant Cutler that had been previously been rented to another consumer by Defendant Cutler was concerned about going forward with the purchase after seeing homes in the neighborhood being remediated for faulty construction by Defendant Cutler, but the consumer went forward with the purchase after Defendant Cutler assured him there were no issues with the home, only to discover leaks around the windows and basement shortly after moving into the home.

33. Another consumer experienced leaks around the windows shortly after moving into the home, and Defendant Cutler eventually caulked around the windows after the consumer contacted Defendant Cutler on numerous occasions, only to later discover that the caulking did not fix the problem and now the home has significant rot, decay, and mold, and is in the process of remediation costing the consumer over One Hundred Twenty Thousand and 00/100 Dollars ($120,000.00).

34. In many instances, consumers contacted Defendant Cutler about the defects, and in some cases Defendant Cutler failed to repair the defects.

35. In some cases, upon being notified of defects and water infiltration, Defendant Cutler made repairs, including caulking of windows, doors, and utility penetrations, or replacing small sections of stucco. Such attempts at corrective action did not remediate the extensive underlying issues as the home still did not Perform, nor were the repairs all-inclusive as Defendant Cutler failed to address similar systemic issues in the home.

36. In a number of cases, Defendant Cutler ignored consumers' attempts to contact them regarding the defects or refused to remediate the defects.

37. Defendant Cutler's defective construction caused damages that required consumers to incur financial costs for repairs, inability for the consumers to re-sell their homes at market value, as well as potential health risks associated with the presence of mold.

38. Even after Defendant Cutler was put on notice of the defects, Defendant Cutler continued to use the same substandard construction practices.

39. The Pennsylvania Office of Attorney General, Bureau of Consumer Protection (herein referred to as "Bureau") has received numerous consumer complaints against Defendant Cutler's business practices.

40. The Commonwealth believes and therefore avers that there are additional consumers who have not filed complaints with the Bureau and have also been harmed due to the methods, acts and practices of Defendant Cutler, which include, but are not limited to, those as alleged herein. These consumers are both those who purchased the home directly from Defendant Cutler, and additionally those consumers who subsequently purchased homes constructed by Defendant Cutler, but who were not original purchasers of the homes, and were not aware of the defects at the time they purchased the homes.

41. The Commonwealth has reason to believe that Defendant Cutler has used, is

using, or is about to use methods, acts or practices declared unlawful by Section 201-3 of the Consumer Protection Law.

42. The Commonwealth believes that the public interest is served by seeking a permanent injunction from this Honorable Court to restrain the methods, acts and practices of Defendant Cutler. The Commonwealth believes that the public is suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

COUNT I – VIOLATIONS OF THE CONSUMER PROTECTION LAW DEFENDANT CUTLER FAILED TO COMPLY WITH BUILDING CODE, MANUFACTURERS' RECOMMENDATIONS, AND INDUSTRY STANDARDS IN CONSTRUCTING NEW HOMES

43. The averments and allegations of the preceding paragraphs are incorporated as though the same were more fully set forth herein.

44. As specifically discussed herein above, Defendant Cutler failed to comply with relevant building codes, manufacturers' recommendations, and industry standards in Defendant Cutler's installation of Cladding, flashings, and other parts of construction of homes in the Commonwealth of Pennsylvania, where stucco was used as part of the exterior finish of the homes, which Defendant Cutler's failures led to water infiltration into the homes and caused damage such as mold, rot, and decay, and other deterioration to the homes.

45. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4), including, but not limited to, the following:

a. Section 201-2(4)(v), representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they

do not have or that a person has sponsorship, approval, status, affiliation or connection that he does not have;

b. Section 201-2(4)(vii), representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another; and

c. Section 201-2(4)(xxi), engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. §§ 201-3, and 201-2(4)(v), (vii), and (xxi).

46. The Commonwealth alleges that all of the practices described above were performed willfully. Accordingly, and pursuant to Section 201-8 of the Consumer Protection Law, the Commonwealth seeks the imposition of civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each violation of the Consumer Protection Law, including enhanced civil penalties of Three Thousand and 00/100 Dollars ($3,000.00) for each violation involving consumer victims age sixty (60) or older, in addition to other relief sought, as appropriate.

47. The Commonwealth believes that the public interest is served by seeking before this Court a permanent injunction to restrain the methods, acts and practices described herein, as well as seeking restitution for consumers and civil penalties for violation of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court issue an Order:

A. Declaring Defendant's conduct to be in violation of the Consumer

Protection Law;

B. Permanently enjoining Defendant and all other persons acting on its behalf, directly or indirectly, from violating the Consumer Protection Law and any amendments thereto, including, but not limited to:

1. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation or connection that he does not have, as prohibited by Section 201-2(4)(v) of the Consumer Protection Law, 73 P.S. § 201-2(4)(v);

2. Representing that goods and or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, as prohibited by Section 201-2(4)(vii) of the Consumer Protection Law, 73 P.S. § 201-2(4)(vii); and

3. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xxi);

C. Prohibiting Defendant from otherwise violating the Consumer Protection Law and any amendments thereto;

D. Permanently enjoining Defendant from representing that the stucco, flashings, and WRB had been installed properly when they had not;

E. Directing Defendant to make full restitution pursuant to Section 201-4.1 of the Consumer Protection Law to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law;

F. Directing Defendant to forfeit and pay to the Commonwealth civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each instance of a past or present violation of the Consumer Protection Law, and Three Thousand and 00/100 Dollars ($3,000.00) for each instance of a past or present violation of the Consumer Protection Law involving consumers aged sixty (60) or older as victims;

G. Directing Defendant to disgorge and forfeit all profits it has derived as a result of their unfair and deceptive acts and practices as set forth in this Complaint;

H. Requiring Defendant to pay the Commonwealth's investigative and litigation costs in this matter; and

I. Granting such other general, equitable and/or further relief as the Court deems just and proper, including, but not limited to, the appointment of a receiver.

COUNT II – VIOLATIONS OF THE CONSUMER PROTECTION LAW DEFENDANT CUTLER FAILED TO COMPLY WITH THE EXPRESS WARRANTY FOR ORIGINAL PURCHASERS OF THE HOMES

48. The averments and allegations of the preceding paragraphs are incorporated as though the same were more fully set forth herein.

49. Defendant Cutler issued an express warranty to the purchasers who bought the homes from Defendant Cutler, as specifically alleged herein above.

50. As alleged more fully above herein, Defendant Cutler failed to comply with its warranty as specifically alleged herein above.

51. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4), including, but not limited to, the following:

a. Section 201-2(4)(xiv), failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made; and

b. Section 201-2(4)(xxi), engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. §§ 201-3, and 201-2(4)(xiv) and (xxi).

52. The Commonwealth alleges that all of the practices described above were performed willfully. Accordingly, and pursuant to Section 201-8 of the Consumer Protection Law, the Commonwealth seeks the imposition of civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each violation of the Consumer Protection Law, including enhanced civil penalties of Three Thousand and 00/100 Dollars ($3,000.00) for each violation involving consumer victims age sixty (60) or older, in addition to other relief sought, as appropriate.

53. The Commonwealth believes that the public interest is served by seeking before this Court a permanent injunction to restrain the methods, acts and practices described herein, as well as seeking restitution for consumers and civil penalties for violation of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court issue an Order:

A. Declaring Defendant's conduct to be in violation of the Consumer Protection Law;

B. Permanently enjoining Defendant and all other persons acting on its

behalf, directly or indirectly, from violating the Consumer Protection Law and any amendments thereto, including, but not limited to:

1. Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made, as prohibited by Section 201-2(4)(xiv) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xiv); and

2. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xxi);

C. Prohibiting Defendant from otherwise violating the Consumer Protection Law and any amendments thereto;

D. Permanently enjoining Defendant from representing that the stucco, flashings, and WRB had been installed properly when they had not;

E. Directing Defendant to make full restitution pursuant to Section 201-4.1 of the Consumer Protection Law to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law;

F. Directing Defendant to forfeit and pay to the Commonwealth civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each instance of a past or present violation of the Consumer Protection Law, and Three Thousand and 00/100 Dollars ($3,000.00) for each instance of a past or present violation of the Consumer Protection Law involving consumers aged sixty (60) or older as victims;

G. Directing Defendant to disgorge and forfeit all profits it has derived as a

result of their unfair and deceptive acts and practices as set forth in this Complaint;

H. Requiring Defendant to pay the Commonwealth's investigative and litigation costs in this matter; and

I. Granting such other general, equitable and/or further relief as the Court deems just and proper, including, but not limited to, the appointment of a receiver.

COUNT III – VIOLATIONS OF THE CONSUMER PROTECTION LAW DEFENDANT CUTLER MADE SUBSTANDARD REPAIRS THAT FAILED TO ADDRESS THE DEFECTS AS PROMISED AND WARRANTED

54. The averments and allegations of the preceding paragraphs are incorporated as though the same were more fully set forth herein.

55. As specifically alleged herein above, in some cases, consumers notified Defendant Cutler of defects and water infiltration.

56. Defendant Cutler represented and assured those consumers that appropriate repair and/or other remediation steps would be taken to address the defects.

57. Defendant Cutler failed to live up to those promises and assurances. In the limited occurrences that Defendant Cutler responded to the consumers, Defendant Cutler made minor repairs, including caulking of windows, doors, and utility penetrations, or replacing small sections of stucco. Such attempts at corrective action did not remediate the extensive underlying issues as the home still did not Perform, nor were the repairs all-inclusive as Defendant Cutler failed to address similar systemic issues in the home.

58. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4), including, but not limited to, the following:

a. Section 201-2(4)(xvi), making repairs, improvements or replacements on tangible, real or personal property, of a nature of quality inferior to or below the standard of that agreed to in writing; and

b. Section 201-2(4)(xxi), engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. §§ 201-3, and 201-2(4)(xvi) and (xxi).

59. The Commonwealth alleges that all of the practices described above were performed willfully. Accordingly, and pursuant to Section 201-8 of the Consumer Protection Law, the Commonwealth seeks the imposition of civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each violation of the Consumer Protection Law, including enhanced civil penalties of Three Thousand and 00/100 Dollars ($3,000.00) for each violation involving consumer victims age sixty (60) or older, in addition to other relief sought, as appropriate.

60. The Commonwealth believes that the public interest is served by seeking before this Court a permanent injunction to restrain the methods, acts and practices described herein, as well as seeking restitution for consumers and civil penalties for violation of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court issue an Order:

A. Declaring Defendant's conduct to be in violation of the Consumer Protection Law;

B. Permanently enjoining Defendant and all other persons acting on its

behalf, directly or indirectly, from violating the Consumer Protection Law and any amendments thereto, including, but not limited to:

1. Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing, as prohibited by Section 201-2(4)(xvi) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xvi); and

2. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xxi);

C. Prohibiting Defendant from otherwise violating the Consumer Protection Law and any amendments thereto;

D. Permanently enjoining Defendant from representing that the stucco, flashings, and WRB had been installed properly when they had not;

E. Directing Defendant to make full restitution pursuant to Section 201-4.1 of the Consumer Protection Law to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law;

F. Directing Defendant to forfeit and pay to the Commonwealth civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each instance of a past or present violation of the Consumer Protection Law, and Three Thousand and 00/100 Dollars ($3,000.00) for each instance of a past or present violation of the Consumer Protection Law involving consumers aged sixty (60) or older as victims;

G. Directing Defendant to disgorge and forfeit all profits it has derived as a

result of their unfair and deceptive acts and practices as set forth in this Complaint;

H. Requiring Defendant to pay the Commonwealth's investigative and litigation costs in this matter; and

I. Granting such other general, equitable and/or further relief as the Court deems just and proper, including, but not limited to, the appointment of a receiver.

COUNT IV – VIOLATIONS OF THE CONSUMER PROTECTION LAW DEFENDANT CUTLER FAILED TO COMPLY WITH THE IMPLIED WARRANTY OF HABITABILITY

61. The averments and allegations of the preceding paragraphs are incorporated as though the same were more fully set forth herein.

62. As specifically alleged herein above, Defendant Cutler impliedly warranted that the homes would be habitable and free of latent defects affecting habitability.

63. Consumers justifiably relied on Defendant Cutler's implied warranty of habitability.

64. As specifically alleged herein above, Defendant Cutler's poor construction contained latent defects that led to failure of certain consumers' homes' Cladding systems, resulting in damage to the homes, compromise of structural integrity, impairment of home values, infiltration of water reaching behind the WRB and/or the interior of the homes, moisture penetration, and water entrapment in and through the Cladding system, leading to mold, rot, decay and other water damage within the home, which ultimately caused some homes to be uninhabitable.

65. Defendant Cutler failed to comply with the implied warranty of habitability.

66. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of

the Consumer Protection Law, as defined by Section 201-2(4), including, but not limited to, the following:

a. Section 201-2(4)(v), representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation or connection that he does not have;

b. Section 201-2(4)(vii), representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

c. Section 201-2(4)(xiv), failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made; and

d. Section 201-2(4)(xxi), engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. §§ 201-3, and 201-2(4)(v), (vii), (xiv) and (xxi).

67. The Commonwealth alleges that all of the practices described above were performed willfully. Accordingly, and pursuant to Section 201-8 of the Consumer Protection Law, the Commonwealth seeks the imposition of civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each violation of the Consumer Protection Law, including enhanced civil penalties of Three Thousand and 00/100 Dollars ($3,000.00) for each violation involving consumer victims age sixty (60) or older, in addition to other relief sought, as appropriate.

68. The Commonwealth believes that the public interest is served by seeking before

this Court a permanent injunction to restrain the methods, acts and practices described herein, as well as seeking restitution for consumers and civil penalties for violation of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court issue an Order:

A. Declaring Defendant's conduct to be in violation of the Consumer Protection Law;

B. Permanently enjoining Defendant and all other persons acting on its behalf, directly or indirectly, from violating the Consumer Protection Law and any amendments thereto, including, but not limited to:

1. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation or connection that he does not have, as prohibited by Section 201-2(4)(v) of the Consumer Protection Law, 73 P.S. § 201-2(4)(v);

2. Representing that goods and or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, as prohibited by Section 201-2(4)(vii) of the Consumer Protection Law, 73 P.S. § 201-2(4)(vii);

3. Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made, as prohibited by Section 201-2(4)(xiv) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xiv); and

4. Engaging in any other fraudulent or deceptive conduct which

creates a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xxi);

C. Prohibiting Defendant from otherwise violating the Consumer Protection Law and any amendments thereto;

D. Permanently enjoining Defendant from representing that the stucco, flashings, and WRB had been installed properly when they had not;

E. Directing Defendant to make full restitution pursuant to Section 201-4.1 of the Consumer Protection Law to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law;

F. Directing Defendant to forfeit and pay to the Commonwealth civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each instance of a past or present violation of the Consumer Protection Law, and Three Thousand and 00/100 Dollars ($3,000.00) for each instance of a past or present violation of the Consumer Protection Law involving consumers aged sixty (60) or older as victims;

G. Directing Defendant to disgorge and forfeit all profits it has derived as a result of their unfair and deceptive acts and practices as set forth in this Complaint;

H. Requiring Defendant to pay the Commonwealth's investigative and litigation costs in this matter; and

I. Granting such other general, equitable and/or further relief as the Court deems just and proper, including, but not limited to, the appointment of a receiver.

COUNT V – VIOLATIONS OF THE CONSUMER PROTECTION LAW DEFENDANT CUTLER FAILED TO COMPLY WITH THE IMPLIED WARRANTY OF WORKMANSHIP

69. The averments and allegations of the preceding paragraphs are incorporated as though the same were more fully set forth herein.

70. As specifically alleged herein above, in addition to any express warranty as alleged above herein, Defendant Cutler impliedly warranted that the consumers' homes would be constructed in a workmanlike manner and in accordance with industry standards.

71. Consumers justifiably relied on Defendant Cutler's implied warranty of workmanship.

72. As more specifically alleged herein above, Defendant Cutler failed to construct the homes in a workmanlike manner and in accordance with industry standards and building code.

73. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4), including, but not limited to, the following:

a. Section 201-2(4)(vii), representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

b. Section 201-2(4)(xiv), failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made; and

c. Section 201-2(4)(xxi), engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. §§ 201-3, and 201-2(4)(vii), (xiv) and (xxi).

74. The Commonwealth alleges that all of the practices described above were performed willfully. Accordingly, and pursuant to Section 201-8 of the Consumer Protection Law, the Commonwealth seeks the imposition of civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each violation of the Consumer Protection Law, including enhanced civil penalties of Three Thousand and 00/100 Dollars ($3,000.00) for each violation involving consumer victims age sixty (60) or older, in addition to other relief sought, as appropriate.

75. The Commonwealth believes that the public interest is served by seeking before this Court a permanent injunction to restrain the methods, acts and practices described herein, as well as seeking restitution for consumers and civil penalties for violation of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court issue an Order:

A. Declaring Defendant's conduct to be in violation of the Consumer Protection Law;

B. Permanently enjoining Defendant and all other persons acting on its behalf, directly or indirectly, from violating the Consumer Protection Law and any amendments thereto, including, but not limited to:

1. Representing that goods and or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, as prohibited by Section 201-2(4)(vii) of the Consumer Protection Law, 73 P.S. § 201-2(4)(vii);

2. Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made, as prohibited by Section 201-2(4)(xiv) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xiv); and

3. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xxi);

C. Prohibiting Defendant from otherwise violating the Consumer Protection Law and any amendments thereto;

D. Permanently enjoining Defendant from representing that the stucco, flashings, and WRB had been installed properly when they had not;

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G. Directing Defendant to disgorge and forfeit all profits it has derived as a result of their unfair and deceptive acts and practices as set forth in this Complaint;

H. Requiring Defendant to pay the Commonwealth's investigative and

litigation costs in this matter; and

I. Granting such other general, equitable and/or further relief as the Court deems just and proper, including, but not limited to, the appointment of a receiver.

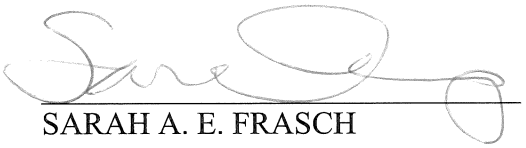
Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

BRUCE R. BEEMER
Attorney General

ROBERT A. MULLE
First Deputy Attorney General

JAMES A. DONAHUE, III
Executive Deputy Attorney General
Public Protection Division

Date: 10/3/16 By: 

SARAH A. E. FRASCH
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Date: 10-4-16 By:

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VERIFICATION

I, Michael D. Carroll, hereby state that I am a Senior Consumer Protection Agent with the Pennsylvania Office of Attorney General, Bureau of Consumer Protection, and am authorized to make this verification on behalf of the Plaintiff in the within action. I hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.

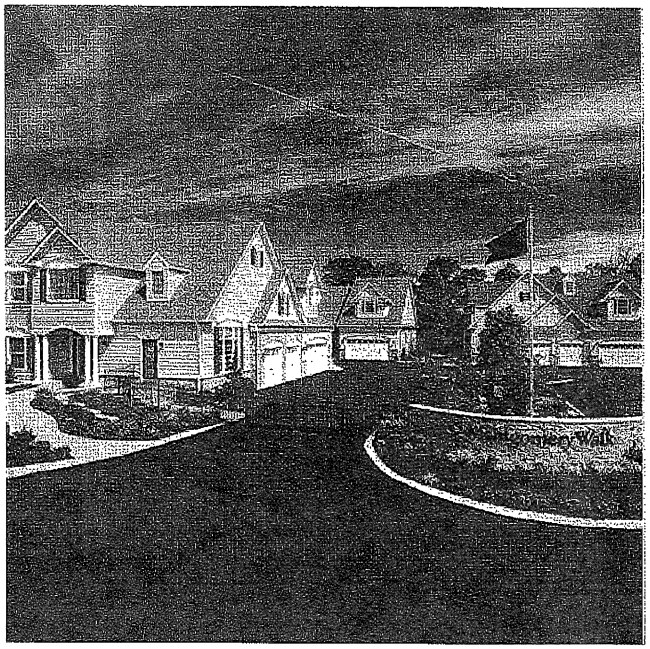
I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 10/3/2016

Michael D Carroll
Michael D. Carroll
Senior Consumer Protection Agent

Exhibit A

2016-23891-0000 10 5 2016 10:27 AM = 10985757
Complaint Civil Action
Rcpt=2016-8-03174 Fee:$270.00 Exhibit A
Mark Levy - MontCo Prothonotary



WELCOME HOME

Welcome to the David Cutler Group - the largest privately held residential builder in the Delaware Valley. A leader in the home building industry, David Cutler Group has constructed thousands of exquisite homes in Pennsylvania's most coveted locations. Old world fabrication. Meticulous attention to detail. Exceptional customer service. David Cutler Group weaves these elements together to provide an unsurpassed home-buying experience. At the David Cutler Group we make the American dream of home ownership possible. Your new home is waiting.

Exciting things are happening! Click on the blog link below for details on the purchase of Center Square Golf Club.

Quick Delivery at Ridings of Warwick - Open House June 26th

Click here to view our blog

QUICK SEARCH

SEARCH HOMES

GRAND OPENINGS

The Meadows at Parkview

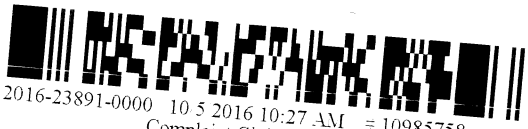
Montgomery Township

FEATURED PROPERTY

Lot #43, Waterforde Custom
Ridings of Warwick
$899,900
4 Bed, 3 Bath

© 2011 David Cutler Group | Suite One, 5 Apollo Road, Plymouth Meeting, PA 19462 | 610-940-9800 | office@davidcutlergroup.com | Legal | Site Map | designed by MOD

Exhibit B



2016-23891-0000 10 5 2016 10:27 AM = 10985758
Complaint Civil Action
Rcpt=2016-8-03174 Fee:$270.00 Exhibit B
Mark Levy - MontCo Prothonotary

DAVIDCUTLERGROUP

LARGEST PRIVATELY HELD RESIDENTIAL BUILDER IN THE DELAWARE VALLEY

Homeowner Guide
To Warranties
And Maintenance

DAVIDCUTLERGROUP

LARGEST PRIVATELY HELD RESIDENTIAL BUILDER IN THE DELAWARE VALLEY

CONGRATULATIONS are in order now that final settlement has taken place. THE DAVID CUTLER GROUP would like to take this opportunity to wish you and your family GOOD LUCK and A LONG LIFE in your new home.

Your home has been constructed by skilled tradesmen, using both modern methods and materials. However, no matter how careful we try to be, when dealing with the human element, there are bound to be some oversights.

PRE-INSPECTION LIST:

Buyer or his agent shall have the opportunity to inspect the premises prior to settlement. Minor incomplete items shall be listed by Buyer. Said list is to be given to Seller at time of settlement and Seller will complete within a reasonable time. If weather does not permit final blacktopping, concrete, grading and seeding to be done prior to settlement, Seller shall agree to have it completed as soon as possible. The incompletion of items listed shall not delay settlement by Buyer. Seller shall deliver the premises to Buyer in final clean condition.

Please Note– **Buyer has inspected all glass, porcelain, mirrors, vanity tops, vanities, kitchen cabinets, exterior doors, countertops, all appliances, railings, rail parts, stairs, all plumbing fixtures and all flooring and floor coverings at this pre-inspection walk-thru. Any items NOT NOTED on the pre-inspection walk-thru sheet that pertains to these items WILL BE DENIED.**

CLAIMS PROCEDURE:

Although there is a tendency to report warranty service items as soon as you see them, PLEASE DO NOT! Experience has shown us that it is better policy to live in a house for a while, to get a feel for your new home and to make a note of warranty items as you discover them. Anytime during the first 90 days, you may submit a warranty list to our office. This list is your **FINAL LIST** so we suggest you wait until you have a total feel of your new home. This list must be typed – **WE ACCEPT NO RESPONSIBILITY FOR ITEMS DISCUSSED BY TELEPHONE.**

The only warranty items that our company is responsible to adjust after this period are structural defects. The difference between structural defects and maintenance items are outlined in the enclosed *HOME WARRANTY AGREEMENT*, which we highly recommend that you read.

Please realize that your cooperation is necessary in order for us to maintain our schedule and provide efficient service. IT MAY BE NECESSARY TO ARRANGE THAT OUR WARRANTY REPRESENTATIVES HAVE ACCESS TO YOUR HOME FOR AT LEAST ONE FULL WORKING DAY (MONDAY THROUGH FRIDAY, 8:00 - 4:00) PER WEEK DURING EACH SERVICE PERIOD. If our representatives are unable to obtain an appointment with you, your warranty request will be placed in the inactive file. No appointment will be made for exterior maintenance unless you specifically request one. No weekend appointments are available.

THE DAVID CUTLER GROUP

DAVIDCUTLERGROUP

LARGEST PRIVATELY HELD RESIDENTIAL BUILDER IN THE DELAWARE VALLEY

HOMEOWNER'S RESPONSIBILITIES

The following is a list of items to assure you of the proper maintenance of your new home:

1. **BASEMENTS**

With regard to wet basement walls, please be advised of the following information: Because of basement excavation, three feet around the entire perimeter of the basement is fresh backfill. During rainstorms, water penetrating through the ground will seek the points of least resistance, thereby saturating the entire perimeter of a basement with water. Because of this it is not uncommon for basement walls to be wet and damp in new construction. The exterior of the basement wall is coated with an approved foundation coating and then inspected prior to backfill. Sometime during the first two (2) years this situation abates and, depending on weather conditions, this freshly filled dirt will become tighter, thereby allowing the water to run off rather than saturating it. The David Cutler Group basement waterproof warranty is voided if homeowners install a concrete or paved patio in the rear or side yard of their house after settlement. The basement waterproof warranty is also voided if homeowners install landscaping on the side or rear perimeter of the house after settlement.

Homeowners could help themselves by **temporarily extending down-spouts 5-10 feet away from the house.** This will help by keeping all the runoff water from the roof flowing onto the more compact soil. This alleviates pressure against the basement wall. Additional homeowner maintenance may be required including any ground settlement, which does not allow water to flow away from the house. In doing our utmost to help a homeowner against wet basements and, because we are aware that no one has come up with a solution to control water pressure, we do the following in all our basement houses. We install perimeter drains under the floor. This pipe finds itself to a sump pit where we install a sump pump. That sump pump when installed and properly maintained, in turn, removes the water which could enter from pressure through the walls. On many occasions, the water pressure is powerful enough to penetrate underneath the footing and up through the floor level; the sump pump would remove this water if this should occur. The submersible sump pump provided with your new home was tested for proper operation prior to settlement and found to be in proper working order per the manufactures guidelines. The pumps are of high quality and should provide years of reliable service with proper maintenance. **The sump pump must be checked every month and after excessive rainfall to insure proper working condition.** The David Cutler Group does not warrant against possible sump pump failures resulting in flooded basements due to power outages, frozen discharge pipes, clogged pump impellers obstructed floats or a homeowner's misuse and or lack of maintenance.

It is highly recommended that no valuables be stored directly on unfinished basement floors as The David Cutler Group will not reimburse for loss or damaged items resulting from basement flooding.

The conditions of concrete are such, that with the extreme temperature change in this part of the country, from winter to summer, there may be occasions that cracks may form in your basement walls. Even though these cracks are not of structural significance to your new home, evidence of water may seep through these cracks. For a period of one (1) year after settlement, the David Cutler will come back and seal these cracks with state-of-the-art-methods. This procedure will be guaranteed by the David Cutler Group against any leakage on that particular crack for two (2) additional years beyond the repair. Any future leaks in basement walls that occur after the one (1) year anniversary date of settlement will be the responsibility of the homeowner.

Basement windows are not water or air tight, if it is determined that window wells are needed, it is the homeowner's responsibility to keep them covered and free of ice and snow build up and any other debris.

2. **BROKEN GLASS (Including Mirrors)**

The David Cutler Group is responsible **only if noted on pre-inspection list.**

3. **CONCRETE**

a. **CRACKS:** - Cracks may develop in concrete patios, walks, driveways, porches, basements, floors or foundations due to expanding and contracting characteristics of concrete as changes in temperature occur. Cracks may also develop because of the expanding and contracting of the soil on which the concrete is placed. **There is no known way of completely eliminating these conditions and characteristics which are inherent to concrete. These cracks are not of structural significance. If cracks occur and leakage is found, it is the homeowners responsibility to submit a written request to the David Cutler Group accompanied by photographs of the crack and leak before it will be addressed by the David Cutler Group.** The David Cutler Group will only replace concrete which develops a trip step of 1/2" within the first year, and if replacement is needed, the David Cutler Group cannot guarantee the color of the concrete to match.

b. **FLAKING:** - The use of de-icing salts or other chemicals can cause flaking of concrete surfaces and should be avoided. If the flaking process should appear, the structural value of the concrete is not affected. To minimize flaking it is the homeowner's responsibility to seal with approved masonry sealant. If flaking should occur it is not the responsibility of the David Cutler Group to repair and or replace.

4. **DRIVEWAYS**

For one year after the driveway is laid, the David Cutler Group will patch depressions if they measure more than 3/4 inch deep. Driveways requiring more than three patches will be resurfaced. After the second winter, if the driveway needs repair, the David Cutler Group will patch depressions and ridges over two inches deep. After the second winter, the driveway will not be resurfaced. There will be no further driveway maintenance after this point. Note: For proper homeowner maintenance, the David Cutler Group recommend asphalt sealers as a preventive measure by the homeowner every spring.

Do not permit heavy trucks, loaded or unloaded, inside the curb line of your property. They may seriously damage concrete and asphalt surfaces. Scuffing marks are not covered under warranty as they are caused by excessive turning of wheels when vehicles are not moving.

In the event the curb entryway is required to be replaced per township official, the David Cutler Group will only be required to patch and seal the driveway and not re-surface it. Also cracks on the edges is normal occurrence and is not covered under warranty. Any use of outside contractors for driveway extensions, additions, etc., will void the warranty.

5. ELECTRICAL

Any alteration to the electrical work done by the homeowner after settlement immediately voids the electrical warranty. Any electrical fixtures which have scratches or are tarnished that are not noted on the pre-inspection list are not the responsibility of the David Cutler Group.

6. EXTERIOR DOORS

All exterior doors are affected by the elements. The doors in your house are steel and or fiberglass on wood and foam cores. At times, especially after heavy rains, they may not open or close as smoothly as at other times. This is because wood frames absorb moisture and swell. The doors will adjust themselves in the course of a normal drying-out process. Hasty cutting or planing of the wood core is not recommended. The frequency of repainting will be determined by the degree to which the door is exposed to the elements. Weather stripping is provided between the door and the frame to help keep the cold out and the heat in. Do not paint weather-stripping or remove any small felt pads which are attached to doors or door jambs. Four times per year, the weather stripping on the door jamb and on the bottom of the door should be adjusted to ensure a tight fit. Seasonal temperature and humidity changes will cause the weather stripping to change shape and admit outside air if the adjustments are not made. Buyer is responsible to change locks.

GARAGE DOORS: The improper installation of garage door openers cause excessive stress and damage to both the track system and door panels themselves. The David Cutler Group therefore cannot warranty any garage door which has an opener installed after settlement.

7. FLOOR AND STAIR SQUEAKS

Extensive research on this subject concludes that much has been accomplished in avoiding floor and stair squeaks, but complete avoidance is almost impossible. Generally, these will appear and disappear with changes in weather conditions.

The David Cutler Group can assume no responsibility for squeaks unless they are of major structural significance. This is an item the homeowner will be responsible for and can consider part of their homeowner maintenance program. If it is determined that the David Cutler Group has to do a repair to your sub-floor, it will be the responsibility of the homeowner to remove any furniture in that area.

8. GRADING

Your lot and surrounding lot grades were established to provide drainage away from the building. The builder assumes no responsibility for the grading if established patterns are altered and water problems are caused by improper drainage. Service company meter problems and service lines not installed by the builder are not the responsibility of the builder. We cannot guarantee lawn maintenance and establishment with regard to erosion control. Unfortunately, wash outs are a homeowner's responsibility. The David Cutler Group will be more than happy to help rectify your washouts by providing you with a few buckets of topsoil.

TREES

The price of your lot is not based on any number of trees. Seller may remove such trees as they deem necessary or advisable, and the continued life of any remaining trees is not guaranteed. Areas left wooded or undisturbed will not be graded, raked or seeded. After settlement, seller shall have no responsibility for the continued life or removal of any trees. Seller shall not be required to well trees or erect retaining walls. Existing natural trees are the homeowner's responsibility and are not serviceable by the David Cutler Group.

9. CERAMIC TILE AND GROUT

Separation of tile from a tub at the intersection of the tub ledge to the wall and the wall to the floor connection with other materials resulting in loose grout is practically inevitable. This is caused by the normal expansion and contraction of all materials involved. This is an item of maintenance and can be easily repaired by the homeowner with tile grout or sealant obtained from almost any hardware store. Any discoloration of grout, that is not noted on the pre-inspection list will be the homeowner's responsibility. Tile is a rigid product which is susceptible to cracking. Any tile crack not listed on the pre-inspection list will not be covered under warranty.

10. GUTTERS/ROOF

With the extreme winter conditions the North East has experienced in the last 5 years, ice dams may form in your gutters or roof, causing water leakage into your new home. It is the responsibility of the homeowner to clear these ice dams. Clearing ice dams allows water to run off the roof instead of entering the home through roof, gables, gussets or underneath the roof shingles. Leaks due to snow and ice dams are not the responsibility of the David Cutler Group.

a. ROOF VENTS: It is not uncommon for snow and rain to blow into these vents. Leaks caused by this occurrence are not covered by the David Cutler Group.

11. HVAC (HEATING, VENTILATION & AIR CONDITIONING)

Due to individual room usage, it is the homeowner's responsibility to temper and adjust room registers depending on how much air flow they desire in each room. For the most efficient usage, the homeowner should be aware that all heating and air conditioning systems require maintenance and the cleaning of all filters. The cleaning and repair schedule must be done at least twice a year for optimum efficiency. Damages as a result of a lack of maintenance are not covered under warranty.

12. INTERIOR WALL CRACKS

Plaster cracks, drywall cracks, paneling cracks, settlement cracks, wood shrinkage, nail pops or seams may appear in a new home because of drying out and normal expansion and contraction of the wood or masonry to which it has been secured. This is normal. Measures found effective by research have been taken to avoid these faults as much as possible, but complete elimination seems impossible. Slight imperfections such as nail pops, seam lines and cracks not exceeding 1/8" in width are common in gypsum wallboard installations and are considered acceptable. We will provide a drywall finisher to repair only cracks exceeding 1/8" in width in your new home on your 90 day list. The responsibility to repaint these areas is the homeowners. We strongly suggest that any custom color interior paint be saved so that you are able to retouch the speckled

12. INTERIOR WALL CRACKS *(Continued)*

areas. In the interest of goodwill the David Cutler Group will provide to the homeowner one (1) can of touch up paint, to address any drywall repaired areas.

13. LANDSCAPING

The grounds around your home must be kept graded so that the earth slopes away from the building. Sometimes the homeowner, in planting around the house, digs near the foundation and forms a low spot not realizing that they are creating a troublesome situation. A positive drainage condition must be maintained. Sodded or seeded areas become the sole responsibility of the homeowner after settlement. If the placement of sod or seed is after settlement, the homeowners responsibility begins at the time of placement. Whether or not sod or seed will root and grow depends on the care it is given after it is laid. In summer or dry periods, continued soaking is essential. The David Cutler Group is not responsible for sod and seed washing out before it has taken root.

The homeowner is responsible for the yard after pre-settlement inspection.

It is not the responsibility of the David Cutler Group to replace any landscaping (bushes, shrubs, or trees) planted by the David Cutler Group that dies and/or is damaged by any adverse weather conditions. It is the homeowner's responsibility to care for and, if necessary, replace any street trees that exist on the property.

14. MASONRY

A white powdery substance often forms on brick walls. This crystallization can be removed with a brush and a weak acid solution. Extreme caution must be used in following the instructions for use of this acid. Non-uniformity of appearance of antique type brick is to be expected. Brick may discolor due to the elements, rain, runoff, weathering or its composition, color, hardness and porosity of masonry and mortar. It is recommended that all masonry products be sealed with an approved water repellent. Buyer is responsible to inspect the brick and installation of same prior to settlement, any inconsistencies must be noted on the pre-inspection list, or they will be considered future homeowner maintenance items.

15. MORTAR CRACKS

Cracks may develop in mortar used in bonding masonry together. This is a normal condition due to shrinkage in either the mortar or masonry. Some cracking is common and should be expected with certain tolerances. Cracks in brick veneer greater than 1/4" in width will be repaired by pointing or patching within the first year. An exact color match can not be assured. The David Cutler Group is not responsible for color variations, but will match as closely as possible. Color variations cannot be determined with the mortar joint and the brick work. Note: fireplace mortar is "green" and needs to be cured and tempered before being subjected to severe heat. When first used, temper your fireplace with 2 or 3 small fires.

16. PAINT

Colorfastness under conditions of exposure to sun and weather can not be maintained, although wood surfaces will still have the protection of paint. Checks, cracks and peeling are common items due to cases other than paint or its application (e.g. allowing lawn sprinkler to hit painted area will greatly reduce the life expectancy of painted area involved). Variations in wood grain absorb the same stain differently. These variations can not be controlled. Exterior paint will only be warranted for a period of one (1) year.

In Developments where touch-up paint of the 90 day drywall repairs is offered - The David Cutler Group will touch-up areas repaired by the drywall contractor with the **ORIGINAL BUILDER'S COLOR ONLY!** Any areas that have been repainted with custom colors - post settlement - **WILL NOT BE PAINTED.**

Due to variations in wall textures and paint overlay, the touch-up areas may not match perfectly. These variations are inevitable and can not be controlled.

17. PLUMBING

It is not uncommon for faucets to begin dripping after 60 days or so in new homes. The washers have to be reset and it is a function of homeowner maintenance. It is not the responsibility of the David Cutler Group to unclog toilets and/or garbage disposals. It is the homeowner's responsibility to properly drain all pipes to outside hose bibs. If pipes are not properly drained this may result in bursting which is not the responsibility of the David Cutler Group to repair or replace. Plumbing fixtures that are scratched and/or tarnished that are not noted on the pre-inspection list are not the responsibility of the David Cutler Group. The David Cutler Group is responsible for the integrity of the sewer lateral from the house to the street for two (2) years. In the event the sewer lateral cracks or breaks after two (2) years it is the responsibility of the homeowner to have it repaired.

18. RESILIENT / HARDWOOD / LAMINATE FLOORING

High heels and furniture can cause damage and identification marks on resilient, laminate and hardwood floors. Expansion and contraction of resilient materials may cause butt joints in the flooring to show. These are characteristic of the material and do not affect the inherent quality of the floor. The David Cutler Group will only be responsible for defects noted on the pre-inspection list. These defects will be patched. **The David Cutler Group does not replace vinyl floors.**

a. Nails popping through resilient flooring will only be repaired if the nail has broken through the flooring, if it is determined that a repair is needed, it will be patched and not replaced.

Flooring imperfections, depressions or crowns not exceeding 1/4 inch over 32" are common and not covered.

Separations between finished floor boards is normal due to natural settlement and humidity changes, separations not exceeding 1/4" are not covered.

b. Carpet spotting or fading on your floor covering that is not noted on the pre-inspection list is not the responsibility of the David Cutler Group.

Due to the structural makeup of your new home, evidence of floor unevenness may occur where the wood floor members meet the structural steel members of the first floor system. It is obvious that wood floor members shrink and settle at a different scale than the structural steel floor members. As any new home continues to settle these areas will eventually settle into their final position, with only minor deviation depending on outside temperature change. This is an inherent characteristic of lumber and steel, and will be found in the floor system of any new home that uses both of these materials simultaneously.

19. SHINGLE ROOFS

Solid colored roofs may show some variation in shade at certain angles of reflection. This is caused by the varying absorption and reflection of light from the minute granules that make up the surface of the shingles. The position of the granules cannot be controlled by the manufacturer. The roof is warranted for a period of one (1) year against leaks and or shingles being blown off.

SIDING: Damage to siding must be addressed on the pre-inspection list. Any siding that may become loose will be covered for a period of one (1) year.

20. STUCCO

Hairline cracks are not unusual in stucco wall surfaces. This may result in leakage if not properly maintained by the homeowner. Sunlight may bleach some stucco pigments changing the appearance. Mud splattering on the lower part of the walls is responsible for most discoloration. It is the homeowner's responsibility to make sure that the dirt is covered by either straw, grass or mulch to alleviate dirt stains. Stucco will appear darker when wet. The homeowner should seal their stucco within the first year with an approved waterproofing wall sealant. This must be done to maximize the longevity of the stucco. This will minimize cracks in the stucco, water penetration and discoloration. The stucco application is warranted for one year.

21. WINDOWS

The David Cutler Group will only honor cracked, scratched, broken, or chipped sashes or glass if so noted on the pre-inspection list. If the windows are tinted by the homeowner or contractor for the homeowner and this results in cracking of the window or failure of the seal, it is the responsibility of the homeowner to replace window(s). The David Cutler Group will not replace any window(s) that has a broken seal if the window has been tinted by the homeowner or contractor for the homeowner. If it is determined by The David Cutler Group that a window will be replaced due to a manufacture or installation defect, the cost for any aftermarket glass tinting will be considered homeowner responsibility.

CONDENSATION & FROST: Condensation and frost on windows is caused by temperature differences between the interior and the exterior of the home, as well as the personal living habits of the occupants. These conditions are beyond the control of the David Cutler Group and will not be considered as a defect.

22. WOOD CRACKS

Wood will shrink during the drying-out process of your home, and it is a natural characteristic of wood to continue to expand and contract with the changing humidity. The joints of paneled doors, mitered casings, mitered crown molding and areas where drywall and molding meet, as well as solid paneling may open up. This is normal; restoration in appearance is a function of homeowner maintenance.

23. WOOD PRODUCTS

Wood will vary in graining and will expand and contract as atmospheric conditions change. The variations appearing in doors, cabinets, paneling, floors, baseboards, jambs, exterior trims, exterior doors, railings and decks should be expected. They do not affect the house structurally. At the next painting, open joints can be filled and resealed. Stained woods, wood cabinets, paneling, and doors all have variations in wood grain. Minor warpage of wood doors and cabinet doors frequently occurs. These variations cannot be controlled.

INTERIOR WOOD AND DOORS

Wood cabinets, hardwood floors, paneling, doors and wood trim all have variations in wood grains and color. As the different woods age these variations may become greater or lesser and may become more pronounced in stained trim homes. These variations cannot be controlled. Interior doors expand and contract with the seasons and may bind within the jambs. A simple shaving of the door by the homeowner will control this natural process.

24. WOODED AREA

On wooded areas the builder will use reasonable care to keep as many trees as possible. Due to construction, working conditions, the size of construction equipment, and the many utility lines necessary to build your home, it is necessary to remove many of the trees. Trees will not be removed after the foundation has been started unless they interfere with construction, utility lines or final grading. The builder shall not be required to well trees that are not removed. Following settlement, the builder will not be responsible for the removal of dead trees. This is the responsibility of the homeowner.

25. FIREPLACES

a. A minimal amount of water entering the chimney flue and surfacing within the firebox is a common occurrence during wind swept rains and is not covered.

b. While all homes are insulated to comply with national and municipal codes and all measures are taken to prevent drafts and heat loss, it is a common occurrence to experience drafts and heat loss at the fireplace. These drafts can be minimized with the installation of glass fireplace doors but can not be eliminated and are not covered.

26. GENERAL

a. Chips, cracks, scratches, dents, scuffs and mars in tile, countertops, woodwork, window frames, wood floors, vinyl floors, walls, marble, glass, porcelain, brick, mirrors, plumbing fixtures, tubs, shower pans, vanity tops, vanity cabinets, kitchen cabinets, built-ins, railings, rail parts and spots on carpeting (if included in home) that are not noted on the pre-inspection list, are not the responsibility of the builder. Oil spots on marble will occur if oil is allowed to stand and penetrate. The best protection is regular cleaning and care.

b. Frozen pipes or sillcocks caused by failure to close crawl space vents in freezing weather or by failure to drain sillcocks and close cut-off valves are not the responsibility of the builder.

c. Due to the extreme amount of wind and rainstorms in this area, we recommend the installation of a storm door. The storm door will provide waterproofing, added insulation, and safety to your family. Installation is in your best interest.

d. If replacement has been determined by the David Cutler Group to be the type of corrective action necessary to adequately repair a deficiency, it shall be understood that depending on the material being replaced, in most instances, the replacement will not match in color and texture. The David Cutler Group will, therefore, not be responsible for any color mismatch due to replacements or manufacturers availability to match the initial product.

For the reasons previously mentioned, replacements will be considered as a suitable means of corrective measure only as a last resort. Examples of the situation are as follows:

Deficiencies in flooring and carpeting	Deficiencies in concrete/stucco
Deficiencies in roofing and siding	Deficiencies in cabinet or vanity doors
Deficiences in ceramic tile	

DAVID CUTLER GROUP

LARGEST PRIVATELY HELD RESIDENTIAL BUILDER IN THE LEHIGH VALLEY

LIMITED WARRANTY
HOME WARRANTY AGREEMENT

1. BUILDERS NAME AND ADDRESS: THE DAVID CUTLER GROUP

2. PURCHASERS NAME: [redacted]

3. ADDRESS OF HOME: [redacted]

4. PURCHASE PRICE OF HOME: [redacted]

5. COMMENCEMENT DATE (FIRST OCCUPANCY OR FINAL SETTLEMENT, WHICHEVER OCCURS FIRST). [redacted]

THE PURCHASER AND BUILDER HAVE SIGNED THIS AGREEMENT ON THIS [redacted] DAY OF [redacted]

BUILDER: THE DAVID CUTLER GROUP

BY: _____

PURCHASER(S): _____

_____

CONSEQUENTIAL DAMAGES

Consequential damages are excluded. (Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitation or exclusion may not apply to you).
Implied warranties of the builder will last only as long as the term of this written warranty. Some states do not allow limitations on how long an implied warranty lasts, so this limitation may not apply to you.

THIS WARRANTY IS IN LIEU OF ALL OTHER EXPRESS WARRANTIES HERETOFORE MADE BY SELLER OR IT'S AGENTS:

1. Seller shall assign to the Buyer all manufacturer's guarantees and service warranties held by Seller, including but not limited to Roof, Plumbing, Heating, and Air Conditioning, and kitchen appliances. Seller warrants said premises to be free of structural or mechanical defects for a period of one (1) year from the date of settlement, and Seller shall be responsible for the correction of such defects found at the premises during said one (1) year period, and shall act with reasonable promptness to repair, reconstruct or otherwise correct at Seller's sole discretion such defects upon receipt of notice in writing from Buyer of any such structural or mechanical defects, and after Seller inspects same at said premises.

2. Coverage During Second Year. During the second year after the commencement date, the Builder continues to warrant that the home will be free from major construction defects and that the plumbing, electrical, heating and cooling systems will perform according to the Approved Standards, unless their failure is the result of a defect in an appliance, fixture, or item of equipment. A major construction defect is actual damage to the load-bearing portion of the home (including damage due to subsidence, expansion or lateral movement of soil from causes other than flood or earthquake) which affects its load-bearing function and which vitally affects (or is imminently likely to produce a vital effect on) the use of the home for residential purposes.

3. In addition, Seller specifically warrants as follows, but not in limitation of the general warranty stated above:

a. Your home has been constructed in accordance with the accepted home building practice of this locality and prior to delivery, has been inspected by our trained personnel as well as the building Inspector.
b. We guarantee against defects in workmanship and materials for a period of one (1) year from the date of settlement to the following items:
   1. the plumbing system
   2. the heating system
   3. the roof against leaks
   4. the electrical system
c. The builder shall be liable only to the limit of the manufacturer's warranties of the following items used in the construction of your home:
   1. Furnace
   2. Hot water heater
   3. Air Conditioner
   4. Dishwasher
   5. Kitchen appliances
d. Builder does not assume responsibility for decorating over newly installed interior walls.

DAVIDCUTLERGROUP

LARGEST PRIVATELY HELD RESIDENTIAL BUILDER IN THE DELAWARE VALLEY

LIMITED WARRANTY
HOME WARRANTY AGREEMENT

e. If at any time within the warranty period, any persons besides those contracted by THE DAVID CUTLER GROUP, or representing the manufacturing or equipment, tampers, repairs, or adjusts any items with regard to the home, declares the warranty on that system to be null and void.

f. This warranty is not transferable. Any obligation under it terminates if the property is resold or shall cease to be occupied by the homeowner to whom it is originally issued.

g. All repairs and adjustments will be confined to the limits set forth in this warranty.

h. *Other Insurance.* In the event the Builder repairs or replaces, or pays the cost of repairing or replacing, any defect covered by this warranty for which you are covered by other insurance, you must, upon request by the Builder, assign the proceeds of such insurance to the Builder to the extent of the cost to the Builder of such repair or replacement.

i. *Other Rights.* This warranty gives you specific legal rights. You may also have other legal rights which vary from state to state. This agreement does not affect any rights of you or the Builder under any other express or implied warranty.

j. *Independence from Purchase Contract.* This agreement is independent of the contract between you and the Builder for the construction of the home and/or its sale to you. Nothing contained in that contract or any other contract between you and the Builder can restrict or override the provisions of this agreement. You and the Builder may contract for additional standards or requirements, but only the Approved Standards are applicable under this agreement.

k. *General Provisions.* Should any provision of this agreement be deemed by a court of competent jurisdiction to be unenforceable, that determination will not affect the enforceability of the remaining provisions. This agreement is to be binding upon the parties, their heirs, executers, administrators, successors, and assigns. Use of one gender in this agreement includes all other genders; and use of the plural includes the singular, all as may be appropriate. This agreement is to be covered by and construed in accordance with the laws of the state in which the home is located.

l. *Amendments.* This agreement cannot be changed or altered in any way.

EXCLUSIONS

The following are not covered by the warranty:

1. Defects in outbuildings (except that outbuildings which contain the plumbing, electrical, heating, or cooling systems serving the home covered), swimming pools and other recreational facilities; driveways, walkways; patios; boundary walls, retaining walls which are not necessary for the home's structural stability; fences; landscaping (including sodding, seeding, shrubs, trees and plantings); off-site improvements; or any other improvements not a part of the home itself.

2. Bodily injury, damage to personal property, or damage to real property which is not part of the home which was included in the purchase price filled in on the preceding page.

3. Any damage to the extent it is caused or made worse by:
   - Negligence, improper maintenance or improper operation by anyone other than the Builder or his employees, agents or subcontractors; or
   - failure of anyone other than the Builder or his employees, agents or subcontractors to comply with the warranty requirements of manufacturers or appliances, equipment or fixtures; or
   - failure to give notice to the Builder of any defect within a reasonable time; or
   - changes of the grading of the ground by anyone other than the Builder, or his employees, agents or subcontractors.

4. Any defect in, or caused by, materials or work (including, but not limited to, items shown on any attached "Addendum to Home Warranty Agreement") supplied by anyone other than the Builder, or his employees, agents or subcontractors.

5. Normal wear and tear or normal deterioration.

6. Loss or damage not caused by a defect in the construction of the home by the builder, or his employees, agents or subcontractors, but resulting from accidents or acts of God, including, but not limited to: fire, explosion, smoke, water escape, changes which are not reasonably foreseeable in the level of the underground table, glass breakage, wind storm, hail, lightning, falling trees, aircraft, vehicles, flood and earthquake.

7. Any defect caused by soil movement for which compensation is provided by legislation or which is covered by other insurance.

8. Insect damage.

9. Any loss or damage which arises while the home is being used primarily for non-residential purposes.

10. Any defect which does not result in actual loss or damage.

11. Any decorating installed over new walls for period of the warranty.