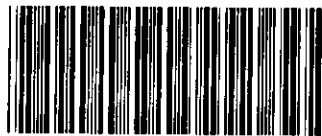


HAMILTON COUNTY
COMMON PLEAS COURT

Brian Oswald, *et al.* : CASE NO.: A 0508601
: :
Plaintiffs, : JUDGE DENNIS S. HELMICK
: :
v. :
: DEFENDANT DOUGLAS MEYER'S
Meyer Builders/Douglas Homes, Ltd., *et al.* : MOTION TO DISMISS AND
: MEMORANDUM
Defendants. : IN SUPPORT OF MOTION
: :

Defendant Douglas H. Meyer moves to dismiss Plaintiff Brian L. Oswald and Angela Oswald's (collectively, hereinafter, "the Oswalds") and Constance Smith's ("Smith's") Complaint on the grounds that the Oswalds and Smith fail to state a claim upon which relief can be granted with respect to him, pursuant to Ohio Rules of Civil Procedure 12(B)(6). Mr. Meyer is not a party to the contract upon which the Oswalds and Smith base their lawsuit, nor have they pled any other grounds for bringing him into the lawsuit.

The reasons for granting this Motion are stated more fully in the accompanying Memorandum in Support.



D66061837

Respectfully submitted,

ARONOFF, ROSEN & HUNT

Patrick M. O'Neill (0062519)
Edward P. Akin (0074357)
2200 U.S. Bank Tower
425 Walnut Street
Cincinnati, Ohio 45202
Telephone: (513) 241-0400
Facsimile: (513) 241-2877
Attorney for Defendant Douglas H. Meyer

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY, OH

2005 NOV 14 P 2:41

FILED

MEMORANDUM IN SUPPORT

Plaintiffs Brian L. Oswald, Angela M. Oswald (collectively, hereinafter, “the Oswalds” and Constance Smith’s (“Smith’s”) Complaint names Douglas H. Meyer as a defendant, but fails to state any claim against him individually. The Oswalds’ and Smith’s claims all lie against Meyer Builders/Douglas Homes, LTD. (“Meyer Builders”), not Mr. Meyer. As a matter of law, their Complaint fails to state a colorable claim against Mr. Meyer, because Mr. Meyer was not a party to the contract between the Oswalds, Smith and Meyer Builders. The Court should therefore dismiss Mr. Meyer individually from this lawsuit.

I. FACTS

The Oswalds and Smith jointly purchased a home from Meyer Builders, an Ohio LLC in good standing. (See Secretary of State filing, attached as Exhibit “A” hereto). Although their Complaint names Douglas H. Meyer as a defendant, they did not contract directly with Mr. Meyer, nor did they pay any money directly to Mr. Meyer with regard to the transaction in dispute.

Even cursory examination of the parties’ contract reveals Mr. Meyer did not even execute it on behalf of Meyer Builders. (See Agreement of Sale, attached hereto as Exhibit “B”). Rather, Kerry Seitel, an employee of Meyer Builders, negotiated and signed the contract in her capacity as Sales Representative. (*Id.*) Indeed, the only reference the Oswalds and Smith make to Mr. Meyer individually in their Complaint is both cryptic and incorrect. They note that “the fictitious business and trade name of Douglas Homes . . . Appears on the Contract to Purchase,” but incorrectly infer that this somehow furnishes grounds to name him as an individual defendant.” In fact, Mr. Meyer is a Member in the Limited Liability Company involved in this dispute, but that does not provide any foundation for naming him as an individual defendant here.

II. ARGUMENT OF LAW

A court should dismiss a complaint (or discrete portion thereof) where said complaint (or portion thereof) does not and cannot state a legally cognizable claim. Ohio R. Civ. P. 12 (B)(6).

A. A Contract Only Binds Parties Thereto, and Those in Privity With the Parties.

The Oswalds and Smith attempt, in effect, to bind Douglas Meyer to a contract which nowhere identified him as a party to the agreement. This clashes with well-settled Ohio law. Contracts only bind the parties thereto, and parties in privity with them. *See, e.g., Samadder v. DMF of Ohio*, 154 Ohio App.3d 770, 778, 798 N.E. 2d 1141, 1147 (Ohio Ct. App. 10th Dist. 2003). The Oswalds and Smith do not and cannot plead that the contract between themselves and Meyer Builders somehow made Douglas Meyer a party, or conferred upon Mr. Meyer any rights or duties. Nor have they even argued that Mr. Meyer was in privity with any of the parties to that contract. Accordingly, the Court should dismiss Mr. Meyer from this lawsuit.

In another residential home sale case, the Court of Appeals, Ninth District, held that home purchasers could not state a claim against the individuals who sold their home to the vendor. *See Garvey v. Clevidence*, No. 22143, 2004 WL 2806339, 2004 - Ohio-6536 (Ohio Ct. App. 9th Dist. Dec. 8, 2004) (attached hereto as Exhibit "C"). The *Garvey* court held that "[b]ecause the [prior owners] were neither in privity with the [plaintiffs/appellants], nor a party to the [plaintiffs/appellants'] purchase agreement, they had no duty to disclose any defects" to plaintiffs/appellants. *Id.* at *3, 2004-Ohio-6536 at ¶ 14. Reasoning that the home buyers "could not set forth facts sufficient to entitle them to recovery" on their contract and fraud-based claims, the Court of Appeals held that the trial court properly dismissed these claims pursuant to Rule 12(b)(6). *Id.* Applying this standard to the instant case, it is clear that Douglas Meyer was neither a party to, nor in privity with any of the parties to the agreement between the Oswalds, Smith and Meyer Builders. Accordingly, the Oswalds and Smith have not and cannot state any claim against him

B. A Corporate Officer or LLC Member Cannot Be Held Individually Liable Where He Neither Signed the Instrument in His Capacity Nor Otherwise Indicate Intent to Be Bound Personally.

The Oswalds and Smith improperly seek, without legal foundation, to hold Douglas H. Meyer individually liable in this case. Their Complaint principally sounds in breach of contract and breach

of warranty. It therefore relies heavily on written instruments which neither benefit nor bind Mr. Meyer individually. Here, the plaintiff home buyers actually contracted with Meyer Builders, which has been separately named as a defendant in this suit (*See* Exhibit “B” attached hereto.) While Mr. Meyer serves as an officer of Meyer Builders, it remains well-settled Ohio law that an individual cannot be held personally liable for the alleged acts of a corporation or Limited Liability Company (“LLC”) by mere virtue of his/her status as a corporate officer. Instead, the corporate officer must either intentionally or inadvertently bind himself personally, through affirmative acts. And such acts most often consist, in significant part, of an actual signature by said officer unaccompanied by any indication that he is signing in his representative capacity. Stated differently, such personal liability ordinarily will not lie if the officer’s manner of signature unambiguously indicates he is “wearing the hat” of a corporate or LLC officer. *See, e.g., Belvedere Condominium Unit Owners’ Assn v. R.E. Roark Cos.*, 67 Ohio St. 3d 274, 617 N.E.2d 1075 (1993); *State ex rel. Fisher v. Am. Courts, Inc.* 644 N.E. 2d 1112, 1114 (Ohio Ct. App. 8th Dist. 1994). *Dietz-Britton v. Smythe, Cramer, Co.*, 139 Ohio App. 3d 337, 352, 743 N.E. 2d 960 (Ohio Ct. App. 8th Dist. 2000). Here, the Oswalds and Smith cannot point to any signature suggesting Mr. Meyer intentionally or inadvertently bound himself personally in this matter, or otherwise acted on his own individual account in the underlying transaction.

While Ohio Courts have held that a corporate officer can face personal liability if he or she executes an agreement in his/her personal capacity, such plainly was not the case here. As the Court of Appeals, Second District held, “[w]hether a corporate officer is personally liable upon a [corporate] contract depends upon the form of the promise and the *form of the signature*.” *Spicer v. James*, 21 Ohio App. 3d 222, 223 (Ohio Ct. App. 2d Dist. 1985) (emphasis added). Here, Mr. Meyer did not sign the sales agreement. Accordingly, the Oswalds and Smith have no legal grounds to hold him personally liable. Moreover, there is nothing in the content of the parties’ contract to indicate any intent to bind Mr. Meyer personally, irrespective of the signature issue.

In addition, the Oswalds and Smith's Complaint fails to plead that they ever dealt directly with Mr. Meyer in any manner which could conceivably subject him to personal liability under Ohio law. Rather, the Oswalds and Smith simply misconstrue letterhead on the first page of the contract, which precedes the substantive portions of the contract, and bears no legal significance. As noted, the parties' Agreement of Sale was in fact negotiated and signed by Kerry Seitel, an employee of Meyer Builders/Douglas Homes, Ltd. The Oswalds and Smith do not and cannot allege that Ms. Seitel is either a legal surrogate for Mr. Meyer, or Mr. Meyer's personal agent.

C. Alternatively, The Statute of Frauds Bars Any Effort to Hold Douglas Meyer Individually Liable Here.

Even if one assumed for argument's sake that The Oswalds and Smith seeks to hold Mr. Meyer liable as a guaranty or surety for Meyer Builders, such an agreement would have to be in writing, signed by the party to be charged, *viz.* Mr. Meyer. *See*, Ohio Revised Code §1335.05. Mr. Meyer cannot be a guarantor or surety for Meyer Builders where he never signed the Agreement of Sale. Moreover, absolutely no provision contained therein indicates the parties bargained for him to personally guarantee Meyer Builder's performance.

D. The Oswalds and Smith State No Claim Against Doug Meyer, "d/b/a Douglas Homes."

Finally, the Oswalds and Smith cannot possibly state a claim against any defendant styled as "Douglas H. Meyer d/b/a Douglas Homes." In the first place, Douglas H. Meyer does not use the "fictitious business and trade name of Douglas Homes" as a personal d/b/a name or alias. The Oswalds and Smith have brought forth no evidence of such alleged use.

The mere fact that the name "Douglas Homes" appears on the parties' contract will not give rise to an inference that Mr. Meyer uses "Douglas Homes" as his personal d/b/a name. As noted above, Mr. Meyer did not sign the Agreement of Sale. Moreover, in the one document which the Oswalds and Smith attached to their Complaint which Douglas Meyer did sign, the General Warranty Deed to his lot, Mr. Meyer plainly signed in his capacity as an officer of "Meyer Builder/Douglas

Homes, Ltd. an Ohio Limited Liability Company.” (See General Warranty Deed, attached hereto as Exhibit “C”.)

This issue is ripe for disposition under Rule 12(B)(6), because the Oswalds and Smith cannot possibly state a claim against Douglas Meyer d/b/a Douglas Homes, because they have sued upon written instruments, and these instruments identify no such party. Accordingly, The Oswalds’ and Smith’s pleadings against “Douglas Meyer, d/b/a Douglas Homes” state no legally cognizable claim under contractual or warranty based theories. Instead, they serve merely to increase Plaintiffs’ perceived leverage against Meyer Builder/Douglas Homes, the real party to the contract, and to clutter up this proceeding with “ghost” defendants

III. CONCLUSION

The Oswalds and Smith either mistake Mr. Meyer for the LLC which shares, in part, his surname, or else labor under the mistaken impression that merely serving as an LLC officer renders one individually liable for acts undertaken on behalf of such entity. In fact, where they can point to no contract with Mr. Meyer, there is no basis in fact nor any foundation laid in their pleadings for holding him individually liable. The Court should, therefore, dismiss Mr. Meyer from this lawsuit if the Oswalds and Smith refuse to do so voluntarily. Douglas Meyer further moves the Court to strike paragraph 5 of the Oswalds’ and Smith’s Complaint and those portions of the Complaint caption which assert allegations against or otherwise implicate as a defendant the non-existent entity “Douglas Meyer d/b/a Douglas Homes.”

Respectfully submitted,

ARONOFF, ROSEN & HUNT



Patrick M. O'Neill (0062519)

Edward P. Akin (0074357)

2200 U.S. Bank Tower

425 Walnut Street

Cincinnati, Ohio 45202


Telephone: (513) 241-0400

Facsimile: (513) 241-2877

Attorney for Defendant Douglas H. Meyer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of Defendant Douglas Meyer's Motion to Dismiss has been served upon Courtney Caparella, Esq., *Attorney for Plaintiffs, Brian L. & Angela M Oswald and Constance Smith*, Lyons & Lyons, 8310 Princeton-Glendale Road, West Chester, Ohio 45069, via U.S. Ordinary Mail, on this 14th day of November 2005.


Edward P. Akin

OHIO SECRETARY OF STATE
PROCESSING STATEMENT
12/08/95

CORPORATION:

MEYER BUILDERS - DOUGLAS HOMES LTD.

05349-0087 CHARTER NUMBER: 924597
ROLL AND FRAME: 5349-0087

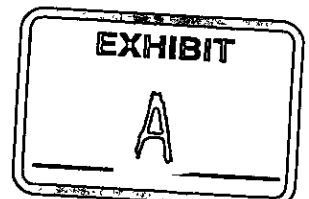
DOCUMENT NUMBER	CODE	FEE
95120723901	LCA	85.00
95120723901	MIS	10.00

057688

RETURN TO: RITTER & RANDOLPH
ATTN H D HEMMERLE
105 E FOURTH ST STE 700
CINCINNATI OH 45202

TOTAL : 95.00

0454



05349-0089



The State of Ohio

Bob Taft

Secretary of State

924597

❖ Certificate ❖

It is hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous

Filings; that said records show the filing and recording of: LCA MIS

of:

MEYER BUILDERS - DOUGLAS HOMES LTD.

United States of America
State of Ohio
Office of the Secretary of State

Recorded on Roll 5349 at Frame 0089 of
the Records of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State at

Columbus, Ohio, this 7TH day of DEC

A.D. 19 95 .



Bob Taft
Bob Taft
Secretary of State

05349-0089

Prescribed by
Bob Taft, Secretary of State
30 East Broad Street, 14th Floor
Columbus, Ohio 43266-0418
Form LCA (July 1994)

Approved AHT
Date 12-7-95
Fee \$85.00
9512072390

ARTICLES OF ORGANIZATION

(Under Section 1705.04 of the Ohio Revised Code)
Limited Liability Company

The undersigned, desiring to form a limited liability company, under Chapter 1705 of the Ohio Revised Code, do hereby state the following:

FIRST: The name of said limited liability company shall be _____

Meyer Builders - Douglas Homes Ltd.
(the name must include the words "limited liability company", "limited", "Ltd" or "Ltd.")

SECOND: This limited liability company shall exist for a period of 30 years or until the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member, unless there is unanimous consent of all remaining members to continue.

THIRD: The address to which interested persons may direct requests for copies of any operating agreement and any bylaws of this limited liability company is:

5917 Harrison Avenue
(street or post office box)
Cincinnati, OH 45248
(city, village or township) (state) (zip code)

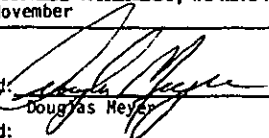
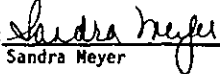
Please check this box if additional provisions are attached hereto

Provisions attached hereto are incorporated herein and made a part of these articles of organization.

05349-0090

FOURTH: Purpose (optional)

IN WITNESS WHEREOF, we have hereunto subscribed our names, this 30 day of
November, 19 95.

Signed: <u></u>	Signed: <u></u>
Douglas Meyer	Sandra Meyer
Signed: _____	Signed: _____
Signed: _____	Signed: _____

(If insufficient space for all signatures, please attach a separate sheet containing additional signatures)

INSTRUCTIONS

1. The fee for filing Articles of Organization for a limited liability company is \$85.00.
2. Articles will be returned unless accompanied by a written appointment of agent signed by all or a majority of the members of the limited liability company which must include a written acceptance of the appointment by the named agent.
3. A limited liability company must be formed by a minimum of two persons.
4. Any other provisions that are from the operating agreement or that are not inconsistent with applicable Ohio law and that the members elect to set out in the articles for the regulation of the affairs of the limited liability company may be attached.

[Ohio Revised Code Section 1705.04]

05349-0081

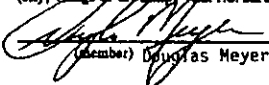

Prescribed by
Bob Taft, Secretary of State
30 East Broad Street, 14th Floor
Columbus, Ohio 43266-0418
Form LCO (July 1994)

ORIGINAL APPOINTMENT OF AGENT
(for limited liability company)

The undersigned, being at least a majority of the members of Meyer Builders - Douglas Homes Ltd., hereby appoint
Douglas Meyer (name of limited liability company),
Douglas Meyer (name of agent) to be the agent


upon whom any process, notice or demand required or permitted by statute to be served upon the limited liability company may be served. The complete address of the agent is:

5917 Harrison Avenue
(street address)
Cincinnati, Ohio 45248
(city, village or township) (state P.O. Box addresses are not acceptable) (zip code)

 (member) Douglas Meyer
 (member) Sandra Meyer
(member) (member)

(If insufficient space for all signatures, please attach a separate sheet containing additional signatures)

ACCEPTANCE OF APPOINTMENT

The undersigned, named herein as the statutory agent for Meyer Builders-Douglas Homes Ltd.,
 hereby acknowledges and accepts the
appointment of agent for said limited liability company.

Agent's Signature

INSTRUCTIONS

1. Articles of organization must be accompanied by an original appointment of agent R.C. 1705.06(B).
2. The agent for a limited liability company must be an individual who is a resident of Ohio, an Ohio corporation, or a foreign corporation holding an Ohio license as a foreign corporation. R. C. 1705.06(A)
3. An original appointment of agent form must be signed by at least a majority of the members of the limited liability company. R.C. 1705.06(B)

05349-0082

RITTER & RANDOLPH
ATTORNEYS AT LAW

DANIEL F. RANDOLPH*
MARY ANN JACOBS
LINDA D. WALDNER
LORETTA M. HELFRICH*
DAVID L. KERR
MARK D. HEMMERLE*

*ALSO ADMITTED IN KENTUCKY
*ALSO ADMITTED IN COLORADO
*ALSO ADMITTED IN INDIANA

JOHN H. RITTER - (1917-1993)
HOWARD P. SHUETTS
ELLIOTT POLANIECKI
OF COUNSEL

SUITE 700
106 EAST FOURTH STREET
CINCINNATI, OHIO 45202
TELEPHONE (616) 381-8700
TELEPHONE (616) 241-8748
FACSIMILE (616) 381-0014

December 6, 1995

VIA FEDERAL EXPRESS

Bob Taft
Secretary of State
14th Floor
30 East Broad Street
Columbus, Ohio 43266-0418

Re: Limited Liability Company
R&R File No. 4026

TO THE CLERK:

Enclosed please find the original and two copies of the following documents for filing a limited liability company in the name of Meyer Builders - Douglas Homes Ltd.:

1. Articles of Organization
2. Original Appointment of Agent.

Enclosed please also find the \$85 filing fee and the additional \$10 to expedite this service.

Please feel free to contact me if you have any questions on the enclosed information.

Very truly yours,

RITTER & RANDOLPH

Mark D. Hemmerle

MDH/jle

Enclosures

cc: Douglas and Sandy Meyer (w/o encls.)

CORRESPONDENCE



Douglas H. Meyer, Builder
5517 Harrison Avenue • Cincinnati, Ohio 45248 • (513) 574-1726 • Fax (513) 596-2343

AGREEMENT OF SALE

(Residence to be constructed or under construction)

Revised 10/02

This Agreement of Sale is made as of this 4th day of September 2003 by and between Meyer Builders/Douglas Homes, Ltd., herein referred to as "Seller" and Angela A. Oswald Brown & Constance M. Smith herein referred to as "Buyer". Seller and Buyer agree as follows:

1. **Description, price and terms:**

The Seller agrees to sell and the Buyer agrees to buy a house constructed by the Seller, described as:

Plan: Omni Elevation Type Lot # 15 Subdivision Creekside Meadows
City of/Twp Liberty County Butler State Ohio Zip 45044
in accordance with the plans and specifications and the Customer Options and Final Selections signed by the Buyer and on file with the Seller (subject to tolerances and deviations customary to the building industry). Seller reserves the right to make changes in the plans and specifications required by building codes and for normal architectural design improvements.

2. **Purchase Price:**

Buyer shall pay to Seller the following amounts:

Base price of house, including lot:	\$ <u>309,500.⁰⁰</u>
Additional or optional items (see selection sheet):	\$ <u>42,609.⁰⁰</u>
Total Sale Price:	\$ <u>352,109.⁰⁰</u>

Said sale price shall be paid as follows:

A. Deposit (due upon execution of this Agreement, non-refundable).	\$ <u>200.⁰⁰</u>
B. Remainder of non-refundable Deposit (TO BE PAID AS FOLLOWS):	\$ <u>13,000.⁰⁰</u>
<u>Within 14 Days - Key Bank</u>	
C. Balance due at Closing:	\$ <u>337,109.⁰⁰</u>

* Balance is subject to change, should a "Change Order" be authorized by both Buyer and Seller. The Deposit is non-refundable. The deposit is Seller's fee and will not be refunded in any way.

3. **Pro-rations:**

Seller shall pay the first real estate tax bill due and payable after the deed is delivered. Additionally, real estate taxes and homeowners' association fees, if any, shall be pro-rated through closing. Buyer shall be responsible for the payment of any homeowners' association capital contributions associated with the real estate.

4. **Attachments/Addendums/Exhibits:**

The documents described below and attached hereto shall be deemed an integral part of this "Agreement of Sale", as well as other Exhibits described herein: Customer Options, Final Selections, Change Order Policy, Visitation Policy, Option for Seed & Straw, Industry Standards Manual and Restrictive Covenants. Others: Amendment A

5. **Delivery:**

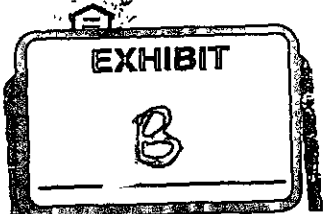
Seller shall commence construction of said residence as soon as practicable after Buyer shall have (A) paid to Seller the sums specified in (A) and (B) of Paragraph 2 hereunder, (B) completed the Customer Selection Sheet, and (C) made adequate financial arrangements satisfactory to Seller. EXCEPT AS PROVIDED IN PARAGRAPH 18, BUYER AGREES TO COMPLETE SAID ITEMS WITHIN TWO (2) WEEKS AFTER ACCEPTANCE OF THIS AGREEMENT BY SELLER. (Unless stated otherwise.) Seller shall complete construction of said residence as soon as practicable provided that nothing contained herein shall render Seller liable for any delay caused by failure of any subcontractor or materialman, fires, strikes, acts of public authorities, inclement weather delays or defaults by public or private carriers, shortages of materials or labor, acts of God, casualties or other causes beyond the control of Seller.

Construction time shall be approximately four (4) to five (5) months from start, with an estimated completion date to be given at the pre-construction meeting, weather permitting, but for purposes of complying with the Interstate Land Sales Act, in no event later than two (2) years from the date of this Agreement of Sale.

6. **Scope of Services:**

Buyer employs Seller to construct upon property as identified herein and perform all services and furnish all materials necessary to complete the residence as set forth herein and in the Customer Selection Sheet and other policies and permits as identified herein and attached and thereby made part of this Agreement of Sale.

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16

Amendments:

The parties hereto agree that there shall be no amendments or additions to this Agreement of Sale or to the work described herein unless both parties mutually agree in writing to such changes, additions or alterations and extra costs. Additional charges for changes, additions or alterations will be included in the final sale price and become part of the written contract.

All changes, additions or alterations must be made through the office prior to implementing the change in the field. Seller reserves the right to deny any request for a change, addition or alteration or to require a deposit from Buyer. Absolutely no changes made in the field will be honored. Notwithstanding the above, in the event that Seller is unable to obtain from its usual or ordinary sources of supply, the exact materials specified in connection with the construction of the residence, Seller shall have the right to substitute materials of similar pattern, design and quality, provided such substitute materials are of equal or greater value to the items specified.

17.

Advertisement:

During the period of construction, Seller shall have the right to place a reasonably sized sign upon the premises which advertises the Seller or its builder. Buyer grants Seller the right to obtain and use photographs of the interior and exterior of the residence for publication and advertising purposes.

18

Visitation:

Due to the possibility of theft, damage from vandalism, and personal injury, Seller will lock homes under construction at 5:00 p.m. daily. Homes will not be open on weekends. Visitation must be scheduled through the sales representative within the guidelines established within the "Visitation Policy" which by this reference is attached and hereby made a part of this Agreement of Sale. Buyer hereby releases and agrees to hold Seller harmless from and against any claims, actions, alleged causes of actions, or losses sustained by Buyer or its invitee, arising out of or in any way connected with Buyer entering the premises prior to the closing. Unauthorized visits may result in a fine for trespassing.

19.

Selections:

Buyer agrees that all selections will be made within fourteen (14) days after acceptance of this Agreement of Sale by Seller, unless otherwise stated. Failure to finalize selections when requested can and will affect the completion date of the home. Selections are to be made through the sales representative in keeping with the guidelines established within the Selection Policy which is hereby attached and made a part of this Agreement of Sale.

20.

Radon:

Testing for radon gas shall not be conducted prior to closing since, to the best of the Seller's knowledge, such testing may not be reliable if it is conducted during the construction period or immediately after completion thereof. Seller has no expertise in the detection of radon gas or in the methods for reduction of radon gas once it has been detected. Seller therefore, makes no representations of any kind regarding the existence or absence of radon gas or any toxic substance in or around the residence. Buyer understands and acknowledges that Seller does not warrant that any radon gas related testing has been done in or around the premises, nor does Seller make any warranties, expressed or implied, regarding radon gas as it relates to the premises or the inhabitability thereof. Buyer releases Seller from any claim it may have of any kind against Seller in any way related to the existence of radon gas or other toxic substances in or around the residence property.

21.

Controversy:

Any controversy, claim or other matter arising out of or relating to this agreement, or breach thereof, other than a claim by Seller for specific performance and related damages, shall be determined in accordance with the construction industry arbitration rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The parties agree that Seller shall have the right to add its subcontractors and/or suppliers as parties to the arbitration. The parties further agree that the arbitration hearing shall be conducted either at the subject residence or the offices of the arbitrator, as determined by the arbitrator. Seller shall have the right, but not the obligation, to enter the residence at reasonable times prior to the arbitration hearing for purposes of conducting inspections and tests of the residence. All such controversies, claims or other matters regarding construction shall be resolved in accordance with the Home Builders Association of Greater Cincinnati Industry Standards Manual which establishes the standard by which Seller's Performance in connection with construction matters shall be governed.

22.

Legal Notice:

This is a legally binding contract. Read and understand all provisions prior to signing. If not understood, seek legal advice. The agreement and addendum(s) contain the entire agreement between the parties. No representation, promise or inducement not included in this agreement (whether made by an agent, employee or representative of Seller or otherwise), shall be binding upon any party hereto, including without limitation, representations regarding property boundaries, zoning, amenities in the subdivision or usage of adjoining property. No agent or employee of Seller has any authority to change or modify orally the terms and conditions of this

Revised 10/02

initial QMS BLO
QMS

B

agreement or addendum(s), and you should rely only upon the terms and conditions of this agreement and addendum(s) regarding your legal rights thereunder. Seller hereby specifically excludes all other express or implied warranties, including any implied warranty of merchantability, habitability or fitness for a particular purpose. This "Agreement of Sale" supersedes all previous contracts with respect to this property. Any other agreements, whether oral or written, are null and void. This "Agreement of Sale" shall be construed under the laws of the state where the premises is located.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

BUYER Angela M Donald 9/4/03 BUYER Brian L Donald 9-04-03
DATE DATE
BUYER UNITARY W/CONDO DATE 9/7/05
ADDRESS 66 Margaret Ave Hamilton Ohio 45015

PHONE NUMBERS/OFFICE: 701-5510 MR/MRS HOME: 887-8531 Mr/Ms.

SALES REPRESENTATIVE [Signature] 9-4-03
DATE

ACCEPTED BY AUTHORIZED REPRESENTATIVE OF SELLER _____ DATE

CO-OP INFORMATION: MEYER BUILDERS-DOUGLAS HOMES, LTD., AGREES TO PAY:

BROKER: _____

REALTOR: N/A

CO-OP COMMISSION: _____

04-01769
Return to
First Title Agency, Inc.
2483 Crowne Point Dr.
Cincinnati, Ohio 45241

SURVIVORSHIP DEED



BK: 7367 PG: 159

Meyer Builders-Douglas Homes, LTD., an Ohio Limited Liability Company of Hamilton County, Ohio, for valuable consideration paid, grants, with general warranty covenants, to Brian L. Oswald and Angela M. Oswald, husband and wife, of Butler County, Ohio, and Constance M. Smith, unmarried, of Butler County, Ohio, for their joint lives, remainder to the survivor of them, whose tax- mailing address is: 4947 Streamside Court, Hamilton, Ohio 45011, the following REAL PROPERTY:

Situated in the County of Butler in the State of Ohio and in the Township of Liberty,

Entire Lot 15 in Creekside Meadows Section 1, a subdivision located in Section 3, Town 2, Range 3, Liberty Township, Butler County, Ohio

The plat of said subdivision is located in Envelope 3570, Pages A through D of the Engineer's Records of Butler County, Ohio.

Said conveyance is subject to easements of record and the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements at Volume 7177, pages 1687 - 1708.

Subject to all easements and restrictions of record. 02020270000015

Subject to legal highways, easements and conditions of record.

All taxes and assessments becoming due and payable after the date hereof.

Meyer Builders - Douglas Homes, Ltd.,
an Ohio Limited Liability Company
BY: DHM Interests, Inc., an Ohio
Corporation Member, Managing Member

By:
Douglas H. Meyer, President

State of Ohio,

County of Hamilton } ss:

The foregoing instrument was acknowledged before me this 19th day of April, 2004, by Douglas H. Meyer, President of DHM Interest, Inc., an Ohio Corporation, Managing Member, of Meyer Builders - Douglas Homes, Ltd., an Ohio Limited Liability Company, on behalf of the company.

Kimberly S. Argentiero
Notary Public, State of Ohio
My Commission Expires
July 18, 2005

Notary Public - State of Ohio

This instrument was prepared by Meyer Builders - Douglas Homes, Ltd.
5917 Harrison Avenue, Cincinnati, Ohio 45248.

DATE 5/13/04
CONVEYANCE # 03794
FEE \$ 1,092.30 (302.088.47)
EXEMPT

200400037666
Filed for Record in
BUTLER COUNTY, OHIO
DANNY H CRANK
05-14-2004 At 02:06:49 pm.
DEED 28.00
OR Book 7367 Page 159 - 159

The Commission Expires 319.206 of the revised code

