

08-846-CD  
Charles Kutsel vs Torrell & Bernardo al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

CHARLES E. KUTSEL, Owner

vs.

TORRELL AND BERNARDO LAND :  
CORP., Contractor :

No. 2008-846-CD

Type of Pleading: Contractor's Waiver  
of Liens

Filed on behalf of: Owner

FILED

MAY 06 2008

10/22/08  
William A. Shaw  
Prothonotary/Clerk of Courts

Counsel of Record for this party: No 9c

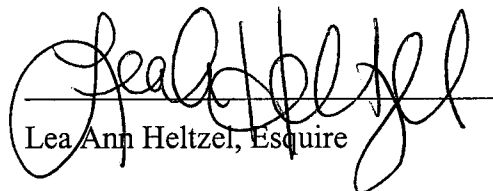
HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire  
Attorney at Law  
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire  
Attorney at Law  
Supreme Court No. 83998

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

  
Lea Ann Heltzel, Esquire

### CONTRACTOR'S WAIVER OF LIENS

THIS AGREEMENT, made and entered into this 5<sup>TH</sup> day of May, 2008, by and between Charles E. Kutsel, of 1298 Highland Street Extension, DuBois, Pennsylvania 15801, hereinafter "Owner"; and TORRELL & BERNARDO LAND CORP. of 130 McCracken Run Road, DuBois, Pennsylvania, 15801.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, the parties do agree as follows:

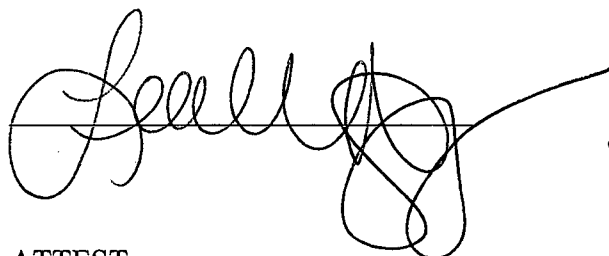
1. The Contractor for himself and anyone else acting or claiming through or under him, intending to be legally bound hereby, does hereby waive and relinquish all right to file a mechanic's lien, claim or notice of intention to file any lien or claim, and does hereby covenant, promise and agree that no mechanics' lien or claim or other lien or claim of any kind whatsoever shall be filed or maintained against the improvements or the estate or the title of the Owner in the Property or the curtilage or curtilages appurtenant thereto, by or in the name of the Contractor or any subcontractor, materialmen or laborers for work done or materials furnished under the Contract or by any other party acting through or under them or any of them for and about the improvements or the Property or any part thereof, or on credit thereof, and that all subcontractors, materialmen and laborers on the works shall look to and hold Contractor personally liable for all subcontractors, materials furnished and work and labor done, so that there shall not be any legal or lawful claim of any kind whatever against Owner for any work done or labor or materials furnished under the Contract for and about the erection, construction and completion of the improvements or under any contract for extra work, or for work supplemental thereto, or otherwise.

2. The Contractor does hereby remise, release and waive for himself, subcontractor and materialmen the right under the Act of Assembly entitled the Mechanics's Lien Act of 1963 to file or enter on record any Mechanic's Lien or Liens against: ALL that certain piece, parcel or tract of land in the City of DuBois, Clearfield County, Pennsylvania. See attached Exhibit "A".

3. This Agreement waiving the right of lien shall be an independent covenant and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work in the erection, construction and completion of the improvements as to any work and labor done and materials furnished under the Contract.

4. In the event Contractor consists of more than one person, firm or corporation, the undertakings hereunder of each of such persons, firms or corporations shall be joint and several, and the word "Contractor" shall mean all or some or any of them. For purposes of this Agreement, the singular shall be deemed to include the plural, and the neuter shall be deemed to include the masculine and feminine, as the context may require. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators and assigns.

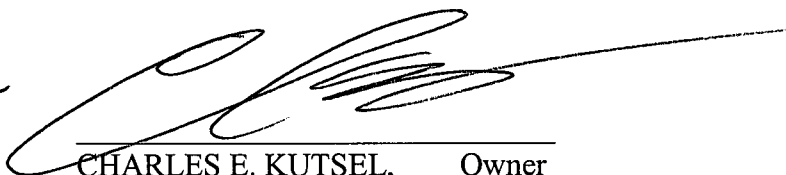
IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby do execute this Agreement the day and year first above written.



ATTEST



Ronald C. Torrell

  
CHARLES E. KUTSEL, Owner

TORRELL & BERNARDO  
LAND CORP.



Richard J. Bernardo, Contractor

## EXHIBIT 'A'

ALL that certain piece, parcel or tract of land lying and being situate in the City of DuBois, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the Kaylee Court sixty-five (65) feet radius cul-de-sac right of way in the Coke Hill Estate Subdivision in the City of DuBois, Pennsylvania, said point being the southwest corner of the lot herein being described;

THENCE along the boundary line of Lot No. 66 in said subdivision, N 06° 21' 30" W, five hundred ninety four and two hundredths (594.02) feet to a point in boundary line between the City of DuBois and Sandy Township;

THENCE along said boundary line, N 83° 54' 43" E, two hundred seventeen and forty five hundredths (217.45) feet to an iron rail at the northeast corner of lot herein being described;

THENCE continuing along said Sandy Township/City of DuBois boundary line, S 06° 07' 34" E, five hundred twenty six and three hundredths (526.03) feet to a point at the northeast corner of Lot No. 64;

THENCE along Lot No. 64, S 50° 36' 02" W, one hundred seventy three and ninety seven hundredths (173.97) feet to a point in the Kaylee Court sixty five (65) feet radius cul-de-sac right of way;

THENCE along said right of way curve having a chord N 74° 35' 00" W, seventy four and eighty four hundredths (74.84) feet to a point and the place of beginning.

CONTAINING 2.90 acres, more or less, and being identified as Lot No. 65 in the Coke Hill Estates Subdivision in the City of DuBois, Pennsylvania.

EXCEPTING and reserving a right-of-way easement ten (10.0) feet wide for the construction and maintenance of utility lines along and adjacent to the road right-of-ways.

UNDER AND SUBJECT, nevertheless, to the express conditions and restrictions as appear below which Grantees, for themselves, their heirs and assigns, by acceptance of this indenture, agree with the Grantors, their heirs and assigns, that said restrictions and conditions may be amended, expanded, or eliminated, either in part or in entirety from future conveyances by the Grantors from its lands:

1. No lot shall be used except for single family residential dwelling purposes. All houses built on said premises will contain at least 1232 square feet of living area. Anything under 1232 square feet must meet approval of Grantor or its successors or assigns.
2. All dwellings and accessories thereto constructed shall be in accordance with the ordinances in effect as ordained by the City of DuBois except the side set backs shall be ten (10) feet. Any side set back less than ten (10) feet must meet the approval of Grantor, its successors and/or assigns. All accessory building will match the exterior of dwelling, as close as possible. All metal sheds are prohibited.
3. Every owner of a lot in the subdivision shall be conclusively presumed to have covenanted, by acquiring title to his lot (regardless of the means of such title acquisition) to connect to City of DuBois water and sewer lines and to pay charges for water and sewer services as may be charged by City of DuBois. The application for the said hook-up shall be handled in cooperation with and coordinated through TORRELL and BERNARDO Remodeling and Custom Homes or its successors or assigns.
4. UNDER AND SUBJECT to the condition that all utility lines in the subdivision, including but not limited to electric, gas and telephone cable, must be placed underground.
5. UNDER AND SUBJECT to the condition that construction of a residential structure be commenced within 120 days from the date hereof. It is further understood and agreed that in the event said structure is not commenced within 120 days from the date hereof, the within conveyance shall become null and void and title thereto shall revert to Grantors herein, their heirs and assigns. Grantors herein do agree, however, that in the case of said reversion or retaking, they shall reimburse to the Grantees the original purchase price less any and all amounts expended by them for the transfer taxes, real estate taxes, attorney's fees and closing costs of the original transaction as well as all costs involved in the transfer necessitated by the reversion or retaking. Should Torrell and Bernardo Remodeling and Custom Homes or any successor to Torrell and Bernardo Remodeling and Custom Homes which is owned, operated and/or controlled by Ronald Torrell and/or Richard Bernardo cease the conduct of its business prior to the parties entry of a Construction Contract as set forth herein, the provisions of this paragraph shall be null and void.
6. It is expressly covenanted and agreed by and between the parties hereto that as further consideration of the Grantors conveying the above described premises to Grantees, the Grantees shall within a period of 120 days from the date of conveyance and within sufficient time to comply with the restrictions specifically set forth in No. 5 herein, enter into a contract which shall be prepared by TORRELL and BERNARDO Remodeling and Custom Homes for the construction of at least a shell of a residential dwelling which contract shall specify that all construction of said residential shell, (which will include all excavating, the placement of a cement footer foundation, foundation work, exterior finish and the placement of all interior partitions), shall be completed by TORRELL and

BERNARDO Remodeling and Custom Homes. Should Torrell and Bernardo Remodeling and Custom Homes or any successor to Torrell and Bernardo Remodeling and Custom Homes which is owned, operated and/or controlled by Ronald Torrell and Richard Bernardo cease the conduct of its business prior to the parties entry of a Construction Contract as set forth herein, the provisions of this paragraph shall be null and void.

7. After completion of exterior of house, buyer has one year to install yard.

8. It is expressly covenanted and agreed by and between the parties hereto that in the event a contractor or contracting firm other than TORRELL and BERNARDO Remodeling and Custom Homes is hired by Grantees to complete construction of the residential structure or accessories thereto other than said shell construction as set forth in item 6 above, Grantees shall not permit said contractor or contracting firm to at anytime place signs with the name of the contractor or contracting firm or any other means of advertisement by the contractor or contracting firm in the said subdivision.

9. Grantor reserves for itself, its successors and assigns, for the purposes incident to its development of the real property subject to these restrictions a 7.6 foot wide easement along all property boundary lines for the purpose of construction, operation and maintenance of culvert pipes and/or utility lines and mains. Grantor also reserves the right to trim, cut and remove any trees and brush and to locate guide wires and braces wherever necessary for the installation, operation and maintenance together with the right to install, operate and maintain gas, water and sewer mains and other services for the convenience of the property owners and appurtenances thereto.

10. On each lot, the rights of way and easements area reserved by Grantor shall be maintained continuously by the lot, owner but no structures, plantings or other material shall be place or permitted to remain or other activities undertake which may damage or interfere with the installation or maintenance of culvert pipes and/or utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or create erosion or sliding problems, provided however that where the existing location of a drainage channel would hinder the orderly development of a lot, the drainage channel may be relocated, provided such relocation does not cause any encroachment on any other lot in the subdivision. Improvements within such area shall also be maintained by the respective lot owner except for those which a public authority or utility company is responsible.

11. Any other excavation or changing of water tables, besides what is specified in the contract, buyer will be responsible for their own ENS plans.

12. UNDER AND SUBJECT to the condition that Grantee shall not encumber the subject premises or use the same as collateral for any loan unless the grantee is borrowing for the purchase of lot or until such time as they have entered into a contract for the construction of a residential dwellings with TORRELL and BERNARDO Remodeling and Custom

Homes and the said lot may only be used as collateral to obtain purchase money for lot and to construct the residential dwelling require by said restrictions. Notwithstanding that said lot may be encumbered to obtain purchase money necessary to complete construction of said shell and residential dwelling in order to comply with restriction more particularly set forth in numbers 1 through 8 herein. When using the lot for collateral to purchase the said lot, the amount may not exceed more than \$16,000.00. After said time period that the residential premises is constructed, this clause concerning restrictions on encumbering same shall be null and void and there shall be no restrictions on encumbering the same.

UNDER AND SUBJECT to all sewer lines in, on, or underlying said premises with the right to go on said premises to repair, maintain and replace the same.

FURTHER UNDER AND SUBJECT to all exceptions and reservations and easements of record or which can be determined by inspection of the premises.

FURTHER UNDER AND SUBJECT to right of City of DuBois to construct, repair or replace any culvert pipes or for construction or repair of any utility lines which may run on, under, or upon the subject premises.