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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2024-CP-04-02229
Appellate Case No. 2025-001549
Appellate Case No. 2025-002012

Moats Construction, Inc. and The Green Man, LLC,

Appellants,

v.

APB Partnership, LLC, Wesley Edwards, 2916 N. Main, LLC, W.H. Bass, Inc., Whataburger Restaurants, LLC, and United Community Bank,

Respondents.

RECORD ON APPEAL

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s/ David L. Paavola

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Attorneys for Appellants

April 10, 2026
Cayce, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2024-CP-04-02229
Appellate Case No. 2025-001549
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Moats Construction, Inc. and The Green Man, LLC,

Appellants,

v.

APB Partnership, LLC, Wesley Edwards, 2916 N. Main, LLC, W.H. Bass, Inc., Whataburger Restaurants, LLC, and United Community Bank,

Respondents.

PROOF OF SERVICE

I certify that the Record on Appeal has been served on John S. Nichols and Daniel L. Draisen, counsel for Respondents APB Partnership, LLC, Wesley Edwards, and 2619 N. Main, LLC, by email sent to their primary e-mail addresses listed in the Attorney Information System, john@bluesteinattorneys.com, daniel@injuredsc.com, Paul H. Hoefer and C. Elizabeth Weston, counsel for Respondent United Community Bank, by email sent to their primary e-mail addresses listed in the Attorney Information System, phoefer@robinsongray.com and lweston@robinsongray.com, Dana Woodrum Lang, counsel for WH Bass, Inc., by email sent to her primary e-mail address listed in the Attorney Information System, dana.lang@wbd-us.com, and Christopher B. Major, counsel for Whataburger Restaurants, LLC, by email sent to his primary e-mail address listed in the Attorney Information System, cmajor@hsblawfirm.com, on April 10, 2026.

[Signature page to follow]

/s/David L. Paavola

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Attorneys for Appellants

April 10, 2026
Cayce, South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP0402229

Moats Construction Inc. et al
PLAINTIFF(S)

APB Partnership LLC et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

DEFENDANT APB PARTNERSHIP LLC'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. MR. DRAISEN TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2155

Judge Code

Date**For Clerk of Court Office Use Only**

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Anderson Common Pleas

Case Caption: Moats Construction Inc , plaintiff, et al VS Apb Partnership Llc ,
defendant, et al

Case Number: 2024CP0402229

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2025-06-05 12:58:49 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

**MOATS CONSTRUCTION, INC. and THE
GREEN MAN, LLC,**

C/A No. 2024-CP-04-02229

Plaintiffs,

v.

**APB PARTNERSHIP, LLC, WESLEY
EDWARDS, 2916 N. MAIN, LLC, W.H.
BASS, INC., WHATABURGER
RESTAURANTS, LLC, and UNITED
COMMUNITY BANK,**

Defendants.

**ORDER DISCHARGING MECHANIC'S
LIENS, RELEASING LIS PENDENS,
AND DISMISSING PLAINTIFFS'
CAUSES OF ACTION FOR LIEN
FORECLOSURE**

This matter came on for hearing before the Court on the 5th day of June, 2025 pursuant to Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC's Motion to Dissolve Mechanic's Liens, Dismiss Plaintiffs' Claims for Foreclosure of Mechanic's Liens, and to Dismiss Defendants APB Partnership, LLC, Wesley Edwards and 2916 N. Main, LLC. In attendance at the hearing were the Plaintiffs, Moats Construction, Inc. and The Green Man, LLC, and their attorney David L. Paavola, Esq., of Kenison, Dudley & Crawford, LLC, and Daniel L. Draisén, Esq. of The Injury Law Firm, P.C., attorney for Defendants APB Partnership, LLC, Wesley Edwards, and 2196 N. Main, LLC. Christopher B. Major, Esq., attorney for Defendant Whataburger Restaurants, LLC, and C. Elisabeth Weston, Esq., attorney for United Community Bank, were also present

but did not participate and took no position on Defendants' Motion. All parties were properly notified of the date, time, and location of the hearing.

Having reviewed the pleadings, Affidavits, and exhibits, and heard fully the arguments of counsel, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC's Motion is **GRANTED**. I make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. Even if the Court, when viewing the facts in a light most favorable to the Plaintiffs, were to find that the Plaintiffs timely filed and served their Mechanic's Liens upon the APB Defendants *within ninety (90) days* after Plaintiffs ceased to labor on or furnish labor or materials to the Property as is required by S.C. Code of Laws § 29-5-90 (which is disputed), I find that the Plaintiffs failed to foreclose the liens within the statutory six (6) month timeframe in which to do so.

2. Based on an e-mail from Moats, Moats states on April 4, 2024 at 12:57 pm:

“we told everyone that if you didn't pay . . we would be demobilizing from the sight [sic], which means, as I'm sure you know, **removing all of our equipment from the project sight [sic]. Which we did.**” “we did not want to leave an un-safe sight [sic] **as we had also removed our traffic control.**”

3. Mr. Moats, by his own statement, admits that Moats demobilized from the job site on April 3, 2024.

4. In his Affidavit, Mr. Moats asserts that Moats still had traffic control devices (i.e., orange road cones) on the job site after April 3, 2024, that Moats only partially demobilized on April 3, 2024, and that Moats did incidental work to remove the cones and some materials from the job site on April 29, 2024 which extended the time within which it had to file its Mechanic's Lien.
5. Assuming that the traffic cones belonged to Moats, and that it either intentionally or accidentally failed to remove its traffic cones and materials from the job site when it took everything else off the site, I find that it would be unreasonable (based on the alleged scope of incidental work done) to allow Moats a lien time extension until April 29, 2024, some twenty-six (26) additional days after pulling off the job site, to return to the site to remove easily movable cones or materials.
6. I find that the incidental work done by Moats in removing the remaining traffic cones on April 29, 2024 was not done to a) complete construction, or b) done at the owner or General Contractor's request.
7. Even if the Court extended the date of demobilization to April 13 (the date Moats claims it met with City officials on the jobsite), the Summons and Complaint would have had to have been filed on or before October 13, 2024.
8. The Summons and Complaint in this matter were filed on October 28, 2024, well beyond the statutory six (6) month timeframe in which to do so.
9. During the hearing, counsel for The Green Man, LLC acknowledged to the Court that The Green Man, LLC did not file an action to foreclose its Mechanic's Liens within the statutory six (6) month timeframe, and that its foreclosure actions were not timely filed.

10. As a result of Plaintiffs' failure to foreclose its Mechanic's Liens within the statutory timeframe, Plaintiffs' Mechanic's Liens, and each of them, dissolved by operation of law and are of no force and effect.

11. Viewing the undisputed facts in a light most favorable to the Plaintiffs, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC are entitled to judgment as a matter of law and are entitled to (partial) Summary Judgment in this matter as to Plaintiffs' Fifth and Sixth causes of action for Foreclosure of Mechanic's Lien.

CONCLUSIONS OF LAW:

While Defendants' Motion was filed as a Motion to Dismiss, matters outside the pleadings were presented by the parties and allowed by the Court in the form of Affidavits and exhibits. Pursuant to SCRCP, Rule 12(b):

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

As such, the Court treats Defendants' Motion as one for Summary Judgment pursuant to SCRCP, Rule 56, having given the parties reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.

Incidental work extends the time for a lien only when performed to complete the scope of work or at the behest of the owner or General Contractor. Removing easily moveable traffic cones, even if they belong to Moats (which is disputed) were not done to complete the work and Moats does not even allege that this was done at the behest

of the owner or General Contractor. Additionally, such work must be in good faith and not merely to extend the lien.

In Wood v. Hardy, 110 S.E.2d 157, 235 S.C. 131 (S.C. 1959), the South Carolina Supreme Court held:

The only requirement of the law is that the account be filed within ninety (90) days after he ceases to labor on or furnish labor or materials for such building or structure.'

In 57 C.J.S. Mechanics' Liens § 125, at page 632, it is said:

'* * * The statute runs from the date of the last item, even though the doing of the last item of work is somewhat delayed, provided the delay is not for the purpose of extending the period for giving notice. * * *'

In the case of Breeding v. Melson, 4 W.W.Harr. 9, 34 Del. 9, 143 A. 23, 25, 60 A.L.R. 1252, it appeared that certain labor and material were furnished by the plaintiff from March, 1921, to October, 1921, after which time nothing further was furnished by him until April, 1922, when labor and material of the value of \$3.40 were furnished. The record discloses that the building constructed was a moving picture theater and was temporarily opened in September, 1921, the windows being closed with metal, and that the defendant waited until April, 1922, for the plaintiff to get the necessary material for him to complete the building as he had contracted to do. **The Court held that in order to extend the time for filing of a mechanic's lien, the work performed or materials furnished must be required by the contract, and what is done must be done in good faith for the purpose of fully performing the obligation of the contract, and not for the mere purpose of extending the time for filing the lien.** The Court said, in upholding the validity of the filing of the lien within 30 days after the expiration of 90 days from the completion of the building, pursuant to statute, that the lien was valid. We quote from the Opinion the following:

'* * * It is quite true that very little material was supplied by the plaintiff, and that the value of the same was insignificant, but that fact cannot have any bearing on his status as a contractor, as the statute does not specify that any particular amount of labor or material shall be furnished.'

In District Heights Apartments, Section D-E v. Noland Company, Inc., 202 Md. 43, 95 A.2d 90, 94, 39 A.L.R.2d 387, it was said:

* * * But where a claimant, after a contract is substantially completed, does additional work or furnishes additional material which is necessary for the proper performance of his contract, and which is done in good faith at the request of the owner or for the purpose of fully completing the contract, and not merely as a gratuity or act of friendly accommodation, the period for filing the lien will run from the doing of such work or the furnishing of such materials, irrespective of the value thereof. *Harrison v. Stouffer*, 193 Md. 46, 65 A.2d 895. * * *

In *Butler Contracting v. Court Street*, 631 S.E.2d 252, 369 S.C. 121 (S.C. 2006),

the South Carolina Supreme Court states:

The position adopted in *Wood*, as reflected in foreign precedent cited in that 1959 opinion, has not changed substantially in more recent cases from other courts. **"[W]hen an unreasonable period of time has elapsed since substantial completion of the work, the performance of trivial services or the furnishing of trivial materials generally will not extend the time for filing the certificate past the date of substantial completion.... If, however, subsequent to the date of substantial completion, trivial services or materials are provided at the request of the owner, rather than at the initiative of the contractor for the purpose of saving a lien, the furnishing of such work or material will extend the commencement of the period for filing a certificate of mechanic's lien."** *F.B. Mattson Co. v. Tarte*, 247 Conn. 234, 719 A.2d 1158, 1161 (1998) (holding that, although roofing project had been substantially completed more than a month earlier, deadline to file mechanic's lien began to run upon removal of scaffolding and roofing brackets from property at request of owner); accord *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 87 P.3d 955, 959-61 (2004) (deadline to file mechanic's lien began to run when builder purchased a sheet of cedar and locking door handle for house, not when certificate of occupancy was issued several weeks earlier; although dollar value of items was minimal, they were actually used in constructing and repairing the home, were reasonably necessary to complete construction and punch list according to terms of contract, were not merely trivial or insubstantial, and purchases were not intended to extend time for filing lien); *Interstate Elec. Servs. Corp. v. Cummings Props., LLC*, 63 Mass.App.Ct. 295, 825 N.E.2d 1059, 1063-64 (2005) (mere delay in completing contract and performance of trifling items of work have never been held under Massachusetts statute fatal to maintenance of a mechanic's lien when work was done in good faith and was necessary to a complete performance of the contract); *Security Ben. Life Ins. Corp. v.*

Fleming Companies, 21 Kan.App.2d 833, 908 P.2d 1315, 1321-22 (1995) (for purposes of mechanic's lien filing deadline, store checkout system installer last performed work on date it set up direct store delivery system and trained employees on its use; although other work was completed earlier, work performed on that date was necessary to comply with terms of contract); 53 Am.Jur.2d Mechanics' Liens § 211 (1996).

In the instant case, Moats would have the Court believe that it reasonably took Moats some *twenty-six (26) additional days* after pulling off the jobsite to return to the site to remove its easily movable traffic cones and remaining materials. The Court declines to do so.

Based upon the pleadings in this case, the Affidavits and exhibits attached to Defendants' Motion, and the Affidavit and exhibits filed by Moats, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC are entitled to the discharge Plaintiffs' Mechanic's Liens, to release of the Lis Pendens, and to dismissal of the Plaintiffs' causes of action for Foreclosure of Mechanic's Liens with prejudice.

To the extent that Plaintiffs asserted other causes of action based on contract or equity against Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC, Defendants' Motion as to those causes of action is denied at this time.

Pursuant to SC Code, Ann., Section 29-5-20, et seq., Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC are hereby determined and declared to be the prevailing party in the within matter with regard to Plaintiffs' Mechanic's Lien causes of action. As such, Defendants are entitled to an award of attorney's fees and costs incurred in defending the matter. If Defendants seek an award of attorney's fees and costs, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC shall

submit to the Court, with copies to opposing counsel, an appropriate Affidavit of Attorney's Fees and costs. Any party wishing to contest the amount requested may request a hearing on Defendants' request for an award of attorney's fees and costs within ten (10) days of submission, and upon filing a hearing request the Clerk of Court is directed to set such hearing at the next available term of court.

IT IS THEREFORE ORDERED, ADJUDGE AND DECREED that:

1. The Mechanic's Lien dated July 2, 2024 and filed by Moats Construction, Inc. on real estate owned by 2916 N. Main, LLC on July 3, 2024 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 65 at Page 112 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.
2. The Mechanic's Lien dated July 2, 2024 and filed by Moats Construction, Inc. on real estate owned by APB Partnership, LLC on July 3, 2024 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 65 at Page 121 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.
3. The Mechanic's Lien dated July 2, 2024 and filed by The Green Man, LLC on real estate owned by 2916 N. Main, LLC on July 3, 2024 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 65 at Page 129 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.
4. The Mechanic's Lien dated July 2, 2024 and filed by The Green Man, LLC on real estate owned by APB Partnership, LLC on July 3, 2024 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 65 at Page 136 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.

5. The Amended Mechanic's Lien dated February 19, 2025 and filed by Moats Construction, Inc. on real estate owned by APB Partnership, LLC on February 20, 2025 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 67 at Page 29 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.

6. The Lis Pendens filed in the within case, C/A No. 2024-CP-04-02229, on the property of the Defendants, 2900 N. Main Street, Anderson, SC 29621, **TMS# 122-12-02-005**, 2902 N. Main Street, Anderson, SC 29621, **TMS# 122-12-02-003**, and 2916 N. Main Street, Anderson, SC 29621, **TMS# 122-12-02-002**, is hereby cancelled and the Clerk of Court is directed to mark same cancelled of record.

7. Plaintiffs' Fifth and Sixth causes action for Foreclosure of Mechanic's Lien are hereby dismissed with prejudice.

8. As the prevailing party with regard to Plaintiffs' Mechanic's Lien causes of action, pursuant to SC Code, Ann., Section 29-5-20, et seq., Defendants are entitled to an award of attorney's fees and costs incurred in defending the matter. If Defendants seek an award of attorney's fees and costs, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC, by and through its attorney, shall submit to the Court, with copies to opposing counsel, an appropriate Affidavit of Attorney's Fees and costs. Any party wishing to contest the amount requested may request a hearing on Defendants' request for an award of attorney's fees and costs within ten (10) days of submission and, upon filing a hearing request, the Clerk of Court is directed to set such hearing at the next available term of court.

IT IS SO ORDERED.

(e-signature affixed hereto)

R. Lawton McIntosh,
Circuit Court Judge

Date: _____



Anderson Common Pleas

Case Caption: Moats Construction Inc , plaintiff, et al VS Apb Partnership Llc ,
defendant, et al
Case Number: 2024CP0402229
Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2025-06-17 09:23:07 page 11 of 11

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP0402229

Moats Construction Inc. et al
PLAINTIFF(S)

APB Partnership LLC et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFFS' MOTION TO RECONSIDER ORDER DISCHARGING MECHANIC'S LIENS, REALEASING LIS PENDENS, AND DISMISSING PLAINTIFFS' CAUSES OF ACTION FOR LIEN FORECLOSURE IS DENIED WITHOUT NECESSITY OF A HEARING. NO FORMAL ORDER REQUESTED.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2155

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Anderson Common Pleas

Case Caption: Moats Construction Inc , plaintiff, et al VS Apb Partnership Llc ,
defendant, et al
Case Number: 2024CP0402229
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2025-07-03 14:45:10 page 3 of 3

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2024 CP-04-02229

MOATS CONSTRUCTION INC. ET, AL.
PLAINTIFF(S)

APB PARTNERSHIP LLC. ET, AL.
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF MOTION TO RECONSIDER CANCELLATION OF LIS PENDENS IS DENIED. MR. DRAISEN TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT**Court Reporter:**

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ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Anderson Common Pleas

Case Caption: Moats Construction Inc , plaintiff, et al VS Apb Partnership Llc ,
defendant, et al
Case Number: 2024CP0402229
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2025-08-27 15:45:15 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

**MOATS CONSTRUCTION, INC. and THE
GREEN MAN, LLC,**

C/A No. 2024-CP-04-02229

Plaintiffs,

v.

**ORDER DENYING PLAINTIFF'S
REQUEST TO REINSTATE LIS
PENDENS****APB PARTNERSHIP, LLC, WESLEY
EDWARDS, 2916 N. MAIN, LLC, W.H.
BASS, INC., WHATABURGER
RESTAURANTS, LLC, and UNITED
COMMUNITY BANK,**

Defendants.

This matter came on for hearing before the Court on the 27th day of August, 2025 pursuant to a request by Plaintiffs that the Court reinstate the Lis Pendens filed by the Plaintiff's in the referenced matter. In attendance at the hearing were the Plaintiffs, Moats Construction, Inc. and The Green Man, LLC, and their attorney David L. Paavola, Esq., of Kenison, Dudley & Crawford, LLC, and Daniel L. Draisen, Esq. of The Injury Law Firm, P.C., attorney for Defendants APB Partnership, LLC, Wesley Edwards, and 2196 N. Main, LLC. Christopher B. Major, Esq., attorney for Defendant Whataburger Restaurants, LLC, and C. Elizabeth Weston, Esq., attorney for United Community Bank, were also present but did not participate and took no position on Plaintiff's request. All parties were properly notified of the date, time, and location of the hearing.

Plaintiffs assert that while the Court issued its Order discharging Mechanic's Liens, releasing Lis Pendens, and Dismissing Plaintiffs' causes of action for lien foreclosure on June 17, 2025, it was improper for the Clerk of Court to cancel the Lis Pendens of record prior to the expiration of the time within which Plaintiffs had to file a Notice of Appeal in the matter.

Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC assert that cancellation of the Lis Pendens and dismissal of the cause of action for foreclosure were appropriate and are the natural consequence of the discharge of the underlying Mechanic's Liens, the Mechanic's Liens being the sole basis for the Lis Pendens and the foreclosure cause of action. Defendants also assert that because Moats filed a Notice of Appeal, the Circuit Court has been divested of jurisdiction over the matter.

Pursuant to SC Code, Ann., Section 15-11-40, "The court in which the action was commenced, in its discretion at any time after the action is...discontinued...on application of a person aggrieved and on good cause shown...may order the notice authorized by this chapter to be canceled of record by the clerk of any county in whose office the notice was filed or recorded."

On April 29, 2025, Defendants filed their Motion to Dissolve Mechanic's Liens, Dismiss Plaintiff's Claims for Foreclosure of Mechanic's Liens, and Dismiss Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC. Defendants' Motion constitutes their "application" to the Court for the dissolution of Plaintiffs' Mechanic's

Liens, for cancellation of the Lis Pendens, and for the dismissal of Plaintiffs' cause of action for foreclosure of Mechanic's Liens.

Having found that the Plaintiffs' failed to foreclose its Mechanic's Liens within the statutory timeframe and that Plaintiffs' Mechanic's Liens dissolved by operation of law, the Mechanic's Liens being the sole basis for the Lis Pendens and the foreclosure cause of action, this Court, in its discretion, directed the cancellation of the Lis Pendens. I do not find that the Court has misapprehended the facts or the law applicable to this matter.

Accordingly, having reviewed the pleadings and heard fully the arguments of counsel, Plaintiffs' request is hereby **DENIED**.

IT IS SO ORDERED.

(e-signature affixed hereto)

R. Lawton McIntosh,
Circuit Court Judge

Date: _____



Anderson Common Pleas

Case Caption: Moats Construction Inc , plaintiff, et al VS Apb Partnership Llc ,
defendant, et al
Case Number: 2024CP0402229
Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2025-09-03 17:27:49 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc.

Lienor / Contractor,

vs.

APB Partnership, LLC

Lienee / Owner

Wesley W. Edwards

2916 N. Main , LLC

United Community

Party Defendant(s)

IN THE OFFICE OF THE
REGISTER OF DEEDS

NOTICE AND CERTIFICATE OF
CLAIM OF MECHANIC'S LIEN &
STATEMENT OF ACCOUNT

NOTICE IS HEARBY GIVEN, that the undersigned lien claimant, **Moats Construction, Inc.** located at 1523 Old Roberts Church Road in Anderson, South Carolina 29626 is due the sum of (\$543,813.01) Five Hundred Forty-Three Thousand Eight Hundred Thirteen Dollars and 01/100^{ths} from the lienees and owners for improvements to real estate owned by APB Partnership, LLC with responsible party defendants by and through Wesley W. Edwards, 2916 N. Main, LLC and United Community Bank.

That this debt is due the Lienor / Contractor for labor performed and materials furnished and actually used in the improvement of real estate, hereinafter described as Exhibit A, Including Demolition and Site Services, by virtue of an agreement with, or consent of Lienees / Owners, or a person authorized by the Lienees / Owners. That as shown on the attached Statement, Lienor / Contractor, acting individually and/or by and through its agents, servants, employees labor on or furnished labor and materials for such buildings, structures or improvements within 90 days of the date hereof.

That by virtue thereof, the service the filing of this certificate and pursuant to the statutes of the State of South Carolina in such cases made and provided, the said Lienor / Contractor has and claims a lien to secure payment the debts due and costs of enforcing this mechanic's lien upon the following described real estate:

EXHIBIT A

All that certain piece of property located at **2916 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202002.

Also, ALL that certain piece, parcel, or lot of land situate, lying and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.49 acres, or more or less, on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, at Page 10-A, in the office of Register of Deeds for Anderson County, South Carolina, as shown on said plat, Tract A-1 is more particularly described as follows:

BEGINNING at an iron pin corner along the edge of the concrete sidewalk which adjoins North Main Street, said point being the southernmost point of the property herein described, and proceeding thence N. 39-12-00 W. 132.22 feet to an iron pin corner, turning and proceeding thence N. 62-38-00 E. 48.11 feet to an iron pin corner, turning and proceeding thence N. 27-17-35 W. 179.18 feet to an iron pin corner at the edge of Pine Lane; proceeding thence along the edge of Pine Lane, N. 61-43-00 E. 21.13 feet to an iron pin corner; turning turning and proceeding hence S. 27-23-02 E. 208.20 feet to a point; turning and proceeding thence N. 61-50-20 E. 34.75 feet to a point; turning and proceeding thence S. 36-03-00 E. 15.29 feet to an iron pin corner; turning and proceeding thence S. 58-13-00 E. 45.54 feet to an iron pin corner; turning and proceeding thence N. 81-47-00 E. 34.25 feet to an iron pin corner; turning and proceeding thence S. 17-25-00 E. 133.70 feet to an iron pin corner, turning and proceeding thence S. 72-05-00 W. 347.79 feet to the iron pin corner which is the point of beginning.

Said Parcel being more recently described as all that certain piece, parcel, or lot of land situate, lying, and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.487 acres, more or less, on that certain plat prepared by Nu-South Inc., Earl O'Brien, S.C. R.L.S. #10755, dated August 12, 2022, and recorded in Plat Slide 2954, at Page 10, in the office of the Register of Deeds for Anderson County, South Carolina, reference to said plat being made for a more complete metes and bounds description thereof,

Together with a non-exclusive easement for ingress, egress, and utilities over along, and under Tract A as this property is shown on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, Page 10-A, in the Office of the Register of Deeds for Anderson County, South Carolina, and on Schedule B in that certain Memorandum of Lease Agreement which was recorded on July 18, 1997, in Deed Book 2682 at Page 52, in the Office of the Register of Deeds for Anderson County, South Carolina.

Derivation: Deed of Alfonso Leon, Ramon Bravo, and Joe Aguayo to 2916 N. Main, LLC, dated August 23, 2022, and recorded August 24, 2022, in Deed Book 16331 at Page 209, in the Office of the Register of Deeds for Anderson County, South Carolina.

TMS No. 122-12-02-002

ALSO:

All that certain piece of property located at **2900 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202005.

All that certain lot in Centerville Township, School District Number Five, City of Anderson, County of Anderson, State of South Carolina, containing 0.44 acres as shown on plat prepared by Nu-South Surveying, Inc. dated June 21, 1998 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 904 at Page 7-A; the metes and bounds,

courses and distances as shown on said plat being incorporated herein by reference and made a part of this description.

This is the same property conveyed unto R. Alexander Spainhour, III and Wesley W. Edwards by deed of Francis K. Hamilton, et al., dated 06/30/98 and recorded in the Anderson County Register of Deeds Office in Book 3008 at Page 137. R. Alexander Spainhour, III conveyed his one-half interest to Wesley W. Edwards by deed dated 8/12/08 and recorded in the Anderson County Register of Deeds Office in Book 8801 at Page 297.

TMS No. 122-12-02-005

ALSO:

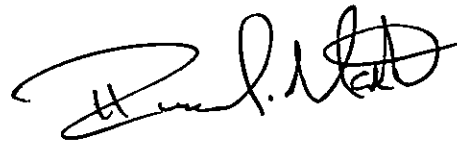
All that certain piece of property located at **2902 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202003.

All that certain piece, parcel or tract of land situate, lying and being in the City of Anderson, County of Anderson, State of South Carolina, containing 1.46 acres, more or less, and being more particularly shown and described on a plat by John F. Tinsley, PLS 16824, dated January 6, 2009, of record in the Register of Deeds Office for Anderson County, South Carolina in Plat Book/Slide 1815 at Page 5-A and having the metes and bounds, courses and distances as upon said plat appear; being bounded, according to the aforementioned plat, by N. Main Street, lands now or formerly of Leon Alfonso, Ramon Bravo and Joel Aquayo; by lands now or formerly of Jane A. Chamblee; by Concord Road; and by lands now or formerly of Wesley W. Edwards.

This is the same property conveyed unto Wesley W. Edwards by deed of M.A. McAlister, as Personal Representative (Executor) and Trustee under the Last Will and Testament of J. Albert Moorhead, dated 1/8/09 and recorded in the Anderson County Register of Deeds Office in Book 8986 at Page 244.

TMS No. 122-12-02-003

Moats Construction, Inc.
1523 Old Roberts Church Road
Anderson, South Carolina 29624
864.276.5021
info@moatsconstruction.com.com
By: Russell T. Moats Its: President

A handwritten signature in black ink, appearing to read "Russell T. Moats", written in a cursive style.

I, Russell T. Moats, do certify that the attached **Exhibit B** is a True and Accurate Statement of Account.

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

ANDERSON COUNTY

I, Lance B. King, DO HEREBY CERTIFY THAT,
Russell T. Moats, PERSONALLY APPEARED BEFORE ME
THIS DAY AND ACKNOWLEDGED THE DUE EXECUTION OF THE _____
FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL SEAL
THIS THE 2nd DAY OF July, 2024.

Lance B. King

SIGNATURE OF NOTARY

October 23, 2025

NOTARY COMMISSION EXPIRES



R-000035



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

Exhibit B

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

		Amount Due	Amount Enc.		
		\$543,813.01			
Date	Transaction	Amount	Balance		
12/31/2021	Balance forward		0.00		
10/24/2023	INV #4600537. Due 10/24/2023.	54,702.00	54,702.00		
	--- LS Contract, 1 @ \$2,875.00 = 2,875.00				
	--- LS Contract, 1 @ \$2,000.00 = 2,000.00				
	--- LS Contract, 1 @ \$9,500.00 = 9,500.00				
	--- LS Contract, 1 @ \$6,500.00 = 6,500.00				
	--- LS Contract, 1 @ \$6,000.00 = 6,000.00				
	--- LS Concrete, 1 @ \$9,500.00 = 9,500.00				
	--- LS Concrete, 3 @ \$830.00 = 2,490.00				
	--- LS Concrete, 260 @ \$5.00 = 1,300.00				
	--- LS Concrete, 1 @ \$1,000.00 = 1,000.00				
	--- LS Contract, 1 @ \$1,000.00 = 1,000.00				
	--- LS Contract, 1 @ \$800.00 = 800.00				
	--- LS Contract, 1 @ \$800.00 = 800.00				
	--- LS Contract, 1 @ \$1,500.00 = 1,500.00				
	--- LS Concrete, 4 @ \$100.00 = 400.00				
	--- LS Concrete, 126 @ \$12.00 = 1,512.00				
	--- LS Concrete, 1 @ \$5,000.00 = 5,000.00				
	--- Silt Fence w/ Stakes, 505 @ \$5.00 = 2,525.00				
12/19/2023	INV #4600545. Due 12/19/2023.	970.00	55,672.00		
	--- LS Contract, 1 @ \$970.00 = 970.00				
01/12/2024	INV #4600540. Due 01/12/2024.	28,500.00	84,172.00		
	--- LS Contract, 1 @ \$28,500.00 = 28,500.00				
01/25/2024	PMT	-28,500.00	55,672.00		
02/09/2024	INV #4600544. Due 02/09/2024.	711.05	56,383.05		
	--- CR Stone, 20.61 @ \$34.50 = 711.05				
02/09/2024	INV #4600547. Due 02/09/2024.	31,100.00	87,483.05		
	--- LS Contract, 140 @ \$115.00 = 16,100.00				
	--- LS Contract, 1 @ \$15,000.00 = 15,000.00				
02/16/2024	INV #4600542. Due 02/16/2024.	91,370.00	178,853.05		
	--- LS Contract, 1 @ \$89,000.00 = 89,000.00				
	--- LS Contract, 1 @ \$13,520.00 = 13,520.00				
	--- LS Contract, 1 @ \$3,550.00 = -3,550.00				
	--- LS Contract, 1 @ \$7,600.00 = -7,600.00				
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96	0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #	E-mail				
864.224.0904	info@moatsconstruction.com		Page 1		



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

				Amount Due	Amount Enc.	
				\$543,813.01		
Date	Transaction			Amount	Balance	
03/01/2024	INV #4600546. Due 03/01/2024.			124,550.00	303,403.05	
	--- LS Contract, 1 @ \$124,550.00 = 124,550.00					
04/03/2024	INV #4600549. Due 04/03/2024.			226,685.00	530,088.05	
	--- LS Contract, 37 @ \$1,000.00 = 37,000.00					
	--- LS Contract, 108 @ \$1,000.00 = 108,000.00					
	--- LS Contract, 43 @ \$650.00 = 27,950.00					
	--- LS Contract, 1 @ \$6,000.00 = 6,000.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- CR Stone, 1 @ \$650.00 = 650.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 1 @ \$4,500.00 = 4,500.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 2,460 @ \$1.00 = 2,460.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 1.5 @ \$400.00 = 600.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 8 @ \$400.00 = 3,200.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 1 @ \$2,700.00 = 2,700.00					
	--- LS Contract, 1 @ \$350.00 = 350.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 4 @ \$650.00 = 2,600.00					
	--- LS Contract, 1 @ \$8,000.00 = 8,000.00					
	--- LS Contract, 1 @ \$1,500.00 = 1,500.00					
	--- LS Contract, 4 @ \$400.00 = 1,600.00					
	--- LS Concrete, 1 @ \$3,500.00 = 3,500.00					
	--- LS Contract, 8 @ \$400.00 = 3,200.00					
	--- LS Contract, 7.25 @ \$400.00 = 2,900.00					
	--- LS Contract, 12 @ \$400.00 = 4,800.00					
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96		0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #		E-mail		Page 2		
864.224.0904		info@moatsconstruction.com				



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

		Amount Due	Amount Enc.
		\$543,813.01	
Date	Transaction	Amount	Balance
07/02/2024	INV #FC 107. Due 07/02/2024. Finance Charge --- Fin Chg \$13,724.96 --- Invoice #4600537 for 54,702.00 on 10/24/2023 --- Invoice #4600545 for 970.00 on 12/19/2023 --- Invoice #4600544 for 711.05 on 02/09/2024 --- Invoice #4600547 for 31,100.00 on 02/09/2024 --- Invoice #4600542 for 91,370.00 on 02/16/2024 --- Invoice #4600546 for 124,550.00 on 03/01/2024 --- Invoice #4600549 for 226,685.00 on 04/03/2024 <		

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-

SUMMONS
(Jury Trial Demanded)

YOU ARE SUMMONED AND REQUIRED to answer the Complaint in the above-entitled action, a copy of which is served upon you, and to serve a copy of your Answer upon the Plaintiffs' attorneys at their offices located at 1122 Barnwell Street, Suite B, Columbia, South Carolina 29201 within thirty (30) days after the date of such service, exclusive of the day of service. If you fail to answer the Complaint within thirty (30) days, judgment by default will be entered against you for the relief demanded in the Complaint.

s/ David L. Paavola

Brian A. Autry (SC Bar No. 69401)

David L. Paavola (SC Bar No. 100714)

Caitlin S. Cameron (SC Bar No. 106286)

Kenison, Dudley & Crawford, LLC

1122 Barnwell Street, Suite B

Columbia, SC 29201

T: (864) 242-4899

autry@conlaw.com

paavola@conlaw.com

cameron@conlaw.com

Attorneys for Plaintiff

October 28, 2024

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-

COMPLAINT
(Jury Trial Demanded)

The Plaintiffs, Moats Construction, Inc. and The Green Man, LLC (collectively, “Plaintiffs”) complaining of the Defendants APB Partnership, LLC, Wesley Edwards, 2916 N Main, LLC, W.H. Bass, Inc., and Whataburger Restaurants, LLC (collectively, “Defendants”), would show the Court the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Moats Construction, Inc. (“Moats”) is a South Carolina corporation that, at all times mentioned herein, was conducting business in South Carolina.
2. Plaintiff The Green Man, LLC (“Green Man”) is a South Carolina limited liability company that, at all times mentioned herein, was conducting business in South Carolina.
3. Defendant APB Partnership, LLC (“APB”) is a South Carolina limited liability company and the record owner of real property located at 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street (TMS No. 122-12-02-003), both in Anderson, South Carolina.

4. 2916 N Main, LLC (“2916 LLC”) is a South Carolina limited liability company and at all relevant times to this lawsuit was the record owner of real property located at 2916 N. Main Street (TMS No. 122-12-02-002) in Anderson, South Carolina.

5. Defendant Wesley Edwards, upon information and belief, is a citizen and resident of Anderson, South Carolina.

6. Defendant W.H. Bass, Inc. (“W.H. Bass”) is a Georgia corporation and at all relevant times was doing business on real property located in Anderson, South Carolina.

7. Defendant Whataburger Restaurants LLC (“Whataburger”) is a Texas company and at all relevant times was doing business on real property located in Anderson, South Carolina.

8. Defendant United Community Bank d/b/a The Palmetto Bank is a financial institution engaged in lending in South Carolina and specifically for the properties at issue in this action.

9. The facts giving rise to this matter all relate to improvements to real property located in Anderson County, South Carolina.

10. For the reasons set forth above and as alleged in more detail herein, jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

11. The properties that are the subject of this action are located at 2916 N. Main Street, 2902 N. Main Street and 2900 N. Main Street, Anderson, South Carolina (collectively, the “Properties”).

12. Upon information and belief, United Community Bank loaned funds to APB secured by real property located at 2902 and 2900 N. Main Street, Anderson, South Carolina.

13. Upon information and belief, 2916 N. Main LLC and APB Partnership, LLC are related entities and controlled by common members.

14. At all relevant times to this lawsuit, 2916 N. Main LLC was the owner of 2916 N. Main Street (TMS No. 122-12-02-002).

15. At all relevant times to this lawsuit, APB Partnership, LLC was the owner of 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street (TMS No. 122-12-02-003).

16. In late 2023 and early 2024, the Properties were improved for the construction of a Whataburger restaurant located at 2900 N. Main Street Anderson, SC (the "Project").

17. Upon information and belief, the Defendants all worked together to improve the Properties for the eventual construction of a Whataburger restaurant at 2900 N. Main Street.

18. Upon information and belief, APB, 2916 LLC, and/or Wesley Edwards entered into an agreement/s with Defendant Whataburger Restaurant and/or W.H. Bass to improve the Properties.

19. Upon information and belief APB has entered into leases for the properties located at 2902 N. Main Street and 2900 N. Main Street, and it is benefiting from the work performed by Moats and the Green Man on these properties.

20. Upon information and belief, W.H. Bass entered into an agreement with Whataburger to improve the Properties and construct a restaurant on 2900 N. Main Street.

21. Construction of the Whataburger restaurant necessitated site improvement work and development of the Properties.

22. On or about August 2023, Defendants APB, 2916 LLC, Wesley Edwards hired Moats Construction to conduct demolition and construction services on the Properties.

23. On or about December 2023, Defendant W.H. Bass, Inc. contracted with Moats, and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger Restaurants, LLC, to conduct demolition, utility services, and construction services on the Properties.

24. Upon information and belief, Whataburger hired Moats to perform construction services on the Properties through other Defendants and Whataburger has previously paid for certain work directly to Moats. Whataburger is directly benefiting from Moats' work on the Properties.

25. On or about December 2023, Defendant W.H. Bass, Inc. hired the Green Man, and upon information and belief on behalf this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger Restaurants, LLC, to provide dumpsters, portable toilets, and Conex containers on the Properties.

26. Moats satisfied, performed, and completed all demolition, construction services, and site related work at the Properties and Defendants have not paid for this work. In total, Moats is owed \$543,813.01 for all work it performed on the Properties.

27. Green Man provided dumpsters, portable toilets, and Conex containers for the Properties and Defendants have not paid for this work. In total, Green Man is owed \$6,236.54.

28. On or about July 3, 2024, and within ninety days from last supplying labor or materials on the Project, Moats filed and served mechanic's liens on the Properties for the amounts due from Defendants (the "Moats Mechanic's Liens"). The Moats Mechanic's Liens were filed with the Anderson County Register of Deeds Office in Book 65, Page 121.

29. On or about July 3, 2024, and within ninety days from last supplying labor or materials on the Project, Green Man filed and served mechanic's liens on the Properties for the

amounts due from Defendants (the “Green Man Mechanic’s Liens”). The Green Man Mechanic’s Liens were filed with the Anderson County Register of Deeds Office in Book 65, Page 136.

30. On or about July 2024, Moats and Green Man sent letters to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days.

31. Despite demand from Moats, Defendants have failed and/or refused to pay the balance due to Moats of at least \$543,813.01 and the balance due to Green Man of \$6,236.54.

32. Moats is entitled to recovery of its proven damages from Defendants.

33. Green Man is entitled to recovery of its proven damages from Defendants.

FOR A FIRST CAUSE OF ACTION
(Moats - Breach of Contract as to All Defendants)

34. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

35. 2916 LLC, APB and Wesley Edwards hired Moats to perform demolition and construction services on the Properties.

36. W.H. Bass hired Moats and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger, to conduct demolition, utility services, and construction services on the Properties.

37. Upon information and belief, Whataburger hired Moats to perform construction services on the Properties directly or through other Defendants and for certain work has already paid Moats directly.

38. Moats fully satisfied and performed its obligations under the contracts with Defendants.

39. Defendants have wrongfully failed and refused to pay Moats for labor and materials furnished by Moats in the amount of at least \$543,813.01.

40. Defendants' failure and refusal to pay Moats constitutes a breach of the contracts.

41. As a result of Defendants' breach of the contracts, Moats has been damaged in the amount of at least \$543,813.01, together with interest at the pre-judgment rate per annum until date of judgment, interest thereafter at the post-judgment rate per annum until paid in full, and attorney's fees.

42. On or about July 2024, Moats sent a letter to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days. Moats is also entitled to attorneys' fees and interest from pursuant to S.C. Code Ann. § 27-1-15.

43. Moats is entitled to recovery of its proven damages from Defendants.

FOR A SECOND CAUSE OF ACTION
(Green Man - Breach of Contract as to All Defendants)

44. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

45. On or about December 2023, Defendant W.H. Bass, Inc. hired the Green Man, and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger, to provide dumpsters, portable toilets, and Conex containers on the Properties.

46. Green Man fully satisfied and performed its obligations under the contracts with Defendants.

47. Defendants have wrongfully failed and refused to pay Green Man in the amount of at least \$6,236.54.

48. Defendants' failure and refusal to pay Green Man constitutes a breach of the contracts.

49. As a result of Defendants' breach of the contracts, Green Man has been damaged in the amount of at least \$6,236.54 together with interest at the pre-judgment rate per annum until date of judgment, interest thereafter at the post-judgment rate per annum until paid in full, and attorney's fees.

50. On or about July 2024, Green Man sent a letter to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days. Green Man is also entitled to attorneys' fees and interest from pursuant to S.C. Code Ann. § 27-1-15.

51. Green Man is entitled to recovery of its proven damages from Defendants.

FOR A THIRD CAUSE OF ACTION
(Moats - Quantum Meruit/Unjust Enrichment as to All Defendants)

52. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

53. Moats pleads this cause of action in the alternative and to the extent it is determined that Moats did not have an enforceable contract with Defendants.

54. Moats furnished labor and materials to the Project for the use and benefit of Defendants, and such labor and materials were accepted, used, and enjoyed by Defendants.

55. At the time that the labor and materials were provided to Defendants, Defendants understood that Moats was to be paid for the labor and materials. Further, Defendants specifically requested the labor and materials. To the extent the Contract is determined to be invalid, the acceptance of Moats's labor and materials by Defendants created an implied agreement or contract between Defendants and Moats.

56. Defendants benefited from the labor and materials supplied by Moats. Such labor and materials were furnished under circumstances that it was clear that Moats expected to be paid for them.

57. Defendants will be unjustly enriched if Moats is not paid for the labor and materials supplied.

58. The reasonable market value of the labor and materials provided to Defendant is at least \$543,813.01, for which Moats hereby sues together with attorney's fees, costs and prejudgment interest.

FOR A FOURTH CAUSE OF ACTION
(Green Man - Quantum Meruit/Unjust Enrichment as to All Defendants)

59. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

60. Green Man pleads this cause of action in the alternative and to the extent it is determined that Green Man did not have an enforceable contract with Defendants.

61. Green Man furnished labor and materials to the Project for the use and benefit of Defendants, and such labor and materials were accepted, used, and enjoyed by Defendants.

62. At the time that the labor and materials were provided to Defendants, Defendants understood that Green Man was to be paid for the labor and materials. Further, Defendants specifically requested the labor and materials. To the extent the Contract is determined to be invalid, the acceptance of Green Man's labor and materials by Defendants created an implied agreement or contract between Plaintiffs and Moats.

63. Defendants benefited from the labor and materials supplied by Green Man. Such labor and materials were furnished under circumstances that it was clear that Green Man expected to be paid for them.

64. Defendants will be unjustly enriched if Green Man is not paid for the labor and materials supplied.

65. The reasonable market value of the labor and materials provided to Defendants is at least \$6,236.54, for which Green Man hereby sues together with attorney's fees, costs and prejudgment interest.

FOR A FIFTH CAUSE OF ACTION

(Moats - Foreclosure of Mechanic's Liens as to Defendant APB Partnership, LLC)

66. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

67. APB Partnership, LLC was, and upon further information and belief, still is, the record owner of two of the Properties described in the Moats Mechanic's Liens.

68. Pursuant to the terms of the contracts with Defendants, Moats provided labor and materials for improvements to the Properties.

69. Within ninety days from last supplying labor and materials on the Project, Moats filed the Moats Mechanic's Liens.

70. Moats has filed, contemporaneously with this Complaint, a Lis Pendens on the Properties.

71. This Complaint is being filed within six months of Moats last supplying labor and materials on the Project.

72. Defendants have failed and neglected to pay Moats for labor and materials provided on the Properties, and there is, as of the filing of this Complaint, still due and owing Moats a sum of \$543,813.01, which may be accounted for by the properly filed Moats Mechanic's Liens.

73. Upon information and belief, by virtue of the duly filed and perfected Moats Mechanic's Liens, Moats is entitled to foreclose on the Properties and have the Moats Mechanic's

Liens, along with interest and attorney's fees, satisfied from the proceeds of the foreclosure of the Properties.

FOR A SIXTH CAUSE OF ACTION
(Green Man - Foreclosure of Mechanic's Lien as to APB Partnership, LLC)

74. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

75. Defendant APB Partnership, LLC was, and upon further information and belief, still is, the record owner of two of the Properties described in the Green Man Mechanic's Liens.

76. Pursuant to the terms of the Contract with Defendants, Green Man provided labor and materials for improvements to the Properties.

77. Within ninety days from last supplying labor and materials on the Project, Green Man filed the Mechanic's Lien.

78. Green Man has filed, contemporaneously with this Complaint, a Lis Pendens on the Properties.

79. This Complaint is being filed within six months of Green Man last supplying labor and materials on the Project.

80. Defendants have failed and neglected to pay Green Man for labor and materials provided on the Properties, and there is, as of the filing of this Complaint, still due and owing Green Man a sum of \$6,236.54, which may be accounted for by the properly filed Green Man Mechanic's Liens.

81. Upon information and belief, by virtue of the duly filed and perfected Green Man Mechanic's Liens, Green Man is entitled to foreclose on the Properties and have the Green Man Mechanic's Liens, along with interest and attorney's fees, satisfied from the proceeds of the foreclosure of the Properties.

WHEREFORE, Plaintiffs respectfully pray this Court to enter judgment against the Defendants as follows:

A. For damages in favor of Moats on all its causes of action in the amounts to be proven at trial, plus costs associated with this action, including reasonable attorney's fees, prejudgment interest and any such other relief as the Court deems just and proper.

B. For damages in favor of Green Man on all its causes of action in the amounts to be proven at trial, plus costs associated with this action, including reasonable attorney's fees, prejudgment interest and any such other relief as the Court deems just and proper.

C. Foreclosure of the Properties pursuant to the Moats Mechanic's Liens and directing application of the proceeds to satisfy the debt due to Moats for the unpaid labor and materials provided to the Properties, plus attorneys' fees, interest, costs, and any other relief afforded by S.C. Code Ann. § 29-5-20 et. seq.

D. Foreclosure of the Properties pursuant to the Green Man Mechanic's Liens and directing application of the proceeds to satisfy the debt due to Green Man for the unpaid labor and materials provided to the Properties, plus attorneys' fees, interest, costs, and any other relief afforded by S.C. Code Ann. § 29-5-20 et. seq.

s/ David L. Paavola

Brian A. Autry (SC Bar No. 69401)
David L. Paavola (SC Bar No. 100714)
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Attorneys for Plaintiff

October 28, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-04-02229

**AMENDED SUMMONS
(Jury Trial Demanded)**

YOU ARE SUMMONED AND REQUIRED to answer the Amended Complaint in the above-entitled action, a copy of which is served upon you, and to serve a copy of your Answer upon the Plaintiffs' attorneys at their offices located at 440 Knox Abbott Drive, Suite 510, Cayce, South Carolina 29033 within thirty (30) days after the date of such service, exclusive of the day of service. If you fail to answer the Complaint within thirty (30) days, judgment by default will be entered against you for the relief demanded in the Complaint.

s/ David L. Paavola

Brian A. Autry (SC Bar No. 69401)
David L. Paavola (SC Bar No. 100714)
Caitlin S. Cameron (SC Bar No. 106286)
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Attorneys for Plaintiff

February 17, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-04-02229

**AMENDED COMPLAINT
(Jury Trial Demanded)**

The Plaintiffs, Moats Construction, Inc. and The Green Man, LLC (collectively, “Plaintiffs”) complaining of the Defendants APB Partnership, LLC, Wesley Edwards, 2916 N Main, LLC, W.H. Bass, Inc., and Whataburger Restaurants, LLC (collectively, “Defendants”), would show the Court the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Moats Construction, Inc. (“Moats”) is a South Carolina corporation that, at all times mentioned herein, was conducting business in South Carolina.
2. Plaintiff The Green Man, LLC (“Green Man”) is a South Carolina limited liability company that, at all times mentioned herein, was conducting business in South Carolina.
3. Defendant APB Partnership, LLC (“APB”) is a South Carolina limited liability company and the record owner of real property located at 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street (TMS No. 122-12-02-003), both in Anderson, South Carolina.

4. 2916 N Main, LLC (“2916 LLC”) is a South Carolina limited liability company and at all relevant times to this lawsuit was the record owner of real property located at 2916 N. Main Street (TMS No. 122-12-02-002) in Anderson, South Carolina.

5. Defendant Wesley Edwards, upon information and belief, is a citizen and resident of Anderson, South Carolina.

6. Defendant W.H. Bass, Inc. (“W.H. Bass”) is a Georgia corporation and at all relevant times was doing business on real property located in Anderson, South Carolina.

7. Defendant Whataburger Restaurants LLC (“Whataburger”) is a Texas company and at all relevant times was doing business on real property located in Anderson, South Carolina.

8. Defendant United Community Bank d/b/a The Palmetto Bank is a financial institution engaged in lending in South Carolina and specifically for the properties at issue in this action.

9. The facts giving rise to this matter all relate to improvements to real property located in Anderson County, South Carolina.

10. For the reasons set forth above and as alleged in more detail herein, jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

11. The properties that are the subject of this action are located at 2916 N. Main Street, 2902 N. Main Street and 2900 N. Main Street, Anderson, South Carolina (collectively, the “Properties”).

12. Upon information and belief, United Community Bank loaned funds to APB secured by real property located at 2902 and 2900 N. Main Street, Anderson, South Carolina.

13. Upon information and belief, 2916 N. Main LLC and APB Partnership, LLC are related entities and controlled by common members.

14. At all relevant times to this lawsuit, 2916 N. Main LLC was the owner of 2916 N. Main Street (TMS No. 122-12-02-002).

15. At all relevant times to this lawsuit, APB Partnership, LLC was the owner of 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street (TMS No. 122-12-02-003).

16. In late 2023 and early 2024, the Properties were improved for the construction of a Whataburger restaurant located at 2900 N. Main Street Anderson, SC (the “Project”).

17. Upon information and belief, the Defendants all worked together to improve the Properties for the eventual construction of a Whataburger restaurant at 2900 N. Main Street.

18. Upon information and belief, APB, 2916 LLC, and/or Wesley Edwards entered into an agreement/s with Defendant Whataburger Restaurant and/or W.H. Bass to improve the Properties.

19. Upon information and belief, APB has entered into leases for the properties located at 2902 N. Main Street and 2900 N. Main Street, and it is benefiting from the work performed by Moats and the Green Man on these properties.

20. Upon information and belief, W.H. Bass entered into an agreement with Whataburger to improve the Properties and construct a restaurant on 2900 N. Main Street.

21. Construction of the Whataburger restaurant necessitated demolition, site improvement work, and development of the Properties.

22. On or about August 2023, Defendants APB, 2916 LLC, Wesley Edwards hired Moats Construction to conduct demolition and construction services on the Properties.

23. On or about December 2023, Defendant W.H. Bass, Inc. contracted with Moats, and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger Restaurants, LLC, to conduct demolition, utility services, and construction services on the Properties.

24. Upon information and belief, Whataburger hired Moats to perform construction services on the Properties through other Defendants and Whataburger has previously paid for certain work directly to Moats. Whataburger is directly benefiting from Moats' work on the Properties.

25. On or about December 2023, Defendant W.H. Bass, Inc. hired the Green Man, and upon information and belief on behalf this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger Restaurants, LLC, to provide dumpsters, portable toilets, and Conex containers on the Properties.

26. Moats satisfied, performed, and completed all demolition, construction services, and site related work at the Properties and Defendants have not paid for this work. In total, Moats is owed \$543,813.01 for all work it performed on the Properties.

27. Green Man provided dumpsters, portable toilets, and Conex containers for the Properties and Defendants have not paid for this work. In total, Green Man is owed \$6,236.54.

28. As part of performing work on the Project and Properties, Moats entered into a Rental Purchase Option agreement for equipment to be used to conduct work on the Properties and Project. Moats intended to purchase such equipment at the end of its work on the Properties but was unable to do so as a result of Defendants' failure to pay amounts properly due to Moats. Instead, Moats lost its ability to purchase the equipment and incurred fees and costs when the equipment was returned to the vendor.

29. As part of performing work on the Project and Properties, Moats used trade accounts to furnish materials for the project. As a result of Defendants' failure to pay amounts properly due to Moats, Moats's trade credit with certain vendors has been lost or damaged and such amounts have occurred late fees and other costs.

30. On or about July 3, 2024, and within ninety days from last supplying labor or materials on the Project, Moats filed and served mechanic's liens on the Properties for the amounts due from Defendants (the "Moats Mechanic's Liens"). The Moats Mechanic's Liens were filed with the Anderson County Register of Deeds Office in Book 65, Page 121.

31. On or about July 3, 2024, and within ninety days from last supplying labor or materials on the Project, Green Man filed and served mechanic's liens on the Properties for the amounts due from Defendants (the "Green Man Mechanic's Liens"). The Green Man Mechanic's Liens were filed with the Anderson County Register of Deeds Office in Book 65, Page 136.

32. On or about July 2024, Moats and Green Man sent letters to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days.

33. Despite demand from Moats, Defendants have failed and/or refused to pay the balance due to Moats of at least \$543,813.01 and the balance due to Green Man of \$6,236.54.

34. Moats is entitled to recovery of its proven damages from Defendants.

35. Green Man is entitled to recovery of its proven damages from Defendants.

FOR A FIRST CAUSE OF ACTION
(Moats - Breach of Contract as to All Defendants)

36. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

37. 2916 LLC, APB and Wesley Edwards hired Moats to perform demolition and construction services on the Properties.

38. W.H. Bass hired Moats and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger, to conduct demolition, utility services, and construction services on the Properties.

39. Upon information and belief, Whataburger hired Moats to perform construction services on the Properties directly or through other Defendants and for certain work has already paid Moats directly.

40. Moats fully satisfied and performed its obligations under the contracts with Defendants.

41. Moats entered into a Rental Purchase Option agreement for equipment used on the Project and Properties. Moats lost the ability to continue renting and to purchase the equipment as a result of Defendants' failure to pay amounts due to Moats. Moats incurred fees and costs associated with this equipment being returned to the vendor. All such damages were caused by Defendants' breach of contract.

42. Moats used trade accounts to furnish materials for the project. As a result of Defendants' failure to pay amounts properly due to Moats, Moats's trade credit with certain vendors has been lost or damaged and all such related damages and late fees and costs were caused by Defendants' breach of contract.

43. Defendants have wrongfully failed and refused to pay Moats for labor and materials furnished by Moats in the amount of at least \$543,813.01.

44. Defendants' failure and refusal to pay Moats constitutes a breach of the contracts.

45. As a result of Defendants' breach of the contracts, Moats has been damaged in the amount of at least \$543,813.01, together with interest at the pre-judgment rate per annum until date of judgment, interest thereafter at the post-judgment rate per annum until paid in full, and attorney's fees.

46. On or about July 2024, Moats sent a letter to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days. Moats is also entitled to attorneys' fees and interest from pursuant to S.C. Code Ann. § 27-1-15.

47. Moats is entitled to recovery of its proven damages from Defendants.

FOR A SECOND CAUSE OF ACTION
(Green Man - Breach of Contract as to All Defendants)

48. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

49. On or about December 2023, Defendant W.H. Bass, Inc. hired the Green Man, and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger, to provide dumpsters, portable toilets, and Conex containers on the Properties.

50. Green Man fully satisfied and performed its obligations under the contracts with Defendants.

51. Defendants have wrongfully failed and refused to pay Green Man in the amount of at least \$6,236.54.

52. Defendants' failure and refusal to pay Green Man constitutes a breach of the contracts.

53. As a result of Defendants' breach of the contracts, Green Man has been damaged in the amount of at least \$6,236.54 together with interest at the pre-judgment rate per annum until

date of judgment, interest thereafter at the post-judgment rate per annum until paid in full, and attorney's fees.

54. On or about July 2024, Green Man sent a letter to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days. Green Man is also entitled to attorneys' fees and interest from pursuant to S.C. Code Ann. § 27-1-15.

55. Green Man is entitled to recovery of its proven damages from Defendants.

FOR A THIRD CAUSE OF ACTION
(Moats - Quantum Meruit/Unjust Enrichment as to All Defendants)

56. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

57. Moats pleads this cause of action in the alternative and to the extent it is determined that Moats did not have an enforceable contract with Defendants.

58. Moats furnished labor and materials to the Project for the use and benefit of Defendants, and such labor and materials were accepted, used, and enjoyed by Defendants.

59. At the time that the labor and materials were provided to Defendants, Defendants understood that Moats was to be paid for the labor and materials. Further, Defendants specifically requested the labor and materials. To the extent the Contract is determined to be invalid, the acceptance of Moats's labor and materials by Defendants created an implied agreement or contract between Defendants and Moats.

60. Defendants benefited from the labor and materials supplied by Moats. Such labor and materials were furnished under circumstances that it was clear that Moats expected to be paid for them.

61. Defendants will be unjustly enriched if Moats is not paid for the labor and materials supplied.

62. The reasonable market value of the labor and materials provided to Defendant is at least \$543,813.01, for which Moats hereby sues together with attorney's fees, costs and prejudgment interest.

FOR A FOURTH CAUSE OF ACTION
(Green Man - Quantum Meruit/Unjust Enrichment as to All Defendants)

63. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

64. Green Man pleads this cause of action in the alternative and to the extent it is determined that Green Man did not have an enforceable contract with Defendants.

65. Green Man furnished labor and materials to the Project for the use and benefit of Defendants, and such labor and materials were accepted, used, and enjoyed by Defendants.

66. At the time that the labor and materials were provided to Defendants, Defendants understood that Green Man was to be paid for the labor and materials. Further, Defendants specifically requested the labor and materials. To the extent the Contract is determined to be invalid, the acceptance of Green Man's labor and materials by Defendants created an implied agreement or contract between Plaintiffs and Moats.

67. Defendants benefited from the labor and materials supplied by Green Man. Such labor and materials were furnished under circumstances that it was clear that Green Man expected to be paid for them.

68. Defendants will be unjustly enriched if Green Man is not paid for the labor and materials supplied.

69. The reasonable market value of the labor and materials provided to Defendants is at least \$6,236.54, for which Green Man hereby sues together with attorney's fees, costs and prejudgment interest.

FOR A FIFTH CAUSE OF ACTION
(Moats - Foreclosure of Mechanic's Liens as to Defendant APB Partnership, LLC)

70. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

71. APB Partnership, LLC was, and upon further information and belief, still is, the record owner of two of the Properties described in the Moats Mechanic's Liens.

72. Pursuant to the terms of the contracts with Defendants, Moats provided labor and materials for improvements to the Properties.

73. Within ninety days from last supplying labor and materials on the Project, Moats filed the Moats Mechanic's Liens.

74. Moats has filed, contemporaneously with this Complaint, a Lis Pendens on the Properties.

75. This Complaint is being filed within six months of Moats last supplying labor and materials on the Project.

76. Defendants have failed and neglected to pay Moats for labor and materials provided on the Properties, and there is, as of the filing of this Complaint, still due and owing Moats a sum of \$534,778.37, which may be accounted for by the properly filed Moats Mechanic's Liens.

77. The lien amount is further divided among the identified real property as follows: One Hundred Eighty-Six Thousand Six Hundred Thirty-Three Dollars and 77/100 (\$186,633.77) on 2900 North Main St. Anderson, SC 29621 and Three Hundred Forty-Eight Thousand One

Hundred Forty-Four Dollars and 60/100 (\$348,144.60) on 2902 North Main St. Anderson, SC 29621.

78. Upon information and belief, by virtue of the duly filed and perfected Moats Mechanic's Liens, Moats is entitled to foreclose on the Properties and have the Moats Mechanic's Liens, along with interest and attorney's fees, satisfied from the proceeds of the foreclosure of the Properties.

FOR A SIXTH CAUSE OF ACTION
(Green Man - Foreclosure of Mechanic's Lien as to APB Partnership, LLC)

79. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

80. Defendant APB Partnership, LLC was, and upon further information and belief, still is, the record owner of two of the Properties described in the Green Man Mechanic's Liens.

81. Pursuant to the terms of the Contract with Defendants, Green Man provided labor and materials for improvements to the Properties.

82. Within ninety days from last supplying labor and materials on the Project, Green Man filed the Mechanic's Lien.

83. Green Man has filed, contemporaneously with this Complaint, a Lis Pendens on the Properties.

84. This Complaint is being filed within six months of Green Man last supplying labor and materials on the Project.

85. Defendants have failed and neglected to pay Green Man for labor and materials provided on the Properties, and there is, as of the filing of this Complaint, still due and owing Green Man a sum of \$6,236.54, which may be accounted for by the properly filed Green Man Mechanic's Liens.

86. Upon information and belief, by virtue of the duly filed and perfected Green Man Mechanic's Liens, Green Man is entitled to foreclose on the Properties and have the Green Man Mechanic's Liens, along with interest and attorney's fees, satisfied from the proceeds of the foreclosure of the Properties.

WHEREFORE, Plaintiffs respectfully pray this Court to enter judgment against the Defendants as follows:

A. For damages in favor of Moats on all its causes of action in the amounts to be proven at trial, plus costs associated with this action, including reasonable attorney's fees, prejudgment interest and any such other relief as the Court deems just and proper.

B. For damages in favor of Green Man on all its causes of action in the amounts to be proven at trial, plus costs associated with this action, including reasonable attorney's fees, prejudgment interest and any such other relief as the Court deems just and proper.

C. Foreclosure of the Properties pursuant to the Moats Mechanic's Liens and directing application of the proceeds to satisfy the debt due to Moats for the unpaid labor and materials provided to the Properties, plus attorneys' fees, interest, costs, and any other relief afforded by S.C. Code Ann. § 29-5-20 et. seq.

D. Foreclosure of the Properties pursuant to the Green Man Mechanic's Liens and directing application of the proceeds to satisfy the debt due to Green Man for the unpaid labor and materials provided to the Properties, plus attorneys' fees, interest, costs, and any other relief afforded by S.C. Code Ann. § 29-5-20 et. seq.

s/ David L. Paavola
 Brian A. Autry (SC Bar No. 69401)
 David L. Paavola (SC Bar No. 100714)
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Attorneys for Plaintiff

February 17, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

**MOATS CONSTRUCTION, INC. and THE
GREEN MAN, LLC,**

C/A No. 2024-CP-04-02229

Plaintiffs,

v.

**APB PARTNERSHIP, LLC, WESLEY
EDWARDS, 2916 N. MAIN, LLC, W.H.
BASS, INC., WHATABURGER
RESTAURANTS, LLC, and UNITED
COMMUNITY BANK,**

Defendants.

**SUMMONS TO
COUNTERCLAIMS AND CROSS-
CLAIMS**

(Jury Trial Demanded)

TO THE PLAINTIFFS AND CROSS-CLAIM DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim and/or Cross-Claims in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaim or Cross-Claims on the subscriber at his office at 2006 North Main Street, Anderson, South Carolina 29621, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Counterclaim or Cross-Claims within the time aforesaid, the Defendants, Counterclaimants, Cross-Claim Plaintiffs in this action will apply to the Court for the said relief demanded in the Counterclaim and Cross-Claims.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Defendants, Counterclaimants, Cross-Claim Plaintiffs(s) herein.

**TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE)
AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM
(S)HE/(THEY) RESIDE(S):**

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent said infant(s) under 14 years of age (said incompetent or insane person) within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Defendants, Counterclaimants, Cross-Claim Plaintiffs(s) herein.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

s/Daniel L. Draisen (SC Bar# 13536)

2006 North Main Street

Anderson, South Carolina 29621

864 888-8887

daniel@injuredSC.com

March 7, 2025
Anderson, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

**MOATS CONSTRUCTION, INC. and THE
GREEN MAN, LLC,**

C/A No. 2024-CP-04-02229

Plaintiffs,

v.

**APB PARTNERSHIP, LLC, WESLEY
EDWARDS, 2916 N. MAIN, LLC, W.H.
BASS, INC., WHATABURGER
RESTAURANTS, LLC, and UNITED
COMMUNITY BANK,**

**ANSWER, COUNTERCLAIMS
AND CROSS-CLAIMS BY
DEFENDANTS ABP
PARTNERSHIP, LLC, WESLEY
EDWARDS and 2916 N. MAIN,
LLC**

Defendants.

(Jury Trial Demanded)

Defendants **APB PARTNERSHIP, LLC, WESLEY EDWARDS, and 2916 N. MAIN, LLC** (hereinafter collectively referred to as the “APB Defendants”), answering the Complaint of the Plaintiffs, would respectfully show unto the Court and allege:

FOR A FIRST DEFENSE

1. APB Defendants generally deny each and every allegation of the Plaintiffs’ Complaint not hereinafter admitted, modified or explained.
2. Subject to the defenses contained herein, and to the Counterclaims and Cross-Claims of the APB Defendants, APB Defendants generally admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 10 of Plaintiffs’ Complaint.
3. Paragraphs 9 and 11 state legal conclusions for which no response is necessary. However, to the extent a response is deemed necessary, APB Defendants admit that it

appears from the Complaint that Plaintiffs allege this matter is related to improvements to real property located in Anderson, South Carolina.

4. APB Defendants admit the allegations of Paragraph 12 of Plaintiffs' Complaint.

5. APB Defendants deny the allegations of Paragraph 13 of Plaintiffs' Complaint. The terms "related entities," "controlled," and "common members" are vague and ambiguous such that Defendants are incapable of providing a response thereto and therefore must deny same. APB Defendants affirmatively assert that the named entities are separate and distinct corporate entities. While each entity may have a member that is a member of both entities, the member interests in each company are separate and distinct.

6. APB Defendants admit the allegations of Paragraph 14 of Plaintiffs' Complaint.

7. APB Defendants admit the allegations of Paragraph 15 of Plaintiffs' Complaint.

8. While the allegations of Paragraph 16 are conclusory, APB Defendants generally admit the allegations of Paragraph 16 of Plaintiffs' Complaint.

9. APB Defendants deny the allegations of Paragraph 17 of Plaintiffs' Complaint.

10. APB Defendants deny the allegations of Paragraph 18 or Plaintiff's Complaint.

11. With regard to Paragraph 19, APB Defendants admit that there are leases for the properties at 2902 and 2900 N. Main Street. The remaining allegations are denied and strict proof is demanded thereof.

12. The allegations of Paragraph 20 do not refer to the APB Defendants. As such, no response is necessary. However, to the extent a response is deemed necessary, APB Defendants are without information sufficient to admit or to deny the allegations and therefore must deny same.

13. Paragraph 21 states legal conclusions for which no response is necessary. However, to the extent a response is deemed necessary, APB Defendants deny construction of the Whataburger “necessitated” demolition. Demolition work was done by the owner prior to development of the site by or for Whataburger.

14. APB Defendants deny the allegations of Paragraph 22 of Plaintiffs’ Complaint.

15. APB Defendants deny the allegations of Paragraph 23 of Plaintiffs’ Complaint.

16. The allegations of Paragraph 24 do not refer to the APB Defendants. As such, no response is necessary. However, to the extent a response is deemed necessary, APB Defendants are without information sufficient to admit or to deny the allegations and therefore must deny same.

17. APB Defendants deny the allegations of Paragraph 25 of Plaintiffs’ Complaint.

18. APB Defendants deny the allegations of Paragraph 26 of Plaintiffs’ Complaint.

19. APB Defendants deny the allegations of Paragraph 27 of Plaintiffs’ Complaint.

20. The APB Defendants are without any information as to what contractual agreements or arrangements Moats made or may have made, assert that such arrangements are irrelevant, and APB Defendants deny the allegations of Paragraph 28 of Plaintiffs’ Complaint.

21. The APB Defendants are without any information as to what contractual agreements or arrangements Moats made or may have made, assert that such arrangements are irrelevant, and APB Defendants deny the allegations of Paragraph 29 of Plaintiffs’ Complaint.

22. Paragraph 30 states a legal conclusion for which no response is necessary. However, to the extent a response is deemed necessary, APB Defendants admits only that Moats filed Mechanic's Liens. The remaining allegations are denied.

23. Paragraph 31 states a legal conclusion for which no response is necessary. However, to the extent a response is deemed necessary, APB Defendants admits only that Green Man filed Mechanic's Liens. The remaining allegations are denied.

24. APB Defendants deny the allegations of Paragraph 32 of Plaintiffs' Complaint. APB Defendants affirmatively assert that, by and through its counsel, APB contacted Moats and advised that they were not the responsible parties, that they did not contract with Moats or Green Man for the work performed, that they were improperly involved in any payment dispute, and that Moats needed to contact Defendants W.H. Bass and Whataburger regarding the payment dispute.

25. Subject to the defenses contained herein, and to the Counterclaims and Cross-Claims of the APB Defendants, APB Defendants generally admit the allegations of Paragraph 33 of Plaintiffs' Complaint inasmuch as they maintain that they do not owe the balances alleged owed and as a result have refused to pay Moats and Green Man related same.

26. Paragraphs 34 and 35 state legal conclusions for which no response is necessary. However, to the extent a response is deemed necessary, APB Defendants, to the extent the term "Defendants" includes the APB Defendants, deny same and demand strict proof thereof.

27. APB Defendants deny the allegations of Paragraph 37 of Plaintiffs' Complaint.

28. APB Defendants deny the allegations of Paragraph 38 of Plaintiffs' Complaint.

29. The allegations of Paragraph 39 do not refer to the APB Defendants. As such, no response is necessary. However, to the extent a response is deemed necessary, APB Defendants are without information sufficient to admit or to deny the allegations and therefore must deny same.

30. APB Defendants deny the allegations of Paragraph 40 of Plaintiffs' Complaint. APB Defendants, to the extent the term "Defendants" includes contracts with the APB Defendants, deny same and demand strict proof thereof.

31. The APB Defendants are without any information as to what contractual agreements or arrangements Moats made or may have made, assert that such arrangements are irrelevant, and APB Defendants deny the allegations of Paragraphs 41 and 42 of Plaintiffs' Complaint.

32. APB Defendants deny the allegations of Paragraph 43 of Plaintiffs' Complaint. APB Defendants, to the extent the term "Defendants" includes the APB Defendants, deny same and demand strict proof thereof.

33. Paragraph 44 states a legal conclusion for which no response is necessary. However, to the extent a response is deemed necessary, APB Defendants, to the extent the term "Defendants" includes the APB Defendants, deny same and demand strict proof thereof.

34. APB Defendants deny the allegations of Paragraphs 45, 46 and 47 of Plaintiffs' Complaint.

35. APB Defendants deny the allegations of Paragraph 49 of Plaintiffs' Complaint.

36. APB Defendants deny the allegations of Paragraph 50 of Plaintiffs' Complaint.

37. APB Defendants deny the allegations of Paragraphs 51, 52 and 53 of Plaintiffs' Complaint. APB Defendants, to the extent the term "Defendants" includes the APB Defendants, deny same and demand strict proof thereof.

38. APB Defendants deny the allegations of Paragraph 54 of Plaintiffs' Complaint. APB Defendants affirmatively assert that, by and through its counsel, APB contacted Moats/Green Man and advised that they were not the responsible parties, that they did not contract with Moats or Green Man for the work performed, that they were improperly involved in any payment dispute, and that Moats needed to contact Defendants W.H. Bass and Whataburger regarding the payment dispute.

39. APB Defendants deny the allegations of Paragraph 55 of Plaintiffs' Complaint. APB Defendants, to the extent the term "Defendants" includes the APB Defendants, deny same and demand strict proof thereof.

40. With regard to Paragraphs 57, 58, 59, 60, 61 and 62, to the extent the term "Defendants" includes the APB Defendants, APB Defendants deny same and demand strict proof thereof.

41. With regard to Paragraphs 64, 65, 66, 67, 68 and 69, to the extent the term "Defendants" includes the APB Defendants, APB Defendants deny same and demand strict proof thereof.

42. Subject to the defenses contained herein, and to the Counterclaims and Cross-Claims of the APB Defendants, APB Defendants generally admit the allegations of Paragraph 71 of Plaintiffs' Complaint.

43. APB Defendants deny the allegations of Paragraph 72 of Plaintiffs' Complaint.

44. Paragraphs 73, 74 and 75 state a legal conclusions for which no response is necessary. However, to the extent a response is deemed necessary, APB Defendants deny same and demand strict proof thereof.

45. With regard to Paragraphs 76, 77 and 78, to the extent the term "Defendants" includes the APB Defendants, APB Defendants deny same and demand strict proof thereof.

46. Subject to the defenses contained herein, and to the Counterclaims and Cross-Claims of the APB Defendants, APB Defendants generally admit the allegations of Paragraph 80 of Plaintiffs' Complaint.

47. APB Defendants deny the allegations of Paragraph 81 of Plaintiffs' Complaint.

48. Paragraphs 82, 83 and 84 state a legal conclusions for which no response is necessary. However, to the extent a response is deemed necessary, APB Defendants deny same and demand strict proof thereof.

49. With regard to Paragraphs 85, 86 and 87, to the extent the term "Defendants" includes the APB Defendants, APB Defendants deny same and demand strict proof thereof.

50. APB Defendants deny Plaintiffs' prayer for relief in it is entirety, request that Plaintiffs' Complaint be dismissed with prejudice, that the APB Defendants be awarded their attorney's fees and costs, and demand strict proof thereof.

FOR A SECOND DEFENSE

51. The APB Defendants reiterate the allegations contained in their previous Defense as if fully restated herein.

52. Pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure, Plaintiffs have failed to state facts sufficient to constitute a cause of action against the APB Defendants.

FOR A THIRD DEFENSE

53. The APB Defendants reiterate the allegations contained in their previous Defenses as if fully restated herein.

54. The Plaintiff's claims are barred by the doctrine of Accord and Satisfaction as any debts alleged as owed by the APB Defendants have been paid and satisfied in full.

FOR A FOURTH DEFENSE

55. The APB Defendants reiterate the allegations contained in their previous Defenses as if fully restated herein.

56. To the extent the Plaintiffs have made allegations about the discussions, negotiations and or representations of the APB Defendants related to demolition, site work, construction, or other improvements to real property at issue in this matter prior to the signing of written contracts for same, any such negotiations, terms, conditions or representations were and are merged into the express terms of the written contract pursuant to the Doctrine of Merger.

FOR A FIFTH DEFENSE

57. The APB Defendants reiterate the allegations contained in their previous Defenses as if fully restated herein.

58. APB Defendants plead payment as an affirmative defense. The Plaintiffs have been paid all sums due to them under the terms of the Contract for the scope of work Plaintiffs were hired to perform and to complete at the request of the APB Defendants,

including for all work that was done correctly, to code, and in a proper and workmanlike manner as guaranteed by the Contract.

FOR A SIXTH DEFENSE

59. The APB Defendants reiterate the allegations contained in their previous Defenses as if fully restated herein.

60. Plaintiffs' claims are barred by the Doctrine of Waiver.

FOR A SEVENTH DEFENSE

61. The APB Defendants reiterate the allegations contained in their previous Defenses as if fully restated herein.

62. Plaintiffs' claims are barred by the Doctrine of Consent.

FOR AN EIGHTH DEFENSE

63. The APB Defendants reiterate the allegations contained in their previous Defenses as if fully restated herein.

64. Any damages allegedly sustained by the Plaintiffs, which is denied, was only caused by the acts or omissions of entities or persons other than the APB Defendants, which acts, or omissions constitute the intervening and superseding cause of the Plaintiffs' alleged damages and bar the Plaintiffs' claims against these Defendants.

FOR A NINTH DEFENDSE BY WAY OF ADDITIONAL AFFIRMATIVE DEFENSES

65. The APB Defendants reiterate the allegations contained in their previous Defenses as if fully restated herein.

66. The APB Defendants allege that any recovery by Plaintiffs must be set off or reduced, abated, or apportioned to the extent that any other party's actions caused or contributed to damages, if any.

67. The APB Defendants allege that to the extent Plaintiffs seek recovery in contract, Plaintiffs materially breached the terms and conditions of the said agreement and are entitled to no relief thereon.

68. The APB Defendants allege that, to the extent Plaintiffs allege these Defendants had any obligation as to which full performance has not been rendered or excused, there has been a failure of consideration.

69. The APB Defendants allege that, to the extent Plaintiffs allege these Defendants had any obligation or duty as to which full performance has not been rendered or excused, not all conditions precedent to said obligations or duties occurred.

70. The APB Defendants allege that, to the extent Plaintiffs allege these Defendants had any obligation as to which full performance has not been rendered or excused, that obligation did not exist or was based upon acts or omissions that were void or otherwise extinguished.

71. The APB Defendants allege that Plaintiffs cannot seek the recovery pleaded herein because such recovery is expressly contrary to the evidence this court may consider under the parol evidence rule.

72. The APB Defendants allege that any recovery by Plaintiffs is barred by their failure to mitigate damages, or that any recovery must be reduced by those damages that Plaintiffs failed to mitigate.

73. The APB Defendants allege that the damages suffered by Plaintiffs, if any, were the result of the acts or omissions of other parties named and unnamed in this action, for which these answering Defendants bear no responsibility.

74. The APB Defendants allege that Plaintiffs' action is barred under the equitable doctrine of unclean hands.

75. The APB Defendants allege that the damages suffered by Plaintiffs, if any, resulted from the Defendants' detrimental reliance on Plaintiffs' conduct, for which these answering Defendants bear no responsibility.

76. The APB Defendants allege that Plaintiffs' bad faith bars its claims or that any damages must be reduced as a result of Plaintiffs' comparative bad faith.

77. The APB Defendants allege that the complaint and each cause of action are uncertain.

78. The APB Defendants allege that the damages suffered by Plaintiffs, if any, were the result of the negligence and failure to use reasonable diligence in performing the acts required of Plaintiffs.

79. The APB Defendants allege that Plaintiffs were guilty of contributory fault and negligence in the matters alleged in the complaint and that such contributory fault and negligence proximately caused the damages complained of herein.

80. The APB Defendants allege that any recovery by Plaintiffs is barred or must be reduced as a result of Plaintiffs' comparative fault.

81. The APB Defendants allege that Plaintiffs assumed the risk of all damages of which they now complain.

82. The APB Defendants do not waive, expressly reserve, and hereby assert as if fully set forth herein all other statutory and common law defenses, including all affirmative defenses, not previously set forth above. Further, the APB Defendants expressly reserve the right to amend their Answer, Counterclaims and Cross-Claims to assert such other and further claims, defenses, counterclaims, or cross-claims as may, through the course of discovery, be deemed necessary and proper in this matter.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIMS AND CROSS-CLAIMS

83. The APB Defendants hereby incorporate, by reference thereto, the allegations contained in their previous Defenses as if fully restated herein.

84. The APB Defendants, Counterclaimants and Cross-Claim Plaintiffs, complaining of the Plaintiffs, Counterclaim Defendants and/or Cross-Claim Defendants herein, would respectfully show unto the Court and allege that:

85. Plaintiff/Counterclaim Defendant Moats Construction, Inc. ("Moats") is a South Carolina corporation that, at all times mentioned herein, was conducting business in the County of Anderson, State of South Carolina.

86. Plaintiff/Counterclaim Defendant The Green Man, LLC ("Green Man") is a South Carolina limited liability company that, at all times mentioned herein, was conducting business in the County of Anderson, State of South Carolina

87. Defendant/Counterclaimant/Cross-Claim Plaintiff APB Partnership, LLC ("APB") is a South Carolina limited liability company and the record owner of real property located at 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street

(TMS No. 122-12-02-003), both in Anderson, South Carolina that, at all times mentioned herein, was conducting business in South Carolina.

88. Defendant/Counterclaimant/Cross-Claim Plaintiff 2916 N Main, LLC ("2916 LLC") is a South Carolina limited liability company and at all relevant times to this lawsuit was the record owner of real property located at 2916 N. Main Street (TMS No. 122-12-02-002) in Anderson, South Carolina.

89. Defendant/Counterclaimant/Cross-Claim Plaintiff Wesley Edwards is a citizen and resident of Anderson, South Carolina.

90. Defendant/Cross-Claim Defendant W.H. Bass, Inc. ("W.H. Bass") is a Georgia corporation and at all relevant times was doing business on real property located in Anderson, South Carolina.

91. Defendant/Cross-Claim Defendant Whataburger Restaurants LLC ("Whataburger") is a Texas company and at all relevant times was doing business on real property located in Anderson, South Carolina.

92. All parties, matters and things herein are within the jurisdiction of this Court.

**FOR A FIRST CAUSE OF ACTION AS TO COUNTERCLAIM DEFENDANTS MOATS
AND GREEN MAN**
(Prevailing Party in Mechanic's Lien Action)

93. As set forth herein above in the Defenses asserted, **APB PARTNERSHIP, LLC, 2916 N. MAIN, LLC, and WESLEY EDWARDS**, within the course and scope of his duties as a Member of the respective LLCs, (hereinafter collectively referred to as the "APB Defendants"), contracted in 2023 for certain work to be performed by Lloyd

Roofing Co., Inc. on the real property located at 2900 and 2902 North Main Street, Anderson, SC.

94. Lloyd Roofing Co., Inc. subcontracted a portion of its work for partial demolition of the existing structure to Plaintiff Moats Construction, Inc. and Russell Moats.

95. Moats Construction, Inc. completed the work it was contracted to perform by Lloyd Roofing Co., Inc., on behalf of the APB Defendants, in the first part of February 2024.

95. Moats Construction, Inc. invoiced for the work performed on or about February 20, 2024. After receipt of Moats' W9 and Certificate of Insurance, Lloyd Roofing paid the Moats Invoice in full for the work performed in the total amount of \$91,370.00.

96. Thereafter, upon information and belief, while Moats was working on the APB project, Defendant W.H. Bass, Inc., on behalf of Defendant Whataburger Restaurants, LLC, approached Moats and Green Man about completing work for W.H. Bass on the adjacent property since Moats was already on site.

97. The APB Defendants had absolutely nothing to do with, were not part of, did not request, authorize, or guarantee, and did not enter into any agreements (written or verbal) with Plaintiff Moats or Plaintiff Green Man for any of the alleged scope of work done or services provided as set forth in the Plaintiffs' Complaint.

98. Upon information and belief, any and all such work done or services provided were at the sole instance of and request of Defendant W.H. Bass, Inc. or Defendant Whataburger Restaurants, LLC., for the benefit of completing their site development project to use the APB Defendants' property as a restaurant.

99. Pursuant to SC Code, Ann., Section 29-5-20:

(A) Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of the labor or material so furnished, including the costs of the action and a reasonable attorney's fee which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court. The fee and the court costs may not exceed the amount of the lien. The lien may be enforced as herein provided.

100. In the event the APB Defendants, as parties defending against the liens placed on their property, are deemed to be prevailing parties, the APB Defendants assert that they are entitled to an award of the costs of this action and a reasonable attorney's fee as determined by the Court.

101. Accordingly, the APB Defendants/Counterclaimants pray that they be awarded the costs of this action and attorney's fees in an amount to be determined by the Court.

FOR A SECOND CAUSE OF ACTION AS TO COUNTERCLAIM DEFENDANTS
MOATS AND GREEN MAN
(Abuse of Process)

102. The APB Defendants/Counterclaimants hereby incorporate, by reference thereto, the allegations contained in their Defenses and First Cause of Action as if fully restated herein.

103. The act by the Plaintiffs of "lumping in" the APB Defendants with the W.H. Bass and Whataburger Defendants, the parties that, upon information and belief, engaged the Plaintiffs to perform work and to provide services, constitutes the institution or

continuation of a legal proceeding with malice and without probable cause as against the APB Defendants, is an abuse of process, and constitutes malicious prosecution by the Plaintiffs.

104. The Plaintiffs are fully aware that the construction work and services that they seek collection for were not done at the instance of or request of the APB Defendants, that the Plaintiffs did not contract for the APB Defendants for the work or services, that the Plaintiffs did, in fact, contract with other parties for the construction work and services and not the APB Defendants, and the claims against the APB Defendants should be dismissed and/or dismissed on summary adjudication.

105. As such, should the APB Defendants obtain a summary adjudication in their favor dismissing them from the within lawsuit, the APB Defendants are entitled to an award of damages against the Plaintiffs, to actual damages for mental pain and suffering, fright, nervousness, indignity, humiliation, embarrassment, and injury to reputation, and special damages including discomfort or injury to health, loss of time, deprivation of society or family, reasonable attorney's fees, in such amount as the Court shall deem just and appropriate.

**FOR A THIRD CAUSE OF ACTION AS TO CROSS-CLAIM DEFENDANTS W.H BASS
and WHATABURGER
(Contractual Indemnity)**

106. The APB Defendants/Counterclaimants hereby incorporate, by reference thereto, the allegations contained in their Defenses and First and Second Cause of Action as if fully restated herein.

107. Plaintiffs sued the APB Defendants claiming sums owed for construction work alleged to have been performed by Plaintiffs on the property.

108. W.H. Bass and Whataburger contracted with the APB Defendants for the lease of the property which permitted W.H. Bass and Whataburger to construct a facility on the property, and to maintain same, at its sole cost and expense, to make the property usable for W.H. Bass and Whataburger's intended purpose.

109. APB Defendants are informed and believes that if, in fact, Plaintiffs are correct regarding the allegations of the Complaint, that the failure to pay the Plaintiffs for work performed or services provided, if any, are the result of the wrongful acts, breach of contract, breach of warranties, omissions, negligence, and/or representations of W.H. Bass and/or Whataburger, all of which are contrary to the statutory and common laws of the State of South Carolina.

110. APB Defendants have suffered damages, including but not limited to, any future adjudication of liability to Plaintiffs in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, or negligence of W.H. Bass and/or Whataburger, which have damaged the APB Defendants as set forth more fully above.

111. Pursuant to each Agreement with the APB Defendants, W.H. Bass and Whataburger agreed to defend the APB Defendants from damages arising out of any and all work they had performed on the property.

112. Pursuant to each Agreement with the APB Defendants, W.H. Bass and Whataburger agreed to indemnify the APB Defendants, ant each of them, from damages arising out of any and all work they had performed on the property.

113. APB Defendants are entitled to a defense of the claims against them brought by Plaintiffs.

114. APB Defendants are entitled to a judgment for full contractual indemnification from W.H. Bass and Whataburger, and APB Defendants would be entitled to damages for the acts, errors, and/or omissions, breach of warranties, breach of contract, and negligence of W.H. Bass and Whataburger, as described hereinabove, entitling APB Defendants to recover from W.H. Bass and Whataburger their damages as set forth above and/or as may be later shown.

115. The alleged acts or omissions of W.H. Bass and Whataburger are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiffs, and the cause of APB Defendants' separate and distinct damages set forth above and any wrongful acts or omissions by the APB Defendants, which are expressly denied, were passive and secondary only.

**FOR A FOURTH CAUSE OF ACTION AS TO CROSS-CLAIM DEFENDANTS W.H
BASS and WHATABURGER**

(Equitable Indemnification as to all Cross-Claim Defendants)

116. The APB Defendants/Counterclaimants hereby incorporate, by reference thereto, the allegations contained in their Defenses and First, Second and Third Cause of Action as if fully restated herein.

117. Plaintiffs sued the APB Defendants claiming damages related to the failure to pay for work and services provided to the property owned by the APB Defendants.

118. APB Defendants have denied all substantive allegations against them that were made by the Plaintiffs.

119. A sufficient special relationship exists between the APB Defendants and W.H. Bass and Whataburger, such that APB Defendants could be held liable for work performed on their property without any failures or errors by them.

120. APB Defendants are informed and believe that if, in fact, Plaintiffs are correct about the allegations, that the allegations are the result of the wrongful acts, omissions, breach of contract, breach of warranty, negligence, and/or representations of W.H. Bass and Whataburger, all of which are contrary to the statutory and common laws of the State of South Carolina.

121. As the APB Defendants have suffered damages, including but not limited to, any future adjudication of liability to Plaintiffs in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, or negligence of W.H. Bass and Whataburger, which have damaged APB Defendants as set forth more fully above. To the extent, if any, that the APB Defendants, and each of them, are held liable to Plaintiffs in this action, the alleged acts or omissions of W.H. Bass and Whataburger are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiffs, and any wrongful acts or omissions by the APB Defendants, and each of them, which are expressly denied, were passive and secondary only.

122. The APB Defendants are entitled to a judgment for full common law indemnification from W.H. Bass and Whataburger for all damages, as set forth above, including any liability the APB Defendants, and each of them, could be found to have to Plaintiffs in this action, and the APB Defendants would be entitled to damages for the acts, errors, and/or omissions, and negligence of W.H. Bass and Whataburger as described above, entitling the APB Defendants, and each of them, to recover from W.H. Bass and Whataburger damages including, but not limited to, all sums awarded to the Plaintiffs, if any, the full current fair market value of the APB Defendants' real property in the event same are lost to foreclosure, previously unknown breaches of APB Defendants' common law duties, express and implied contractual indemnification and warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and/or attorneys' fees and litigation costs incurred due to W.H. Bass and Whataburger's breach of contract and/or failure to pay the Plaintiffs at their sole cost and expense for work and or services they commissioned on the property.

WHEREFORE, the APB Defendants, Counterclaimants and Cross-Claim Plaintiffs pray:

(a) Having fully answered the allegations of Plaintiffs' Complaint, dismissal of the Complaint and all causes of action contained therein against the APH Defendants, with prejudice, and an award to the APB Defendants, as the prevailing party, of their attorney's fees, costs, and other expenses incurred in defending this action, plus such further legal and equitable relief as the Court deems just and proper;

(b) On APB Defendants/Counterclaimants' First and Second Causes of Action, judgment for the APB Defendants and against the Plaintiffs in an amount to be determined at trial;

(c) On APB Defendants' Third Cause of Action, judgment in favor of the APB Defendants, and each of them, and against Cross-Claim Defendants W.H. Bass and Whataburger in the amount of any liability the APB Defendants are found to have to the Plaintiffs in this action and requiring the DRH Subcontractors to defend and indemnify DRH against any liability which DRH may be liable for and for any costs, losses, or damages DRH may incur as it relates to the Plaintiff in this action, to include DRH's attorneys' fees, costs, and any and all other expenses incurred in defending this action;

(d) On APB Defendants' Fourth Cause of Action, judgment in favor of the APB Defendants, and each of them, and against Cross-Claim Defendants W.H. Bass and Whataburger in the amount of any liability the APB Defendants are found to have to the Plaintiffs in this action and requiring the Cross-Claim Defendants W.H. Bass and Whataburger to defend and indemnify the APB Defendants, and each of them, against any liability which the APB Defendants may be liable for, and for any costs, losses, or damages the APB Defendants may incur as it relates to the Plaintiffs in this action, to include the APB Defendants' attorneys' fees, costs, and any and all other expenses incurred in defending this action;

(e) Attorneys' fees;

(f) Costs of this action; and

(g) Such other and further relief that this Court deems just and proper.

THE APB DEFENDANTS HEREBY DEMAND A JURY TRIAL.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

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Anderson, South Carolina 29621

(864) 888-8887

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ATTORNEY FOR DEFENDANTS/

APB PARTNERSHIP, LLC, WESLEY EDWARDS,

and 2916 N. MAIN, LLC

March 7, 2025

Anderson, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-04-02229

REPLY TO COUNTERCLAIMS

Plaintiffs/Counterclaims Defendants Moats Construction, Inc. and The Green Man, LLC (collectively, “Plaintiffs” or “Counterclaim Defendants”) reply to the Counterclaims of Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC (collectively, “APB Defendants”) as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not specifically admitted, qualified, or explained is denied.

FOR A SECOND DEFENSE

2. Paragraphs 1 through 82 comprise APB Defendants’ answer and affirmative defenses to Plaintiffs’ Complaint, and therefore no response is required from Plaintiffs. To the extent those paragraphs contain any allegations against Plaintiffs, they are denied.

3. Paragraphs 83 and 84 are administrative paragraphs to which no response is required from Plaintiffs. To the extent a response is required, Plaintiffs deny the allegations.

4. Plaintiffs admit the allegations in Paragraphs 85 and 86.

5. Upon information and belief, Plaintiffs admit the allegations in Paragraphs 87 through 91.

6. Paragraph 92 is a legal conclusion to which no response is required from Plaintiffs. To the extent a response is required, Plaintiffs admit same.

7. Plaintiffs are without sufficient information to admit or deny the allegations in Paragraph 93.

8. Plaintiffs deny the allegations in Paragraphs 94 and 95.

9. Responding to the second enumerated Paragraph 95, Plaintiffs respond that they admit that they invoiced Wes Edwards for this amount and that Lloyd Roofing paid Moats an amount equal to \$91,370.00. Plaintiffs deny that they had a contract with Lloyd Roofing or that this amount paid for all services Plaintiffs performed on the APB Defendants' properties. Plaintiffs deny all other allegations.

10. Plaintiffs admit the allegations in Paragraph 96 only to the extent that Defendant W.H. Bass, Inc. approached Plaintiffs about completing work on the adjacent property owned by APB Defendants, but it was unclear who was the contracting party for this work and who would ultimately be responsible for payment for any such work performed by Plaintiffs. Any allegations in Paragraph 96 inconsistent therewith are denied.

11. Plaintiffs deny the allegations in Paragraphs 97 and 98.

12. Responding to Paragraph 99, Plaintiffs reference the statute quoted therein, which speaks for itself. To the extent a response is required, Plaintiffs deny the allegations.

13. Plaintiffs deny the allegations in Paragraphs 100 and 101.

14. Paragraph 102 is an administrative paragraph to which no response is required from Plaintiffs. To the extent a response is required, Plaintiffs deny the allegations.

15. Plaintiffs deny the allegations in Paragraphs 103, 104, and 105.

16. Paragraphs 106 through 122 are directed at other persons and entities and therefore do not require a response from Plaintiffs. To the extent a response is required, Plaintiffs deny the allegations.

17. Plaintiffs deny all remaining allegations of the APB Defendants' Counterclaims, including their prayer for relief as set forth in the WHEREFORE paragraph and accompanying subparagraphs.

FOR A THIRD DEFENSE

18. The APB Defendants fail to state sufficient facts to constitute a cause of action against Plaintiffs upon which relief can be granted.

FOR A FOURTH DEFENSE

19. The APB Defendants' claims against Plaintiffs are barred by the equitable doctrines of laches, waiver, and/or estoppel.

FOR A FIFTH DEFENSE

20. The APB Defendants' claims against Plaintiffs are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE

21. Plaintiffs are not liable to the APB Defendants, because of the intervening negligent, grossly negligent, reckless, willful, and wanton acts of third parties, whose negligent and reckless acts were not reasonably foreseeable and intervened and acted as the direct and proximate cause of the damages, if any, sustained by the APB Defendants.

FOR AN SEVENTH DEFENSE

22. The final completion and APB Defendants' acceptance of the services performed by Plaintiffs constitutes a defense to its claims against Plaintiffs.

FOR AN EIGHTH DEFENSE

23. The APB Defendants' claims and damages, if any, are barred or should be reduced by its own comparative negligence and recklessness, which combined with, contributed to, and concurred with any alleged negligence on the part of Plaintiffs, if any, which is expressly denied.

FOR AN NINTH DEFENSE

24. The APB Defendants' claims are barred due to the lack of proximate cause between its alleged damages and the alleged actions/inactions of Plaintiffs.

FOR AN TENTH DEFENSE

25. The APB Defendants' claims are barred by the doctrine of consent.

FOR AN ELEVENTH DEFENSE

26. Plaintiffs reserve the right to rely upon and assert any and all other applicable defenses as may be asserted by other parties to this action or that become evident through the course of discovery, and thus reserves the right to amend their Answer to assert any such defenses.

WHEREFORE, having responded to the Counterclaims of the APB Defendants, Plaintiffs respectfully request that this Court dismiss the Counterclaims against Plaintiffs and award such other and further relief as the Court deems fair and equitable.

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

Brian A. Autry (SC Bar No. 69401)

David L. Paavola (SC Bar No. 100714)

Caitlin S. Cameron (SC Bar No. 106286)

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Email: cameron@conlaw.com

Attorneys for Plaintiffs

April 8, 2025
Cayce, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

**MOATS CONSTRUCTION, INC. and THE
GREEN MAN, LLC,**

C/A No. 2024-CP-04-02229

Plaintiffs,

v.

**APB PARTNERSHIP, LLC, WESLEY
EDWARDS, 2916 N. MAIN, LLC, W.H.
BASS, INC., WHATABURGER
RESTAURANTS, LLC, and UNITED
COMMUNITY BANK,**

Defendants.

**DEFENDANTS' MOTION TO DISSOLVE
MECHANIC'S LIENS, DISMISS
PLAINTIFFS' CLAIMS FOR
FORECLOSURE OF MECHANIC'S
LIENS, AND DISMISS DEFENDANTS
APB PARTERSHIP, LLC, WESLEY
EDWARDS, and 2916 N. MAIN, LLC**

TO THE PLAINTIFFS ABOVE NAMED:

COMES NOW, Defendants **APB PARTNERSHIP, LLC, WESLEY EDWARDS, 2916 N. MAIN, LLC** (collectively the "APB Defendants"), by and through their undersigned attorney, responding to the Notice and Certificate of Mechanic's Lien recorded on **July 3, 2024** in the Anderson County Register of Deeds Office at Book 65 Page 112, the Notice and Certificate of Mechanic's Lien recorded on **July 3, 2024** in the Anderson County Register of Deeds Office at Book 65 Page 121, the Notice and Certificate of Mechanic's Lien recorded on **July 3, 2024** in the Anderson County Register of Deeds Office at Book 65 Page 129, the Notice and Certificate of Mechanic's Lien recorded on **July 3, 2024** in the Anderson County Register of Deeds Office at Book 65 Page 136, and the Amended Notice and Certificate of Claim of Mechanic's Lien recorded on **February 20, 2025** in the Anderson County Register of Deeds Office in

Book 67 at Page 29. (the "Liens"); the subsequent, above-captioned lawsuit, including the cause of action for foreclosure of said Liens found in Plaintiffs Summons and Complaint filed with the Court in the above-captioned matter on October 28, 2024; and, the Lis Pendens filed with the Court on October 28, 2024 and assigned Lis Pendens No. 2024LP0400388, hereby move pursuant to S.C. Code Ann. §§ 29-5-90 and 29-5-120, and Rules 12 and 4(d)(I) of the *South Carolina Rules of Civil Procedure*: (I) to dismiss the mechanics' lien foreclosure cause of action with prejudice; (2) for dissolution of the mechanic's liens; and (3) to dismiss the APB Defendants from this lawsuit with prejudice.

In support of this motion, The APB Defendants would respectfully show:

1. The Liens filed by Plaintiffs were not timely filed and served upon the APB Defendants, the owners or agents of the real property that is subject of the Liens and the above-captioned action (the "Property"), ***within ninety (90) days*** after Plaintiffs ceased to labor on or furnish labor or materials to the Property as is required by S.C. Code of Laws § 29-5-90. ***The Liens were filed on July 3, 2024 which is ninety-one (91) days after the Plaintiffs ceased to labor on or furnish labor or materials to the Property (27 days in April, 31 days in May, 30 days in June, and 3 days in July = 91 days).*** See Exhibits A and B attached hereto and incorporated by reference thereto.
2. Plaintiffs did not properly serve the Liens upon the APB Defendants pursuant to Rule 4(d)(I), SCRPC. The purported service of the Liens on the APB Defendants occurred on or after July 3, 2024. This date of service is ***outside of the ninety (90) day period*** required by § 29-5-90. See **Exhibits A and B**.

Finally, the cause of action to foreclose on the same was filed outside the statutory 180-day timeframe to do so. ***The Summons and Complaint were filed on October 28, 2024 which is two hundred-eight (208) days after the Plaintiffs ceased to labor on or furnish labor or materials to the Property on April 3, 2024.*** The last date to file and serve the Summons and Complaint to foreclose the Mechanic's Liens was September 1, 2024.

Based upon the pleadings in this case and the Affidavit of Cole Miller and attached documents to the same, dated April 21, 2025, which is attached and incorporated hereto as **Exhibit A**, and the Affidavit of Wesley Edwards dated April 29, 2025, which is attached and incorporated hereto as **Exhibit B**. The APB Defendants are entitled to the cancellation of the Lien, dismissal of the Plaintiffs cause of action for foreclosure of the Lien with prejudice, and dismissal of the APB Defendants from the above-captioned lawsuit with prejudice as no other viable cause of action can exist against them without the liens.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

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Anderson, South Carolina 29621

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ATTORNEY FOR DEFENDANTS/

APB PARTNERSHIP, LLC, WESLEY EDWARDS,

and 2916 N. MAIN, LLC

April 29, 2025

Anderson, South Carolina

AFFIDAVIT OF COLE MILLER

1. My name is Cole Miller. I am over the age of 18 and competent to make this affidavit regarding matters within my personal knowledge.

2. Since 2019, I have served as a Project Manager with W.H. Bass, Inc. ("WH Bass"). In that capacity, I had an oversight role with the Anderson Whataburger project at 2900 N. Main Street, Anderson SC (the "Project"). In the course of my employment, I learned of the conflict brewing with Moats Construction in early 2024.

3. Because of my role, I have firsthand personal knowledge of the Project, the contracts, and Bass's dealings with Russell Moats, Moats Construction, LLC and The Green Man, LLC.

4. I am informed and believe that Russell Moats is the principal of both Moats Construction, LLC and The Green Man, LLC.

5. I personally handled some of the communications with those persons or entities, including communications regarding Moats' decision on behalf of his companies to abandon the Project.

6. WH Bass entered into a contract for construction with Whataburger Restaurants LLC to construct the Project. A true and accurate copy of that contract is attached hereto as **Exhibit 1**.

7. WH Bass did not have a contract of any kind with Wesley Edwards.

8. WH Bass did not have a contract of any kind with APB Partnership, LLC.

9. WH Bass did not have a contract of any kind with 2916 N. Main, LLC.

10. WH Bass hired Moats Construction as a subcontractor to perform limited site work at the Project in December 2023.

11. WH Bass hired The Green Man to provide dumpsters and temporary toilets to the Project in December, 2023.

12. Disputes arose between WH Bass and Moats Construction.

13. Moats Construction demobilized from the site on April 3, 2024 and provided no further labor or materials to the project from that date.

14. The Green Man demobilized from the site on April 3, 2024 and provided no further labor or materials to the project from that date.

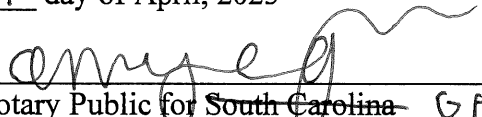
15. The attached **Exhibit 2** is a true and accurate copy of an email exchange with Russell Moats, principal of both Moats Construction and The Green Man, wherein Mr. Moats confirms his intent to perform no further work at the Project after April 3, 2024 and further confirms entering the Project site on the evening of April 3, 2024 to remove all materials and equipment from the Project site.

FURTHER AFFIANT SAYETH NOT.

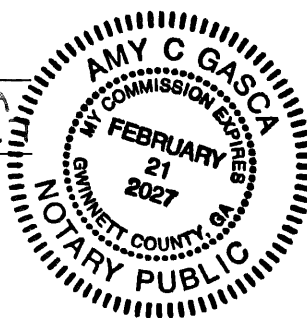


Cole Miller

SWORN to and subscribed before me this
21 day of April, 2025



Notary Public for South Carolina - GA
My Commission Expires: 2/21/27



FIXED-PRICE CONSTRUCTION CONTRACT (SOUTH CAROLINA)

THIS FIXED PRICE CONSTRUCTION CONTRACT (“Agreement”) made effective as of the “**Effective Date**” (as defined below), is by and between WH BASS, INC., a Georgia Corporation (hereinafter referred to as “**Contractor**”), whose address is 11300 Johns Creek Parkway, Suite 100; and WHATABURGER RESTAURANTS LLC, a Texas limited liability company (whether property tenant or owner, referred to herein as “**Owner**”), whose address is 300 Concord Plaza, San Antonio, Texas 78216, Attn: Bill Sorrells. In consideration of the mutual promises and valuable consideration set forth herein, Contractor and Owner agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 In addition to other capitalized terms defined elsewhere in this Agreement, the following capitalized terms have the following meanings when used in this Agreement:

“**Addenda**” means those listed on Attachment 4 and Attachment 12.

“**Affidavit of Completion**” means an affidavit stating that the Work is complete, substantially in the form attached hereto as Attachment 8.

“**Application for Payment**” is defined in Section 4.2.

“**Application Period**” means the period covered by each Application for Payment, respectively.

“**Bid Documents**” means the cost information submitted by the Contractor to Owner, including but not limited to, bid sheet or form, inclusions and exclusions. Such term also includes any drawings, specifications, schedules, timelines and/or other information used to derive cost information submitted to Owner.

“**Bills Paid Affidavit**” means an affidavit of Contractor listing all Subcontractors, and affirming that all payments due to each Subcontractor have been made, substantially in the form attached hereto as Attachment 9.

“**Changes**” is defined in Section 6.1.

“**Change Order**” is defined in Section 6.1.

“**Commencement Date**” is defined in Section 5.2.

“**Contract Documents**” means: (a) this Agreement (including all exhibits, schedules and attachments); (b) the Specifications; (c) the Drawings; (d) the Addenda, if any; (e) any Modifications, and (f) Bid Documents. The Contract Documents do not include other documents. In particular, no “project manual” prepared by the architect or any other party is part of the Contract Documents.

“**Contract Sum**” means the fixed price for the Work set forth on Attachment 6 plus the additional sums due under the General Conditions and Fee Bid Form set forth on Attachment 7.

“**Contract Time**” is defined in Section 5.3.

“**Contractor Parties**” means Contractor, each Subcontractor, the Contractor Superintendent, and the employees, agents, representatives and contractors of each.

“Contractor Superintendent” is defined in Section 9.4.

“Completion Date” means the date that a Certificate of Occupancy (conditional or unconditional) or comparable occupancy permit, is issued allowing Owner to occupy the improved Property and operate in accordance with its intended use, subject to adjustment by Modification.

“Drawings” means those listed on Attachment 2.

“Effective Date” means the later of: (a) the date on which Owner signs this Agreement; and (b) the date on which Contractor signs this Agreement.

“Environmental Laws” all applicable federal, state, and local laws, statutes, ordinances, regulations, common law, standards, prohibitions, restrictions, directives, interpretations, guidelines, permits, licenses, approvals, entitlements and any judgment, order, writ, injunction or decree of an Governmental Authority that relate to the protection of human health, safety and/or the environment or create rights or obligations in connection with the presence or release of Hazardous Materials or Petroleum Products.

“Evaluation Data” is defined in Section 6.5.

“Final As-Built Drawings and Specifications” means corrected blueprint drawings showing the exact locations of all underground plumbing, electrical and mechanical lines as well as all modifications made to above ground improvements and grades whether new or relocation of existing, including, without limitation, the information set forth on Attachment 5, with respect to the actual improvements constructed at the Jobsite.

“Final Completion” means the date on which the last of the following events occurs: (a) the Work is complete, including the correction of all punch list items; (b) Owner has issued an Affidavit of Completion; (c) Contractor delivers to Owner an executed Bills Paid Affidavit; (d) Contractor delivers to Owner all warranties, operating manuals, descriptions and instructions for all equipment and systems; (e) Contractor delivers to Owner a set of Final As-Built Drawings and Specifications for the Work; and (f) all necessary governmental licenses and approvals necessary in connection with the occupation and use of the entire Work, which shall be final and not temporary, are issued.

“Final Lien Waivers” means a final release of all material supplier and/or mechanic’s liens by Contractor and each Subcontractor, substantially in the forms attached hereto as Attachment 10, as required under the terms of this Agreement.

“Final Payment” is defined in Section 4.4.

“Force Majeure Occurrence” is defined in Section 5.4.

“General Conditions and Fee Bid Form” means the form submitted by Contractor to Owner, substantially in the form attached hereto as Attachment 7, which form will include a breakdown of the general conditions and fees based on the fixed price as shown on Attachment 6.

“Governmental Authority” means any federal, state or local governmental authority, agency, board, commission, judicial body or other body having jurisdiction over the matter at issue.

“Hazardous Materials” means “hazardous substance,” “pollutant or contaminant,” “petroleum” and “natural gas liquids” as those terms are defined and/or used in or under any Environmental Laws, and any other substance regulated because of its effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials and putrescible and infectious materials.

“Incentive Bonus” is defined in Section 4.8.

“Incentive Bonus Invoice” is defined in Section 4.8.

“Jobsite” means the real property located at 2900 N. Main St. Anderson, SC 29621.

“Legal Requirements” means all applicable local, state and federal laws, ordinances, rules, codes and orders, including, without limitation, all Environmental Laws.

“Letter of Intent” or **“LOI”** means the letter entered into between Contractor and Owner indicating that Contractor has been awarded the Project, can procure material, and enter into subcontractor agreements as necessary.

“Major Subcontractor” means each Subcontractor whose subcontract’s value exceeds \$10,000.00.

“Major Subcontract Report Sheet” means the sheet attached hereto as Attachment 11, completed with the relevant information by Contractor.

“Modifications” means: (a) any written amendments to this Agreement that are executed by Owner and Contractor; and (b) any “Changes” (as defined in Section 6.1).

“Notice of Completion” is defined in Section 7.1.

“Notice to Proceed” means the letter submitted from Owner to Contractor notifying Contractor of the Commencement Date for Work at the Jobsite.

“Original Material” is defined in Section 6.5.

“Owner Parties” means Owner and its affiliates, and their respective directors, officers, partners, managers, employees, agents, representatives, contractors, successors and assigns.

“Owner-recognized Holidays” means, for a given calendar year, New Year’s Day, President’s Day (Observed), Good Friday, Memorial Day, Martin Luther King Day, Veterans Day, Independence Day, Labor Day, Thanksgiving, the Friday After Thanksgiving, Christmas Eve and Christmas Day.

“Program” is defined in Section 6.1.

“Progress Payment Lien Waivers” means a release of material supplier and/or mechanic’s liens by Contractor and each Subcontractor, substantially in the forms attached hereto as Attachment 10, as required under the terms of this Agreement.

“Project” shall mean the entirety of Work to be performed under the Contract Documents by Contractor Parties.

“Proposed Substitute” is defined in Section 6.5.

“Purchased Materials” is defined in Section 4.2(c).

“Required Insurance Coverage” is defined in Section 11.1.

“Scheduled Completion Date” means no later than the stated twenty-five (25) week construction schedule commencing upon the Commencement Date set forth in the Notice to Proceed.

“Specifications” means those listed on Attachment 3.

“Subcontractor” means any person or entity who has a direct contract with either Owner, Contractor or another Subcontractor to perform any portion of the Work, or who otherwise furnishes labor, services or materials, specifically including all “sub-subcontractors.”

“Substantial Completion” means when the Contractor has (1) completed a Walk Thru with Whataburger Representative(s), (2) obtained a Certificate of Occupancy for full operations to commence, and (3) all Work is complete.

“Substitution Request” is defined in Section 6.5.

“Work” means all labor, materials, services and equipment provided or to be provided by Contractor, any subcontractor of Contractor, and any subcontractor of Owner to fulfill Contractor’s obligations under the Contract Documents and generally constitutes the construction of a Whataburger Restaurant and drive-thru at the Jobsite and as described in the Drawings and Specifications.

ARTICLE 2 – OWNERSHIP OF MATERIALS

The Contract Documents and all other documents or materials furnished to Contractor or any Subcontractor by Owner or prepared by Contractor or any Subcontractor for Owner in connection with the Work are solely the property of Owner. The Contractor shall not divulge information concerning this Project to any third party without the Owner's prior written authorization. Contractor shall obtain similar agreements with persons, firms and corporations employed by Contractor. This requirement shall survive the expiration or termination of this Agreement. Contractor and its Subcontractors are authorized to use and reproduce applicable portions of the Contract Documents for use in the execution of their Work only. Neither the Contractor nor any Subcontractor shall own or claim a copyright in any of the Contract Documents. All copies of the Contract Documents, except for one record set, which Contractor is allowed to retain, shall be returned to Owner or suitably accounted for, after completion of the Work, or any earlier termination of this Agreement. The Contract Documents, and copies thereof furnished to the Contractor, are for use solely with respect to this Project and may not be used by the Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and any third party who might also have any ownership interest therein.

ARTICLE 3 – SCOPE OF WORK

3.1 Contract Documents. Contractor shall perform the Work in strict compliance with the Contract Documents. Unless otherwise provided in the Contract Documents, all materials shall be new and both workmanship and materials shall be of the highest quality, and Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, security, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.2 Review of Contract Documents. Contractor certifies that it has carefully reviewed and is fully familiar with all of the terms, conditions and requirements of the Contract Documents. Contractor shall at once report to Owner any errors, inconsistencies or omissions it may discover. Provided Owner is promptly notified by Contractor, Owner shall promptly clarify or correct such errors, inconsistencies or omissions. The intent of the Contract Documents is to include all the work for the Contract Sum and completion within the Contract Time. The Contract Documents are to be considered as cooperative and necessary for the execution of the Work. All work described in the specifications not shown on the drawings, or any work which is obviously necessary to complete the Work within the limits established by the drawings and specifications, shall be considered as part of this Agreement, and shall be executed by the Contractor in the same manner and with the same character of material as other portions of the Agreement. If Contractor performs any portion of the Work knowing it to be in error or in violation of any Legal Requirements, Contractor shall assume full responsibility therefor, and shall bear all costs attributable thereto.

3.3 Jobsite. By executing this Agreement, Contractor confirms that it is familiar with the Jobsite, any and all improvements thereto, the vicinity thereof and all other conditions and requirements relevant to the performance of the Work. Except as specifically provided in Section 6.3, Contractor assumes the risk of such conditions and requirements (including security of stored materials) and will fully complete the Work for the Contract Sum.

ARTICLE 4 – PAYMENT

4.1 Contract Sum. Owner shall pay Contractor the Contract Sum for the Contractor's performance of the Work. The Contract Sum is for the full performance of the Work and shall be deemed to compensate Contractor for all federal, state and local sales and use taxes that may be due in connection with the Work. Contractor agrees to pay all taxes, duties or fees associated with the Work. The price includes all federal, state and local sales and use taxes. In addition, any fees reflected on the General Conditions and Fee Bid Form provided by Contractor to Owner shall only be applicable to the twenty-five (25) week construction time period (or alternative time period if set forth therein), and in no event shall the fees (including overhead and profit) stated therein be increased if the Work is not completed by the Scheduled Completion Date, or if the Contractor is awarded an Incentive Bonus for early completion of the Work.

4.2 Progress Payments. Owner shall make progress payments of the Contract Sum on a Net 30 basis to the Contractor as provided in this Article 4, based on approved applications for payment ("***Application for Payment***") submitted by Contractor to Owner.

a. The period covered by each Application for Payment shall be an Application Period.

b. Each Application for Payment shall reference the Unit Number, and shall be on an AIA Form G702 (Application and Certificate for Payment), and shall be accompanied by the following, all in form and substance reasonably satisfactory to the Owner and in compliance with applicable statutes for the State in which the Project is located: (1) executed Progress Payment Lien Waivers in both Owner and landlord's favor from the Contractor and all Subcontractors, which shall be conditional with respect to the amounts covered by the current Application for Payment, and unconditional with respect to all amounts covered by all previous Applications for Payment; (2) if any Major Subcontractor work is covered by the Application for Payment, a completed Major Subcontractor Report Sheet; and (3) such other information, documentation and materials as the Owner reasonably may require, including, without limitation, completed and signed continuation

sheets. All Applications for Payment having the above mentioned criteria will be accepted on the basis of the below progress of completion of the Project:

- 30% Foundation (All site work, foundation, framing, etc.)
- 25% Dry In (Roof, HVAC)
- 5% FF&E Installation (Décor, Kitchen Equipment, etc.)
- 30% Final Completion (Certificate of Occupancy)
- 10% Final Retainage (Approved and completed punch list)

c. Each Application for Payment shall show the percentage of completion of the Work based upon the Contractor's estimate of the portion of the Contract Sum properly allocable to: (1) labor, materials and equipment incorporated in the Work during the Application Period; and (2) materials and equipment properly stored at the site of the Work or at some other location mutually agreed upon in writing by Owner and Contractor (the "**Purchased Materials**"), so long as at the time of payment, title to the Purchased Materials vests in Owner by appropriate Bill of Sale or Bill of Lading, and the Purchased Materials are stored in a bonded warehouse, unless other locations have been approved by Owner in writing. All estimates shall be based upon the percentage of completion of the Work in proportion to the approved schedule of values, which shall be submitted by Contractor within five (5) days after the date of this Agreement. The Contractor's estimate of the percentage of completion shall be subject to final review and approval by the Owner.

d. The Owner shall be entitled to retain ten percent (10%) of the Contract Sum as retainage unless a different percentage is specified for retainage in **Attachment 12**, in which case the retainage set forth in **Attachment 12** shall prevail. Any retainage (less any amounts the Owner is otherwise entitled to withhold pursuant to the Contract Documents) shall be paid to the Contractor at the time of Final Payment (as defined in **Section 4.4** below). In the event that the State in which the Jobsite is located requires a different retainage amount, procedure or hold period, or other requirement differing from that provided herein, it is the intent of the parties that the requirements hereunder shall be amended to abide by local statute. Such amendment shall apply to requirements only, and not permitted variances.

e. All lien waivers shall be provided on the conditional or unconditional lien waiver forms attached hereto as **Attachment 10**, as appropriate, unless the State in which the Jobsite is located requires a promulgated form to be utilized. In the event of any conflict between the forms provided and what is required by statute, the statutory form shall be used.

f. Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to Owner's interests. Notwithstanding anything to the contrary herein, any and all completed Work shall be covered under the Contractor's Builders Risk Policy until such time as Owner receives the Notice of Completion of the Work.

4.3 **Payment of Subcontractors.** Contractor shall immediately pay each Subcontractor, upon receipt of payment from Owner, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such Subcontractor's portion of the Work. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Subcontractors in similar manner. Owner shall have no obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law; **however**, Owner may, in its sole discretion,

pay any or all amounts due any such Subcontractor by check jointly payable to Contractor and any such Subcontractor who can show proof of performance and nonpayment.

4.4 Final Payment. Owner shall pay to Contractor the then-remaining unpaid balance of the Contract Sum less amounts for unsettled claims (“**Final Payment**”), within thirty-five (35) days following Final Completion of the Work; provided, however, that Contractor delivers to Owner (i) an executed conditional Final Lien Waiver for itself, (ii) executed unconditional Final Lien Waivers from all Subcontractors from the prior Application for Payment, (iii) an updated Bills Paid Affidavit reflecting that no other parties are due to be paid out of the Final Payment except for Contractor and those Subcontractors from whom retainage was withheld previously, and (iv) a signed Final Completion Form by General Contractor and Construction Manager. Notwithstanding the foregoing condition, sub-item (ii) above shall be deemed satisfied if the period of time in which a Subcontractor may lawfully file a lien claim has expired without any lien claim being perfected, or Contractor provides a surety bond covering any properly perfected lien claim. In the event that any party other than Contractor is to be paid with the proceeds of the Final Payment, then Owner may elect to continue with Final Payment; provided, however, that in addition to the above, Contractor shall deliver a conditional Final Lien Waiver to Owner for each Subcontractor being paid out of the Final Payment, and Owner shall have the right to pay the Final Payment using joint checks as set forth in Section 4.3 above, or to directly pay such sums to Subcontractor. Notwithstanding anything contained in this Agreement to the contrary, in no event shall Owner be required to pay out any retainage until after all filing deadlines relating thereto have passed. Owner, at its sole discretion, may pay any portion of the balance of the Contract Sum before the expiration of the foregoing time period without waiving any of its rights under the Contract Documents.

4.5 Owner’s Right to Withhold. Notwithstanding the above, to the full extent allowed by applicable law, Owner may withhold any payment due under this Agreement, or, because of subsequently discovered evidence, may nullify the whole or a part of any previous payment to protect the Owner from loss for which Contractor is responsible, because of any of the following: (a) defective Work that has not been remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by Contractor; (c) Contractor’s failure to make payments properly to Subcontractors or for labor, materials or equipment; (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (e) damage to Owner or another contractor; (f) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or (g) Contractor’s failure to carry out the Work in accordance with the Contract Documents. Once the reasons for withholding payment are removed or remedied, Owner will promptly release the withheld funds to Contractor.

4.6 Liens. Upon request, Contractor agrees to execute, deliver and file (or cause the execution, delivery and filing of) all notices or documents requested or deemed necessary by Owner to protect the Work, the Jobsite or other property of Owner or from such liens. Contractor, for its employees, agents, representatives, subcontractors, successors and assigns agrees to indemnify and hold harmless Owner from and against all Claims relating to any such liens. Owner reserves the right to settle any disputed mechanics’ lien claims by direct payment to the mechanic lien claimant by Owner if Owner, in its sole discretion, determines that such payments are the most economical or advantageous method of settling any dispute. Contractor shall promptly reimburse Owner for such payment on demand, or Owner may elect to deduct the amount of any such payment from the Contract Sum.

4.7 Performance and Payment Bonds. Owner may require Contractor to furnish bonds covering faithful performance of the Contract Documents and/or payment of obligations arising thereunder. In the event Owner requires Contractor to furnish such bonds, then Owner, at its option may either: (a) pay the

bond issuer directly for the premium for the bonds; or (b) choose to have the premium added to the Contract Sum.

4.8 Early Completion Bonus Incentive: If the Project is completed in accordance with the terms, provisions and conditions set forth in this Agreement and the Completion Date occurs at least one (1) full calendar day prior to the Scheduled Completion Date, a bonus (as defined below) shall be paid directly to the Contractor, for distribution as follows, unless a different bonus amount and/or distribution is specified in **Attachment 12**, in which case the bonus amount and/or distribution set forth in **Attachment 12** shall prevail:

Contractor shall provide Owner written notice twelve (12) weeks following the Notice to Proceed (day 84) indicating Contractor's estimate as to how many days in advance that the Completion Date will occur of the Scheduled Completion Date, and shall provide Owner written notice immediately upon receipt of the Certificate of Occupancy, as applicable. The notices required by this paragraph shall be circulated by email, followed the same day by a notice circulated in accordance with the terms, conditions and provisions of this Agreement.

The bonus shall be \$2,500.00 per day that the Completion Date occurs in advance of the Scheduled Completion Date, for a maximum of twelve (12) days or Thirty Thousand Dollars (\$30,000) (the "**Incentive Bonus**"), payable to the Contractor and Contractor Superintendent, respectively.

- o Incentive Bonus Breakdown by day:
 - Two Thousand Dollars (\$2,000.00) for Contractor
 - Five Hundred Dollars (\$500.00) for Contractor Superintendent (Paid by Contractor to the Contractor Superintendent)

The Incentive Bonus shall be paid to Contractor by Owner following the Final Completion of Work. Contractor agrees that any Incentive Bonus received by Contractor from Owner for the benefit of Contractor Superintendent shall be promptly delivered to the Contractor Superintendent by Contractor without deduction or penalty (subject to payroll deductions required by law). Contractor shall prepare a separate invoice for the payment of the Incentive Bonus (the "**Incentive Bonus Invoice**"). The Incentive Bonus Invoice shall be included for payment with the Final AIA Application for Certificate of Payment – Retainage Draw and the Final Lien Waiver, as defined in this Agreement.

4.9 Failure to Meet Completion Date. Delivery Date. Subject to extension as may be expressly permitted under the terms of this Agreement, if the actual Completion Date for the Project does not occur by the Scheduled Completion Date, Contractor acknowledges and agrees that in such event, Owner will sustain certain damages, and that due to the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy, Contractor agrees to pay to Owner as liquidated damages, but not as a penalty, the Liquidated Damages Amount (as defined below) for the Project per day commencing immediately after the Scheduled Completion Date until such time as the actual delivery date by Contractor to Owner of possession of the Project together with a Certificate of Occupancy, which amount shall be paid, at Owner's election, by credit against monies owed Contractor, if any. Despite the difficulty in ascertaining actual damages, the parties further acknowledge that (i) the Liquidated Damages Amount bears a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by Owner in connection with any failure of Contractor to timely complete Contractor's Work, and (ii) is intended strictly as compensation to Owner and is not intended to be punitive in nature. Owner acknowledges and agrees that it shall accept such Liquidated Damages Amount in full settlement and in lieu of any other loss, costs or damages that Owner could otherwise claim as the result of Contractor's failure to timely complete the Work by the Scheduled Completion Date. Owner hereby waives and relinquishes the right to pursue Contractor for any such other loss, cost or damages (direct and indirect, foreseen and unforeseen and including, without limitation, consequential, punitive and special damages)

resulting from Contractor's failure to timely complete the Project, and releases Contractor from any and all such loss, cost or damages of Owner of every type and nature whatsoever accruing as a result of Contractor's failure to timely complete the Project, except solely with respect to the Liquidated Damages Amount described in this paragraph. The foregoing limitation and agreement as to liquidated damages shall apply to any claim, loss, cost or damages with respect to Contractor's failure to timely complete the Work only. Owner expressly reserves any and all rights to pursue its remedies provided in this Agreement pertaining to any other default or other matter arising out of Contractor's performance and obligations or responsibilities under the Agreement. If the Completion Date does not occur by the "Scheduled Completion Date", as defined herein for the Project, at Owner's sole option, Owner may by written notice to Contractor delivered prior to the actual Completion Date, terminate this Agreement, subject, however, to the payment by Owner of any outstanding amounts due under this Agreement for Work performed prior to the date of termination, subject, however, to a deduction by Owner of the Liquidated Damages Amount, calculated from the Scheduled Completion Date up to the date of termination.

Liquidated Damages for Days Late or Untimely Completion: If the Project is not completed in accordance with the terms, provisions and conditions set forth in this Agreement and the Completion Date occurs at least one (1) full calendar day after the Scheduled Completion Date, a Liquidated Damages Amount shall be withheld from final retainage equal to the amount of Two Thousand Five Hundred Dollars (\$2,500.00) for each day after the Scheduled Completion Date until Final Completion of Work, for a maximum of Twelve (12) days, or Thirty Thousand Dollars (\$30,000) ("**Liquidated Damages Amount**").

ARTICLE 5 – TIME

5.1 Time of Essence. Time is of the essence of this Agreement.

5.2 Commencement of Work. Contractor shall commence performance of the Work immediately following the agreed upon start date set forth in Owner's Notice to Proceed to commence the Work (the "**Commencement Date**").

5.3 Contract Time. Contractor shall diligently prosecute the Work and shall achieve Substantial Completion of the Work on or before the Scheduled Completion Date. The "**Contract Time**" is the time period of twenty-five (25) weeks commencing from the Commencement Date set forth in the Owner's Notice to Proceed. By executing this Agreement, Contractor confirms that the Contract Time is a reasonable period for completing the Work.

5.4 Force Majeure. In the event Contractor is delayed in performing the Work and such delay is caused by war, riot, civil insurrection, act of the public enemy, act of civil or military authority, fire, flood, earthquake or act of God ("**Force Majeure Occurrence**"), such delay shall be excused and the Scheduled Completion Date shall be extended in accordance with Article 6 if this Agreement for each day that the Force Majeure Occurrence actually delays the Final Completion of the Work. In the event of a Force Majeure Occurrence, Contractor shall diligently prosecute Work which can be performed notwithstanding the Force Majeure Occurrence. In no event shall any actual or asserted increased cost of performance on the part of Contractor or Contractor's subcontractors, suppliers or vendors constitute a Force Majeure Occurrence. Notwithstanding anything contained to the contrary in the Contract Documents, an extension of time in which to complete the Work shall be Contractor's sole remedy for delay, any hindrance in performance of the Work, loss in productivity, impact damages or other similar claims.

5.5 Schedules. Contractor, no later than 10 (ten) days after contract execution, shall prepare and furnish to Owner a schedule of the Work in the form of a "ghant chart" for review and approval by

Owner. Once the schedule is approved, if Contractor requests any changes to the schedule, it must do so in accordance with Article 6 of this Agreement, and Owner may approve any such request in its reasonable discretion so long as any such change does not cause the anticipated date of Final Completion of the Work to extend beyond the Scheduled Completion Date, and if any such request does cause the anticipated date of Final Completion of the Work to extend beyond the Scheduled Completion Date then Owner may deny that request in its sole and absolute discretion.

ARTICLE 6 – MODIFICATIONS

6.1 Changes. Owner, without invalidating this Agreement, may order changes to the Work, including additions, deletions or other revisions (“**Changes**”). Changes that impact either the Contract Time or the Contract Sum shall be ordered by written order to Contractor, and to the extent that Owner utilizes a software program (“**Program**”) to document and process change orders (Ex: PM Web) regarding cost and schedule changes or other aspects of the Work, Contractor shall take such steps as may be necessary to access and obtain functionality under such software program. All Changes must be signed or authorized in writing by an authorized representative of Owner (a “**Change Order**”). Owner may order minor Changes to the Work that do not affect either the Contract Time or the Contract Sum by written change directive to Contract on the AIA G710 (Supplemental Instructions) form, signed by an authorized representative of Owner. Owner will make reasonable efforts to memorialize such minor changes in a timely manner.

6.2 Adjustments for Changes. The cost or credit to Owner from a Change shall be the agreed upon amount reflected in the Change Order. The Change will be memorialized on the AIA G714 (Construction Change Directive) form.

6.3 Concealed Conditions. The Contractor shall not be entitled to any adjustment in the Contract Sum or the Scheduled Completion Date for any concealed or unknown conditions encountered in the performance of the Work if that condition is: (a) of a usual nature and does not materially differ from those conditions ordinarily encountered and generally recognized as inherent to work of a similar nature to the Work, or from the conditions disclosed by Owner or which could have been investigated or were reasonably inferable from the Contractor’s prior work or should have been reasonably inferable by the Contractor from the Contract Documents and/or the field conditions at the Project site; or (b) of a nature that Contractor should have reasonably known or anticipated based on the area (including security, if required) where the Project site is located, the type of Work and the prevailing industry practices. Contractor may make a written claim for an adjustment in the Scheduled Completion Date or Contract Sum regarding special or concealed conditions which do not fall into the categories set forth above (a “**Non-excluded Concealed Condition**”), including a sufficient description of the alleged Non-excluded Concealed Conditions, promptly before conditions are disturbed and in no event later than five (5) days after first observance of the alleged Non-excluded Concealed Conditions. If the Contractor’s claim is not timely and properly made, it shall be considered waived. If a Non-excluded Concealed Condition exists that causes an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, and the Contractor has timely and properly made its claim, the Scheduled Completion Date or Contract Sum, or both, shall be equitably adjusted, as appropriate.

6.4 Refinement and Detailing. It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Drawings and Specifications. No adjustment in the Contract Sum or the Scheduled Completion Date shall be made unless the refinement or detailing results in changes in the scope, quality, function and/or intent of the Drawings and Specifications not reasonably inferable or reasonably capable of anticipation by a contractor of Contractor’s experience and expertise.

6.5 **Substitutions.** If it becomes necessary for Contractor to substitute a material or product of a different brand or manufacturer from one specified in the Contract Documents (the “**Original Material**”), then the Contractor shall submit a written request to Owner for approval, utilizing the Program, or such other method specified in writing from time to time by Owner (a “**Substitution Request**”), of the substitute material or product (the “**Proposed Substitute**”), as soon as practical after Contractor becomes aware of the need therefor. Each Substitution Request must: (a) state any amount of change to the Contract Sum that resulting from the Proposed Substitute; (b) include complete descriptive literature and performance data for both the Original Material and the Proposed Substitute, including samples if appropriate (the “**Evaluation Data**”), (c) any cost reductions or additions and (d) change the project schedule if any. By making a Substitution Request, Contractor: (i) represents that it has personally investigated the Proposed Substitute and determined that it is of equal or superior quality to the Original Material; (ii) represents that the Proposed Substitute will have a warranty period and coverage that it at least as good as the warranty that the Original Material would have had; and (iii) certifies that the Evaluation Data is complete and that the stated change to the Contract Sum takes into consideration all changes in cost due to the Proposed Substitution. If a Proposed Substitute is approved by Owner, a Change Order will be issued.

ARTICLE 7 – COMPLETION

7.1 **Notice of Completion.** When Contractor deems it has fully completed the Work, it shall deliver to Owner written notice that the Work has been completed in accordance with the Contract Documents and in compliance with all Legal Requirements (the “**Notice of Completion**”). Upon receipt of the Notice of Completion, Owner shall promptly inspect the Work and shall do one of the following: (a) reject defective or uncompleted portions of the Work, in which case the remaining balance of the Contract Sum or any portion thereof shall not be paid to Contractor; or (b) conditionally accept the Work, in which case a portion of the Contract Sum shall be retained by Owner sufficient to complete defective or uncompleted portions with the Work and delay damages resulting therefrom; or (c) fully accept the Work and execute an Affidavit of Completion in the form attached hereto as **Attachment 8**.

7.2 **Rejection of Work.** In the event Owner rejects the Work or any portion thereof, Contractor shall promptly remedy such rejected Work at Contractor’s expense, and shall again provide Owner with a Notice of Completion of the Work. The foregoing procedure shall apply again and successively thereafter until Owner has issued an Affidavit of Completion. All facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work shall remain in place until the final Affidavit of Completion has been issued by the Owner.

7.3 **Owner’s Failure to Inspect.** Any failure of Owner to inspect the Work or to reject Contractor’s Notice of Completion as set forth above shall not be deemed to be acceptance of the Work for any purpose by Owner nor imply acceptance of or agreement with any Notice of Completion provided by Contractor, but shall instead result in an equitable adjustment of the Contract Time. Furthermore, no partial payment, final payment, nor partial or entire occupancy of the subject premises by the Owner shall be construed to constitute Final Completion, or an acceptance of work or material which are not strictly in accordance with the Contract Documents, nor a waiver of the Owner’s rights under this Agreement.

ARTICLE 8 – SUBCONTRACTORS

8.1 **Subcontractor List.** Contractor, no later than 10 (ten) days after execution of the Contract, and in any event prior to the submission of its first Application for Payment, shall deliver to Owner a Major Subcontractor Report Sheet in the form of **Attachment 11**, with the name and address of each Major Subcontractor filled in. Contractor shall not contract with any Subcontractor to whom Owner has made a

reasonable objection after receiving the proposed Major Subcontractor Report Sheet. If Owner objects to a Subcontractor proposed by Contractor, and that Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.

8.2 Provisions of Subcontracts. Contracts between Contractor and Subcontractors shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which Contractor, by the Contract Documents, assumes toward Owner.

ARTICLE 9 – PERFORMANCE OF WORK

9.1 Condition of Jobsite. Contractor shall keep the Jobsite and the vicinity of the Jobsite secure, clean and neat during the performance of the Work and shall comply with all Legal Requirements pertaining to the Jobsite, the vicinity thereof, and the Work. Furthermore, and upon Final Completion, Contractor shall leave the Jobsite and the Work clean and ready for use, and shall remove all materials, equipment, rubbish and other debris located at the Jobsite and the vicinity of the Jobsite in a manner consistent with all Legal Requirements and as directed by all authorized representatives of Owner. In the event Contractor fails to maintain or leave the Jobsite or the Work in the condition required by this Section, Owner may, at its option and to its satisfaction, make the Jobsite and the Work clean and ready for use, in which case Owner shall have the right to offset all associated costs, or to demand reimbursement from Contractor for all or any portion of such costs incurred in making the Jobsite or Work ready.

9.2 Safety. Contractor shall take all necessary safety, security and other precautions to protect all property and persons from damage or injury arising out of the performance of the Work. Contractor shall abide by any and all Legal Requirements related to safety and security, and shall at all times exercise commercially prudent judgement in securing the Jobsite and in the provision of a safe workplace. Contractor shall provide security, as needed, to protect all materials, equipment, tools, construction equipment and machinery, water, heat, utilities, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor shall comply strictly with all Legal Requirements relating to safety, including, employee safety orders or safe place of employment laws (whether federal, state or local). At all times while any of Contractor's employees, agents or subcontractors are on the Jobsite and/or the vicinity thereof, Contractor shall be responsible for providing them with a safe place of employment, and shall inspect any such places and correct any conditions which are or may create an unsafe place of employment. Owner hereby expressly disclaims, and Contractor waives and holds Owner harmless from, any and all responsibilities and obligations related to the safety and security of the Jobsite, Contractor's employees, subcontractors, suppliers, visitors and invitees during the term of this Agreement and/or the prosecution of the Work hereunder.

9.3 Qualified Individuals. Contractor shall utilize only qualified and (where required) duly licensed employees, agents and subcontractors to perform the Work and all portions thereof in accordance with the requirements of the Contract Documents. Owner may refuse permission for any person, including any employee, agent and representative of Contractor, to enter upon the Jobsite.

9.4.1 Supervision. Contractor shall closely supervise the performance of the Work. Contractor shall ensure that at any time Work is being performed a competent supervisor is present at the Jobsite (the "**Contractor Superintendent**"). The Contractor Superintendent shall have full authority to make decisions

binding on Contractor including, without limitation, decisions regarding Changes, and all directions, instructions or written notices given to the Contractor's Superintendent by the Owner shall be binding as if given to the Contractor.

9.4.2 The following individuals shall perform in the following roles for the Contractor during the course of the Project (unless specified in **Attachment 12**):

1. Project Manager: Taylor Gaddis

2. Contractor Superintendent: TBD

9.5 **Equipment**. All construction equipment obtained or furnished by Contractor which is to be used by Contractor on the Jobsite shall be in first-class operating condition, safe, fit for the uses for which the equipment is intended, and suitable for the safe and efficient performance of the Work. All equipment or services utilized by Contractor to perform the Work shall be promptly removed by the Contractor upon completion or as directed by the Owner. Any repairs or alterations to said equipment, or any repairs or alterations necessitated by the use or removal of said equipment, shall be made by the Contractor at Contractor's expense.

9.6 **Records**. Contractor shall maintain, and require each of its subcontractors to maintain open records showing all items relating to the Work and supporting invoices submitted pursuant to this Agreement. Such records shall be available in the offices of Contractor and each of its subcontractors for inspection and audit by Owner at all times during the performance of the Work and for twenty-four (24) months after Final Completion.

9.7 **Independent Contractor**. Contractor is an independent contractor and has responsibility for and control over the details and means for performing the Work, provided that Contractor is in compliance with the terms of the Contract Documents, and Contractor shall be responsible to Owner for errors or omissions in the construction and/or for Contractor's failure to perform in accordance with the terms of this Agreement. Anything in the Contract Documents that may appear to give Owner the right to direct Contractor as to the details of the performance of the Work, or to exercise a measure of control over Contractor, shall mean that Contractor shall follow the desires of Owner in the results only of the Work. Contractor shall be solely responsible for its employees, subcontractors, agents and representatives, and for their compensation, benefits, contributions and taxes, if any. Nothing in the Contract Documents is intended to create any employment or agency relationship between Contractor and Owner.

9.8 **Legal Compliance**. Contractor shall, at its expense (but subject to reimbursement by Owner), give all necessary notices and cause all work done and materials, equipment and other items furnished pursuant to the Contract Documents to comply strictly with Legal Requirements. In addition, Contractor covenants and warrants that it shall observe and comply strictly with all Legal Requirements in connection with the performance of the Work or otherwise. If Owner has reasonable cause to believe that the provisions of this Section have been violated, Owner may audit all the records of Contractor for the purposes of establishing Contractor's compliance.

9.9 **Permits and Licenses**. Contractor shall secure and pay for all permits, certificates, licenses and inspections required for the proper execution and completion of the Work, except as otherwise specifically provided in the Contract Documents. Contractor shall review permits, certificates and licenses to be obtained on behalf of Owner with an authorized representative of Owner prior to application to any government agency. Contractor will invoice Owner for any and all out-of-pocket costs to obtain permits, certificates, licenses, and inspections related to the Project, if not already paid for by Owner.

9.10 Tests and Inspections.

a. General. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made so that a representative of Owner may be present for such procedures. Acceptance, or failure, of the Owner of any test data or inspection of any portion of the Work shall not relieve the Contractor of his obligation to perform the Work as required by this Agreement. Furthermore, failure of the Owner during the progress of the Work to discover or reject defective work, or work not in accordance with the drawings and specifications, shall not be deemed an acceptance thereof, nor a waiver of, the Owner's rights to the proper execution of the Work or any part of it.

b. Concrete and Soils. Contractor shall coordinate with a local third party materials testing company approved by the Owner to perform compaction testing and to collect and analyze concrete samples from the jobsite. The cost of the concrete and soils testing is the responsibility of the Owner.

9.11 Temporary Facilities. All temporary power, water, dumpster, toilet facilities, security, storage and job shacks necessary at the Jobsite for the performance of the Work shall be furnished by Contractor, and the Contract Sum shall be deemed to fully compensate Contractor therefor. Contractor shall apply for temporary utility services and water service prior to the Commencement Date. Any storage units used by Contractor at the Jobsite shall be constructed of prefabricated steel (e.g. "Rent-A-Vault") and shall be confined within the limits allowed by the Owner and shall not unnecessarily encumber the premises or adjacent properties. All representatives of Owner shall have access to jobsite drawings and other temporary facilities constructed by Contractor. Owner will schedule the installation of a permanent telephone and transfer to permanent power. Contractor will immediately (within twenty-four (24) hours) notify Owner if Contractor is unable to obtain any of the services listed above.

9.12 Temporary Sign. The Contractor shall provide a suitable temporary sign acceptable to the Owner advertising the Work and indicating thereon the proper title of the project and include the Jobsite address. The sign shall be approximately 8 feet by 4 feet. Layout, text and location of such sign shall be approved by Owner.

9.13 Connecting the Work. The Contractor shall do all cutting, fitting and patching that may be required to make the several parts of the work come together properly and to fit his work to receive or be received by the work of other firms as shown upon or reasonably implied by the drawings and specifications. After others have finished their work, he shall promptly complete and finish his work as the Owner may direct. The Contractor shall not endanger nor cut or alter the work of any other firm without the consent of the Owner. If any part of the Work is dependent upon the proper execution or maximum durability upon the work of any other firm, the Contractor or his subcontractor(s) shall inspect said work before commencing his own work and shall make known, for approval by the Owner, any departures from the drawings and specifications. Failure of the Contractor to observe these requirements shall bar him from claiming thereafter that defects in his own work are due to defects in the work of others, unless he submits convincing evidence that a thorough inspection of said other work was made before his own work went forward and that tests which are reasonable and customary failed to disclose the defects which later appeared.

9.14 As Built Drawings and Information. Contractor shall maintain an accurate set of “as built” drawings on a daily basis with special attention given to any underground improvements such as utility lines, and any other items set forth on Attachment 5. Upon the completion of the Work, Contractor shall deliver an electronic copy of the Final As-Built Drawings and Specifications to Owner with a copy to the architect and consultants in Adobe pdf format at the time that “Close-Out” documents are completed and submitted, no later than 30 (thirty) days after Final Completion

9.15 Owner-purchased Goods and Services. The Owner reserves the right to award other Contracts in connection with the Work. The Contractor shall afford such other firms, contractors, or subcontractors adequate opportunity for the introduction and storage of their material and the execution of their work, and shall properly Connect the Work with such other firms, contractors or subcontractors. The Contractor shall cooperate with other firm’s contractors, subcontractors, or the Owner on the Work so all portions of the work may be completed in the least possible time. The Contractor shall furnish other firms, contractors or subcontractors whose work is fitted into his, details and erection drawings giving full information regarding the fabrication and assembly of the Contractor's work. When possible, drawings shall show checked field measurements. Should the Contractor cause damage to any item or to another contractor’s or subcontractor’s work, the Contractor agrees to use his best efforts to negotiate a settlement with such firm, contractor or subcontractor.

ARTICLE 10 – GUARANTEES

10.1 Qualifications. Contractor guarantees that it has the capability, experience and means required to perform the Work, and the Work will be performed using personnel, equipment and material qualified and/or suitable to accomplish the Work.

10.2 Quality of Work. Contractor further guarantees to Owner that the Work shall: (a) strictly comply with all the provisions of the Contract Documents; (b) be first-class in every particular; (c) be free from defects in construction and workmanship; (d) conform with high professional and trade standards; and (e) strictly comply with all Legal Requirements. Contractor further guarantees to Owner that all materials, equipment and supplies furnished by Contractor for the Work shall be new, in conformance with the Contract Documents, merchantable, of the most suitable grade, and fit for their intended purpose. Without limitation of any other rights or remedies of Owner, if the Work fails to conform with the foregoing guarantees, then Contractor shall upon receipt of notice of such defect promptly furnish, at no cost to Owner, all labor, equipment and materials at the Jobsite necessary to correct any such defect and cause the Work to fully comply with the foregoing guarantees. This warranty shall be in addition to, and will not limit, any other warranty or remedy required by Legal Requirements or by the Contract Documents and shall survive Final Payment.

10.3 Assignment of Third Party Warranties. Upon Final Completion, Contractor shall assign or cause to be assigned to Owner all manufacturer’s and other warranties with respect to the Work, including, without limitation, all labor materials and equipment that have been incorporated into the Work.

10.4 Defective Work. If, during the performance of the Work or within twelve (12) months following Final Completion, any part of the Work is found to be defective or otherwise nonconforming, Owner shall notify Contractor of such defect or nonconformity and Contractor shall promptly correct such defect or nonconformity at Contractor’s cost and expense. If Contractor fails to correct any such defect or nonconformity within fifteen (15) days following notice (or within the reasonable time period required, but not more than sixty (60) days, if such defect or nonconformity cannot reasonably be corrected within fifteen (15) days and Contractor promptly commences and diligently prosecutes corrective action), Owner may correct any such defect or nonconformity at Contractor’s expense.

ARTICLE 11 – INSURANCE & INDEMNITY

11.1 **Required Insurance Coverage.** Prior to the Commencement Date, Contractor shall, at its sole cost, cause to be issued and Contractor shall maintain during the entire progress of the Work all insurance coverage required by all Legal Requirements (including worker's compensation, employer's liability and occupational disease insurance), and all minimum insurance coverage set forth in the attached and incorporated **Attachment 1** (the "***Required Insurance Coverage***"). All such insurance policies shall be with responsible insurance companies with an A.M. Best rating of not less than A- and a financial size category of not less than VIII, authorized to do business in the State where the Jobsite is located. Contractor shall be solely responsible for the payment of premiums, audits, deductions, retro adjustments, or other payment obligations of Contractor under such policies. The Required Insurance Coverage shall not limit Contractor's liability for any duty, obligation or requirement arising out of this Agreement.

11.2 **Insurance Certificates.** Contractor shall provide Owner with certificates of insurance evidencing the Required Insurance Coverage. At a minimum, all insurance certificates shall state that "*Whataburger Restaurants LLC, a Texas limited liability company, and its respective parent company, subsidiaries, affiliates, officers, directors, managers, employees and landlord, if applicable, are each an additional insured*" and that the certificate holder is *Whataburger Restaurants LLC, a Texas limited liability company, and its respective parent company, subsidiaries, affiliates, officers, directors, managers, employees and landlord, if applicable, are each an additional insured*" Furthermore, all insurance certificates shall state that Owner will be notified in writing thirty (30) days prior to the cancellation, material change or non-renewal of the policy. Contractor will also provide timely certificates of insurance as the Required Insurance Coverage policies are renewed.

11.3 **Subcontractor Insurance.** In the event Contractor utilizes subcontractors in connection with the Work, Contractor shall require each subcontractor to fully comply with the provisions of this **Article 11**.

11.4 **Potential Claims.** Contractor shall promptly report to Owner any and all potential claims relating to injury or death of any person (including, but not limited to, employees of Owner and Contractor) or property damage.

11.5 **Claims Made Policies.** If any insurance policies provided by Contractor pursuant to the Contract Documents that are "claims made" policies are canceled or not renewed, then Contractor shall provide a replacement insurance policy or policies with terms and conditions and in amounts which comply with the terms of the Contract Documents and which provide for retroactive coverage to the Commencement Date to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior "claims made" policy. With respect to all "claims made" policies which are renewed, Contractor shall provide coverage retroactive to the Commencement in the renewed policy. Furthermore, Contractor shall maintain all "claims made" policies in full force and effect for at least two (2) years after the date on which Final Completion occurs. A certificate evidencing continuation of such policies shall be submitted with the Notice of Completion. Nothing set forth in this Section shall affect the continuing effect of any indemnity clauses contained in the Contract Documents.

11.6 **Indemnification.** To the fullest extent allowed by applicable law, Contractor agrees, on behalf of itself and its Subcontractors, to indemnify and hold harmless the Owner Parties from and against any and all liabilities, claims, causes of action, losses, fines, penalties, attorneys fees, costs and expenses whether contingent, accrued, absolute or otherwise ("***Claims***"), arising out of or related to any of the following: (a) any actual or asserted failure of any Contractor Party to comply with any

Legal Requirements; (b) any actual or asserted improper appropriation or use of any trade secret or proprietary information, or infringement of any trademark, service mark or patent arising out of the use or sale of materials, equipment, methods, processes, designs, information or other things furnished by any Contractor Party in or for the performance of the Work; (c) the death of or actual or asserted injury to persons (including employees of any Owner Party or Contractor Party) or actual or asserted damage to or loss of property arising directly or indirectly out of the acts or omissions to act of any Contractor Party in the performance of the Work, including without limitation, Claims arising under non-delegable duties of Owner arising from the use or operation by any Contractor Party of construction equipment, tools, scaffolding, or facilities furnished to any Contractor Party by Owner to perform the Work, SPECIFICALLY INCLUDING THOSE SITUATIONS WHERE OWNER IS CONCURRENTLY, OR ACTIVELY OR PASSIVELY NEGLIGENT, but excepting where the injury or death of persons or damage to or loss of property is caused by the sole negligence or willful misconduct of Owner; or (d) actual or alleged contamination or pollution from any toxic or hazardous material or substance which is classified or regulated as toxic or hazardous to health or the environment by any governmental authority, arising either directly or indirectly out of the acts or omissions to act of any Contractor Party. The foregoing indemnity shall not apply to any matter determined in the final judgment of a court to have been proximately caused by the sole negligence of the Owner Party seeking indemnification, but SHALL APPLY TO ANY INCIDENT PROXIMATELY CAUSED IN PART BY THE NEGLIGENCE OF THE OWNER PARTY SEEKING INDEMNIFICATION or solely or in part by any third party.

11.7 Waivers of Subrogation. Owner waives all rights against the Contractor Parties, and Contractor waives all rights against the Owner Parties, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work, but only to the extent of actual recovery therefrom. Contractor waives all rights against the Owner Parties for damages to the extent they are either covered by, or in the event that Contractor has failed to maintain the Required Insurance Coverage, would have been covered by, insurance carried by Contractor. Contractor, as appropriate shall require of its Subcontractors similar waivers each in favor of other parties enumerated herein. The Required Insurance Coverage policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.8 Survival. The provisions of this Article 11, specifically including the indemnities set forth in Section 11.6, shall survive acceptance of the Work, Final Completion, Final Payment, and, if applicable, the expiration or earlier termination of this Agreement.

ARTICLE 12 – TERMINATION OR SUSPENSION OF THE WORK

12.1 Termination For Cause. Owner, at its sole option, may immediately terminate this Agreement if Contractor breaches this Agreement, and fails to cure such breach within fifteen (15) days following Contractor's receipt of written notice of such breach from Owner.

12.2 After Termination. Upon termination Owner, without prejudice to any other rights and remedies of Owner, may: (a) take possession of the Jobsite and improvements thereto and all of the materials, equipment, tools and machinery located thereon owned by Contractor; and (b) finish the Work by whatever reasonable method Owner may deem expedient. Furthermore, Contractor shall not be entitled to receive any further payment of the Contract Sum. To the full extent permitted by applicable law, if the cost to complete the Work exceeds the unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner. In determining the cost of completing the Work, Owner may include its reasonable administrative costs and other damages incurred by Owner in connection with Contractor's default.

12.3 Termination Without Cause. Owner may terminate this Agreement without cause. In that event, Contractor's recovery shall be limited to compensation by Owner for Work performed based upon the percentage of the Work actually completed by Contractor plus materials or equipment actually procured for the Work by Contractor. Such compensation shall not include any actual or asserted lost profits, and shall be without prejudice to any claims which Owner may have against Contractor.

12.4 Suspension of Work. Owner may also suspend, delay or interrupt the Work without cause for such period as Owner may determine. In that event, an equitable adjustment to the Contract Sum shall be made based solely upon Contractor's proven increased cost of performance. The Contract Time shall also be adjusted based upon the duration of any such suspension, delay or interruption.

12.5 No Termination by Contractor. Contractor may not stop work or terminate this Agreement without the prior written consent of Owner, except in the event of a default by Owner in making payments to Contractor as required in accordance with Article 4 hereunder.

ARTICLE 13 – MISCELLANEOUS

13.1 Notices. All notices, consents, approvals and other communications provided pursuant to the Contract Documents must be in writing and shall be deemed to have been duly served: (a) if delivered in person to the party for whom it was intended at the address of the appropriate party listed in the introduction to this Agreement, (b) if delivered at or sent by registered or certified mail or national overnight courier service, fee prepaid to the address of the appropriate party listed in the introduction to this Agreement or (c) if delivered via electronic mail to the party for whom it was intended at the address of the appropriate party listed in the introduction to this Agreement. Notice shall be deemed effective: (i) upon delivery, if personally delivered; (ii) upon one (1) business day following deposit with a national overnight courier service; (iii) upon two (2) business days following deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested; or (iv) upon receipt if by electronic mail. Either party may change its address for notice hereunder by delivering notice of that change to the other party in accordance with the provisions of this Section.

13.2 Entire Agreement. The Contract Documents contain the entire agreement of the parties with respect to the matters covered by the Contract Documents, and no other agreement, statement or promise made by any party, or to any employee, officer, or agent of any party which is not contained in the Contract Documents shall be binding or valid. The Contract Documents cannot be modified by any means except by a written instrument signed by Owner and Contractor.

13.3 Prevailing Party. Should any action or proceeding at law or in equity be brought to enforce the Contract Documents or as a result of any breach of a provision hereof, the prevailing party shall be entitled to recover its costs, including its reasonable attorneys' fees incurred in connection with the prosecution or defense of any such action or proceeding.

13.4 Governing Law. The Contract Documents shall be governed by and construed under the laws of the State in which the Jobsite is located.

13.5 Assignment. Contractor may not assign the Contract without the prior written consent of Owner. Owner has the absolute right to assign its interest under this Agreement. In connection with any financing of this Project, Contractor and all Subcontractors of any tier shall execute and deliver any and all instruments reasonably required by Owner, Landlord or any lender.

13.6 Authority; Binding Effect. Each person executing this Agreement represents that he or she has been duly authorized to do so by all requisite action on the part of the party on whose behalf he or she

is signing, and that in so doing, he or she shall bind such party to all of the terms, provisions, conditions and covenants hereof. Each party hereto represents that: (a) its execution, delivery and performance of this Agreement are within its corporate, limited liability, partnership or individual powers, have been duly authorized, and do not and will not with the passage of time or giving of notice constitute a default under any agreement to which it is a party or by which it is bound, and (b) this Agreement and the documents to executed and delivered in connection herewith constitute legal, valid and binding obligations of such party, enforceable in accordance with their terms.

13.7 Headings. The headings and section references found herein are for convenience only and shall not be considered a part of this Agreement for any purpose, or be considered as in any way interpreting, constituting, varying, altering, or modifying this Agreement or any of the provisions hereof.

13.8 Counterparts and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all counterparts together shall constitute one Agreement. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by e-signature, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to replicate or signify a signature for a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

13.9 Severability. If one or more provisions of this Agreement is held unenforceable, invalid, or illegal in any respect, such unenforceability, invalidity, or illegality will not affect any other provision of this Agreement, which will be construed as if such unenforceable, invalid, or illegal provision had never been a part hereof.

13.10 No Waiver. No action or failure to act by Owner shall constitute a waiver of any right or duty afforded under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

13.11 Limitation on Owner's Liability. **Notwithstanding anything to the contrary herein, in no event shall Owner, under any circumstances, be liable to Contractor for exemplary, punitive, special, consequential or indirect damages of any kind.**

13.12 AIA Documents. Notwithstanding anything to the contrary herein, in any AIA document form used in connection with this Agreement: (a) all references to the term "*Architect*" shall be deemed to refer to "*Owner*" (as defined herein); and (b) all references to the "*Architect's Project Number*" shall be to the Unit Number set forth in this Agreement.

[signatures on following page]

Signature Page
to
Fixed Price Construction Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

OWNER:

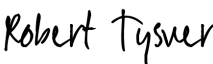
WHATABURGER RESTAURANTS LLC,
a Texas limited liability company

By: 
Name: Bill Sorrells
Title: Group Director, Real Estate Development

Date: 12/6/2023 | 8:48 AM CST

CONTRACTOR:

WH Bass, Inc.

By: 
Name: Robert Tysver
Title: CFO

Date: 12/6/2023 | 8:17 AM CST

ATTACHMENT 1
MINIMUM INSURANCE REQUIREMENTS

1. Commercial General Liability Policy Form

a. Minimum Limits

- i. \$1,000,000 per occurrence
- ii. \$2,000,000 general aggregate
- iii. \$500,000 products/completed operations aggregate

b. Required Coverages

- i. Premises/operations
- ii. Explosion, blasting, underground damage, and collapse
- iii. Products/completed operations
- iv. Blanket contractual specifically covering the indemnity contained in this Agreement
- v. Broad form property damage
- vi. Independent contractors
- vii. Personal injury
- viii. Cross liability endorsement

- c. Additional Requirements – Policy must be endorsed to include *Whataburger Restaurants LLC, a Texas limited liability company, and its respective parent company, Subsidiaries, affiliates, officers, directors, managers, employees and landlord, if applicable* (the “**Owner Parties**”), as additional insureds. Policy must include a waiver of subrogation against the Owner Parties by Contractor and its insurer. Policy must provide that Owner Parties will be notified in writing within 30 days prior to the cancellation, material change or non-renewal of policy.

2. Commercial Automobile Liability

- a. Minimum Limit - combined single limit of \$1,000,000 per occurrence

b. Required Coverages

- i. Owned vehicles iii. Non-owned vehicles v. Cross liability
- ii. Hired vehicles iv. Mobile equipment

- c. Additional Requirements – Policy must be endorsed to include the Owner Parties as additional insureds. Policy must include a waiver of subrogation against the Owner Parties by Contractor and its insurer. Policy must provide that Owner Parties will be notified in writing within 30 days prior to the cancellation, material change or non-renewal of policy.

- 3. Builder’s Risk including Delay In Start Up** - Contractor must carry and maintain builder’s risk insurance providing full replacement cost coverage for direct loss or damage to all Work completed or in progress, equipment, materials and structures on the Jobsite or in transit or outside storage which are or will be incorporated into the Work. The policy must be endorsed to include the Owner Parties as additional insureds, and must include a waiver of subrogation against the Owner Parties by Contractor and its insurer. The policy should include coverage for \$100,000 of Delay In Start Up coverage to cover the Owner’s risk of lost operating time due to a delayed opening following a property loss. Contractor is also responsible for its own equipment and property on the Jobsite.

- 4. Workers’ Compensation** – Contractor must carry and maintain workers’ compensation insurance sufficient to comply with the statutory limits, including occupational disease, for the state in which the work is to be performed.

5. Employer's Liability – Minimum Limits of:

- a. \$500,000 per accident b. \$500,000 disease each employee c. \$500,000
disease policy limit

6. Umbrella Liability

- a. Minimum Limit - \$2,000,000 Combined Single Limit Bodily Injury and Property Damage in excess of Employer's Liability, Commercial General Liability and Automobile Liability Coverages described above.
- b. Additional Requirements – Coverage must be in excess of and at least as broad as the coverages described herein. Coverage must “drop down” for exhausted aggregate limits under the liability coverages described above or where the liability coverages described above do not provide coverage. Policy must be endorsed to include the Owner Parties as additional insureds. Policy must contain a mutual waiver of subrogation clause with respect to Workers Compensation claims. Policy must contain standard cross liability endorsement or severability of interests clauses. Policy must provide that Owner Parties will be notified in writing within 30 days prior to the cancellation, material change or non-renewal of policy.

[End of Attachment 1]

ATTACHMENT 2

LIST OF DRAWINGS

- IFC set Anderson, SC by BL Companies, Inc. dated 5-15-23 with revisions #1. 6-22-23 & #2. 7-10-23, pages CV-1 to E7.2

[End of Attachment 2]

ATTACHMENT 3

LIST OF SPECIFICATIONS

- Geotech Anderson, SC – by Terracon dated: 10-04-22
- Exhibit A-3 Addendum of Standard Notes & Instructions – Anderson, SC – by WB dated: 10-30-23
- General Contractor Bid Form Notes & Instructions – Anderson, SC – by WB dated: 10-30-23
- General Contractor Bid Form – Anderson, SC – by WB dated: 10-30-23
- Attachment 7 GC Fee – Anderson, SC – by WB dated: 10-30-23

[End of Attachment 3]

ATTACHMENT 4
LIST OF ADDENDA

[End of Attachment 4]

ATTACHMENT 5

AS-BUILT INFORMATION LIST

[End of Attachment 5]

Attachment 6**BID SHEET OR FORM****General Contractor Bid Form****Exhibit A-1****Bid Proposal**

Company:	WH Bass, Inc.
Date:	1/30/2023
Building Type:	PT22S
Address:	2900 Main St. Anderson, SC 29621
Duration (Weeks):	25

Cost Code	Cost Code Description	Total Cos
13030-11300080	Cleaning	-
13030-11301110	Environmental Consideration / SWPPP	9,750.00
13040-11400020	Insurance	-
13040-11400025	Bonding	-
13040-11400055	Temporary Facilities	-
13040-11400060	Temporary Utilities	-
13040-11401100	Contractor Travel & Expense	160,000.00
13040-11401105	Contractor OH&P	233,000.00
13040-11402005	Site Preparation	79,934.00
13040-11402015	Demol/Remove Existing Structure	20,000.00
13040-11402025	Concrete Paving	66,540.00
13040-11402035	Asphalt Paving	136,429.00
13040-11402040	Curb & Gutter	47,237.00
13040-11402045	Sidewalks	45,829.00
13040-11402055	Bollards & Barricades	3,850.00
13040-11402060	Striping & ADA Signage	12,575.00
13040-11402065	Wheel Stops (Moveable Bumpers)	2,635.00
13040-11402070	Landscaping	49,385.00
13040-11402075	Irrigation (Sprinkler) System	26,500.00
13040-11402100	Fire Line and Hydrants	-
13040-11402110	Storm Water Drainage	8,500.00
13040-11402115	Retaining Walls	-
13040-11402125	Dumpster Enclosure	21,015.00
13040-11402135	Abatement	10,000.00
13040-11403005	Foundation	64,530.00
13040-11403040	Pole Bases	11,550.00
13040-11404005	Architectural Metal	-
13040-11404010	Brick Masonry	83,898.00
13040-11404015	Stone	-
13040-11404020	Stucco	-
13040-11404050	Sign Base (Monument)	4,000.00
13040-11405005	Metal Framing	22,220.00
13040-11405025	Metal Hand Rails	-
13040-11405035	Drive Thru Menu Board Canopy	4,030.00
13040-11405040	Drive Thru Clearance Bar	1,200.00
13040-11405060	Metal Ladders	2,675.00
13040-11406005	Wood Framing	116,495.00
13040-11406010	Trusses	23,470.00

Fixed Price Construction Contract

2900 N. Main St. Anderson, SC 29621—Project No. 2105749

R-000125

13040-11406020	Finish Carpentry	-
13040-11407015	Thermal Protection	9,885.00
13040-11407020	Roofing Panels	-
13040-11407030	Membrane Roofing	52,340.00
13040-11408030	Window Awnings/Canopies	-
13040-11408035	Drive Thru Windows	4,500.00
13040-11408050	Hardware	12,440.00
13040-11408055	Glazing	53,162.00
13040-11409015	Gypsum Board	59,000.00
13040-11409035	Flooring Tile	28,920.00
13040-11409085	Acoustical Tiles	12,500.00
13040-11409090	Paints & Coatings	33,990.00
13040-11410045	Flagpoles	11,000.00
13040-11410075	Toilet, Bath and Laundry Specialties	16,710.00
13040-11410080	Manufactured Exterior Specialties	-
13040-11411040	Detention Equipment	-
13040-11412020	Furnishings & Accessory Install	77,000.00
13040-11412030	Seating & Decor Package	10,500.00
13040-11413055	Fire Suppression	12,000.00
13040-11415005	Site Plumbing	88,655.00
13040-11415010	Building Plumbing	93,350.00
13040-11415025	Plumbing Fixtures / Equipment	-
13040-11415040	HVAC Equipment	223,745.00
13040-11416015	Electrical Power	206,700.00
13040-11416045	Site Electrical	38,700.00
13040-11416050	Exterior Building Lighting	58,575.00
13040-11416060	Building Control System	750.00
13040-11411020	Site Security Cameras (2 ea)	-
	Grand Total	2,371,669.00

Fixed Price Construction Contract

2900 N. Main St. Anderson, SC 29621—Project No. 2105749

R-000126

Attachment 7

GENERAL CONDITIONS AND FEE BREAKDOWN

Contractor Name: WH Bass, Inc.			
Project Name	NWC N Main St & Concord Rd, Anderson SC	Date	11/22/2023
Project Address	2900 Main St.		
	Anderson, SC 29621		
Project Duration	25 wks		

- DETAIL OF GENERAL CONDITIONS -

1) Field and Home Staff Administration and Supervision:									
	Raw Costs	Burden	% of Time	No. of Wks					
Project Exec	\$ \$0 /wk x	Included x	0.00%	x 0.00 wks	=	Included			
Senior Project Mgr	\$ \$0 /wk x	Included x	0.00%	x 0.00 wks	=	Included			
Project Manager	\$ \$0 /wk x	Included x	0.00%	x 0.00 wks	=	Included			
Project Estimator	\$ \$0 /wk x	Included x	0.00%	x 0.00 wks	=	Included			
Senior Superintendent	\$ \$2,675 /wk x	Included x	8.00%	x 25.00 wks	=	\$5,350.00			
Superintendent	\$ \$2,386 /wk x	Included x	100.00%	x 25.00 wks	=	\$59,650.00			
Project Engineer	\$ \$0 /wk x	Included x	0.00%	x 0.00 wks	=	Included			
Project Assistant	\$ \$0 /wk x	Included x	0.00%	x 0.00 wks	=	Included			
Safety Supervisor	\$ \$0 /wk x	Included x	0.00%	x 0.00 wks	=	Included			
A) MANAGEMENT / SUPERVISORY SUBTOTAL						\$ 65,000.00			
2) Field Engineering Labor with Burden						= \$31,000.00			
3) Field Engineering Equipment & Supplies						= \$9,560.00			
4) Field Project Office (Jobsite)						= \$5,660.00			
5) Safety Supervisor Inspections						= \$1,985.00			
6) Temporary Fire extinguishers & Safety Equipment /Labor						= \$1,350.00			
7) Two Pole Mounted Cameras (Incl'd software)						= Included			
8) Office Supplies						= \$500.00			
9) Postage						= Included			
10) Federal Express/Courier Services						= \$1,800.00			
11) Miscellaneous Printing						= \$1,000.00			
12) Copy Machine & Supplies						= Included			
13) Office Equipment & Radios						= Included			
14) Telephone and Fax Service						= \$2,790.00			
15) Main Office Computer						= Included			
16) Personal Computers on Site						= \$2,250.00			
17) Janitorial Services for Jobsite						= Included			
18) Small Tools and Consumables						= \$1,000.00			
19) Vehicle Rental / Mileage						= Included			
20) Vehicle Fuel, Maintenance and Repair						= Included			
21) Vehicle Insurance						= Included			
22) Construction Equipment Freight and Insurance Charges						= \$11,350.00			
23) Independent Testing and Inspection						= Excluded			
24) Project Scheduling Services						= \$6,750.00			
25) Project Accounting Services						= \$29,450.00			
26) Construction Clean-Up						= \$4,500.00			
27) Final Clean-Up						= \$6,500.00			
28) Dumpsters (rubbish removal)						= \$8,100.00			
						# of Dumpsters 16			
						= \$8,500.00			
29) Temporary Protection						= \$2,340.00			
30) Temporary Toilets						= \$23,615.00			
31) Other (list items included in this line item that do not appear above)									
First Aid Supplies						= \$500			
WC & GL Insurance						= \$19,115			
Payroll Tax						= \$4,000			
Warranty						=			
B) MISCELLANEOUS GC TOTAL						\$ 160,000.00			
GENERAL CONDITIONS TOTAL (A +B)						\$ 225,000.00			

Contractor Name: WH Bass, Inc.Date 11/22/2023

Project Name NWC N Main St & Concord Rd, Anderson SC
 Project Address 2900 Main St.
Anderson, SC 29621

C) OVERHEAD & PROFIT DETAIL (Indicate Proposed Percentages)

Description	% of Construction	Comments
Profit - Construction	7.00%	
TOTAL OVERHEAD & PROFIT	7.00%	

D) CHANGES IN THE WORK (Indicate Proposed Percentages)

Description	% of Construction	Comments
Profit -	5.00%	
TOTAL CHANGE ORDER %	5.00%	

E) PERMIT EXPEDITING

Description	Cost	Comments
Permit Expediting	\$ -	
As-Built Cost	\$ 8,000.00	

F) BONDING (If Applicable)

Description	Cost	Comments
Payment & Performance Bonds	N/A	
Subcontractor Default	N/A	

G) SELF-PERFORMED WORK

If you self-perform, what is the total number of field labor hours, included as part of your General Conditions Proposal, that you anticipate for the project?

Trade Description	No. of Hours	Rate	Amount
Laborers	320	\$ 25.00	\$ 8,000.00
Carpenters	0	\$ -	\$ -
Operators	0	\$ -	\$ -
Other Trades	0	\$ -	\$ -
TOTAL FIELD HOURS	320		\$ 8,000.00

Have you indicated the full cost of these hours in your proposal? If not, identify for accurate comparison purposes

Contractor Name: WH Bass, Inc.Project Name
Project AddressNWC N Main St & Concord Rd, Anderson SC
2900 Main St.
Anderson, SC 29621Date 11/22/2023a) How many dumpsters did you assume for the project? 16 dumpster(s)

b) Did you include cost of field offices for personnel?

☒ Yes or No

g) Please identify any general condition items, which may be required for the completion of the work that you have excluded?

An authorized official of the General Contractor's organization with the name of the official and his/her title included must sign bids

Name: Brian Cunningham Title: Business DevelopmentCompany: WH Bass, Inc.Signature: Date: 11/22/2023Phone Number: 770-354-2778 Email: bcunningham@whbass.com

Attachment 8**FORM OF AFFIDAVIT OF COMPLETION****AFFIDAVIT OF COMPLETION**

STATE OF _____ §
 COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the persons whose name is subscribed below, and who, being by me first duly sworn did on his or her oath state as follows:

1. _____, a _____, whose address is _____ (“**Owner**”), is the owner of the real property situated in _____ County, _____, located at _____, _____, _____ [ADD LEGAL] (the “**Property**”), on which Property certain improvements relating to the construction of a _____ (the “**Improvements**”) were constructed and furnished under the original contract with _____ (the “**Original Contractor**”), whose address is _____.

2. The Improvements under the original contract between the Owner and the Original Contractor have been completed and the date of such completion was _____, 20____.

3. The undersigned affiant is an authorized representative of Owner.

NOTICE: IF THE PROPERTY IS LOCATED IN TEXAS, A CLAIMANT MAY NOT HAVE A LIEN ON RETAINED FUNDS UNLESS THE CLAIMANT FILES THE AFFIDAVIT CLAIMING A LIEN NOT LATER THAN THE 40TH DAY AFTER THE DATE OF COMPLETION.

AFFIANT:

SUBSCRIBED AND SWORN BEFORE ME, on this the ____ day of _____, 20____.

 Notary Public in and for the State of _____

Attachment 9**FORM OF BILLS PAID AFFIDAVIT****BILLS PAID AFFIDAVIT**

THE STATE OF _____ §
 COUNTY OF _____ §
 _____ §

CERTIFICATE OF THE CONTRACTOR

The undersigned hereby certifies that all work has been performed and completed under the terms of the *Fixed-Price Construction Agreement* (as amended, the “**Contract**”), between the undersigned (“**Contractor**”) and _____, a _____ (the “**Owner**”), dated _____, relating to the furnishing of labor and/or materials in connection with the construction of certain improvements located or to be located upon that certain tract of real property owned by Owner located at _____, _____, _____ (the “**Property**”).

Contractor represents and warrants to Owner that no construction or other work under the Contract was commenced and no materials were delivered to the Property prior to _____.

The undersigned also certifies that all payments required under the Contract have been made by Owner and received by Contractor in collected funds and that Contractor has made all payments (1) to all of its subcontractors, including without limitation those listed on Schedule A attached hereto and herein incorporated by reference, and (2) for all materials and labor used in or in connection with the performance of the Contract and that no amounts due to any subcontractor or materialman remain outstanding or in dispute. The undersigned further certifies that it has complied with all federal, state, or local tax laws, unemployment compensation laws, workman's compensation laws, and federal wage and hours laws, insofar as applicable to the performance of the Contract.

Furthermore, in consideration of the payments received, Contractor acknowledges that it has no right to any lien, and has (or will have) waived, released, and relinquished all claim or right of lien, upon or against the Property.

The undersigned has further represented and warranted and does hereby represent and warrant that:
 (a) it has not assigned and will not assign any claim against Owner or any right to a lien against the Property,
 (b) all persons and entities who have furnished labor or material to the undersigned in connection with the Contract (or the work described therein) have been paid all amounts to which they have or may become entitled, and (c) the Contract is fully completed in accordance with the final plans and specifications therefor and the Contract Documents.

The undersigned hereby agrees unconditionally to indemnify Owner and hold Owner harmless against all liability, loss, cost or expense (including but not limited to attorneys’ fees) now or hereafter incurred, paid or suffered by or asserted against Owner or the Property because of any claim or action by the undersigned, or by any person or entity claiming by, through or under the undersigned, with respect to the claims, liens or rights described herein or otherwise arising out of the Contract and/or any breach hereof or any untruth of any representation herein made.

If the Contractor is an entity, the individual signing on behalf of Contractor represents and warrants to Owner that he has full right, power and authority to sign this Affidavit and has personal knowledge of the facts hereof.

EXECUTED this _____ day of _____, 20____.

_____, a _____

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20____, by _____, _____ of _____, a _____, on behalf of said _____.

Notary Public in and for the State of _____

Attachment 9 (continued)

SCHEDULE A
to
Bills Paid Affidavit

LIST OF SUBCONTRACTORS

Name of Subcontractor	Trade / Type of Material Supplied	Contact Information

Attachment 10**FORM OF LIEN WAIVERS ON
PROGRESS PAYMENTS****CONDITIONAL WAIVER AND RELEASE ON
PROGRESS PAYMENT**

THE STATE OF _____)
)
 COUNTY OF _____)

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____
 Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____, _____, _____ (location) to the following extent: _____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____

(Company name)

By: _____
 Name: _____
 Title: _____

SUBSCRIBED AND SWORN TO BEFORE ME by _____, on
_____ [date], to certify which witness my hand and seal of office.

(NOTARY SEAL)

Notary Public, State of _____

Attachment 10 (continued)

**FORM OF LIEN WAIVERS ON
PROGRESS PAYMENTS**

**UNCONDITIONAL WAIVER AND RELEASE ON
PROGRESS PAYMENT**

THE STATE OF _____)
COUNTY OF _____)

NOTICE:

THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____
Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of \$_____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____, _____, _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____

(Company name)

By: _____
Name: _____
Title: _____

SUBSCRIBED AND SWORN TO BEFORE ME by _____, on
_____ [date], to certify which witness my hand and seal of office.

(NOTARY SEAL) _____
Notary Public, State of _____

Attachment 10 (continued)

FORM OF LIEN WAIVERS ON
FINAL PAYMENT

CONDITIONAL WAIVER AND RELEASE ON
FINAL PAYMENT

THE STATE OF _____)
COUNTY OF _____)

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____
Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____, _____ (location) to the following extent: _____ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____

(Company name)

By: _____
Name: _____
Title: _____

SUBSCRIBED AND SWORN TO BEFORE ME by _____, on
_____ [date], to certify which witness my hand and seal of office.

(NOTARY SEAL)

Notary Public, State of _____

Attachment 10 (continued)

FORM OF FINAL LIEN WAIVER

**UNCONDITIONAL WAIVER AND RELEASE ON
FINAL PAYMENT**

THE STATE OF _____)
COUNTY OF _____)

NOTICE:

THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____
Job No. _____

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____, _____, _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____

(Company name)

By: _____
Name: _____
Title: _____

Fixed Price Construction Contract
2900 N. Main St. Anderson, SC 29621—Project No. 2105749

R-000140

SUBSCRIBED AND SWORN TO BEFORE ME by _____, on
_____ [date], to certify which witness my hand and seal of office.

(NOTARY SEAL)

Notary Public, State of _____

Attachment 11
FORM OF MAJOR SUBCONTRACTOR REPORT
[FOR ALL SUBCONTRACTS \$10,000 OR >]

GENERAL CONTRACTOR [ADDRESS] _____ **PAGE** _____ **OF** _____

_____ **AFE #** _____

NAME

ADDRESS

Sub-Contractor Name & Address	Base Contract	Change Orders To Date	Payment App. No. _____	Payment App. No. _____	Payment App. No. _____	Payment App. No. _____

Fixed Price Construction Contract
2900 N. Main St. Anderson, SC 29621—Project No. 2105749

Attachment 12
State-Specific Addendum

ELECTRONICALLY FILED - 2025 Apr 29 4:03 PM - ANDERSON - COMMON PLEAS - CASE#2024CP04022229

Fixed Price Construction Contract
2900 N. Main St. Anderson, SC 29621—Project No. 2105749

R-000143

From: Taylor Gaddis <tgaddis@whbass.com>
Sent: Tuesday, April 9, 2024 2:02 PM
To: Rtmoats; Cole Miller
Cc: Joe Forcier; Eddie Wheeler; Lynn Davis; Laura King
Subject: RE: Whataburger - Anderson, SC

Russell/Laura,

We are trying to reach your material suppliers to get the account balances for this project. Could you provide me with an updated phone number for the grease trap provider? The original contact that you provided is no longer in service. Once we have this information I would like to schedule a time for WH Bass and Moats Construction to come to resolution.

Thank you,

Taylor Gaddis
W.H. Bass, Inc. | General Contractors
11695 Johns Creek Parkway | Suite 370
Johns Creek, GA 30097
Cell (706) 974-3228
tgaddis@whbass.com | www.whbass.com



From: Rtmoats <rtmoats@moatsconstruction.com>
Sent: Thursday, April 4, 2024 12:57 PM
To: Cole Miller <cmiller@whbass.com>
Cc: Taylor Gaddis <tgaddis@whbass.com>; Joe Forcier <jforcier@whbass.com>; Eddie Wheeler <EWheeler@WHBass.com>; Wesley Edwards <edwardswesley55@gmail.com>; Anita Thomas <athomas@wbhq.com>; Lynn Davis <LDavis@WHBass.com>; Laura King <lbkingcu@moatsconstruction.com>
Subject: Re: Whataburger - Anderson, SC

Good afternoon Cole!

Well let's see, we told everyone that if you didn't pay the outstanding bill or give assurances and proof of payment by 5pm yesterday we would be demobilizing from the sight, which means, as I'm sure you know, removing all of our equipment from the project sight. Which we did.

You are correct however that we were out there late removing our equipment due to having to move, re-position and clean the temporary storage containers that we had furnished to the site, as well as safe up any existing work that had been in-progress. All documented.

We did not want to leave an un-safe sight as we had also removed our traffic control and there is regular foot traffic across the site at all hours due to numerous vagrants in the area and also customers frequenting the adjacent shops.

Your site superintendent had relocated with his telehandler both of the temporary storage Conex containers from where they had originally been delivered on a dry and level area, and left them for us to pickup in the mud. Thanks for that.

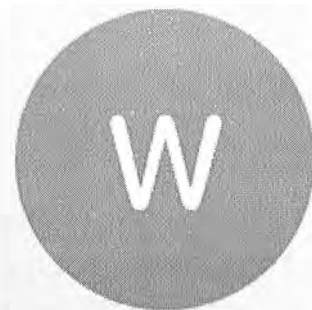
And, WH Bass will be charged for that also I can assure you.

Also in making our work safe we also backfilled the remaining large curb island, which as you know is part of a Grading scope of work that you wanted completed by tomorrow 04/05/24. We could not do that prior to yesterday because there was so much "stuff", to put it nicely, in the way.

So all we did was the remaining backfill so that work would be complete and the area not continue to hold water where all of your other forces had excavated trenches and just left them un-covered, and we have before and after pictures of that work we did yesterday on the way out.

I am not sure about damaging any concrete forms in that process. How would we have damaged concrete forms by backfilling an island. Didn't you all want everything completed like "yesterday", or by tomorrow at the latest correct?

Also, not sure what good a gate is going to do on this site. You have 3 wide open areas front back and side of the property. You may want to go with an entire temporary fence, but why do that at the end of the job Cole? Aren't you wrapping things up now? You should have done that months ago buddy.



WH Bass Jr

Wed, Dec 27 at 4:03 PM

Hey Joe, I had a good week. Duke is ahead and set the transformer and come?

No not that part yet just the I believe



WH Bass Joe >

where curb and gutter goes and your sewer so I can get curb and gutter in then I can get asphalt back in at a reasonable time

Oh and the inspector brought up that fallen silt fence today as well

Yeah I don't know what to do about that. I mentioned the foot traffic and vagrants to Taylor before the project started because we discussed temporary fencing for the job. We will put it up one more time. If they rip it down again we'll just need to get some erosion eels or something similar



Yeah I don't know who's fucking with it but I got cameras up now maybe I can catch them

Thu, Mar 7 at 12:35 PM



Hey russle can we get a dumpster swap tomorrow if possible

Kindest Regards,

Russell T. Moats
Principle

Moats Construction Company

864.224.0904 Office

On Apr 4, 2024, at 10:08 AM, Cole Miller <cmiller@whbass.com> wrote:

Russell,

Good morning. We noticed on the cameras that you came to the site late last night and stayed until around 9:30. This was after your confirmation via email at 2:42 yesterday that you would not be continuing work on the job site. We're not sure what the motive was, but while on site you damaged our concrete sub's form boards and damaged their auger. You will be liable for that damage.

At this point, you have voluntarily removed yourself from the project and are no longer allowed on our job site. We will be putting a gate on the entrance and locking it up when Joe isn't there.

For the materials you've had delivered (sewer pipe, backflows, clean-outs/lids, etc.), those will need to stay on site. As mentioned before, we will handle those invoices directly with the suppliers.

We are still open to coming to an agreement on an amount owed that matches the work you've performed.

Thanks,

Cole Miller
W.H. Bass, Inc.
770-713-0469
cmiller@whbass.com
11695 Johns Creek Parkway | Suite 370
Johns Creek, GA 30097

From: Rtmoats <rtmoats@moatsconstruction.com>

Sent: Wednesday, April 3, 2024 5:18 PM

To: Cole Miller <cmiller@whbass.com>

Cc: Taylor Gaddis <tgaddis@whbass.com>; Joe Forcier <jforcier@whbass.com>; Eddie Wheeler <EWheeler@WHBass.com>; Wesley Edwards <edwardswesley55@gmail.com>; Anita Thomas <athomas@wbhg.com>; Lynn Davis <LDavis@WHBass.com>

Subject: Re: Whataburger - Anderson, SC

There has been no lack of progress on the part of Moats Construction. We have been involved with this project for exactly 2 years now. We have done nothing but try to be helpful and move this project along often times going out of our way to help the owner(s).

We have worked on-site since last September with no issue up until these last couple of weeks where we have been become increasingly aware and wary of being paid for work that we have completed.

I guess it's just a coincidence that we are at the end of the job and you are trying to "hold us hostage" to facilitate and procure a unattainable obligations that you made to your client and cast the blame for your shortcomings on another.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, WESLEY EDWARDS (AFFIANT), who, being first duly sworn, states that (s)he resides at Anderson, South Carolina, that he is an adult over the age of eighteen (18) years of age, and (s)he freely and voluntarily gives the following statement:

I am the corporate Member and President of APB Partnership and a corporate Member of 2916 N. Main, LLC. An agreement was entered into with Whataburger for a ground lease upon which Whataburger would construct and operate a restaurant at the corner of North Main Street and Concord Road in Anderson. In order to accommodate the design plan for Whataburger, APB Partnership had to remove and relocate the back wall of the APB building to allow enough room for vehicular access behind the APB building to Pine Lane. APB Partnership contracted with Lloyd Roofing Co, Inc. to relocate the rear wall of the APB Building. Lloyd Roofing subcontracted Moats to assist with the partial demolition work to the existing structure. The work was completed by Moats the first week of February 2024. Moats invoiced Lloyd Roofing the total sum of \$91,370.00. This amount was paid in full to Moats on March 12, 2024. Upon information and belief, while on site Moats was approached by WH Bass/Whataburger to perform site work related to site development for the Whataburger restaurant. APB Partnership nor 2916 N. Main had anything to do with, did not authorize, approve, agree to be responsible or to pay for, any work that may have been agreed to be done between WH Bass/Whataburger and Moats.

The last work done by Moats on the property (for WH Bass/Whataburger or for anyone) was April 3, 2024. This date coincides with the date they finished the water lines on Main Street. Moats had the APB property trenched along Main Street and a big hole against the property like at the adjoining property entrance. This is when Moats indicated he was not coming back to the job site. I was informed by WH Bass that it contacted Moats and told him that he would be liable for leaving any areas open and unfilled. Thereafter, Moats came and filled in the areas. This is the last time Moats did anything on the job site.

FURTHER AFFIANT SAYETH NOT.

Affiant states that (s)he has read the foregoing Affidavit and all matters alleged therein are true and correct to the best of his/her knowledge. (S)he acknowledges and understands that: **A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.**

Dawn Grimes
 WITNESS #1

Wesley Edwards
 AFFIANT

Jackie Hawkins
 WITNESS #2

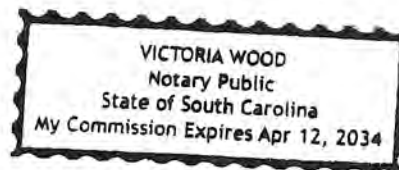
PERSONALLY appeared before me Dawn Grimes (WITNESS #1)
and made oath that (s)he witnessed **WESLEY EDWARDS** (AFFIANT) sign the foregoing
Affidavit and that (s)he saw Jackie Hawkins (WITNESS #2) witness the
execution thereof.

Dawn Grimes
WITNESS #1

SWORN TO AND SUBSCRIBED BEFORE ME
this 29 day of April, 2025.

[Signature] (SEAL)
NOTARY PUBLIC FOR South Carolina (State)
My Commission Expires: April 12, 2034

Victoria Wood
Print name of Notary



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc.

Lienor / Contractor,

vs.

2916 N. Main , LLC

Lienee / Owner

Wesley W. Edwards

APB Partnership, LLC

United Community

Party Defendant(s)

IN THE OFFICE OF THE
REGISTER OF DEEDS

NOTICE AND CERTIFICATE OF
 CLAIM OF MECHANIC'S LIEN &
 STATEMENT OF ACCOUNT

NOTICE IS HEARBY GIVEN, that the undersigned lien claimant, **Moats Construction, Inc.** located at 1523 Old Roberts Church Road in Anderson, South Carolina 29626 is due the sum of (\$543,813.01) Five Hundred Forty-Three Thousand Eight Hundred Thirteen Dollars and 01/100 from the lienees and owners for improvements to real estate owned by 2916 N. Main, LLC with responsible party defendants by and through Wesley W. Edwards, APB Partnership, LLC and United Community Bank.

That this debt is due the Lienor / Contractor for labor performed and materials furnished and actually used in the improvement of real estate, hereinafter described as Exhibit A, Including Demolition and Site Services, by virtue of an agreement with, or consent of Lienees / Owners, or a person authorized by the Lienees / Owners. That as shown on the attached Statement, Lienor / Contractor, acting individually and/or by and through its agents, servants, employees labor on or furnished labor and materials for such buildings, structures or improvements within 90 days of the date hereof.

That by virtue thereof, the service the filing of this certificate and pursuant to the statutes of the State of South Carolina in such cases made and provided, the said Lienor / Contractor has and claims a lien to secure payment the debts due and costs of enforcing this mechanic's lien upon the following described real estate:

EXHIBIT A

All that certain piece of property located at **2916 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202002.

Also, ALL that certain piece, parcel, or lot of land situate, lying and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.49 acres, or more or less, on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, at Page 10-A, in the office of Register of Deeds for Anderson County, South Carolina, as shown on said plat, Tract A-1 is more particularly described as follows:

BEGINNING at an iron pin corner along the edge of the concrete sidewalk which adjoins North Main Street, said point being the southernmost point of the property herein described, and proceeding thence N. 39-12-00 W. 132.22 feet to an iron pin corner, turning and proceeding thence N. 62-38-00 E. 48.11 feet to an iron pin corner, turning and proceeding thence N. 27-17-35 W. 179.18 feet to an iron pin corner at the edge of Pine Lane; proceeding thence along the edge of Pine Lane, N. 61-43-00 E. 21.13 feet to an iron pin corner; turning and proceeding thence S. 27-23-02 E. 208.20 feet to a point; turning and proceeding thence N. 61-50-20 E. 34.75 feet to a point; turning and proceeding thence S. 36-03-00 E. 15.29 feet to an iron pin corner; turning and proceeding thence S. 58-13-00 E. 45.54 feet to an iron pin corner; turning and proceeding thence N. 81-47-00 E. 34.25 feet to an iron pin corner; turning and proceeding thence S. 17-25-00 E. 133.70 feet to an iron pin corner, turning and proceeding thence S. 72-05-00 W. 347.79 feet to the iron pin corner which is the point of beginning.

Said Parcel being more recently described as all that certain piece, parcel, or lot of land situate, lying, and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.487 acres, more or less, on that certain plat prepared by Nu-South Inc., Earl O'Brien, S.C. R.L.S. #10755, dated August 12, 2022, and recorded in Plat Slide 2954, at Page 10, in the office of the Register of Deeds for Anderson County, South Carolina, reference to said plat being made for a more complete metes and bounds description thereof,

Together with a non-exclusive easement for ingress, egress, and utilities over along, and under Tract A as this property is shown on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, Page 10-A, in the Office of the Register of Deeds for Anderson County, South Carolina, and on Schedule B in that certain Memorandum of Lease Agreement which was recorded on July 18, 1997, in Deed Book 2682 at Page 52, in the Office of the Register of Deeds for Anderson County, South Carolina.

Derivation: Deed of Alfonso Leon, Ramon Bravo, and Joe Aguayo to 2916 N. Main, LLC, dated August 23, 2022, and recorded August 24, 2022, in Deed Book 16331 at Page 209, in the Office of the Register of Deeds for Anderson County, South Carolina.

TMS No. 122-12-02-002

ALSO:

All that certain piece of property located at **2900 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202005.

All that certain lot in Centerville Township, School District Number Five, City of Anderson, County of Anderson, State of South Carolina, containing 0.44 acres as shown on plat prepared by Nu-South Surveying, Inc. dated June 21, 1998 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 904 at Page 7-A; the metes and bounds,

courses and distances as shown on said plat being incorporated herein by reference and made a part of this description.

This is the same property conveyed unto R. Alexander Spainhour, III and Wesley W. Edwards by deed of Francis K. Hamilton, et al., dated 06/30/98 and recorded in the Anderson County Register of Deeds Office in Book 3008 at Page 137. R. Alexander Spainhour, III conveyed his one-half interest to Wesley W. Edwards by deed dated 8/12/08 and recorded in the Anderson County Register of Deeds Office in Book 8801 at Page 297.

TMS No. 122-12-02-005

ALSO:

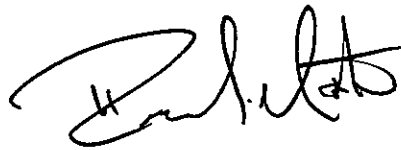
All that certain piece of property located at **2902 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202003.

All that certain piece, parcel or tract of land situate, lying and being in the City of Anderson, County of Anderson, State of South Carolina, containing 1.46 acres, more or less, and being more particularly shown and described on a plat by John F. Tinsley, PLS 16824, dated January 6, 2009, of record in the Register of Deeds Office for Anderson County, South Carolina in Plat Book/Slide 1815 at Page 5-A and having the metes and bounds, courses and distances as upon said plat appear; being bounded, according to the aforementioned plat, by N. Main Street, lands now or formerly of Leon Alfonso, Ramon Bravo and Joel Aquayo; by lands now or formerly of Jane A. Chamblee; by Concord Road; and by lands now or formerly of Wesley W. Edwards.

This is the same property conveyed unto Wesley W. Edwards by deed of M.A. McAlister, as Personal Representative (Executor) and Trustee under the Last Will and Testament of J. Albert Moorhead, dated 1/8/09 and recorded in the Anderson County Register of Deeds Office in Book 8986 at Page 244.

TMS No. 122-12-02-003

Moats Construction, Inc.
1523 Old Roberts Church Road
Anderson, South Carolina 29624
864.276.5021
info@moatsconstruction.com.com
By: Russell T. Moats Its: President

A handwritten signature in black ink, appearing to read "Russell T. Moats", written over a horizontal line.

I, Russell T. Moats, do certify that the attached **Exhibit B** is a True and Accurate Statement of Account.

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

ANDERSON COUNTY

I, Lanae B. King, DO HEREBY CERTIFY THAT,
Russell T. Moats, PERSONALLY APPEARED BEFORE ME
THIS DAY AND ACKNOWLEDGED THE DUE EXECUTION OF THE
FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL SEAL
THIS THE 2nd DAY OF July, 2024.

Lanae B. King

SIGNATURE OF NOTARY

October 23, 2025

NOTARY COMMISSION EXPIRES



R-000156



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

Exhibit B

		Amount Due	Amount Enc.		
		\$543,813.01			
Date	Transaction	Amount	Balance		
12/31/2021	Balance forward		0.00		
10/24/2023	INV #4600537. Due 10/24/2023.	54,702.00	54,702.00		
	--- LS Contract, 1 @ \$2,875.00 = 2,875.00				
	--- LS Contract, 1 @ \$2,000.00 = 2,000.00				
	--- LS Contract, 1 @ \$9,500.00 = 9,500.00				
	--- LS Contract, 1 @ \$6,500.00 = 6,500.00				
	--- LS Contract, 1 @ \$6,000.00 = 6,000.00				
	--- LS Concrete, 1 @ \$9,500.00 = 9,500.00				
	--- LS Concrete, 3 @ \$830.00 = 2,490.00				
	--- LS Concrete, 260 @ \$5.00 = 1,300.00				
	--- LS Concrete, 1 @ \$1,000.00 = 1,000.00				
	--- LS Contract, 1 @ \$1,000.00 = 1,000.00				
	--- LS Contract, 1 @ \$800.00 = 800.00				
	--- LS Contract, 1 @ \$800.00 = 800.00				
	--- LS Contract, 1 @ \$1,500.00 = 1,500.00				
	--- LS Concrete, 4 @ \$100.00 = 400.00				
	--- LS Concrete, 126 @ \$12.00 = 1,512.00				
	--- LS Concrete, 1 @ \$5,000.00 = 5,000.00				
	--- Silt Fence w/ Stakes, 505 @ \$5.00 = 2,525.00				
12/19/2023	INV #4600545. Due 12/19/2023.	970.00	55,672.00		
	--- LS Contract, 1 @ \$970.00 = 970.00				
01/12/2024	INV #4600540. Due 01/12/2024.	28,500.00	84,172.00		
	--- LS Contract, 1 @ \$28,500.00 = 28,500.00				
01/25/2024	PMT	-28,500.00	55,672.00		
02/09/2024	INV #4600544. Due 02/09/2024.	711.05	56,383.05		
	--- CR Stone, 20.61 @ \$34.50 = 711.05				
02/09/2024	INV #4600547. Due 02/09/2024.	31,100.00	87,483.05		
	--- LS Contract, 140 @ \$115.00 = 16,100.00				
	--- LS Contract, 1 @ \$15,000.00 = 15,000.00				
02/16/2024	INV #4600542. Due 02/16/2024.	91,370.00	178,853.05		
	--- LS Contract, 1 @ \$89,000.00 = 89,000.00				
	--- LS Contract, 1 @ \$13,520.00 = 13,520.00				
	--- LS Contract, 1 @ \$3,550.00 = -3,550.00				
	--- LS Contract, 1 @ \$7,600.00 = -7,600.00				
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96	0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #	E-mail				
864.224.0904	info@moatsconstruction.com				

Page 1



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

					Amount Due	Amount Enc.
					\$543,813.01	
Date	Transaction				Amount	Balance
03/01/2024	INV #4600546. Due 03/01/2024.				124,550.00	303,403.05
	--- LS Contract, 1 @ \$124,550.00 = 124,550.00					
04/03/2024	INV #4600549. Due 04/03/2024.				226,685.00	530,088.05
	--- LS Contract, 37 @ \$1,000.00 = 37,000.00					
	--- LS Contract, 108 @ \$1,000.00 = 108,000.00					
	--- LS Contract, 43 @ \$650.00 = 27,950.00					
	--- LS Contract, 1 @ \$6,000.00 = 6,000.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- CR Stone, 1 @ \$650.00 = 650.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 1 @ \$4,500.00 = 4,500.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 2,460 @ \$1.00 = 2,460.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 1.5 @ \$400.00 = 600.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 8 @ \$400.00 = 3,200.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 1 @ \$2,700.00 = 2,700.00					
	--- LS Contract, 1 @ \$350.00 = 350.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 4 @ \$650.00 = 2,600.00					
	--- LS Contract, 1 @ \$8,000.00 = 8,000.00					
	--- LS Contract, 1 @ \$1,500.00 = 1,500.00					
	--- LS Contract, 4 @ \$400.00 = 1,600.00					
	--- LS Concrete, 1 @ \$3,500.00 = 3,500.00					
	--- LS Contract, 8 @ \$400.00 = 3,200.00					
	--- LS Contract, 7.25 @ \$400.00 = 2,900.00					
	--- LS Contract, 12 @ \$400.00 = 4,800.00					
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96		0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #	E-mail		Page 2			
864.224.0904	info@moatsconstruction.com					



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date
7/2/2024

To:
Wesley Edwards 2900 N. Main St. Anderson, SC 29621 C/O Whataburger

				Amount Due	Amount Enc.
				\$543,813.01	
Date	Transaction			Amount	Balance
07/02/2024	INV #FC 107. Due 07/02/2024. Finance Charge --- Fin Chg \$13,724.96 --- Invoice #4600537 for 54,702.00 on 10/24/2023 --- Invoice #4600545 for 970.00 on 12/19/2023 --- Invoice #4600544 for 711.05 on 02/09/2024 --- Invoice #4600547 for 31,100.00 on 02/09/2024 --- Invoice #4600542 for 91,370.00 on 02/16/2024 --- Invoice #4600546 for 124,550.00 on 03/01/2024 --- Invoice #4600549 for 226,685.00 on 04/03/2024 030004474 7/03/2024 03:19:00 PM FILED, RECORDED, INDEXED Bk: 00065 Pg: 00112 Pages: 009 Rec Fee: 25.00 St Fee: Co Fee: REGISTER OF DEEDS, ANDERSON CO, SC Cynthia D. Radford			13,724.96	543,813.01
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96	0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #	E-mail		Page 3		
864.224.0904	info@moatsconstruction.com				

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc.

Lienor / Contractor,

vs.

APB Partnership, LLC

Lienee / Owner

Wesley W. Edwards

2916 N. Main , LLC

United Community

Party Defendant(s)

IN THE OFFICE OF THE
REGISTER OF DEEDS

NOTICE AND CERTIFICATE OF
CLAIM OF MECHANIC'S LIEN &
STATEMENT OF ACCOUNT

NOTICE IS HEARBY GIVEN, that the undersigned lien claimant, **Moats Construction, Inc.** located at 1523 Old Roberts Church Road in Anderson, South Carolina 29626 is due the sum of (\$543,813.01) Five Hundred Forty-Three Thousand Eight Hundred Thirteen Dollars and 01/100 from the lienees and owners for improvements to real estate owned by APB Partnership, LLC with responsible party defendants by and through Wesley W. Edwards, 2916 N. Main, LLC and United Community Bank.

That this debt is due the Lienor / Contractor for labor performed and materials furnished and actually used in the improvement of real estate, hereinafter described as Exhibit A, Including Demolition and Site Services, by virtue of an agreement with, or consent of Lienees / Owners, or a person authorized by the Lienees / Owners. That as shown on the attached Statement, Lienor / Contractor, acting individually and/or by and through its agents, servants, employees labor on or furnished labor and materials for such buildings, structures or improvements within 90 days of the date hereof.

That by virtue thereof, the service the filing of this certificate and pursuant to the statutes of the State of South Carolina in such cases made and provided, the said Lienor / Contractor has and claims a lien to secure payment the debts due and costs of enforcing this mechanic's lien upon the following described real estate:

EXHIBIT A

All that certain piece of property located at **2916 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202002.

Also, ALL that certain piece, parcel, or lot of land situate, lying and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.49 acres, or more or less, on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, at Page 10-A, in the office of Register of Deeds for Anderson County, South Carolina, as shown on said plat, Tract A-1 is more particularly described as follows:

BEGINNING at an iron pin corner along the edge of the concrete sidewalk which adjoins North Main Street, said point being the southernmost point of the property herein described, and proceeding thence N. 39-12-00 W. 132.22 feet to an iron pin corner, turning and proceeding thence N. 62-38-00 E. 48.11 feet to an iron pin corner, turning and proceeding thence N. 27-17-35 W. 179.18 feet to an iron pin corner at the edge of Pine Lane; proceeding thence along the edge of Pine Lane, N. 61-43-00 E. 21.13 feet to an iron pin corner; turning and proceeding thence S. 27-23-02 E. 208.20 feet to a point; turning and proceeding thence N. 61-50-20 E. 34.75 feet to a point; turning and proceeding thence S. 36-03-00 E. 15.29 feet to an iron pin corner; turning and proceeding thence S. 58-13-00 E. 45.54 feet to an iron pin corner; turning and proceeding thence N. 81-47-00 E. 34.25 feet to an iron pin corner; turning and proceeding thence S. 17-25-00 E. 133.70 feet to an iron pin corner, turning and proceeding thence S. 72-05-00 W. 347.79 feet to the iron pin corner which is the point of beginning.

Said Parcel being more recently described as all that certain piece, parcel, or lot of land situate, lying, and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.487 acres, more or less, on that certain plat prepared by Nu-South Inc., Earl O'Brien, S.C. R.L.S. #10755, dated August 12, 2022, and recorded in Plat Slide 2954, at Page 10, in the office of the Register of Deeds for Anderson County, South Carolina, reference to said plat being made for a more complete metes and bounds description thereof,

Together with a non-exclusive easement for ingress, egress, and utilities over along, and under Tract A as this property is shown on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, Page 10-A, in the Office of the Register of Deeds for Anderson County, South Carolina, and on Schedule B in that certain Memorandum of Lease Agreement which was recorded on July 18, 1997, in Deed Book 2682 at Page 52, in the Office of the Register of Deeds for Anderson County, South Carolina.

Derivation: Deed of Alfonso Leon, Ramon Bravo, and Joe Aguayo to 2916 N. Main, LLC, dated August 23, 2022, and recorded August 24, 2022, in Deed Book 16331 at Page 209, in the Office of the Register of Deeds for Anderson County, South Carolina.

TMS No. 122-12-02-002

ALSO:

All that certain piece of property located at **2900 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202005.

All that certain lot in Centerville Township, School District Number Five, City of Anderson, County of Anderson, State of South Carolina, containing 0.44 acres as shown on plat prepared by Nu-South Surveying, Inc. dated June 21, 1998 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 904 at Page 7-A; the metes and bounds,

courses and distances as shown on said plat being incorporated herein by reference and made a part of this description.

This is the same property conveyed unto R. Alexander Spainhour, III and Wesley W. Edwards by deed of Francis K. Hamilton, et al., dated 06/30/98 and recorded in the Anderson County Register of Deeds Office in Book 3008 at Page 137. R. Alexander Spainhour, III conveyed his one-half interest to Wesley W. Edwards by deed dated 8/12/08 and recorded in the Anderson County Register of Deeds Office in Book 8801 at Page 297.

TMS No. 122-12-02-005

ALSO:

All that certain piece of property located at **2902 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202003.

All that certain piece, parcel or tract of land situate, lying and being in the City of Anderson, County of Anderson, State of South Carolina, containing 1.46 acres, more or less, and being more particularly shown and described on a plat by John F. Tinsley, PLS 16824, dated January 6, 2009, of record in the Register of Deeds Office for Anderson County, South Carolina in Plat Book/Slide 1815 at Page 5-A and having the metes and bounds, courses and distances as upon said plat appear; being bounded, according to the aforementioned plat, by N. Main Street, lands now or formerly of Leon Alfonso, Ramon Bravo and Joel Aquayo; by lands now or formerly of Jane A. Chamblee; by Concord Road; and by lands now or formerly of Wesley W. Edwards.

This is the same property conveyed unto Wesley W. Edwards by deed of M.A. McAlister, as Personal Representative (Executor) and Trustee under the Last Will and Testament of J. Albert Moorhead, dated 1/8/09 and recorded in the Anderson County Register of Deeds Office in Book 8986 at Page 244.

TMS No. 122-12-02-003

Moats Construction, Inc.

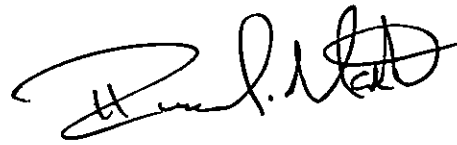
1523 Old Roberts Church Road

Anderson, South Carolina 29624

864.276.5021

info@moatsconstruction.com.com

By: Russell T. Moats Its: President

A handwritten signature in black ink, appearing to read "Russell T. Moats", with a stylized flourish at the end.

I, Russell T. Moats, do certify that the attached **Exhibit B** is a True and Accurate Statement of Account.

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

ANDERSON COUNTY

I, Lance B. King, DO HEREBY CERTIFY THAT,
Russell T. Moats, PERSONALLY APPEARED BEFORE ME
THIS DAY AND ACKNOWLEDGED THE DUE EXECUTION OF THE
FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL SEAL
THIS THE 2nd DAY OF July, 2024.

Lance B. King

SIGNATURE OF NOTARY

October 23, 2025

NOTARY COMMISSION EXPIRES



R-000165



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

Exhibit B

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

		Amount Due	Amount Enc.		
		\$543,813.01			
Date	Transaction	Amount	Balance		
12/31/2021	Balance forward		0.00		
10/24/2023	INV #4600537. Due 10/24/2023.	54,702.00	54,702.00		
	--- LS Contract, 1 @ \$2,875.00 = 2,875.00				
	--- LS Contract, 1 @ \$2,000.00 = 2,000.00				
	--- LS Contract, 1 @ \$9,500.00 = 9,500.00				
	--- LS Contract, 1 @ \$6,500.00 = 6,500.00				
	--- LS Contract, 1 @ \$6,000.00 = 6,000.00				
	--- LS Concrete, 1 @ \$9,500.00 = 9,500.00				
	--- LS Concrete, 3 @ \$830.00 = 2,490.00				
	--- LS Concrete, 260 @ \$5.00 = 1,300.00				
	--- LS Concrete, 1 @ \$1,000.00 = 1,000.00				
	--- LS Contract, 1 @ \$1,000.00 = 1,000.00				
	--- LS Contract, 1 @ \$800.00 = 800.00				
	--- LS Contract, 1 @ \$800.00 = 800.00				
	--- LS Contract, 1 @ \$1,500.00 = 1,500.00				
	--- LS Concrete, 4 @ \$100.00 = 400.00				
	--- LS Concrete, 126 @ \$12.00 = 1,512.00				
	--- LS Concrete, 1 @ \$5,000.00 = 5,000.00				
	--- Silt Fence w/ Stakes, 505 @ \$5.00 = 2,525.00				
12/19/2023	INV #4600545. Due 12/19/2023.	970.00	55,672.00		
	--- LS Contract, 1 @ \$970.00 = 970.00				
01/12/2024	INV #4600540. Due 01/12/2024.	28,500.00	84,172.00		
	--- LS Contract, 1 @ \$28,500.00 = 28,500.00				
01/25/2024	PMT	-28,500.00	55,672.00		
02/09/2024	INV #4600544. Due 02/09/2024.	711.05	56,383.05		
	--- CR Stone, 20.61 @ \$34.50 = 711.05				
02/09/2024	INV #4600547. Due 02/09/2024.	31,100.00	87,483.05		
	--- LS Contract, 140 @ \$115.00 = 16,100.00				
	--- LS Contract, 1 @ \$15,000.00 = 15,000.00				
02/16/2024	INV #4600542. Due 02/16/2024.	91,370.00	178,853.05		
	--- LS Contract, 1 @ \$89,000.00 = 89,000.00				
	--- LS Contract, 1 @ \$13,520.00 = 13,520.00				
	--- LS Contract, 1 @ \$3,550.00 = -3,550.00				
	--- LS Contract, 1 @ \$7,600.00 = -7,600.00				
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96	0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #	E-mail		Page 1		
864.224.0904	info@moatsconstruction.com				



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

				Amount Due	Amount Enc.	
				\$543,813.01		
Date	Transaction			Amount	Balance	
03/01/2024	INV #4600546. Due 03/01/2024.			124,550.00	303,403.05	
	--- LS Contract, 1 @ \$124,550.00 = 124,550.00					
04/03/2024	INV #4600549. Due 04/03/2024.			226,685.00	530,088.05	
	--- LS Contract, 37 @ \$1,000.00 = 37,000.00					
	--- LS Contract, 108 @ \$1,000.00 = 108,000.00					
	--- LS Contract, 43 @ \$650.00 = 27,950.00					
	--- LS Contract, 1 @ \$6,000.00 = 6,000.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- CR Stone, 1 @ \$650.00 = 650.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 1 @ \$4,500.00 = 4,500.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 2,460 @ \$1.00 = 2,460.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 1.5 @ \$400.00 = 600.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 8 @ \$400.00 = 3,200.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 1 @ \$2,700.00 = 2,700.00					
	--- LS Contract, 1 @ \$350.00 = 350.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 4 @ \$650.00 = 2,600.00					
	--- LS Contract, 1 @ \$8,000.00 = 8,000.00					
	--- LS Contract, 1 @ \$1,500.00 = 1,500.00					
	--- LS Contract, 4 @ \$400.00 = 1,600.00					
	--- LS Concrete, 1 @ \$3,500.00 = 3,500.00					
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	--- LS Contract, 12 @ \$400.00 = 4,800.00					
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96		0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #		E-mail		Page 2		
864.224.0904		info@moatsconstruction.com				



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date
7/2/2024

To:
Wesley Edwards 2900 N. Main St. Anderson, SC 29621 C/O Whataburger

		Amount Due	Amount Enc.
		\$543,813.01	
Date	Transaction	Amount	Balance
07/02/2024	INV #FC 107. Due 07/02/2024. Finance Charge --- Fin Chg \$13,724.96 --- Invoice #4600537 for 54,702.00 on 10/24/2023 --- Invoice #4600545 for 970.00 on 12/19/2023 --- Invoice #4600544 for 711.05 on 02/09/2024 --- Invoice #4600547 for 31,100.00 on 02/09/2024 --- Invoice #4600542 for 91,370.00 on 02/16/2024 --- Invoice #4600546 for 124,550.00 on 03/01/2024 --- Invoice #4600549 for 226,685.00 on 04/03/2024 <		

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

The Green Man, LLC

Lienor / Contractor,

vs.

2916 N. Main , LLC

Lienee / Owner

Wesley W. Edwards

APB Partnership, LLC

United Community

Party Defendant(s)

IN THE OFFICE OF THE
REGISTER OF DEEDS

NOTICE AND CERTIFICATE OF
CLAIM OF MECHANIC'S LIEN &
STATEMENT OF ACCOUNT

NOTICE IS HEARBY GIVEN, that the undersigned lien claimant, The Green Man, LLC located at 2306 South Main Street in Anderson, South Carolina 29624 is due the sum of (\$6,236.64) Six Thousand Two Hundred Thirty-Six Dollars and 64/100 from the lienees and owners for improvements to real estate owned by 2916 N. Main, LLC with responsible party defendants by and through Wesley W. Edwards, APB Partnership, LLC and United Community Bank.

That this debt is due the Lienor / Contractor for labor performed and materials furnished and actually used in the improvement of real estate, hereinafter described as Exhibit A, including Demolition and Site Services, by virtue of an agreement with, or consent of Lienees / Owners, or a person authorized by the Lienees / Owners. That as shown on the attached Statement, Lienor / Contractor, acting individually and/or by and through its agents, servants, employees labor on or furnished labor and materials for such buildings, structures or improvements within 90 days of the date hereof.

That by virtue thereof, the service the filing of this certificate and pursuant to the statutes of the State of South Carolina in such cases made and provided, the said Lienor / Contractor has and

claims a lien to secure payment the debts due and costs of enforcing this mechanic's lien upon the following described real estate:

EXHIBIT A

All that certain piece of property located at **2916 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202002.

Also, ALL that certain piece, parcel, or lot of land situate, lying and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.49 acres, or more or less, on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, at Page 10-A, in the office of Register of Deeds for Anderson County, South Carolina, as shown on said plat, Tract A-1 is more particularly described as follows:

BEGINNING at an iron pin corner along the edge of the concrete sidewalk which adjoins North Main Street, said point being the southernmost point of the property herein described, and proceeding thence N. 39-12-00 W. 132.22 feet to an iron pin corner, turning and proceeding thence N. 62-38-00 E. 48.11 feet to an iron pin corner, turning and proceeding thence N. 27-17-35 W. 179.18 feet to an iron pin corner at the edge of Pine Lane; proceeding thence along the edge of Pine Lane, N. 61-43-00 E. 21.13 feet to an iron pin corner; turning turning and proceeding hence S. 27-23-02 E. 208.20 feet to a point; turning and proceeding thence N. 61-50-20 E. 34.75 feet to a point; turning and proceeding thence S. 36-03-00 E. 15.29 feet to an iron pin corner; turning and proceeding thence S. 58-13-00 E. 45.54 feet to an iron pin corner; turning and proceeding thence N. 81-47-00 E. 34.25 feet to an iron pin corner; turning and proceeding thence S. 17-25-00 E. 133.70 feet to an iron pin corner, turning and proceeding thence S. 72-05-00 W. 347.79 feet to the iron pin corner which is the point of beginning.

Said Parcel being more recently described as all that certain piece, parcel, or lot of land situate, lying, and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.487 acres, more or less, on that

certain plat prepared by Nu-South Inc., Earl O'Brien, S.C. R.L.S. #10755, dated August 12, 2022, and recorded in Plat Slide 2954, at Page 10, in the office of the Register of Deeds for Anderson County, South Carolina, reference to said plat being made for a more complete metes and bounds description thereof,

Together with a non-exclusive easement for ingress, egress, and utilities over along, and under Tract A as this property is shown on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, Page 10-A, in the Office of the Register of Deeds for Anderson County, South Carolina, and on Schedule B in that certain Memorandum of Lease Agreement which was recorded on July 18, 1997, in Deed Book 2682 at Page 52, in the Office of the Register of Deeds for Anderson County, South Carolina.

Derivation: Deed of Alfonso Leon, Ramon Bravo, and Joe Aguayo to 2916 N. Main, LLC, dated August 23, 2022, and recorded August 24, 2022, in Deed Book 16331 at Page 209, in the Office of the Register of Deeds for Anderson County, South Carolina.

TMS No. 122-12-02-002

ALSO:

All that certain piece of property located at **2900 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202005.

All that certain lot in Centerville Township, School District Number Five, City of Anderson, County of Anderson, State of South Carolina, containing 0.44 acres as shown on plat prepared by Nu-South Surveying, Inc. dated June 21, 1998 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 904 at Page 7-A; the metes and bounds, courses and distances as shown on said plat being incorporated herein by reference and made a part of this description.

This is the same property conveyed unto R. Alexander Spainhour, III and Wesley W. Edwards by deed of Francis K. Hamilton, et al., dated 06/30/98 and recorded in the Anderson County Register of Deeds Office in Book 3008 at Page 137. R. Alexander Spainhour, III conveyed his one-half interest to Wesley W. Edwards by deed dated 8/12/08 and recorded in the Anderson County Register of Deeds Office in Book 8801 at Page 297.

TMS No. 122-12-02-005

ALSO:

All that certain piece of property located at **2902 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202003.

All that certain piece, parcel or tract of land situate, lying and being in the City of Anderson, County of Anderson, State of South Carolina, containing 1.46 acres, more or less, and being more particularly shown and described on a plat by John F. Tinsley, PLS 16824, dated January 6, 2009, of record in the Register of Deeds Office for Anderson County, South Carolina in Plat Book/Slide 1815 at Page 5-A and having the metes and bounds, courses and distances as upon said plat appear; being bounded, according to the aforementioned plat, by N. Main Street, lands now or formerly of Leon Alfonso, Ramon Bravo and Joel Aquayo; by lands now or formerly of Jane A. Chamblee; by Concord Road; and by lands now or formerly of Wesley W. Edwards.

This is the same property conveyed unto Wesley W. Edwards by deed of M.A. McAlister, as Personal Representative (Executor) and Trustee under the Last Will and Testament of J. Albert Moorhead, dated 1/8/09 and recorded in the Anderson County Register of Deeds Office in Book 8986 at Page 244.

TMS No. 122-12-02-003

The Green Man, LLC

2306 S. Main St. Anderson, South Carolina 29624

864.276.5021

info@thegreenmancan.com

By: Russell T. Moats Its: Managing Member



I, Russell T. Moats, do certify that the attached **Exhibit B** is a True and Accurate Statement of Account.

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

ANDERSON COUNTY

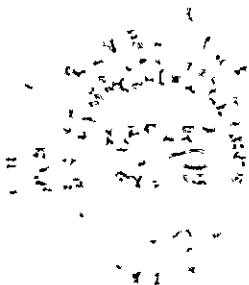
I, Lana B. King, DO HEREBY CERTIFY THAT,
Russell T. Moats, PERSONALLY APPEARED BEFORE ME
THIS DAY AND ACKNOWLEDGED THE DUE EXECUTION OF THE
FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL SEAL
THIS THE 2nd DAY OF July, 2024.

Lana B. King

SIGNATURE OF NOTARY

October 23, 2025

NOTARY COMMISSION EXPIRES



R-000174

Statement**THE GREEN MAN**

2306 South Main St.
Anderson, South Carolina 29624

864-276-5021

accounts@thegreenmancan.com

Date

7/2/2024

Exhibit B

To:

W.H. Bass, Inc.
11300 Johns Creek Parkway
Suite 100
Johns Creek, GA 30097

Amount Due

Amount Enc.

\$6,236.64

Date	Transaction	Amount	Balance		
01/01/2023	Balance forward		0.00		
12/20/2023	INV #543244450. Due 01/19/2024.	300.00	300.00		
02/14/2024	INV #543244465. Due 03/15/2024.	750.00	1,050.00		
02/20/2024	INV #543244451. Due 03/21/2024.	150.00	1,200.00		
02/22/2024	INV #543244452. Due 03/23/2024.	150.00	1,350.00		
02/26/2024	INV #543244468. Due 03/27/2024.	641.10	1,991.10		
03/08/2024	INV #543244463. Due 04/07/2024.	525.00	2,516.10		
03/12/2024	INV #543244467. Due 04/11/2024.	750.00	3,266.10		
03/14/2024	INV #543244466. Due 04/13/2024.	250.00	3,516.10		
03/19/2024	INV #543244464. Due 04/18/2024.	1,509.45	5,025.55		
03/20/2024	INV #543244453. Due 04/19/2024.	150.00	5,175.55		
03/22/2024	INV #543244461. Due 04/21/2024.	150.00	5,325.55		
04/02/2024	INV #543244462. Due 05/02/2024.	651.90	5,977.45		
07/02/2024	INV #FC 26. Due 07/02/2024. Finance Charge	259.19	6,236.64		
030004476 7/03/2024 03:20:01 PM FILED, RECORDED, INDEXED Bk: 00065 Pg: 00129 Pages:007 Rec Fee: 25.00 St Fee: Co Fee: REGISTER OF DEEDS, ANDERSON CO, SC Cynthia D. Radford					
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
259.19	0.00	0.00	3,986.35	1,991.10	\$6,236.64

R-000175

ELECTRONICALLY FILED - 2025 Apr 29 4:03 PM - ANDERSON, SC - COMMON PLEAS CASE#2024CP0402229

STATE OF SOUTH CAROLINA**COUNTY OF ANDERSON**

The Green Man, LLC

Lienor / Contractor,

vs.

APB Partnership, LLC

Lienee / Owner

Wesley W. Edwards

2916 N. Main, LLC

United Community

Party Defendant(s)

**IN THE OFFICE OF THE
REGISTER OF DEEDS****NOTICE AND CERTIFICATE OF
CLAIM OF MECHANIC'S LIEN &
STATEMENT OF ACCOUNT**

NOTICE IS HEARBY GIVEN, that the undersigned lien claimant, The Green Man, LLC located at 2306 South Main Street in Anderson, South Carolina 29624 is due the sum of (\$6,236.64) Six Thousand Two Hundred Thirty-Six Dollars and 64/100 from the lienees and owners for improvements to real estate owned by APB Partnership, LLC with responsible party defendants by and through Wesley W. Edwards, 2916 N. Main, LLC and United Community Bank.

That this debt is due the Lienor / Contractor for labor performed and materials furnished and actually used in the improvement of real estate, hereinafter described as Exhibit A, Including Demolition and Site Services, by virtue of an agreement with, or consent of Lienees / Owners, or a person authorized by the Lienees / Owners. That as shown on the attached Statement, Lienor / Contractor, acting individually and/or by and through its agents, servants, employees labor on or furnished labor and materials for such buildings, structures or improvements within 90 days of the date hereof.

That by virtue thereof, the service the filing of this certificate and pursuant to the statutes of the State of South Carolina in such cases made and provided, the said Lienor / Contractor has and

claims a lien to secure payment the debts due and costs of enforcing this mechanic's lien upon the following described real estate:

EXHIBIT A

All that certain piece of property located at **2916 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202002.

Also, ALL that certain piece, parcel, or lot of land situate, lying and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.49 acres, or more or less, on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, at Page 10-A, in the office of Register of Deeds for Anderson County, South Carolina, as shown on said plat, Tract A-1 is more particularly described as follows:

BEGINNING at an iron pin corner along the edge of the concrete sidewalk which adjoins North Main Street, said point being the southernmost point of the property herein described, and proceeding thence N. 39-12-00 W. 132.22 feet to an iron pin corner, turning and proceeding thence N. 62-38-00 E. 48.11 feet to an iron pin corner, turning and proceeding thence N. 27-17-35 W. 179.18 feet to an iron pin corner at the edge of Pine Lane; proceeding thence along the edge of Pine Lane, N. 61-43-00 E. 21.13 feet to an iron pin corner; turning and proceeding thence S. 27-23-02 E. 208.20 feet to a point; turning and proceeding thence N. 61-50-20 E. 34.75 feet to a point; turning and proceeding thence S. 36-03-00 E. 15.29 feet to an iron pin corner; turning and proceeding thence S. 58-13-00 E. 45.54 feet to an iron pin corner; turning and proceeding thence N. 81-47-00 E. 34.25 feet to an iron pin corner; turning and proceeding thence S. 17-25-00 E. 133.70 feet to an iron pin corner, turning and proceeding thence S. 72-05-00 W. 347.79 feet to the iron pin corner which is the point of beginning.

Said Parcel being more recently described as all that certain piece, parcel, or lot of land situate, lying, and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.487 acres, more or less, on that

certain plat prepared by Nu-South Inc., Earl O'Brien, S.C. R.L.S. #10755, dated August 12, 2022, and recorded in Plat Slide 2954, at Page 10, in the office of the Register of Deeds for Anderson County, South Carolina, reference to said plat being made for a more complete metes and bounds description thereof,

Together with a non-exclusive easement for ingress, egress, and utilities over along, and under Tract A as this property is shown on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, Page 10-A, in the Office of the Register of Deeds for Anderson County, South Carolina, and on Schedule B in that certain Memorandum of Lease Agreement which was recorded on July 18, 1997, in Deed Book 2682 at Page 52, in the Office of the Register of Deeds for Anderson County, South Carolina.

Derivation: Deed of Alfonso Leon, Ramon Bravo, and Joe Aguayo to 2916 N. Main, LLC, dated August 23, 2022, and recorded August 24, 2022, in Deed Book 16331 at Page 209, in the Office of the Register of Deeds for Anderson County, South Carolina.

TMS No. 122-12-02-002

ALSO:

All that certain piece of property located at **2900 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202005.

All that certain lot in Centerville Township, School District Number Five, City of Anderson, County of Anderson, State of South Carolina, containing 0.44 acres as shown on plat prepared by Nu-South Surveying, Inc. dated June 21, 1998 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 904 at Page 7-A; the metes and bounds, courses and distances as shown on said plat being incorporated herein by reference and made a part of this description.

This is the same property conveyed unto R. Alexander Spainhour, III and Wesley W. Edwards by deed of Francis K. Hamilton, et al., dated 06/30/98 and recorded in the Anderson County Register of Deeds Office in Book 3008 at Page 137. R. Alexander Spainhour, III conveyed his one-half interest to Wesley W. Edwards by deed dated 8/12/08 and recorded in the Anderson County Register of Deeds Office in Book 8801 at Page 297.

TMS No. 122-12-02-005

ALSO:

All that certain piece of property located at **2902 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202003.

All that certain piece, parcel or tract of land situate, lying and being in the City of Anderson, County of Anderson, State of South Carolina, containing 1.46 acres, more or less, and being more particularly shown and described on a plat by John F. Tinsley, PLS 16824, dated January 6, 2009, of record in the Register of Deeds Office for Anderson County, South Carolina in Plat Book/Slide 1815 at Page 5-A and having the metes and bounds, courses and distances as upon said plat appear; being bounded, according to the aforementioned plat, by N. Main Street, lands now or formerly of Leon Alfonso, Ramon Bravo and Joel Aquayo; by lands now or formerly of Jane A. Chamblee; by Concord Road; and by lands now or formerly of Wesley W. Edwards.

This is the same property conveyed unto Wesley W. Edwards by deed of M.A. McAlister, as Personal Representative (Executor) and Trustee under the Last Will and Testament of J. Albert Moorhead, dated 1/8/09 and recorded in the Anderson County Register of Deeds Office in Book 8986 at Page 244.

TMS No. 122-12-02-003

The Green Man, LLC

2306 S. Main St. Anderson, South Carolina 29624

864.276.5021

info@thegreenmancan.com

By: Russell T. Moats Its: Managing Member



I, Russell T. Moats, do certify that the attached **Exhibit B** is a True and Accurate Statement of Account.

ELECTRONICALLY FILED - 2025 Apr 29 4:03 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0402229

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

ANDERSON COUNTY

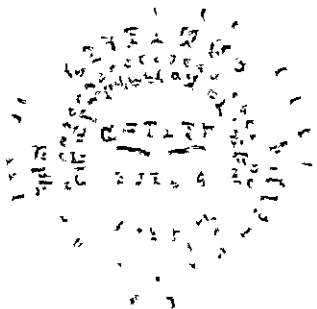
I, Laura B. King, DO HEREBY CERTIFY THAT,
Russell T. Moats, PERSONALLY APPEARED BEFORE ME
THIS DAY AND ACKNOWLEDGED THE DUE EXECUTION OF THE
FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL SEAL
THIS THE 2nd DAY OF July, 2024.

Laura B. King

SIGNATURE OF NOTARY

October 23, 2025

NOTARY COMMISSION EXPIRES



R-000181



THE GREEN MAN

2306 South Main St.
Anderson, South Carolina 29624

864-276-5021

accounts@thegreenmancan.com

Statement

Date

7/2/2024

Exhibit B

To:

W.H. Bass, Inc.
11300 Johns Creek Parkway
Suite 100
Johns Creek, GA 30097

Amount Due	Amount Enc.
\$6,236.64	

Date	Transaction	Amount	Balance		
01/01/2023	Balance forward		0.00		
12/20/2023	INV #543244450. Due 01/19/2024.	300.00	300.00		
02/14/2024	INV #543244465. Due 03/15/2024.	750.00	1,050.00		
02/20/2024	INV #543244451. Due 03/21/2024.	150.00	1,200.00		
02/22/2024	INV #543244452. Due 03/23/2024.	150.00	1,350.00		
02/26/2024	INV #543244468. Due 03/27/2024.	641.10	1,991.10		
03/08/2024	INV #543244463. Due 04/07/2024.	525.00	2,516.10		
03/12/2024	INV #543244467. Due 04/11/2024.	750.00	3,266.10		
03/14/2024	INV #543244466. Due 04/13/2024.	250.00	3,516.10		
03/19/2024	INV #543244464. Due 04/18/2024.	1,509.45	5,025.55		
03/20/2024	INV #543244453. Due 04/19/2024.	150.00	5,175.55		
03/22/2024	INV #543244461. Due 04/21/2024.	150.00	5,325.55		
04/02/2024	INV #543244462. Due 05/02/2024.	651.90	5,977.45		
07/02/2024	INV #FC 26. Due 07/02/2024. Finance Charge	259.19	6,236.64		
030004477 7/03/2024 03:20:22 PM FILED, RECORDED, INDEXED Bk: 00065 Pg: 00136 Pages:007 Rec Fee: 25.00 St Fee: Co Fee: REGISTER OF DEEDS, ANDERSON CO, SC Cynthia D. Radford					
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
259.19	0.00	0.00	3,986.35	1,991.10	\$6,236.64

R-000182

ELECTRONICALLY FILED - 2025 Apr 29 4:03 PM - ANDERSON, SC - COMMON PLEAS - CASE # 2024CP0402229

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-

SUMMONS
(Jury Trial Demanded)

YOU ARE SUMMONED AND REQUIRED to answer the Complaint in the above-entitled action, a copy of which is served upon you, and to serve a copy of your Answer upon the Plaintiffs' attorneys at their offices located at 1122 Barnwell Street, Suite B, Columbia, South Carolina 29201 within thirty (30) days after the date of such service, exclusive of the day of service. If you fail to answer the Complaint within thirty (30) days, judgment by default will be entered against you for the relief demanded in the Complaint.

s/ David L. Paavola

Brian A. Autry (SC Bar No. 69401)

David L. Paavola (SC Bar No. 100714)

Caitlin S. Cameron (SC Bar No. 106286)

Kenison, Dudley & Crawford, LLC

1122 Barnwell Street, Suite B

Columbia, SC 29201

T: (864) 242-4899

autry@conlaw.com

paavola@conlaw.com

cameron@conlaw.com

Attorneys for Plaintiff

October 28, 2024

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-

COMPLAINT
(Jury Trial Demanded)

The Plaintiffs, Moats Construction, Inc. and The Green Man, LLC (collectively, “Plaintiffs”) complaining of the Defendants APB Partnership, LLC, Wesley Edwards, 2916 N Main, LLC, W.H. Bass, Inc., and Whataburger Restaurants, LLC (collectively, “Defendants”), would show the Court the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Moats Construction, Inc. (“Moats”) is a South Carolina corporation that, at all times mentioned herein, was conducting business in South Carolina.
2. Plaintiff The Green Man, LLC (“Green Man”) is a South Carolina limited liability company that, at all times mentioned herein, was conducting business in South Carolina.
3. Defendant APB Partnership, LLC (“APB”) is a South Carolina limited liability company and the record owner of real property located at 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street (TMS No. 122-12-02-003), both in Anderson, South Carolina.

4. 2916 N Main, LLC (“2916 LLC”) is a South Carolina limited liability company and at all relevant times to this lawsuit was the record owner of real property located at 2916 N. Main Street (TMS No. 122-12-02-002) in Anderson, South Carolina.

5. Defendant Wesley Edwards, upon information and belief, is a citizen and resident of Anderson, South Carolina.

6. Defendant W.H. Bass, Inc. (“W.H. Bass”) is a Georgia corporation and at all relevant times was doing business on real property located in Anderson, South Carolina.

7. Defendant Whataburger Restaurants LLC (“Whataburger”) is a Texas company and at all relevant times was doing business on real property located in Anderson, South Carolina.

8. Defendant United Community Bank d/b/a The Palmetto Bank is a financial institution engaged in lending in South Carolina and specifically for the properties at issue in this action.

9. The facts giving rise to this matter all relate to improvements to real property located in Anderson County, South Carolina.

10. For the reasons set forth above and as alleged in more detail herein, jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

11. The properties that are the subject of this action are located at 2916 N. Main Street, 2902 N. Main Street and 2900 N. Main Street, Anderson, South Carolina (collectively, the “Properties”).

12. Upon information and belief, United Community Bank loaned funds to APB secured by real property located at 2902 and 2900 N. Main Street, Anderson, South Carolina.

13. Upon information and belief, 2916 N. Main LLC and APB Partnership, LLC are related entities and controlled by common members.

14. At all relevant times to this lawsuit, 2916 N. Main LLC was the owner of 2916 N. Main Street (TMS No. 122-12-02-002).

15. At all relevant times to this lawsuit, APB Partnership, LLC was the owner of 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street (TMS No. 122-12-02-003).

16. In late 2023 and early 2024, the Properties were improved for the construction of a Whataburger restaurant located at 2900 N. Main Street Anderson, SC (the “Project”).

17. Upon information and belief, the Defendants all worked together to improve the Properties for the eventual construction of a Whataburger restaurant at 2900 N. Main Street.

18. Upon information and belief, APB, 2916 LLC, and/or Wesley Edwards entered into an agreement/s with Defendant Whataburger Restaurant and/or W.H. Bass to improve the Properties.

19. Upon information and belief APB has entered into leases for the properties located at 2902 N. Main Street and 2900 N. Main Street, and it is benefiting from the work performed by Moats and the Green Man on these properties.

20. Upon information and belief, W.H. Bass entered into an agreement with Whataburger to improve the Properties and construct a restaurant on 2900 N. Main Street.

21. Construction of the Whataburger restaurant necessitated site improvement work and development of the Properties.

22. On or about August 2023, Defendants APB, 2916 LLC, Wesley Edwards hired Moats Construction to conduct demolition and construction services on the Properties.

23. On or about December 2023, Defendant W.H. Bass, Inc. contracted with Moats, and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger Restaurants, LLC, to conduct demolition, utility services, and construction services on the Properties.

24. Upon information and belief, Whataburger hired Moats to perform construction services on the Properties through other Defendants and Whataburger has previously paid for certain work directly to Moats. Whataburger is directly benefiting from Moats' work on the Properties.

25. On or about December 2023, Defendant W.H. Bass, Inc. hired the Green Man, and upon information and belief on behalf this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger Restaurants, LLC, to provide dumpsters, portable toilets, and Conex containers on the Properties.

26. Moats satisfied, performed, and completed all demolition, construction services, and site related work at the Properties and Defendants have not paid for this work. In total, Moats is owed \$543,813.01 for all work it performed on the Properties.

27. Green Man provided dumpsters, portable toilets, and Conex containers for the Properties and Defendants have not paid for this work. In total, Green Man is owed \$6,236.54.

28. On or about July 3, 2024, and within ninety days from last supplying labor or materials on the Project, Moats filed and served mechanic's liens on the Properties for the amounts due from Defendants (the "Moats Mechanic's Liens"). The Moats Mechanic's Liens were filed with the Anderson County Register of Deeds Office in Book 65, Page 121.

29. On or about July 3, 2024, and within ninety days from last supplying labor or materials on the Project, Green Man filed and served mechanic's liens on the Properties for the

amounts due from Defendants (the “Green Man Mechanic’s Liens”). The Green Man Mechanic’s Liens were filed with the Anderson County Register of Deeds Office in Book 65, Page 136.

30. On or about July 2024, Moats and Green Man sent letters to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days.

31. Despite demand from Moats, Defendants have failed and/or refused to pay the balance due to Moats of at least \$543,813.01 and the balance due to Green Man of \$6,236.54.

32. Moats is entitled to recovery of its proven damages from Defendants.

33. Green Man is entitled to recovery of its proven damages from Defendants.

FOR A FIRST CAUSE OF ACTION
(Moats - Breach of Contract as to All Defendants)

34. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

35. 2916 LLC, APB and Wesley Edwards hired Moats to perform demolition and construction services on the Properties.

36. W.H. Bass hired Moats and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger, to conduct demolition, utility services, and construction services on the Properties.

37. Upon information and belief, Whataburger hired Moats to perform construction services on the Properties directly or through other Defendants and for certain work has already paid Moats directly.

38. Moats fully satisfied and performed its obligations under the contracts with Defendants.

39. Defendants have wrongfully failed and refused to pay Moats for labor and materials furnished by Moats in the amount of at least \$543,813.01.

40. Defendants' failure and refusal to pay Moats constitutes a breach of the contracts.

41. As a result of Defendants' breach of the contracts, Moats has been damaged in the amount of at least \$543,813.01, together with interest at the pre-judgment rate per annum until date of judgment, interest thereafter at the post-judgment rate per annum until paid in full, and attorney's fees.

42. On or about July 2024, Moats sent a letter to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days. Moats is also entitled to attorneys' fees and interest from pursuant to S.C. Code Ann. § 27-1-15.

43. Moats is entitled to recovery of its proven damages from Defendants.

FOR A SECOND CAUSE OF ACTION
(Green Man - Breach of Contract as to All Defendants)

44. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

45. On or about December 2023, Defendant W.H. Bass, Inc. hired the Green Man, and upon information and belief this was on behalf of APB, 2916 LLC, Wesley Edwards, and Whataburger, to provide dumpsters, portable toilets, and Conex containers on the Properties.

46. Green Man fully satisfied and performed its obligations under the contracts with Defendants.

47. Defendants have wrongfully failed and refused to pay Green Man in the amount of at least \$6,236.54.

48. Defendants' failure and refusal to pay Green Man constitutes a breach of the contracts.

49. As a result of Defendants' breach of the contracts, Green Man has been damaged in the amount of at least \$6,236.54 together with interest at the pre-judgment rate per annum until date of judgment, interest thereafter at the post-judgment rate per annum until paid in full, and attorney's fees.

50. On or about July 2024, Green Man sent a letter to Defendants 2916 LLC, APB, and Wesley Edwards pursuant to S.C. Code Ann. § 27-1-15, and no response was received within forty-five days. Green Man is also entitled to attorneys' fees and interest from pursuant to S.C. Code Ann. § 27-1-15.

51. Green Man is entitled to recovery of its proven damages from Defendants.

FOR A THIRD CAUSE OF ACTION
(Moats - Quantum Meruit/Unjust Enrichment as to All Defendants)

52. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

53. Moats pleads this cause of action in the alternative and to the extent it is determined that Moats did not have an enforceable contract with Defendants.

54. Moats furnished labor and materials to the Project for the use and benefit of Defendants, and such labor and materials were accepted, used, and enjoyed by Defendants.

55. At the time that the labor and materials were provided to Defendants, Defendants understood that Moats was to be paid for the labor and materials. Further, Defendants specifically requested the labor and materials. To the extent the Contract is determined to be invalid, the acceptance of Moats's labor and materials by Defendants created an implied agreement or contract between Defendants and Moats.

56. Defendants benefited from the labor and materials supplied by Moats. Such labor and materials were furnished under circumstances that it was clear that Moats expected to be paid for them.

57. Defendants will be unjustly enriched if Moats is not paid for the labor and materials supplied.

58. The reasonable market value of the labor and materials provided to Defendant is at least \$543,813.01, for which Moats hereby sues together with attorney's fees, costs and prejudgment interest.

FOR A FOURTH CAUSE OF ACTION
(Green Man - Quantum Meruit/Unjust Enrichment as to All Defendants)

59. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

60. Green Man pleads this cause of action in the alternative and to the extent it is determined that Green Man did not have an enforceable contract with Defendants.

61. Green Man furnished labor and materials to the Project for the use and benefit of Defendants, and such labor and materials were accepted, used, and enjoyed by Defendants.

62. At the time that the labor and materials were provided to Defendants, Defendants understood that Green Man was to be paid for the labor and materials. Further, Defendants specifically requested the labor and materials. To the extent the Contract is determined to be invalid, the acceptance of Green Man's labor and materials by Defendants created an implied agreement or contract between Plaintiffs and Moats.

63. Defendants benefited from the labor and materials supplied by Green Man. Such labor and materials were furnished under circumstances that it was clear that Green Man expected to be paid for them.

64. Defendants will be unjustly enriched if Green Man is not paid for the labor and materials supplied.

65. The reasonable market value of the labor and materials provided to Defendants is at least \$6,236.54, for which Green Man hereby sues together with attorney's fees, costs and prejudgment interest.

FOR A FIFTH CAUSE OF ACTION

(Moats - Foreclosure of Mechanic's Liens as to Defendant APB Partnership, LLC)

66. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

67. APB Partnership, LLC was, and upon further information and belief, still is, the record owner of two of the Properties described in the Moats Mechanic's Liens.

68. Pursuant to the terms of the contracts with Defendants, Moats provided labor and materials for improvements to the Properties.

69. Within ninety days from last supplying labor and materials on the Project, Moats filed the Moats Mechanic's Liens.

70. Moats has filed, contemporaneously with this Complaint, a Lis Pendens on the Properties.

71. This Complaint is being filed within six months of Moats last supplying labor and materials on the Project.

72. Defendants have failed and neglected to pay Moats for labor and materials provided on the Properties, and there is, as of the filing of this Complaint, still due and owing Moats a sum of \$543,813.01, which may be accounted for by the properly filed Moats Mechanic's Liens.

73. Upon information and belief, by virtue of the duly filed and perfected Moats Mechanic's Liens, Moats is entitled to foreclose on the Properties and have the Moats Mechanic's

Liens, along with interest and attorney's fees, satisfied from the proceeds of the foreclosure of the Properties.

FOR A SIXTH CAUSE OF ACTION
(Green Man - Foreclosure of Mechanic's Lien as to APB Partnership, LLC)

74. Plaintiffs re-allege the foregoing paragraphs consistent with this cause of action as if fully restated verbatim.

75. Defendant APB Partnership, LLC was, and upon further information and belief, still is, the record owner of two of the Properties described in the Green Man Mechanic's Liens.

76. Pursuant to the terms of the Contract with Defendants, Green Man provided labor and materials for improvements to the Properties.

77. Within ninety days from last supplying labor and materials on the Project, Green Man filed the Mechanic's Lien.

78. Green Man has filed, contemporaneously with this Complaint, a Lis Pendens on the Properties.

79. This Complaint is being filed within six months of Green Man last supplying labor and materials on the Project.

80. Defendants have failed and neglected to pay Green Man for labor and materials provided on the Properties, and there is, as of the filing of this Complaint, still due and owing Green Man a sum of \$6,236.54, which may be accounted for by the properly filed Green Man Mechanic's Liens.

81. Upon information and belief, by virtue of the duly filed and perfected Green Man Mechanic's Liens, Green Man is entitled to foreclose on the Properties and have the Green Man Mechanic's Liens, along with interest and attorney's fees, satisfied from the proceeds of the foreclosure of the Properties.

WHEREFORE, Plaintiffs respectfully pray this Court to enter judgment against the Defendants as follows:

A. For damages in favor of Moats on all its causes of action in the amounts to be proven at trial, plus costs associated with this action, including reasonable attorney's fees, prejudgment interest and any such other relief as the Court deems just and proper.

B. For damages in favor of Green Man on all its causes of action in the amounts to be proven at trial, plus costs associated with this action, including reasonable attorney's fees, prejudgment interest and any such other relief as the Court deems just and proper.

C. Foreclosure of the Properties pursuant to the Moats Mechanic's Liens and directing application of the proceeds to satisfy the debt due to Moats for the unpaid labor and materials provided to the Properties, plus attorneys' fees, interest, costs, and any other relief afforded by S.C. Code Ann. § 29-5-20 et. seq.

D. Foreclosure of the Properties pursuant to the Green Man Mechanic's Liens and directing application of the proceeds to satisfy the debt due to Green Man for the unpaid labor and materials provided to the Properties, plus attorneys' fees, interest, costs, and any other relief afforded by S.C. Code Ann. § 29-5-20 et. seq.

s/ David L. Paavola

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Attorneys for Plaintiff

October 28, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-2229

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO APB PARTNERSHIP, LLC
AND WESLEY EDWARDS MOTION TO
DISMISS**

Plaintiffs Moats Construction, Inc. and The Green Man, LLC (collectively, "Plaintiffs") file this Memorandum in Opposition to APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC's Motion to Dissolve Mechanic's Liens, Dismiss Plaintiffs' Claims for Foreclosure of Mechanic's Liens, and Dismiss Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC (collectively the "APB Defendants"). The APB Defendants' Motion to Dismiss should be denied because: (1) Moats Construction's mechanic's lien was filed and served within ninety (90) days of its last date furnishing labor or materials on the project; (2) Moats Construction filed to foreclose on its lien within six months; and (3) Plaintiff's non-mechanic's lien causes of action are viable separate and apart from mechanic's lien foreclosure cause of action.

In 2023 and 2024, the APB Defendants along with W.H. Bass, Inc. and Whataburger Restaurants, LLC (collectively, "Defendants"), developed 2900 N. Main Street, 2902 N. Main Street, and 2916 N. Main Street, in Anderson South Carolina (collectively, the "Properties") into

a Whataburger restaurant (the “Project”) located at 2900 N. Main Street. Defendants hired Moats Construction and the Green Man on the Project to perform construction related services on the Properties. Plaintiffs performed work and have not been fully paid. This suit followed.

BACKGROUND

Moats Construction, Inc. (“Moats Construction”) is a commercial construction contractor and demolition company. The Green Man, LLC (“Green Man”) is a waste removal and recycling company that also provides construction site storage containers and portable restrooms. Moats Construction and Green Man were hired by the Defendants in 2023 to perform construction related services on 2900 N. Main, 2916 N. Main, and 2902 N. Main Street in Anderson, S.C. for site development for the construction of a Whataburger restaurant. Moats Construction’s work included demolition, site grading, erosion control, storm drainage, sewer and utility work. (Russell Moats Aff. ¶ 8 and Exhibit 5 attached thereto). The Green Man provided dumpsters, portable toilets, and Conex containers. (Moats Aff. ¶ 16).

At all times relevant to the Project, Plaintiffs believed Defendant Wesley Edwards to be the owner of the Properties or to be operating directly on behalf of the owners. (Moats Aff. ¶¶ 5-6). Defendant APB Partnership, LLC (“APB”) is the owner of real property located at 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street (TMS No. 122-12-02-003), in Anderson, South Carolina. (Am. Compl. ¶ 3). Wesley Edwards is the registered agent for APB Partnership. (Exhibit 10 to Moats Aff.). During the time of construction, 2916 N. Main, LLC was the owner of real property located at 2916 N. Main Street in Anderson. (Am. Compl. ¶ 4). In late 2023 and early 2024, these three properties were improved for the construction of a Whataburger restaurant located at 2900 N. Main Street Anderson, S.C. (the “Project”). (Am. Compl. ¶¶ 21-23).

Plaintiffs' understanding is that the Defendants worked together to improve the Properties for the construction of a Whataburger restaurant at 2900 N. Main Street. (Moats Aff ¶ 5).

Throughout the Project, Plaintiffs understood that the Properties were owned by Wes Edwards, or entities controlled by him, and that he was developing his properties into a Whataburger restaurant. (Moats Aff ¶ 5 and attached Exhibit 1 (August 2023 email from Wes Edwards to Russell Moats discussing his development into a Whataburger); Exhibit 2 (September 2023 text message from Tim Burdette to Russell Moats identifying Wes Edwards as the owner of the Properties); Exhibit 3 (April 2, 2024 text from Wes Edwards to Russell Moats inquiring about the status of his sewer project). On or about December 2023, Plaintiffs were also engaged by W.H. Bass to perform work on the Project on behalf of the Defendants. (Am. Compl. ¶¶ 23-25; Moats Aff. ¶ 8).

Moats Construction performed work for the Defendants on the Project from August 2023 to April 29, 2024. (Am. Compl. ¶ 22; Moats Aff. ¶ 14). Moats Construction obtained the grading permit for the Project and held it until the certificate of occupancy was issued, which was after April 2024. (Moats Aff. ¶ 7). Moats Construction continued work on the Project through April 29, 2024, even though Defendants still owed amounts to Moats Constructions from as far back as October 2023 and December 2023. (Moats Aff. ¶ 17).

Moats Construction and Green Man performed services for the Defendants on the Properties and Project that have never been paid. This suit followed.

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) “should not be granted if ‘facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.’” Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999) (quoting Stiles v. Onorato,

318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). “[I]n considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) (citing Stiles, 318 S.C. 297, 457 S.E.2d 601). “If the facts and inferences drawn from the facts alleged in complaint, viewed in the light most favorable to the plaintiff would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

Summary judgment is only appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “A fact is deemed ‘material’ if proof of its existence or nonexistence would affect the disposition of the case under the applicable law.” *Knight v. Am. Nat. Fire Ins. Co.*, 831 F.Supp. 1284, 1285 (D.S.C. 1993) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). “An issue of material fact is ‘genuine’ if the evidence offered is such that a reasonable jury might return a verdict for the non-movant.” *Id.*

“Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.” *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002) (citing *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). When deciding whether a genuine issue of material fact exists, the court must view “the evidence and all inferences which can be reasonably drawn therefrom . . . in the light most favorable to the nonmoving party.” *Id.* at 361-62, 563 S.E.2d at 333 (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)).

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Id.* at 363, 563 S.E.2d at 334 (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000)). “Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.” *Id.* at 362, 563 S.E.2d at 333 (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)). “Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Id.* at 363, 563 S.E.2d at 334 (citing *Baughman*, 306 S.C. 101, 410 S.E.2d 537). “This means . . . that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Id.*

ARGUMENT

This case has just begun and granting a motion to dismiss or summary judgment is premature when discovery has not even begun.

The APB Defendants make three arguments for dismissal: (1) Plaintiffs’ Mechanic’s Liens were not timely filed and served on the APB Defendants within ninety (90) days of the last date of work; (2) the Mechanic’s Liens were not foreclosed upon within 180 days of the last day of work; and (3) all remaining causes of action against the APB Defendants should be dismissed. Moats Construction and Green Man dispute each of these arguments and urge the Court to denied this motion and allow the parties to engage in full discovery of the disputed facts.

I. The Last Date of Work is a Disputed Issue of Material Fact.

The APB Defendants assert that Moats Construction’s last date of work was April 3, 2024, and, as such, any liens were required to be filed and served within 90 days, or by July 2, 2025. This is incorrect. Moats Construction continued to furnish labor and materials until April 29, 2024.

As part of its scope of work, Moats Construction installed traffic control devices and performed work on site grading, sewer, and water installation. (Moats Aff. ¶ 8 and Exhibit 5 thereto). Plaintiffs' photographs show that Moats Construction's traffic control devices were still on site after April 3, 2024, and were not fully demobilized until April 29, 2024. (Moats Aff. ¶¶ 12-14). Ninety days from April 29, 2024 is July 28, 2024. Moats filed its mechanic's lien on July 3, 2024, and attempted to locate Wesley Edwards at the registered agent address of 2902 N. Main Street on that same day. (Moats Aff. ¶ 17 and Exhibit 10 attached thereto). Russell Moats was not able to locate Wes Edwards at this address so he posted both liens on the Properties on that same day to serve the property owner. (Moats Aff. ¶ 18). Service was made by the sheriff's department by July 15, 2024, showing that the lien was filed and service completed within the 90-day statutory period. (Moats Aff. ¶¶ 17-18, and attached Exhibits 10-13 thereto).

The work performed by Moats Construction on April 29, 2024, qualified as "furnish[ing] labor" under the mechanic's lien statute. S.C. Code Ann. § 29-5-90. Mobilization and demobilization are work that are part of every construction contract. (Moats Aff ¶ 8). It takes labor to demobilize. The South Carolina Supreme Court has previously held that the mechanic's lien statute does not specify any amount of materials or labor that must be "furnished" under the statute to begin the statutory 90-day period. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 130, 631 S.E.2d 252, 257 (2006) ("[T]he statute does not specify any particular amount of materials or labor which must be furnished") (citing *Wood v. Hardy*, 235 S.C. 131, 133-136, 110 S.E.2d 157, 157-59 (1959)). In *Wood v. Hardy*, the homeowner argued that "the minor plumbing repair [\$4] was so 'trivial or inconsequential' that it was insufficient to extend the time for serving a mechanic's lien beyond the date the bulk of materials and labor had been provided." *Id.* The

South Carolina Supreme Court disagreed, noting that the mechanic's lien statute does not specify any amount of labor or materials that must be furnished. *Id.*

In *Butler Contracting, Inc. v. Court Street, LLC*, the South Carolina Supreme Court ruled that the delivery of a single box of ceiling tiles for a repair was sufficient furnishing of materials to be the trigger date for the 90-day lien period. *Id.* at 132, 631 S.E.2d at 258. The *Butler* Court explained:

[W]here a claimant, after a contract is substantially completed, does additional work or furnishes additional material which is necessary for the proper performance of his contract, and which is done in good faith at the request of the owner or for the purpose of fully completing the contract, and not merely as a gratuity or act of friendly accommodation, the period for filing the lien will run from the doing of such work or the furnishing of such materials, irrespective of the value thereof.

The position adopted in *Wood*, as reflected in foreign precedent cited in that 1959 opinion, has not changed substantially in more recent cases from other courts. "[W]hen an unreasonable period of time has elapsed since substantial completion of the work, the performance of trivial services or the furnishing of trivial materials generally will not extend the time for filing the certificate past the date of substantial completion. . . . If, however, subsequent to the date of substantial completion, trivial services or materials are provided at the request of the owner, rather than at the initiative of the contractor for the purpose of saving a lien, the furnishing of such work or material will extend the commencement of the period for filing a certificate of mechanic's lien." *F.B. Mattson Co. v. Tarte*, 247 Conn. 234, 719 A.2d 1158, 1161 (Conn. 1998) (holding that, although roofing project had been substantially completed more than a month earlier, deadline to file mechanic's lien began to run upon removal of scaffolding and roofing brackets from property at request of owner) [omitted additional cited cases in opinion]. . . .

Id. at 130-31, 631 S.E.2d at 257-58. As an example of activities that qualify as furnishing labor, in *Butler* the South Carolina Supreme Court cited *F.B. Mattson Co. v. Tarte*, 247 Conn. 234, 719 A.2d 1158 (Conn. 1998), wherein a roofer's work to remove scaffolding and roofing brackets qualified as furnishing labor and the start of the mechanic's lien service period. *Id.*

Here, Moats Construction's equipment and traffic control devices were still being used at the Properties beyond the April 3, 2024 date that APB Defendants claim was the last date of work.

(Moats Aff. ¶¶ 12-13). Moats Construction continued to work on its scope of work on the Project meeting with City of Anderson personnel in April 12 or 13, 2024. (Moats Aff. ¶ 12). Completing demobilization by April 29, 2024, qualifies as furnishing labor, and it was not for the purpose of extending the time to file a lien or an unreasonable delay. To the extent APB Defendants argue otherwise, these are factual issues for discovery. Other courts have denied summary judgment on a similar set of facts when the question is whether demobilization qualified as furnishing labor, ruling that this is a disputed issue of fact. *See., e.g., Beaver Excavating, Co. v. WJM Leasing, LLC*, Case No 2019CV0937, 2020 Ohio Misc. LEXIS 878 (June 17, 2020) (declining to grant summary judgment because it was a question of fact of whether demobilization was necessary to complete the project the plaintiff was hired to do and within the scope contemplated in the parties' contract), attached as **Exhibit A**.

Similarly here, if the APB Defendants dispute that demobilization was part of the parties' contract, or argue that Moats Construction was unreasonably delayed its demobilization, or argue that Moats Construction was trying to extend the lien dates, these are all factual disputes requiring discovery and the Court should deny APB Defendants' motion to dismiss and allow the parties to engage in discovery of these disputed facts.

As the moving party on what is effectively a motion for summary judgment, the APB Defendants bear the burden of proof to demonstrate the absence of a genuine issue of material fact. As reflected by the record before the Court, there are numerous disputes of material fact that preclude summary judgment at this stage of the case before full discovery has been completed. As such, the APB Defendants have not carried their burden of proof to show that they are entitled to summary judgment and for that reason their motion should be denied.

II. An Action to Foreclose a Mechanic's Lien Must Be Filed Within Six Months Not 180 Days.

The APB Defendants wrongly argue that Moats mechanic's lien must be foreclosed within 180 days of the last date of work. The mechanic's lien statute provides that a lien must be foreclosed within six months:

Unless a suit for enforcing the lien is commenced and notice of the pendency of the action is filed within *six months* after the person desiring to avail himself of it ceases to labor on or furnish labor or material for the building or structure, the lien must be dissolved.

S.C. Code Ann. § 29-5-120(A) (emphasis added).

The mechanic's lien statute is strictly construed. *Butler Contracting*, 369 S.C. at 130, 631 S.E.2d at 257. The South Carolina Supreme Court has previously recognized that the deadline to foreclose on a lien is six-months not 180 days:

The time limits run from the same event: the certificate of lien must be filed within ninety days, and the foreclosure suit (and accompanying notice of pending action) *must be commenced within six months after the person asserting the lien ceases to furnish labor or materials*. The effect of these provisions is that the six-month limitations period for enforcing the lien necessarily commences no later than the date the certificate of lien is filed. If suit is not commenced *within six months* after the date the certificate of lien is filed, title examiners may assume that the mechanic's lien is dissolved.

Butler Contracting, 369 S.C. at 129-130, 631 S.E.2d at 256-57 (emphasis added).

Six months from Moats Construction's last date of work of April 29, 2024, falls On October 29, 2024. This suit was filed on October 28, 2024, within the six-month statutory deadline. Because this suit was commenced within six months of the last date of work, the filing date of this foreclosure is not a basis to dissolve the mechanic's liens and the APB Defendants' motion to dismiss on this basis should be denied.

III. There Is No Basis to Dismiss All Other Causes of Action Against the APB Defendants.

Assuming arguendo that the Court determines that Moats Construction's mechanic's lien should be dissolved, this does not mean that the APB Defendants can be dismissed from this case at this stage of the litigation before any discovery has been completed. The South Carolina Supreme Court has made clear that, "[the failure to perfect a mechanic's lien does not preclude an action on the debt." *Butler Constr.*, 369 S.C. at 129, 631 S.E.2d at 257 (citing *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985)).

At the motion to dismiss stage, the question is whether viewing the facts and inferences in the complaint in a light most favorable to Moats Construction and the Green Man would entitle them to relief on any theory. Moats Construction alleges that APB, 2916 LLC and Wesley Edwards hired it to conduct demolition and construction services on their properties. (Am. Comp. ¶ 22). Moats Construction further alleges that W.H. Bass, Inc. and Whataburger hired Moats Construction to perform demolition, utility services, and construction services on the properties and hired the Green Man to provide dumpsters, portable toilets and Conex containers on the Properties on behalf of the owners APB, 2916 LLC, and Wesley Edwards. (Am. Compl. ¶¶ 23-25). Moats and Green Man contend that they have not been paid in full for furnishing labor and materials on this Project.

Viewing these allegations in a light most favorable to Moats Construction and the Green Man, they state sufficient facts to constitutes viable causes against the APB Defendants. As such, there is no basis to dismiss any causes of action against the APB Defendants.

CONCLUSION

For these reasons, Plaintiffs request the Court to deny APB Defendants' motion to dismiss and allow the parties to proceed to discovery.

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

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June 2, 2025

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EXHIBIT A



Neutral

As of: June 2, 2025 9:04 PM Z

Beaver Excavating, Co. v. WJM Leasing, LLC

State of Ohio, Court of Common Pleas, Stark County

June 17, 2020, Decided

Case No. 2019CV0937

Reporter

2020 Ohio Misc. LEXIS 878 *

THE BEAVER EXCAVATING, CO., Plaintiff, v. WJM LEASING, LLC, et al., Defendants.

Core Terms

mechanic's lien, repair, invoices, flute, perform work, machine, separate contract, summary judgment, water line, last day, perform labor, nonmoving, genuine, parties, argues, summary judgment motion, cross motion, moving party, demobilizing, welder, material fact, documentation, Reply

Judges: [*1] Hon. Chryssa N. Hartnett, Judge.

Opinion by: Chryssa N. Hartnett

Opinion

JUDGMENT ENTRY DENYING CROSS MOTIONS FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION TO STRIKE

This matter is before the Court on the *Motion for Summary Judgment* filed by Plaintiff, The Beaver Excavating Co. ("Beaver"), Memorandum Contra filed by Defendants WJM Leasing, LLC ("WJM") and Origin Bank (collectively, "Defendants"), Plaintiffs Reply in Support, Defendants' Cross Motion for Summary Judgment, Plaintiffs Opposition, and Defendants' Reply, as well as Plaintiffs Motion to Strike Defendants' Cross Motion for Summary Judgment, Defendants' Opposition, and Plaintiffs Reply.

The Court has reviewed the above-referenced filings and finds that reasonable minds could disagree as to whether a genuine issue of material fact exists regarding whether Plaintiff can establish that the labor performed on August 22, 2017 was a necessary part of the proper completion and performance of the work which Plaintiff undertook to do, and an attempt in good faith to perform the contract, not merely an effort to extend the time for filing an affidavit for a lien. Accordingly, both Plaintiff and Defendants' cross motions for summary judgment are **DENIED**. [*2]

CASE BACKGROUND

To summarize the litigation before this Court, Plaintiff seeks to foreclose on a mechanic's lien for repair and maintenance work Plaintiff performed for non-party Union Metal Corporation ("Union Metal") at 1432 Maple Avenue N.E., Canton, Ohio (the "Property"). Union Metal owned the Property at the time Plaintiff performed the work, but failed to pay Plaintiff for the work. Plaintiff filed a mechanic's lien against the Property to collect the money due from Union Metal. Subsequently, Union Metal sold the Property to WJM Leasing.

Plaintiff is a construction company with expertise in earthmoving, site development and construction. In 2017, Plaintiff performed the following work for Union Metal at the Property: repairs to the flute foundation, repairs to the welder foundation, and repairs to the water line. Union Metal sent a purchase order to Plaintiff for the flute

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R-000206

foundation work dated March 17, 2017. The purchase order reads "per your revised quote dated 3/10/2017." Union Metal's purchase order for the welder foundation work was dated May 3, 2017. The Court could not locate a purchase order for the water line repair work in the exhibits provided by the parties. Defendants [*3] aver that the water line repair project began in January of 2017.

The flute machine job was referenced as "Contract No. 162173-02" on all of the invoices sent by Plaintiff to Union Metal. The welder foundation job was referred to as "Contract No. 172108-01" on Plaintiffs invoices. The contract number for the water line repair appears to be No. 179007-00, from the "Aging Detail by Contract" document found in Exhibit C to Plaintiffs Memorandum Contra.

This case hinges upon whether Plaintiffs mechanic's lien, filed on November 6, 2017 was timely filed pursuant to [R.C. §1311.06\(B\)\(3\)](#). Pursuant to the statute, Plaintiff had 75 days from "the date on which the last of the labor or work was performed or material was furnished" to file an affidavit of mechanic's lien. Plaintiffs employee David Cook performed approximately three hours of "demobilizing" and cleanup work at the Property on August 22, 2017, which was seventy-five days before November 5, 2017, a Sunday, therefore the mechanic's lien would have been timely filed on November 6, 2017 if indeed August 22, 2017 was the last day Plaintiff performed labor pursuant to the statute.

The Court finds that no work appears to have been performed at the Property between [*4] sometime in late July and August 22, 2017. The parties do not dispute that Cook performed work at the Property on August 22, 2017, however Defendants argue that work, which consisted of demobilizing equipment and removing tools, was trivial, unnecessary to the completion of the projects, and/or only done in order to extend the time to file Plaintiffs mechanic's lien. Defendants claim this is evidenced by the fact that Plaintiff only came back to pick up its equipment after being reminded to do so by a representative of Union Metal on August 2, 2017.

Defendants argue that the last day Plaintiff worked on the last project - the flute machine - was July 25, 2017, citing Plaintiffs internal correspondence dated October 23, 2017 where Plaintiffs employee wrote that the "last day worked" on "Job 162173" (flute machine) was July 25, 2017. Defendants argue this is supported by the fact that Plaintiff sent the last invoice to Union Metal on July 31, 2017 for the "work completed" on the flute machine foundation. Plaintiff argues to the contrary that it was commonplace for them to invoice a customer before the job was complete, and the fact that its employee performed labor on the Property on August [*5] 22, 2017 supports Plaintiffs contention that its mechanic's lien was timely filed.

The parties do not dispute that there was no overarching contractual agreement setting out the terms and conditions for all of the construction work Plaintiff did for Union Metal. Defendants argue the documentation clearly shows that there were three separate contracts, one for the flute machine, one for the water line repair, and one for the welder foundation, as evidenced by the three "contract numbers" referenced on Plaintiffs invoices and aging detail documents. As a result, Defendants argue Plaintiff should have filed three separate mechanic's liens instead of just one.

To the contrary, Plaintiff argues that the three jobs were all part of one "single continuous maintenance and repair project," not three contracts. As will be discussed in greater detail below, since the Court finds there is a genuine issue of fact as to the last date of labor performed and therefore the validity of Plaintiffs mechanic's lien, the Court need not come to a determination on the issue of one contract versus three at this time.

Plaintiff issued invoices to Union Metal for its labor with dates ranging from March 2017 to [*6] July 2017. Of the invoices, Union Metal paid off only one, in the amount of \$7,303.86, which appears to be related to the water line repair. The total amount invoiced by Plaintiff to Union Metal was \$154,451.44.

Plaintiff recorded a mechanic's lien against the Property on November 6, 2017 in the amount of \$154,451.44, plus interest. Contemporaneous with the filing of its lien, Plaintiff endeavored to keep seeking payments from Union Metal. To that end, Plaintiff proposed a payment plan to Union Metal to satisfy the deficiency amounts due and owing. On or about November 7, 2017, Union Metal paid Plaintiff the first proposed installment payment under the

plan, satisfying Invoice No. 91893 in the aforementioned amount of \$7,303.86. However, Union Metal failed to make any of the additional installment payments due on November 21, December 5, or December 19 of 2017 pursuant to the proposed payment plan.

On or about November 15, 2017 after Plaintiff had recorded its mechanic's lien against the Property, Union Metal sold the Property to WJM. On the same date, WJM entered into an Assignment of Leases and Rents and assigned the rents and Leases to Origin Bank. Plaintiff claims despite selling [*7] the Property to WJM, Union Metal continued to control the Property as lessee.

On or about December 20, 2017, Beaver filed a lawsuit against Union Metal alleging breach of contract, unjust enrichment, and seeking action on account. See Stark County Court Docket, No. 2017-CV-2549. Union Metal initially appeared in the action but its counsel withdrew on August 17, 2018. On October 22, 2018, the court summarily granted Beaver's unopposed motion for summary judgment on all counts of the Complaint - breach of contract, unjust enrichment, and action on the account, awarding Beaver \$147,147.58 plus interest. Beaver did not raise, nor did the court's order address the issue of the validity of the mechanic's lien. Beaver has been unsuccessful in collecting on its judgment against Union Metal. On April 26, 2019 Beaver filed the instant lawsuit seeking to foreclose on the mechanic's lien at issue and collect from Defendants.

While Plaintiff argues in its brief that Defendants are collaterally estopped from challenging the amount of Union Metal's \$147,147.58 debt, the Court finds that this point does not appear to be in contention. Defendants admitted in their cross-motion for summary judgment that [*8] they do not seek to challenge the amount of money due and owing. Rather, Defendants seek to challenge the validity of Beaver's mechanic's lien and therefore Beaver's ability to foreclose on the Property and collect from Defendants.

LAW AND ANALYSIS

Summary judgment is appropriate where no genuine issues of material fact exist and the undisputed facts entitle the moving party to judgment as a matter of law. *Ohio Civil Rule 56(C)*; [*Harless v. Willis Day Warehousing, Co., Inc.*, 54 Ohio St.2d 64, 375 N.E.2d 46 \(1978\)](#). There mere existence of some factual disputes, if not material, will not defeat a motion for summary judgment. [*Buckeye Union Ins. Co. v. Consol. Stores Corp.*, 68 Ohio App.3d 19, 22-23, 587 N.E.2d 391 \(10th Dist. 1990\)](#).

Pursuant to *Civ.R. 56(C)*, the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. [*Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996- Ohio 107, 662 N.E.2d 264 \(1996\)](#). However, the moving party cannot discharge its initial burden under this rule with a conclusory assertion that the nonmoving party has no evidence to prove its case; the moving party must specifically point to evidence of the type listed in *Civ.R. 56(C)* affirmatively demonstrating that the nonmoving party has no evidence to support the nonmoving party's claims. *Id.*; [*Vahila v. Hall*, 77 Ohio St.3d 421, 429, 1997- Ohio 259, 674 N.E.2d 1164 \(1997\)](#). If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, [*9] if the moving party satisfies its initial burden, the nonmoving party then has a reciprocal burden outlined in *Civ.R. 56(E)* to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party. [*Dresher at 293*](#); [*Vahila at 430*](#); *Civ.R. 56(E)*.

Pursuant to [*R.C. § 1311.06\(B\)\(3\)*](#), a claimant must file an affidavit of mechanic's lien 75 days from "the date on which the last of the labor or work was performed or material was furnished" in order for it to be considered timely. Here, the applicable date is August 22, 2017, the date in which Plaintiffs employee performed approximately three hours of demobilizing and cleanup work at the Property. Prior to that date, it appears that Plaintiff had been doing work at the Property up until late July of 2017 but then the work ceased for a time until August 22, 2017.

The parties do not dispute that Plaintiff performed work at the Property on August 22, 2017. However, Defendants argue the work performed, which included removing equipment and tools and demobilizing equipment, was done only to extend the time to file Plaintiffs mechanic's lien. Defendants claims this is evidenced by the fact that

Beaver [*10] only came back to pick up its equipment after being reminded by a representative of Union Metal to do so on August 2, 2017.

Defendants claim that the last day Plaintiff worked on the last job left to complete - the flute machine - was July 25, 2017 as referenced above. If this is true, then Plaintiffs mechanic's lien would have been untimely as a matter of law, and they would be precluded from foreclosing upon it in the instant action. Defendants argue this is supported by the fact that Plaintiff sent the last invoice to Union Metal on July 31, 2017 indicating in the cover email that the flute machine project was complete as of July 31, 2017.

Plaintiff argues that it was commonplace for them to invoice a customer before a job was completed. Plaintiff maintains that labor performed on August 22, 2017 was a necessary part of the flute machine project, arguing that case law supports the proposition that site cleanup constitutes labor performed for purposes of calculating the last date worked for the timely filing of a mechanic's lien.

"[I]t is held in most cases, especially where the work or material is trivial, that such work does not extend the time for filing a lien." [Walter v. Bros., 42 Ohio App. 15, 18, 181 N.E. 554, 555, 11 Ohio Law Abs. 593 \(5th Dist.1932\)](#); see also [Specialty Minerals, Inc. v. Dunbar Mechanical, Inc., 164 Fed.Appx. 539, 541-42 \(6th Cir.2005\)](#), citing [*11] [Walter at 555](#) ("Work performed that can be characterized as 'trivial, i.e., unnecessary to the completion of the project' does not extend the last day of performance as required by [R.C. § 1311.06\(B\)\(3\)](#)"). The test is whether the alleged labor or repairs performed are "a necessary part of the proper completion and performance of the work which the lien claimant undertook to do, and an attempt in good faith to perform the contract, and not merely an effort to extend the time for filing an affidavit for a lien. **This is always a question of fact.**" [Id. at 18-19](#). (Emphasis added).

Indeed, work that can be categorized as "corrective" and "inconsequential" does not extend the contract completion date for purposes of filing a timely mechanic's lien, and whether the work performed is inconsequential is also a question of fact. See [Metal & Glass Techs., Inc. v. Trinity Universal Ins. Co., 1st Dist. Hamilton No. C-920519, 1993 WL 465411, *2](#).

In a case cited by both Plaintiff and Defendants, the Ninth District found the last day in which the appellant had performed work under the contract for purposes of a timely filed mechanic's lien was January 17, 1992, on which date defendant-appellee "appeared to leave the job site, removed his equipment, cleaned the road, did some last minute work to finish things that were in process, and left the job site [*12] for good[.]" [Mark's Contracting Group, Inc. v. Jenter Dev., 9th Dist. Medina No. 2538-M, 1996 WL 724758, *2-3](#). Plaintiff argues this case supports its position, as the three hours of cleanup and demobilizing of Plaintiffs equipment which was performed on August 22, 2017 is similar to the aforementioned work performed in *Mark's*. Defendants argue this case is distinguishable because in *Mark's*, the work done on the last date of labor included "last minute work" which was "required by the ... contract" and in the case at bar, Plaintiff performed no work on any of the projects on August 22, 2017. *Id.* at *3-6.

The Court finds there is a genuine issue of fact as to whether the work performed by Plaintiff on August 22, 2017 was necessary to the completion of the projects Plaintiff was retained to do - construction on the welder and flute foundations, or the water line repair. There is a question as to whether the work done on August 22, 2017 was within the scope of what was contemplated in the parties' contract(s) and therefore constituted the last date worked for purposes of finding Plaintiffs mechanic's lien valid and enforceable.

Finally, regarding the issue of whether the work Plaintiff performed for Union Metal was a single, continuous maintenance and repair project as Plaintiff contends, [*13] or whether it was done under three separate contracts as Defendants contend, the Court finds it premature to make a factual determination at this time for the reasons that follow.

The parties do not dispute there was no overarching contractual agreement setting out the terms and conditions for all of the work Plaintiff performed for Union Metal. Defendants argue the documentation clearly shows that there were three separate contracts, one for the flute machine, one for the water line and one for the welder foundation,

as evidenced by the different "contract numbers" listed on Beaver's invoices and aging detail documents. Defendants contend this is further supported by the fact that the three projects were separately invoiced at different times, at the completion of each project. As a result, Defendants argue Plaintiff should have filed three separate mechanic's liens for each of the three jobs.

To the contrary, Plaintiff argues that the three jobs were all part of a "single continuous maintenance and repair project" not three separate contracts, citing the deposition testimony of Brittney Meyer, a Beaver project manager in support of its argument. See Pl. Reply in Support at 2. Beaver [*14] claims the "contract numbers" indicated on the invoices are not proof that there were three separate contracts. Beaver argues further that even if the Court does find that three separate contracts existed, the Court should still find the mechanic's lien valid as to the flute machine repair work because the work performed on August 22, 2017 was related to the demobilization of the flute machine.

"It is axiomatic that separate liens must be filed for separate contracts, but that only one lien need be filed if there is a single contract or if a number of items furnished at different times can be considered as having been furnished under one entire contract." [*Buckeye Crude Expl., Inc. v. Ken Miller Supply, Inc., 4th Dist. Athens No. CA 1307,1987 WL 12243, *7*](#) (reversing the trial court's decision finding the mechanic's lien valid and finding that "two separate and distinct contracts existed" that "could not be tacked together for the purpose of extending the date from which to file a valid lien."); citing 68 Ohio Jur.3d (1986), Mechanics Liens, Section 77, citing 53 *American Jur.2d* (1970) *Mechanics Liens, Section 183* and cases cited therein.

"However, where a contract may be found to be continuing, or where at least such labor or materials may be found to have been performed or delivered under a continuous transaction reasonably under the [*15] general arrangement between the parties, it may be found that a lien could be properly filed within the period of the last labor performed or material delivered." [*Talco Capital Corp. v. State Underground Parking Commission, 41 Ohio App.2d 171, 179-80, 324 N.E.2d 762, 769 \(10th Dist. 1974\)*](#) (Finding the contract and the services rendered to be of a continuing nature not constituting a tacking on of one contract to another, but constituting one contract, although separated into two parts, basic and additional labor, for the purposes of allocating the payments on such contract.)

The Court finds there is an issue of fact as to the terms of the parties' contract(s). In general, "when a term of a contract is not clear from the face of an agreement, issues regarding the parties' intent are determined by the trier of fact. Therefore, when a contract is ambiguous as to its length, determining whether additional material and labor provided are part of the original contract or are separate agreements is a question of fact for the trial court." *Metal & Glass Technologies*, supra at *2 (citations omitted).

Furthermore, because the Court is finding that a genuine issue of material fact exists as to when was the last day that Plaintiff performed work which was a necessary part of the proper completion and performance of the [*16] work that Plaintiff contractually undertook to do, the Court finds it unnecessary to come to a determination at this time as to whether the parties understood there to be three separate contracts or whether the work Plaintiff performed was one continuous maintenance and repair project. Should the evidence presented at the bench trial indicate that the last day of meaningful work performed was before August 22, 2017, then the Court must find Beaver's mechanic's lien invalid as untimely filed, regardless of whether the jobs were part of one contract or three separate contracts.

CONCLUSION

Upon review of the parties' cross motions for summary judgment, responses, replies, and documentation in support thereof, and construing the evidence in the light most favorable to each non-moving party, the Court finds that genuine issues of material fact exist and that neither movant has demonstrate that they are entitled to judgment as a matter of law. Accordingly, Plaintiffs Motion for Summary Judgment is **DENIED**. Defendants' Motion for Summary Judgment is **DENIED**. Plaintiffs Motion to Strike Defendants' Cross Motion for Summary Judgment is also **DENIED**.

IT IS SO ORDERED.

/s/ Chryssa N. Hartnett

Hon. Chryssa [*17] N. Hartnett

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Moats Construction, Inc., and The Green
Man, LLC,

C.A. No.: 2024-CP-2229

Plaintiffs,

AFFIDAVIT OF RUSSELL T. MOATS

vs.

APB Partnership, LLC; Wesley Edwards;
2916 N Main, LLC, W.H. Bass, Inc.,
Whataburger Restaurants, LLC, and
United Community Bank,

Defendants.

PERSONALLY APPEARED before me the undersigned, Russell T. Moats, who being duly sworn, deposes and states as follows:

1. My name is Russell T. Moats. I am over the age of eighteen (18) and have personal knowledge of the matters stated herein.
2. I am the President of Moats Construction, Inc. ("Moats Construction").
3. I am the managing member of The Green Man, LLC ("Green Man").
4. Moats Construction performed construction services and demolition on 2900 N. Main Street, 2916 N. Main Street, and 2902 N. Main Street in Anderson, S.C. (the "Properties") in 2023 and 2024 for the eventual construction of a Whataburger restaurant at 2900 N. Main Street (the "Project").
5. At various times as part of the Project, Moats Construction was asked to perform work by Defendant Wesley Edwards, believed to be operating on behalf of himself and Defendants APB Partnership, LLC (the owner of 2902 N. Main and 2900 N. Main) and 2916 N. Main, LLC (owner of 2916 N. Main Street); Defendant Whataburger; and Defendant W.H. Bass, Inc. Throughout the Project, I believed that all Defendants were working together to improve the Properties for construction of the eventual Whataburger restaurant to be located on 2900 N. Main Street. Moats Construction did not sign a written contract with any of the Defendants for the work it performed.
6. Before the Project began and at all times including in text messages as late as April 2, 2024, Wesley Edwards acknowledged ownership of the Properties and his Project to develop the Properties into a Whataburger, and he acknowledged that Moats Construction and Green Man were working for him on his project. (Email Wes Edwards to Russell Moats regarding his upcoming Whataburger Project (Aug. 23, 2023), attached as **Exhibit 1**; Text Message Tim Burdette to Russell Moats acknowledging that Wes Edwards owns the building (Sept. 5, 2023), attached as **Exhibit 2**; Text Message Wes Edwards to Russell Moats asking "How is my project coming along with sewer along Main Street." (April 2, 2024), attached as **Exhibit 3**).
7. Moats Construction obtained the Grading Permit for the Project. (See Grading Permit (Dec. 19, 2023), attached as **Exhibit 4**). I believe Moats Construction remained the only entity holding the Grading Permit on the Project until the certificate of occupancy was issued and at no time did any Defendants take steps to replace Moats Construction as the grading contractor.
8. On or about December 2023, Defendant W.H. Bass, Inc. provided a draft contract to Moats Construction for work on the Project. The parties discussed the contract but never took steps to execute the written contract; however, the draft contract signed by W.H. Bass reflects that "Mobilization / Staking / Layout, Traffic Control," "Water" and "Sewer" were part of the contemplated scope of work. (Excerpts from Draft Contract attached as **Exhibit 5**). Mobilization and demobilization costs are part of every construction contract.
9. Moats Construction was paid for some of the work it performed on the Properties and Project; however, these payments were not consistently made by any one Defendant. When presented with invoices, the various defendants at times identified each other as the responsible party and Moats Construction made attempts to present invoices to the various Defendants for payment.
10. Moats Construction partially demobilized on April 3, 2024, because of non-payment;

R-000212

however, because the site was still under construction, Moats Construction did not remove all traffic control devices or materials. Moats Construction was working on site on the evening of April 3, 2024 to complete certain scope of work and remove related equipment. After April 3, 2024, W.H. Bass and Moats Construction continued to discuss payment and completion of the scope of work under the parties' contract.

11. Despite not being paid by Defendants for work performed, Moats Construction continued to work in good faith. On April 1, 2024 and April 3, 2024, Moats Construction contacted City of Anderson personnel regarding the status of the water taps believing that Defendants had paid the required fees. City employees responded informing me that the fees had in fact not been paid, meaning Moats Construction could not complete its scope of work until Defendants paid these fees. (Correspondence attached as **Exhibit 6**).

12. As can be seen in the attached April 12, 2024 photograph, Moats Construction's traffic control devices were still in use after April 3, 2024. (Photograph (April 12, 2024), attached as **Exhibit 7**.)

13. On April 13, 2024, Moats Construction continued to demobilize and returned to the Project to retrieve some of its traffic control devices but it did not fully demobilize at this time. (Photograph (April 13, 2024), attached as **Exhibit 8**). I recall that on or about April 12, 2024, or April 13, 2024, I attended a meeting on-site with W.H. Bass and City of Anderson officials regarding coordinating the location of the water tap for domestic water and for the landscaping irrigation meter, which was part of Moats Construction scope of work.

14. Moats Construction finished fully demobilizing from the Project on April 29, 2024. On this date, Moats Construction finished removing its traffic control devices from the Project and it removed its remaining materials for work on the water and sewer systems. (Photograph (April 29, 2024), attached as **Exhibit 9**).

15. On or about December 2023, Defendant W.H. Bass, Inc. hired the Green Man to provide dumpsters, portable toilets, and Conex containers on the Properties. I believed this work to be on behalf of APB, 2916 N. Main LLC, Wesley Edwards, and Whataburger Restaurants, LLC.

16. Green Man provided dumpsters, portable toilets, and Conex containers for the Properties and Defendants have not paid for this work.

17. On July 3, 2024, Moats Construction filed a Mechanic's Lien on 2902 N. Main and 2900 N. Main. (Moats Construction Mechanic's Lien (July 3, 2024), attached as **Exhibit 10**).

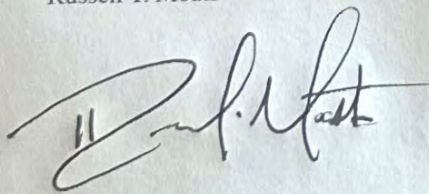
As reflected in the Lien, Moats Construction continued working on the Project in good faith through April 29, 2024, even though it was owed amounts from as far back as October 2023 and December 2023.

18. APB Partnership, LLC's registered agent for service of process listed at the South Carolina Secretary of State's Office is Wesley Edwards with an address of 2902 North Main Street, Anderson, SC 29621. (Attached as **Exhibit 11**). I am not aware that APB Partnership or Wesley Edwards maintain an office to accept service at this location. I understand that this location is a music store that on occasion accepts mail for Wesley Edwards. I attempted to serve APB Partnership at this location but did not locate Wesley Edwards and instead I posted the Mechanic's Lien on the property at 2902 N. Main and 2900 N. Main on July 3, 2024. (Photographs July 3, 2024), attached as **Exhibit 12**). The Anderson County Sheriff's Office also served the lien on the property owner APB Partnership LLC on July 15, 2024. (Affidavit of Service Anderson County Sheriff's Office (July 15, 2024), attached as **Exhibit 13**).

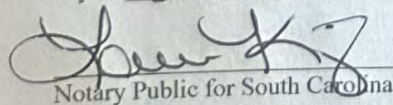
19. I affirm that all statements made herein are true and correct to the best of my knowledge and belief.

20. Further Affiant sayeth not.

Russell T. Moats



SWORN to before me this 2 day of June, 2025



Notary Public for South Carolina

My Commission Expires:

10-23-2025



EXHIBIT 1

From: Wesley Edwards edwardswesley55@gmail.com
Subject: Whataburger Site Plan
Date: Aug 23, 2023 at 12:37:12 PM
To: Garrett.Turpin@duke-energy.com,
rtmoats@moatsconstruction.com, timeburdette@gmail.com

Garrett,

Thanks so much for working out a plan this morning. I look forward to getting this development started and couldn't do it without your help. My cell is [864-617-5245](tel:864-617-5245)

Wesley Edwards



Whataburger Site.pdf
2.9 MB

EXHIBIT 2

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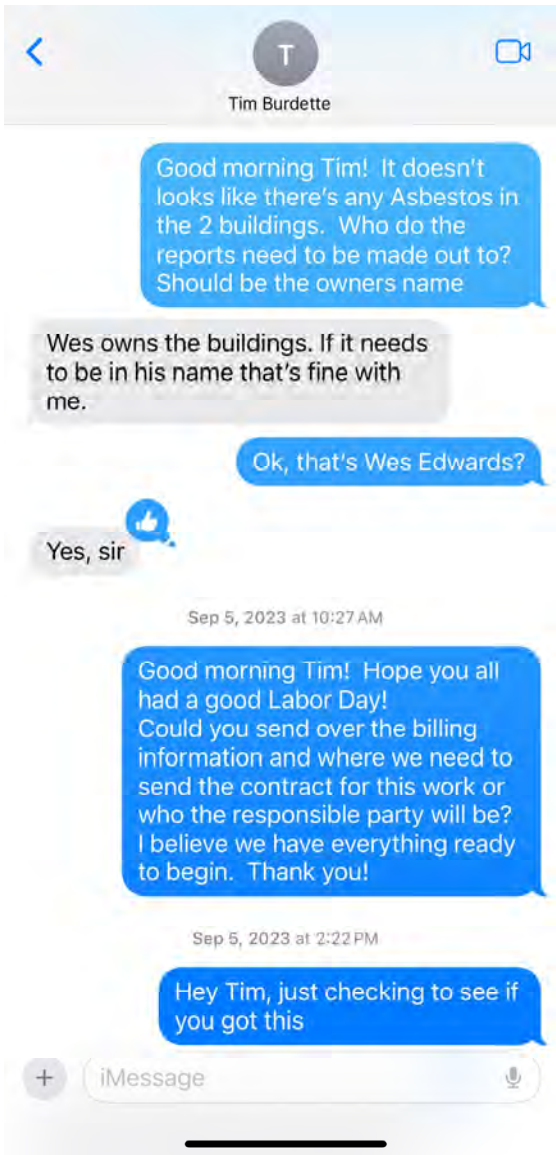


EXHIBIT 3



W



Wesley Edwards >

Thank you for getting with me on this. It's exactly what I need for the HOA



Anytime! You all have a great weekend! Looks like it should be nice!

Tue, Apr 2 at 9:05 AM

Hey Russ, I'm relaying a message to you from a realtor who called me last week. They have a client who would like to buy your building under the bridge downtown. If you have an interest I'll give you information. How is my project coming along with sewer along Main Street? Thanks I'll come up later if you'll be working 👍

Good morning Mr. Wes! Yes I've had a lot of interest in that building since we started working on it several years ago. I have had a number of people make offers, but nothing worth considering except for maybe 1, but still not enough for me to sell.



iMessage



R-000216

**Building & Codes**

601 South Main Street

Anderson, SC 29624

[864-231-2217](tel:864-231-2217)**Grading Permit GP-23-10**Mapref: [1221202005](#)

Job Address: 2900 N MAIN ST ANDERSON SC 29621

Property Type: Commercial

Issued Date: December 19, 2023

Contractor Name: Russell Moats
Moats Construction
Company
1523 Old Roberts Church Road Anderson SC 29626

Owner: APB PARTNERSHIP LLC

Phone Number: [8642765021](tel:8642765021)
License: SC120844

City: 2902 N MAIN ST
ANDERSON , SC 29621
Phone:

Purpose(s) of Grading: New Whataburger Restaurant**Number of Acres:** 1.46**811 Ticket Number:****Cost of Work:** 40,000**Cost of Permit:** \$970.00

W. H. BASS, INC.
11300 Johns Creek Parkway, Suite 100
Johns Creek, Georgia 30097
Phone/Fax: (770)

W. H. BASS, INC.
STANDARD SUBCONTRACT AGREEMENT
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W. H. BASS, INC.
11300 Johns Creek Parkway, Suite 100
Johns Creek, Georgia 30097
Phone/Fax: 770/729-3861

SUBCONTRACT

DATE:	December 11, 2023
PROJECT:	Whataburger 2900 N. Main Street Anderson, SC 29621
SUBCONTRACTOR:	Moats Construction Company 1523 Old Roberts Church Road Anderson, SC 29626 Russell Moats rtmoats@moatsconstruction.com Office: 864-276-5021
WORK:	See Exhibit B – Scope of Work
CONTRACTOR:	W. H. Bass, Inc. 11300 Johns Creek Parkway, Suite 100 Duluth, GA 30097
OWNER:	Whataburger 300 Concord Plaza Drive San Antonio, TX 78216
ARCHITECT-ENGINEER:	Gensler 999 Peachtree Street, NE Suite 1400 Atlanta, GA 30309
PRIME CONTRACT (date):	TBD
SUBCONTRACT PRICE:	One hundred twenty-eight thousand and 00/100 (\$128,000.00)

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IN WITNESS WHEREOF, the parties, through their respective authorized representatives, execute this Subcontract so as to be effective on the date first stated above.

Moats Construction Company
Company Name

W. H. BASS, INC.

By: _____
Signature

By: Taylor Gaddis
Signature

Printed Name

Taylor Gaddis (706) 974-3228
Printed Name

Its: _____
Title

Its: Project Manager
Title

Exhibit E

Moats Schedule of Values

Description	Amount
Mobilization/ Staking/ Layout, Traffic Control	\$10,000.00
Erosion Control	\$5,000.00
Demolition	\$10,000.00
Grading	\$50,000.00
Storm Drainage	\$4,000.00
Domestic Water & Irrigation Stub (Incls RPZ)	\$12,000.00
Sanitary Sewer	\$37,000.00

TOTAL CONTRACT **\$128,000**



C



City Of Anderson Water Josh

Thank Josh. Yeah finally got someone on the line and spoke to him.

Good deal

Apr 1, 2024 at 4:18 PM

Good afternoon Josh! Do you know when you guys might install the tap at 2900 N Main. I had spoke to I believe your lead forman for taps the week before last. He called and said he would stop by so we could show him the location, but we never saw him. Just checking. I believe everything was taken care of on the business side a couple of weeks ago. Thanks

We have the line ran from the building to where the site plan shows the connection.



I will be out of the office until Wednesday morning, I will check with him when I get back and let you know

Tue. Dec 3 at 1:13 PM



iMessage



R-000222

From: Rtmoats rtmoats@moatsconstruction.com
Subject: Re: 2900 N Main St. (Whataburger)
Date: Apr 3, 2024 at 2:45:42 PM
To: Josh Haney JHaney@cityofandersonsc.com
Cc: Traci Wideman twideman@cityofandersonsc.com, Laura King lbkingcu@moatsconstruction.com

Good afternoon!

I never heard back from anyone about these 2 taps. Are they scheduled?

I know that EC Utilities like to perform their own taps. However the owner is saying it is causing a delay in the project now.

I know they just paid the fees a few weeks ago.

They've been that way the entire project.

Just looking for some information to relay back to them.

Thank you!

Russell T. Moats

Principle

Moats Construction Company

864.224.0904 Office

864.276.5021 Direct

www.moatsconstruction.com

R-000223

Moats Con Logo .JPG

On Jan 10, 2024, at 9:14 AM, Josh Haney
<JHaney@cityofandersonsc.com> wrote:

Russell,

Once the tap fee is paid, you're looking at 2-3 weeks for the tap to be made.

Thanks

Josh Haney
Electric City Utilities
Water Operations Manager
[864-231-5232](tel:864-231-5232)
jhaney@cityofandersonsc.com
[314 Tribble St.](#)
[Anderson, SC 29625](#)

From: Rtmoats <rtmoats@moatsconstruction.com>
Sent: Wednesday, January 10, 2024 9:13 AM
To: Josh Haney <JHaney@CITYOFANDERSONSC.com>
Cc: Traci Wideman <twideman@cityofandersonsc.com>; Laura King
<lbkingcu@moatsconstruction.com>
Subject: Re: [2900 N Main St.](#) (Whataburger)

[EXTERNAL SENDER. Only open links and attachments from known senders. USE

R-000224

CAUTION!!]

Thank you Josh! We will get in touch with Traci and Art.
How far out are you on the tap when we get them paid?

Ms. Traci, what are the totals in the capacity fees so that we can share them with the owners.

Thank you!

Russell T. Moats

Principle

Moats Construction Company

864.276.5021 Direct

www.moatsconstruction.com



On Jan 8, 2024, at 8:23 AM, Josh Haney <JHaney@cityofandersonsc.com> wrote:

Russell,

Regarding the taps for [2900 N Main St.](#) The taps have not been paid for. The plans called for a 1.5" domestic tap and a 1" irrigation tap totaling \$6,580.92. This does not include capacity fees. Traci, our administrative assistant never received the information she needed for the capacity

fee charge. This also does not include the sewer tap fees. I have copied Traci in this email so you can reach out to her also. If you need anything else just let me know.

You can reach Traci by phone at [864-231-5230](tel:864-231-5230).

Thanks

Josh Haney

Electric City Utilities

Water Operations Manager

864-231-5232

jhaney@cityofandersonsc.com

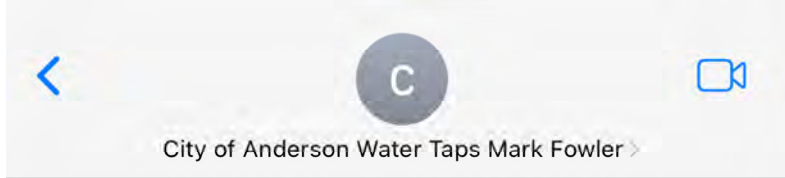
[314 Tribble St.](#)

[Anderson, SC 29625](#)

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iMessage
Apr 3, 2024 at 3:05 PM

The 1" tap has not been paid for
just letting you know thanks mark
fowler





Add a Caption

Friday • Apr 12, 2024 • 4:16 PM

[Adjust](#)



April 12 2024 Traffic Control and Sewer Materials 2902 N Main still onsite

Apple iPhone 14 Pro Max

HEIF

Main Camera — 24 mm $f1.78$

12 MP • 3024 × 4032 • 2.6 MB

ISO 80

24 mm

0 ev

$f1.78$

1/894 s

[Add a location...](#)



Saved





Add a Caption

Saturday • Apr 13, 2024 • 1:21PM Adjust

 April 13 2024 onsite moving traffic control for removal

Apple iPhone 14 Pro Max HEIF

Telephoto Camera — 77 mm *f*2.8
12 MP • 3024 × 4032 • 1.3 MB

ISO 32 | 285 mm | 0 ev | *f*2.8 | 1/797 s

Add a location...

 Saved



Add a Caption

Monday • Apr 29, 2024 • 3:54 PM Adjust

 April 29 onsite to remove remaining traffic control and materials

Apple iPhone 14 Pro Max HEIF

Main Camera — 24 mm f1.78
12 MP • 3024 × 4032 • 2.5 MB

ISO 80 | 25 mm | 0 ev | f1.78 | 1/7042 s

Add a location...



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE OFFICE OF THE
REGISTER OF DEEDS

Moats Construction, Inc.

Lienor / Contractor,

vs.

APB Partnership, LLC

Lienee / Owner

Wesley W. Edwards

2916 N. Main , LLC

United Community

Party Defendant(s)

NOTICE AND CERTIFICATE OF
CLAIM OF MECHANIC'S LIEN &
STATEMENT OF ACCOUNT

NOTICE IS HEARBY GIVEN, that the undersigned lien claimant, **Moats Construction, Inc.** located at 1523 Old Roberts Church Road in Anderson, South Carolina 29626 is due the sum of (\$543,813.01) Five Hundred Forty-Three Thousand Eight Hundred Thirteen Dollars and 01/100 from the lienees and owners for improvements to real estate owned by APB Partnership, LLC with responsible party defendants by and through Wesley W. Edwards, 2916 N. Main, LLC and United Community Bank.

That this debt is due the Lienor / Contractor for labor performed and materials furnished and actually used in the improvement of real estate, hereinafter described as Exhibit A, Including Demolition and Site Services, by virtue of an agreement with, or consent of Lienees / Owners, or a person authorized by the Lienees / Owners. That as shown on the attached Statement, Lienor / Contractor, acting individually and/or by and through its agents, servants, employees labor on or furnished labor and materials for such buildings, structures or improvements within 90 days of the date hereof.

That by virtue thereof, the service the filing of this certificate and pursuant to the statutes of the State of South Carolina in such cases made and provided, the said Lienor / Contractor has and claims a lien to secure payment the debts due and costs of enforcing this mechanic's lien upon the following described real estate:

EXHIBIT A

All that certain piece of property located at **2916 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202002.

Also, ALL that certain piece, parcel, or lot of land situate, lying and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.49 acres, or more or less, on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, at Page 10-A, in the office of Register of Deeds for Anderson County, South Carolina, as shown on said plat, Tract A-1 is more particularly described as follows:

BEGINNING at an iron pin corner along the edge of the concrete sidewalk which adjoins North Main Street, said point being the southernmost point of the property herein described, and proceeding thence N. 39-12-00 W. 132.22 feet to an iron pin corner, turning and proceeding thence N. 62-38-00 E. 48.11 feet to an iron pin corner, turning and proceeding thence N. 27-17-35 W. 179.18 feet to an iron pin corner at the edge of Pine Lane; proceeding thence along the edge of Pine Lane, N. 61-43-00 E. 21.13 feet to an iron pin corner; turning and proceeding thence S. 27-23-02 E. 208.20 feet to a point; turning and proceeding thence N. 61-50-20 E. 34.75 feet to a point; turning and proceeding thence S. 36-03-00 E. 15.29 feet to an iron pin corner; turning and proceeding thence S. 58-13-00 E. 45.54 feet to an iron pin corner; turning and proceeding thence N. 81-47-00 E. 34.25 feet to an iron pin corner; turning and proceeding thence S. 17-25-00 E. 133.70 feet to an iron pin corner, turning and proceeding thence S. 72-05-00 W. 347.79 feet to the iron pin corner which is the point of beginning.

Said Parcel being more recently described as all that certain piece, parcel, or lot of land situate, lying, and being in the State of South Carolina, County of Anderson, City of Anderson, being more particularly shown and described as Tract A-1, containing 1.487 acres, more or less, on that certain plat prepared by Nu-South Inc., Earl O'Brien, S.C. R.L.S. #10755, dated August 12, 2022, and recorded in Plat Slide 2954, at Page 10, in the office of the Register of Deeds for Anderson County, South Carolina, reference to said plat being made for a more complete metes and bounds description thereof,

Together with a non-exclusive easement for ingress, egress, and utilities over along, and under Tract A as this property is shown on that certain plat prepared by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, dated April 14, 1997, and recorded in Plat Slide 1501, Page 10-A, in the Office of the Register of Deeds for Anderson County, South Carolina, and on Schedule B in that certain Memorandum of Lease Agreement which was recorded on July 18, 1997, in Deed Book 2682 at Page 52, in the Office of the Register of Deeds for Anderson County, South Carolina.

Derivation: Deed of Alfonso Leon, Ramon Bravo, and Joe Aguayo to 2916 N. Main, LLC, dated August 23, 2022, and recorded August 24, 2022, in Deed Book 16331 at Page 209, in the Office of the Register of Deeds for Anderson County, South Carolina.

TMS No. 122-12-02-002

ALSO:

All that certain piece of property located at **2900 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202005.

All that certain lot in Centerville Township, School District Number Five, City of Anderson, County of Anderson, State of South Carolina, containing 0.44 acres as shown on plat prepared by Nu-South Surveying, Inc. dated June 21, 1998 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 904 at Page 7-A; the metes and bounds,

courses and distances as shown on said plat being incorporated herein by reference and made a part of this description.

This is the same property conveyed unto R. Alexander Spainhour, III and Wesley W. Edwards by deed of Francis K. Hamilton, et al., dated 06/30/98 and recorded in the Anderson County Register of Deeds Office in Book 3008 at Page 137. R. Alexander Spainhour, III conveyed his one-half interest to Wesley W. Edwards by deed dated 8/12/08 and recorded in the Anderson County Register of Deeds Office in Book 8801 at Page 297.

TMS No. 122-12-02-005

ALSO:

All that certain piece of property located at **2902 North Main St. Anderson, SC 29621**, in the County of Anderson, TMS:1221202003.

All that certain piece, parcel or tract of land situate, lying and being in the City of Anderson, County of Anderson, State of South Carolina, containing 1.46 acres, more or less, and being more particularly shown and described on a plat by John F. Tinsley, PLS 16824, dated January 6, 2009, of record in the Register of Deeds Office for Anderson County, South Carolina in Plat Book/Slide 1815 at Page 5-A and having the metes and bounds, courses and distances as upon said plat appear; being bounded, according to the aforementioned plat, by N. Main Street, lands now or formerly of Leon Alfonso, Ramon Bravo and Joel Aquayo; by lands now or formerly of Jane A. Chamblee; by Concord Road; and by lands now or formerly of Wesley W. Edwards.

This is the same property conveyed unto Wesley W. Edwards by deed of M.A. McAlister, as Personal Representative (Executor) and Trustee under the Last Will and Testament of J. Albert Moorhead, dated 1/8/09 and recorded in the Anderson County Register of Deeds Office in Book 8986 at Page 244.

TMS No. 122-12-02-003

Moats Construction, Inc.

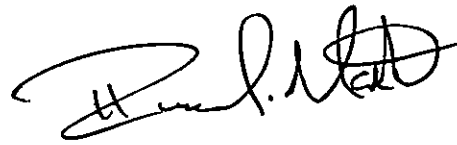
1523 Old Roberts Church Road

Anderson, South Carolina 29624

864.276.5021

info@moatsconstruction.com.com

By: Russell T. Moats Its: President

A handwritten signature in black ink, appearing to read "Russell T. Moats", written over a horizontal line.

I, Russell T. Moats, do certify that the attached **Exhibit B** is a True and Accurate Statement of Account.

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

ANDERSON COUNTY

I, Lance B. King, DO HEREBY CERTIFY THAT,
Russell T. Moats, PERSONALLY APPEARED BEFORE ME
THIS DAY AND ACKNOWLEDGED THE DUE EXECUTION OF THE
FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL SEAL
THIS THE 2nd DAY OF July, 2024.

Lance B. King

SIGNATURE OF NOTARY

October 23, 2025

NOTARY COMMISSION EXPIRES



R-000237



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

Exhibit B

		Amount Due	Amount Enc.		
		\$543,813.01			
Date	Transaction	Amount	Balance		
12/31/2021	Balance forward		0.00		
10/24/2023	INV #4600537. Due 10/24/2023.	54,702.00	54,702.00		
	--- LS Contract, 1 @ \$2,875.00 = 2,875.00				
	--- LS Contract, 1 @ \$2,000.00 = 2,000.00				
	--- LS Contract, 1 @ \$9,500.00 = 9,500.00				
	--- LS Contract, 1 @ \$6,500.00 = 6,500.00				
	--- LS Contract, 1 @ \$6,000.00 = 6,000.00				
	--- LS Concrete, 1 @ \$9,500.00 = 9,500.00				
	--- LS Concrete, 3 @ \$830.00 = 2,490.00				
	--- LS Concrete, 260 @ \$5.00 = 1,300.00				
	--- LS Concrete, 1 @ \$1,000.00 = 1,000.00				
	--- LS Contract, 1 @ \$1,000.00 = 1,000.00				
	--- LS Contract, 1 @ \$800.00 = 800.00				
	--- LS Contract, 1 @ \$800.00 = 800.00				
	--- LS Contract, 1 @ \$1,500.00 = 1,500.00				
	--- LS Concrete, 4 @ \$100.00 = 400.00				
	--- LS Concrete, 126 @ \$12.00 = 1,512.00				
	--- LS Concrete, 1 @ \$5,000.00 = 5,000.00				
	--- Silt Fence w/ Stakes, 505 @ \$5.00 = 2,525.00				
12/19/2023	INV #4600545. Due 12/19/2023.	970.00	55,672.00		
	--- LS Contract, 1 @ \$970.00 = 970.00				
01/12/2024	INV #4600540. Due 01/12/2024.	28,500.00	84,172.00		
	--- LS Contract, 1 @ \$28,500.00 = 28,500.00				
01/25/2024	PMT	-28,500.00	55,672.00		
02/09/2024	INV #4600544. Due 02/09/2024.	711.05	56,383.05		
	--- CR Stone, 20.61 @ \$34.50 = 711.05				
02/09/2024	INV #4600547. Due 02/09/2024.	31,100.00	87,483.05		
	--- LS Contract, 140 @ \$115.00 = 16,100.00				
	--- LS Contract, 1 @ \$15,000.00 = 15,000.00				
02/16/2024	INV #4600542. Due 02/16/2024.	91,370.00	178,853.05		
	--- LS Contract, 1 @ \$89,000.00 = 89,000.00				
	--- LS Contract, 1 @ \$13,520.00 = 13,520.00				
	--- LS Contract, 1 @ \$3,550.00 = -3,550.00				
	--- LS Contract, 1 @ \$7,600.00 = -7,600.00				
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96	0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #	E-mail		Page 1		
864.224.0904	info@moatsconstruction.com				



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date

7/2/2024

To:

Wesley Edwards
2900 N. Main St.
Anderson, SC 29621
C/O Whataburger

				Amount Due	Amount Enc.	
				\$543,813.01		
Date	Transaction			Amount	Balance	
03/01/2024	INV #4600546. Due 03/01/2024.			124,550.00	303,403.05	
	--- LS Contract, 1 @ \$124,550.00 = 124,550.00					
04/03/2024	INV #4600549. Due 04/03/2024.			226,685.00	530,088.05	
	--- LS Contract, 37 @ \$1,000.00 = 37,000.00					
	--- LS Contract, 108 @ \$1,000.00 = 108,000.00					
	--- LS Contract, 43 @ \$650.00 = 27,950.00					
	--- LS Contract, 1 @ \$6,000.00 = 6,000.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- LS Contract, 3 @ \$175.00 = 525.00					
	--- CR Stone, 1 @ \$650.00 = 650.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 1 @ \$4,500.00 = 4,500.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 2,460 @ \$1.00 = 2,460.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 1.5 @ \$400.00 = 600.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 8 @ \$400.00 = 3,200.00					
	--- LS Contract, 2 @ \$400.00 = 800.00					
	--- LS Contract, 1 @ \$2,700.00 = 2,700.00					
	--- LS Contract, 1 @ \$350.00 = 350.00					
	--- LS Contract, 1 @ \$400.00 = 400.00					
	--- LS Contract, 4 @ \$650.00 = 2,600.00					
	--- LS Contract, 1 @ \$8,000.00 = 8,000.00					
	--- LS Contract, 1 @ \$1,500.00 = 1,500.00					
	--- LS Contract, 4 @ \$400.00 = 1,600.00					
	--- LS Concrete, 1 @ \$3,500.00 = 3,500.00					
	--- LS Contract, 8 @ \$400.00 = 3,200.00					
	--- LS Contract, 7.25 @ \$400.00 = 2,900.00					
	--- LS Contract, 12 @ \$400.00 = 4,800.00					
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
13,724.96		0.00	0.00	226,685.00	303,403.05	\$543,813.01
Phone #		E-mail		Page 2		
864.224.0904		info@moatsconstruction.com				



Moats Construction

1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904
864.964.9754

Statement

Date
7/2/2024

To:
Wesley Edwards 2900 N. Main St. Anderson, SC 29621 C/O Whataburger

		Amount Due	Amount Enc.
		\$543,813.01	
Date	Transaction	Amount	Balance
07/02/2024	INV #FC 107. Due 07/02/2024. Finance Charge --- Fin Chg \$13,724.96 --- Invoice #4600537 for 54,702.00 on 10/24/2023 --- Invoice #4600545 for 970.00 on 12/19/2023 --- Invoice #4600544 for 711.05 on 02/09/2024 --- Invoice #4600547 for 31,100.00 on 02/09/2024 --- Invoice #4600542 for 91,370.00 on 02/16/2024 --- Invoice #4600546 for 124,550.00 on 03/01/2024 --- Invoice #4600549 for 226,685.00 on 04/03/2024 <		

Business Entities Online

File, Search, and Retrieve Documents Electronically

APB PARTNERSHIP, LLC

Corporate Information

Entity Id: 00538341

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 10/10/2014

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: WESLEY W. EDWARDS

Address: 2902 NORTH MAIN STREET
ANDERSON, South Carolina 29621

Official Documents On File

Filing Type	Filing Date
Organization	10/10/2014



Add a Caption

Wednesday • Jul 3, 2024 • 6:36 PM [Adjust](#)

July 3 notice post and serve mech liens-4

Apple iPhone 14 Pro Max HEIF

Main Camera — 24 mm *f*1.78
12 MP • 3024 × 4032 • 1.8 MB

ISO 80 | 25 mm | 0 ev | *f*1.78 | 1/3597 s

[Add a location...](#)

Saved from Mail >



Add a Caption

Wednesday • Jul 3, 2024 • 6:52 PM Adjust

 July 3 notice post and serve mech liens-11

Apple iPhone 14 Pro Max HEIF

Telephoto Camera — 77 mm f2.8

12 MP • 3024 × 4032 • 707 KB

ISO 32 | 404 mm | 0 ev | f2.8 | 1/216 s

Add a location...

 Saved from Mail >





Add a Caption

Wednesday • Jul 3, 2024 • 6:50 PM Adjust

July 3 notice post and serve mech liens-8

Apple iPhone 14 Pro Max HEIF

Telephoto Camera — 77 mm f2.8
12 MP • 3024 × 4032 • 1.2 MB

ISO 32 | 109 mm | 0 ev | f2.8 | 1/567 s

Add a location...

Saved from Mail >



ANDERSON COUNTY SHERIFF'S OFFICE

Affidavit of Service or Non - Service

Plaintiff: MOATS CONSTRUCTION INCDocument Number: 030004475

vs.

Defendant: APB PARTNERSHIP LLC

Personally appeared before me JOSH SCOTT, who being duly sworn, says
That he/she served the;

☐ Cross Complaint☐ Summons☐ Summons & Complaint☐ Complaint☐ Motion☐ Answer☐ Petition & Summons☐ Notice of Hearing☐ Subpoena☐ Notice of Mechanic's Lien☐ Order & Rule to Show Cause☐ Writ of Assistance☐ Order of Default Judgment☒ Mechanic's Lien

in this action on the defendant APB Partnership LLC/Registered Agent Wesley W. Edwards

☒ By delivering to him personally at: 2902 N MAIN ST ANDERSON SC 500 Canebrake Dr.

☐ By delivering to _____ a person of discretion residing at the residence of the defendant and being a said residence at the time of service.

☐ By delivering to _____ personally, the _____ of the defendant corporation; and leaving with him/her copies of the same at: _____

☐ Non - Service: _____

at: 1209 (Circle One) am on the 15th day of July, 2024
and the deponent is not a party to this action, and has no interest therein or connection therewith.

[Signature]
Deputy Sheriff / Process Server Anderson County

Attempts	Date	Time	Initials

Sworn to and subscribed to before me

this 15 day of July, 20 24

[Signature]
Notary Public for South Carolina

My Commission Expires: 10/26/21

Affidavit of Service or Non - Service

Revised 5-21-18

R-000245



ANDERSON COUNTY SHERIFF'S OFFICE

Affidavit of Service or Non - Service

Plaintiff: MOATS CONSTRUCTION INC
vs.

Document Number: 030004475

Defendant: UNITED COMMUNITY

Personally appeared before me JOSH SCOTT, who being duly sworn, says
That he/she served the;

- ☐ Cross Complaint
- ☐ Summons
- ☐ Summons & Complaint
- ☐ Complaint
- ☐ Motion
- ☐ Answer
- ☐ Petition & Summons
- ☐ Notice of Hearing

- ☐ Subpoena
- ☐ Notice of Mechanic's Lien
- ☐ Order & Rule to Show Cause
- ☐ Writ of Assistance
- ☐ Order of Default Judgment
- ☒ Mechanic's Lien

in this action on the defendant UNITED COMMUNITY

- ☐ By delivering to him/her personally at: 815 N MAIN ST ANDERSON SC
- ☐ By delivering to _____ a person of discretion residing at the residence of the defendant and being a said residence at the time of service.
- ☒ By delivering to Sharon Powers personally, the manager of the defendant corporation; and leaving with him/her copies of the same at: 815 N. Main St. Anderson, SC
- ☐ Non - Service: _____

at: 1234 (Circle One) pm on the 15th day of July, 2024
and the deponent is not a party to this action, and has no interest therein or connection therewith.

[Signature]
Deputy Sheriff / Process Server Anderson County

Sworn to and subscribed to before me

this 15 day of July, 20 24

[Signature]
Notary Public for South Carolina

My Commission Expires: 10/26/31

Affidavit of Service or Non - Service

Revised 5-21-18

R-000246



ANDERSON COUNTY SHERIFF'S OFFICE

Affidavit of Service or Non - Service

Plaintiff: MOATS CONSTRUCTION INC

vs.

Defendant: WESLEY EDWARDS

Document Number: 030004475

Personally appeared before me Josh Scott, who being duly sworn, says
That he/she served the;

- ☐ Cross Complaint
- ☐ Summons
- ☐ Summons & Complaint
- ☐ Complaint
- ☐ Motion
- ☐ Answer
- ☐ Petition & Summons
- ☐ Notice of Hearing

- ☐ Subpoena
- ☐ Notice of Mechanic's Lien
- ☐ Order & Rule to Show Cause
- ☐ Writ of Assistance
- ☐ Order of Default Judgment
- ☒ Mechanic's Lien

in this action on the defendant WESLEY EDWARDS

- ☒ By delivering to him personally at: 2902 N MAIN ST ANDERSON SC 500 Canebrake Dr
- ☐ By delivering to _____ a person of discretion residing at the residence of the defendant and being a said residence at the time of service.
- ☐ By delivering to _____ personally, the _____ of the defendant corporation; and leaving with him/her copies of the same at: _____
- ☐ Non - Service: _____

at: 1209 (Circle One) pm on the 15th day of July, 2024
and the deponent is not a party to this action, and has no interest therein or connection therewith.

Josh Scott
Deputy Sheriff / Process Server Anderson County

Attempts	Date	Time	Initials
<u>1</u>	<u>7/15/24</u>	<u>1156AM</u>	<u>JRS</u>

Sworn to and subscribed to before me

music store
this 15 day of July, 2024

Sh. Bann
Notary Public for South Carolina

My Commission Expires: 10/26/21

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

**MOATS CONSTRUCTION, INC. and THE
GREEN MAN, LLC,**

C/A No. 2024-CP-04-02229

Plaintiffs,

v.

**REPLY TO PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO
MOTION TO DISMISS**

**APB PARTNERSHIP, LLC, WESLEY
EDWARDS, 2916 N. MAIN, LLC, W.H.
BASS, INC., WHATABURGER
RESTAURANTS, LLC, and UNITED
COMMUNITY BANK,**

Defendants.

TO THE PLAINTIFFS ABOVE NAMED:

COMES NOW, Defendants **APB PARTNERSHIP, LLC, WESLEY EDWARDS, 2916 N. MAIN, LLC** (collectively the "APB Defendants"), by and through their undersigned attorney, and for their Reply to Plaintiffs' Memorandum in Opposition to Motion to Dismiss assert the following:

Even if Plaintiffs' assertions are taken as true, which are admitted only for the purpose of this Reply and for no other purpose (as they are generally denied), in his Affidavit, Mr. Moats essentially argues that Moats still had traffic control devices (i.e., orange road cones) on the job site after April 3, 2024, and that Moats did incidental work to remove the cones and some materials from the job site on April 29, 2024 which extended the time within which it had to file its Mechanic's Lien. However, incidental work extends the time for a lien only when performed to complete the scope of work

(which this clearly was not) or at the behest of the owner or General Contractor. Removing easily moveable traffic cones, even if they do belong to Moats (which is disputed because WH Bass purchased some cones for the job site and the asphalt paver also brought some cones), are not to complete the work and Moats does not even allege that this was done at the behest of the owner or GC. Additionally, the work must be in good faith and not merely to extend the lien.

In *Wood v. Hardy*, 110 S.E.2d 157, 235 S.C. 131 (S.C. 1959), the South Carolina Supreme Court held:

The only requirement of the law is that the account be filed within ninety (90) days after he ceases to labor on or furnish labor or materials for such building or structure.'

In 57 C.J.S. Mechanics' Liens § 125, at page 632, it is said:

'* * * The statute runs from the date of the last item, even though the doing of the last item of work is somewhat delayed, provided the delay is not for the purpose of extending the period for giving notice. * * *'

In the case of *Breeding v. Melson*, 4 W.W.Harr. 9, 34 Del. 9, 143 A. 23, 25, 60 A.L.R. 1252, it appeared that certain labor and material were furnished by the plaintiff from March, 1921, to October, 1921, after which time nothing further was furnished by him until April, 1922, when labor and material of the value of \$3.40 were furnished. The record discloses that the building constructed was a moving picture theater and was temporarily opened in September, 1921, the windows being closed with metal, and that the defendant waited until April, 1922, for the plaintiff to get the necessary material for him to complete the building as he had contracted to do. **The Court held that in order to extend the time for filing of a mechanic's lien, the work performed or materials furnished must be required by the contract, and what is done must be done in good faith for the purpose of fully performing the obligation of the contract, and not for the mere purpose of extending the time for filing the lien.** The Court said, in upholding the validity of the filing of the lien within 30 days after the expiration of 90 days from the completion of the building, pursuant to statute, that the lien was valid. We quote from the Opinion the following:

* * * It is quite true that very little material was supplied by the plaintiff, and that the value of the same was insignificant, but that fact cannot have any bearing on his status as a contractor, as the statute does not specify that any particular amount of labor or material shall be furnished.'

In District Heights Apartments, Section D-E [v. Noland Company, Inc.](#), 202 Md. 43, 95 A.2d 90, 94, 39 A.L.R.2d 387, it was said:

* * * But where a claimant, after a contract is substantially completed, does additional work or furnishes additional material which is necessary for the proper performance of his contract, and which is done in good faith at the request of the owner or for the purpose of fully completing the contract, and not merely as a gratuity or act of friendly accommodation, the period for filing the lien will run from the doing of such work or the furnishing of such materials, irrespective of the value thereof. [Harrison v. Stouffer](#), 193 Md. 46, 65 A.2d 895. * * *

In [Butler Contracting v. Court Street](#), 631 S.E.2d 252, 369 S.C. 121 (S.C. 2006),

the South Carolina Supreme Court states:

The position adopted in [Wood](#), as reflected in foreign precedent cited in that 1959 opinion, has not changed substantially in more recent cases from other courts. "[W]hen an unreasonable period of time has elapsed since substantial completion of the work, the performance of trivial services or the furnishing of trivial materials generally will not extend the time for filing the certificate past the date of substantial completion.... If, however, subsequent to the date of substantial completion, trivial services or materials are provided at the request of the owner, rather than at the initiative of the contractor for the purpose of saving a lien, the furnishing of such work or material will extend the commencement of the period for filing a certificate of mechanic's lien." [F.B. Mattson Co. v. Tarte](#), 247 Conn. 234, 719 A.2d 1158, 1161 (1998) (holding that, although roofing project had been substantially completed more than a month earlier, deadline to file mechanic's lien began to run upon removal of scaffolding and roofing brackets from property at request of owner); accord [Franklin Bldg. Supply Co. v. Sumpter](#), 139 Idaho 846, 87 P.3d 955, 959-61 (2004) (deadline to file mechanic's lien began to run when builder purchased a sheet of cedar and locking door handle for house, not when certificate of occupancy was issued several weeks earlier; although dollar value of items was minimal, they were actually used in constructing and repairing the home, were reasonably necessary to complete construction

and punch list according to terms of contract, were not merely trivial or insubstantial, and purchases were not intended to extend time for filing lien); [Interstate Elec. Servs. Corp. v. Cummings Props., LLC](#), 63 Mass.App.Ct. 295, 825 N.E.2d 1059, 1063-64 (2005) (mere delay in completing contract and performance of trifling items of work have never been held under Massachusetts statute fatal to maintenance of a mechanic's lien when work was done in good faith and was necessary to a complete performance of the contract); [Security Ben. Life Ins. Corp. v. Fleming Companies](#), 21 Kan.App.2d 833, 908 P.2d 1315, 1321-22 (1995) (for purposes of mechanic's lien filing deadline, store checkout system installer last performed work on date it set up direct store delivery system and trained employees on its use; although other work was completed earlier, work performed on that date was necessary to comply with terms of contract); 53 Am.Jur.2d Mechanics' Liens § 211 (1996).

Assuming that the traffic cones belonged to Moats, it apparently forgot to remove the traffic cones and materials from the job site when it took everything else off the site. This would be akin to giving a contractor a lien time extension because he accidentally left his hammer at the jobsite. However, in this instance, Moats would have the Court believe that it reasonably took Moats some **twenty-six (26) additional days**, after pulling off the jobsite, to return and to remove easily movable cones or materials.

In reviewing Ex. 2 to Miller Affidavit (emails Moats and Miller about demobilization), Moats says (April 4 e-mail at 12:57 pm):

1. "we told everyone that if you didn't pay . . we would be demobilizing from the sight [sic], which means, as I'm sure you know, **removing all of our equipment from the project sight [sic]. Which we did.**" (showing intent to fully demobilize and remove all materials/equip).
2. He intended to remove all traffic control: "we did not want to leave an un-safe sight [sic] **as we had also removed our traffic control**"

There can be no serious argument that the incidental work done on April 29, 2024 was to a) complete construction (clearly it was not), or b) at the GC's request. In fact, Miller wrote to Moats on April 4 at 10 am: Moats has "voluntarily removed yourself from the project and are **no longer allowed on our job site.**" As such, if Moats did return to the job site on April 29, it was not good faith completion of the work, it was trespassing.

Finally, the fact that Moats was running around July 3 trying to post the lien all over the place instead of just serving the lien by normal means demonstrates that Moats knew that the time had run.

Based upon the pleadings in this case, the Affidavits attached to Defendants' Motion, and the Affidavit and exhibits filed by Moats, The APB Defendants are entitled to the cancellation of the Lien, dismissal of the Plaintiffs' cause of action for foreclosure of the Lien with prejudice, and dismissal of the APB Defendants from the above-captioned lawsuit with prejudice as no other viable cause of action can exist against them without the liens.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

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Anderson, South Carolina 29621

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ATTORNEY FOR DEFENDANTS/

**APB PARTNERSHIP, LLC, WESLEY EDWARDS,
and 2916 N. MAIN, LLC**

June 4, 2025
Anderson, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-2229

**PLAINTIFFS' MOTION TO RECONSIDER
ORDER DISCHARGING MECHANIC'S
LINES, RELEASING LIS PENDENS, AND
DISMISSING PLAINTIFFS' CAUSES OF
ACTION FOR LIEN FORECLOSURE**

Plaintiff Moats Construction, Inc. moves pursuant to Rules 59(e), SCRCP, and the Court's inherent authority, for the Court to reconsider and vacate its Order Discharging Mechanic's Liens, Releasing Lis Pendens, and Dismissing Plaintiff's Causes of Action for Lien Foreclosure (the "Order") as to Moats Construction, Inc.'s filed mechanic's liens and foreclosure cause of action.

The Court erred in granting summary judgment at this stage of the litigation when there are disputed issues of material fact and discovery has not started. There are genuine issues of material fact as to Moats Construction's last date of furnishing labor or materials on the project and this precludes a grant of summary judgment. For this reason, the Court's Order discharging Moats Construction's mechanic's liens and granting summary judgment on its foreclosure cause of action should be vacated.

LEGAL STANDARDS

Rule 59 – Motion to Alter or Amend

A motion made pursuant to Rule 59(e), SCRCP, is an appropriate “vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. S.C. DOT*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Such a motion is appropriate where a party “believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24, 602 S.E.2d at 780. A motion for reconsideration is appropriate to “prevent manifest injustice” and permit a “court to correct its own errors, ‘sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.’” *Pacific Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

Rule 56 - Summary Judgment

Summary judgment is only appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “A fact is deemed ‘material’ if proof of its existence or nonexistence would affect the disposition of the case under the applicable law.” *Knight v. Am. Nat. Fire Ins. Co.*, 831 F.Supp. 1284, 1285 (D.S.C. 1993) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). “An issue of material fact is ‘genuine’ if the evidence offered is such that a reasonable jury might return a verdict for the non-movant.” *Id.*

“Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.” *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002) (citing *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). When deciding whether a genuine issue

of material fact exists, the court must view “the evidence and all inferences which can be reasonably drawn therefrom . . . in the light most favorable to the nonmoving party.” *Id.* at 361-62, 563 S.E.2d at 333 (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)).

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Id.* at 363, 563 S.E.2d at 334 (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000)). “Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.” *Id.* at 362, 563 S.E.2d at 333 (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)). “Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Id.* at 363, 563 S.E.2d at 334 (citing *Baughman*, 306 S.C. 101, 410 S.E.2d 537). “This means . . . that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Id.*

ARGUMENT

I. The Last Date of Work is a Disputed Issue of Material Fact.

Moats Construction’s last date of work is a disputed issue of material fact that precludes summary judgment at this stage of the litigation before any discovery has been completed. The APB Defendants assert that Moats Construction’s last date of work was April 3, 2024. Moats Construction contends that it continued to furnish labor and materials until April 29, 2024. If the APB Defendants are correct, then Moats Construction’s mechanic’s liens were not foreclosed within six months; however, if Moats Construction is correct, then the liens were timely foreclosed.

On summary judgment, the facts must be viewed in a light most favorable to the non-moving party. Here, the Court relies heavily on Russell Moats’ April 4, 2024 email stating that

Moats Construction demobilized from the work site on the previous day. However, the final date of furnishing work and demobilization is a disputed fact issue as shown by Russell Moats' sworn affidavit and accompanying pictures reflecting Moats Construction's traffic control devices still functioning for their intended purpose at least as late as April 12, 2024, and that Moats Construction did not fully demobilize until April 29, 2024. (Moats Aff. ¶¶ 12-14). If the last date of work is the final day of demobilization on April 29, 2024, then Moats Construction's liens were timely. These facts remain in dispute and cannot be resolved on summary judgment.

The Court also concluded that it would be unreasonable for Moats Construction to have waited to collect its traffic control devices until April 29, 2024, based on an April 4, 2024 email about demobilization. (Order ¶ 5). However, Russell Moats's sworn affidavit shows that (1) the traffic control devices were still in use at least through April 12, 2024 based on photographs, (Moats Aff. ¶ 12 & Exhibit 7 (photograph)); (2) Russell Moats continued to interface with Anderson County officials at least through April 12 or 13, 2024, (Moats Aff. ¶13); and (3) demobilization was completed on April 29, 2024, (Moats Aff. ¶ 14). Based on these facts, viewed in a light most favorable to Moats Construction, April 29, 2024, was the last date of work and was not an unreasonable date to finish demobilization. At a minimum, it is a disputed issue of fact for a fact finder to decide whether the work done on April 29, 2024 was labor furnished as part of the contract, or whether there was an unreasonable delay between April 12, 13, 2024 and April 29, 2024.

The Court also errs in concluding that demobilization on April 29, 2024, was not work done within Moats Construction's contract and that it had to be done at the owner's request. (Order ¶ 6). The work performed by Moats Construction on April 29, 2024, qualified as "furnish[ing] labor" under the mechanic's lien statute. S.C. Code Ann. § 29-5-90. Mobilization and

demobilization are work that are part of every construction contract. (Moats Aff ¶ 8). It takes labor to demobilize. The South Carolina Supreme Court has previously held that the mechanic's lien statute does not specify any amount of materials or labor that must be "furnished" under the statute to begin the statutory 90-day period. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 130, 631 S.E.2d 252, 257 (2006) ("[T]he statute does not specify any particular amount of materials or labor which must be furnished") (citing *Wood v. Hardy*, 235 S.C. 131, 133-136, 110 S.E.2d 157, 157-59 (1959)).

Further, the in *Butler Contracting, Inc. v. Court Street, LLC*, the South Carolina Supreme Court stated that:

[W]here a claimant, after a contract is substantially completed, does additional work or furnishes additional material which is necessary for the proper performance of his contract, and which is done in good faith at the request of the owner or for the purpose of fully completing the contract, and not merely as a gratuity or act of friendly accommodation, the period for filing the lien will run from the doing of such work or the furnishing of such materials, irrespective of the value thereof.

Id. at 130-31, 631 S.E.2d at 257-58. Work performed that is "necessary for the proper performance of his contract" and done in good faith at the request of the owner or "for the purpose of fully complete the contract" will start the lien period. *Id.* Here, Moats Construction's demobilization was part of the scope of its contract and therefore its completion on April 29, 2024 was within the scope of work and there did not need to be a separate request from the owner for Moats Construction to return to the property like there was in *Butler* when the owner requested the special delivery of the extra box of tile. The Court erred in ruling otherwise.

CONCLUSION

For these reasons, Plaintiffs request the Court to vacate its order granting summary judgment to the APB Defendants on Moats Construction's foreclosure causes of action and vacate

the discharge of Moats Constructions' mechanic's liens and allow the parties to move forward with discovery on these issues.

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

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Attorneys for Plaintiffs

June 27, 2025

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-04-02229

**PLAINTIFFS' SUPPLEMENT TO
MOTION TO RECONSIDER ORDER
DISCHARGING MECHANIC'S LINES,
RELEASING LIS PENDENS, AND
DISMISSING PLAINTIFFS' CAUSES OF
ACTION FOR LIEN FORECLOSURE**

Plaintiff Moats Construction, Inc. hereby provides this Supplement to its Motion to Reconsider the Court's Order Discharging Mechanic's Liens, Releasing Lis Pendens, and Dismissing Plaintiff's Causes of Action for Lien Foreclosure (the "Order") as to Moats Construction, Inc.'s filed mechanic's liens and foreclosure cause of action.

As additionally reflecting disputed issues of material fact as to the last date of work and Moats Construction's role as the demolition permit holder through July 1, 2024, Plaintiff relies on the attached document from the City of Anderson reflecting a demolition inspection of the project on July 1, 2024, for Russell Moats as the permit holder for this project. **Exhibit A.** This document was provided to the Court at the hearing on this motion.

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

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David L. Paavola (SC Bar No. 100714)

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Attorneys for Plaintiffs

June 27, 2025

Columbia, South Carolina

EXHIBIT A

From: City of Anderson, SC noreply@opengov.com
Subject: Inspection completed for 2902 D N MAIN ST
Date: Jul 1, 2024 at 7:55:55 AM
To: Russell Moats info@moatsconstruction.com



City of Anderson, SC

An inspection was conducted:

Where: 2902 D N MAIN ST

When: July 1, 2024

Number: DEMO-24-1

[View Inspection](#)



◀ [Back to overview \(/track/74161/step/208148/inspection\)](/track/74161/step/208148/inspection)

Inspection Report

Inspection: Demolition Inspection

Inspector: John Chambers

Inspection Date: Jul 1, 2024 at 12:00am

Record: Demolition Permit (Commercial Renovation) #DEMO-24-1
(</track/74161/step/208148/inspection>)

Location: 2902 D N MAIN ST, ANDERSON, SC 29621

Applicant: Russell Moats

Final

Overall Result: Pass

City of Anderson, SC

Your Profile

Your Records (</dashboard/records>)

Resources

[Search for Records \(/search\)](#)

[Claim a Record \(/claimRecord\)](#)

[Employee Login \(https://andersonsc.workflow.opengov.com\)](https://andersonsc.workflow.opengov.com)

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July 16, 2025

E-Filing SC Courts

The Honorable R. Lawton McIntosh
Circuit Court Chief Admin Judge
P.O. Box 8002
Anderson, SC 29622

The Honorable C. Reena Thomason
Clerk of Court
100 South Main Street
Anderson, SC 29624

**RE: Moats Construction, Inc. and The Green Man, LLC v. APB Partnership, LLC, et al
C/A No.: 2024-CP-04-02229**

Dear Judge McIntosh and Ms. Thomason:

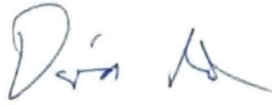
We represent Plaintiffs Moats Construction, Inc. and The Green Man, LLC in the above-referenced matter, which is currently pending in Anderson County Circuit Court.

It has come to our attention that the Lis Pendens filed in this matter was prematurely cancelled on June 16, 2025, following an Order issued by the Court discharging Plaintiff's Mechanic's Liens, releasing Lis Pendens, and Dismissing Plaintiffs' Causes of Action for Lien Foreclosure. Plaintiff is still within the timeframe to file its Notice of Appeal should it choose to do so.

Accordingly, we respectfully request that the Lis Pendens be reinstated and restored until after the appeal deadline expires on August 4, 2025, or if an appeal is filed until the conclusion of the appeal. This is to preserve the status quo and protect our clients' interest pending the outcome of any potential appeal.

Thank you for your time and consideration.

With kind regards,

A handwritten signature in blue ink, appearing to read 'D. Paavola', with a stylized flourish at the end.

David L. Paavola

cc: Daniel L. Draisen, Esq.
Dana W. Lang, Esq.
Paul H. Hoefer, Esq.
Christopher B. Major, Esq.
Clara E. Weston, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-2229

**PLAINTIFF'S MEMORANDUM OPPOSING
PREMATURE RELEASE OF LIS PENDENS**

Plaintiff Moats Construction, Inc. ("Moats") files this Memorandum Opposing the Premature Release of its Lis Pendens during its appeal of Court's Order Discharging Mechanic's Liens, Releasing Lis Pendens, and Dismissing Plaintiffs' Causes of Action for Lien Foreclosure, (the "Order"), filed June 17, 2025. On the same day as entry of the Court's Order, June 17, 2025, the Lis Pendens was also dismissed. This dismissal was entered before the 10-day period in Rule 59(e), SCRCF, to file a motion to reconsider and before the thirty-day period within which to file a notice of appeal.

On June 27, 2025, Moats filed a Motion to Reconsider, which the Court denied on July 3, 2025. Moats had thirty days after entry of the Court's order denying its motion to reconsider to file its Notice of Appeal. Rule 203(b)(1), SCACR. Prior to the end of this thirty-day period, Moats became aware that its Lis Pendens had been cancelled and Moats brought this matter to the Court's attention by letter on July 16, 2025. On August 1, 2025, Moats filed its Notice of Appeal of the Court's Order discharging its mechanic's lien on property owned by APB Partnership, LLC.

The Order is immediately appealable because it affects a substantial right in that it dismisses and discharges Moats's statutory right to a mechanic's lien and strikes a portion of Moats's pleading and legal claims to foreclose the mechanic's lien. S.C. Code Ann. § 14-3-330(2) (order affecting substantial rights immediately appealable); *see Cobb v. Maccaro*, 310 S.C. 303, 306, 423 S.E.2d 156, 157 (Ct. App. 1992) (holding that "a motion to dissolve a mechanic's lien is governed by the law relating to a summary judgment").

The general rule is that the filing of the notice of appeal automatically stays the matters decided and relief ordered in the appealed order:

As a general rule, the service of a notice of appeal in a civil matter acts to *automatically stay matters decided* in the order, judgment, decree or decision on appeal, *and to automatically stay the relief ordered* in the appealed order, judgment, or decree or decision.

Rule 241(a), SCACR (emphasis added). Limited exceptions to the general rule are "found in statutes, court rules, and case law." Rule 241(b), SCACR. Some exceptions are listed in Rule 241(b), SCACR, but none are applicable to this situation—money judgments; judgments directing the delivery of documents or personal property; judgments directing execution of conveyances; judgments directing sale or delivery of possession of real property, etc.

There is no exception to the automatic stay in the Mechanic's Lien Statute, S.C. Code Ann. § 29-5-10, et seq., and no provision requiring an appeal bond. Accordingly, the general rule applies to this situation and the matters decided and the relief ordered in the appealed Order are stayed pending the outcome of the appeal.

Pursuant to the Mechanic's Lien Statute, APB Partnership, LLC, and Wesley Edwards always have the option to post a bond to release the mechanic's lien from the property should they desire to sell the property during the pendency of the appeal. S.C. Code Ann. § 29-5-110.

However, if the mechanic's lien and lis pendens are permitted to be released before the appeal is concluded and then APB Partnership, LLC sells its property, Moats will have lost a significant statutory right to foreclose on the property if it is successful on appeal.

For these reasons, Moats requests that the Court order the Lis Pendens reinstated and the Mechanic's Lien to stay in place during the pendency of the appeal of the Order.

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

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Attorneys for Plaintiffs

August 26, 2025
Columbia, South Carolina

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF ANDERSON

4 Moats Construction, Inc. and
5 The Green Man, LLC,

6 Plaintiffs,

7 vs.

Transcript of Record
2024-CP-04-02229

8 APB Partnership, LLC, Wesley Edwards,
9 2916 N. Main, LLC, W.H. Bass, Inc.,
Whataburger Restaurants, LLC, and United Community
Bank,

10 Defendant.

11
12
13 June 5, 2025
14 Anderson, South Carolina

15 B E F O R E:

16 The HONORABLE R. LAWTON MCINTOSH

17 A P P E A R A N C E S:

18 Daniel Draisen, Representing APB Partnership, LLC

19 David Paavola, Representing Moats Construction, Inc.
20 and The Green Man, LLC

21 C. Elizabeth Weston, United Community Bank

22
23
24
25 SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

R-000270

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1 MR. DRAISEN: May I approach, Your Honor?

2 THE COURT: Did you show it to

3 Mr. Paavola?

4 MR. DRAISEN: They all got copies. This
5 is all filed too, but I just wanted you to have a
6 copy.

7 THE COURT: Okay. This is your motion to
8 dismiss.

9 MR. DRAISEN: Yes, Your Honor.

10 THE COURT: All right.

11 MR. DRAISEN: May it please the Court?

12 Judge, I handed up to the Court a copy of a
13 couple of things that are included in the filings in
14 this matter. Essentially, we're here today because I
15 represent APB Partnership, Wesley Edwards, and 2916 N.
16 Main Street. This is the property, Judge, you may be
17 familiar where my family had their music store for a
18 lot of years and they've now built a Whataburger on
19 the corner of Concord and Main Street here in
20 Anderson. That's this property that's at issue.

21 My client, APB Partnership, entered into
22 a ground lease with Whataburger for development
23 and ultimately to run their restaurant on the
24 property. Whataburger had a company called
25 W.H. Bass that they entered into a contract with

1 to construct the building.

2 Prior to constructing, Whataburger -- in
3 negotiating the ground lease, Whataburger wanted
4 access from not only Main Street and Concord, they
5 wanted access on the side road for the property
6 that goes behind. In order to accommodate that, a
7 portion of the rear of the APB building, which
8 used to be the old A&P, had to be removed. They
9 had to make it wider back there, create an
10 alleyway behind that property so people could
11 access the side where you can come in and out of
12 the property. APB Partnership agreed as part of
13 the contract to do the demolition of a portion of
14 the rear wall and reconstruct the rear wall to the
15 alleyway to be created.

16 As part of that, they hired a contractor who
17 then subcontracted, Moats Construction, to assist with
18 the demolition phase of that part of the building.
19 That work is done, completed, and Moats is paid in
20 full, and that's included in the affidavit. It's
21 91-something thousand dollars for that scope of work.

22 While Moats was there, he was approached
23 by W.H. Bass about working with them under a
24 subcontract agreement to do some site prepare work
25 for the Whataburger. My clients had nothing to do

1 with any work that hired from the scope of the
2 work that had to be done for the Whataburger
3 project and W.H. Bass, their subcontract agreement
4 and other things.

5 Mr. Moats is Jerry Moats's son. He's
6 been in the construction business his whole life.
7 He does big projects. He knows. But, yet, he's
8 here in this case and he's essentially saying,
9 Well, I thought I was working for APB Partnership
10 and Mr. Edwards, and Whataburger and W.H. Bass and
11 all these people all knew that I was doing the
12 job. Didn't bother to get a contract, but said
13 who he was working for.

14 So it is -- part of the reason he's filed
15 this lien against -- what he wants to do is, he
16 wants to collect on the disagreement he has with
17 W.H. Bass about payment.

18 My folks have nothing to do with it, but
19 of course he wants to lien our property and put
20 pressure on us to somehow try to resolve the issue
21 between he and W.H. Bass. And he's alleging some
22 verbal -- even though there's a written
23 subcontract agreement that exists between the
24 parties and work pursuant to it, which is attached
25 to their memo, that somehow, you know, we are a

1 party to this agreement between them and we are
2 liable to the extent of a mechanics lien for
3 improvements. That's the underlying part of this.

4 Mr. Moats with W.H. Bass, and this is in the
5 record, Mr. Moats sent an email to W.H. Bass which
6 says, *If you don't pay me by April the 2nd what you*
7 *owe me, I'm pulling off the job.* And I provided to
8 you those emails. Right here. The email from
9 Mr. Moats is dated -- there's a conversation April 4th
10 where W.H. Bass checks at 10:08 in the morning and
11 says, "Good morning, we noticed on the cameras that
12 you came to the site late last night and stayed until
13 around 9:30. This is after your confirmation via
14 email at 2:42 yesterday that you would not be
15 continuing work on the job site."

16 And he says, "At this point you have
17 voluntarily removed yourself from the project and
18 are no longer allowed on our job site."

19 Mr. Moats responds at 12:57 p.m. and says,
20 "Well, let's see. We told everyone that if you didn't
21 pay the outstanding bill or give assurances and proof
22 of payment by 5:00 p.m. yesterday, we would be
23 demobilizing from the site which means, as I'm sure
24 you know, removing all of your equipment from the
25 project site which we did. We did not want to leave

1 an unsafe site, and also removed our traffic control
2 and there's regular foot traffic across the site at
3 all hours."

4 This is an email from April the 4th, and why
5 is that important, because this demobilization
6 occurred on April the 3rd based on his own email.
7 That's the night that he removed everything.

8 He then later claims that he left traffic
9 cones, those orange reflective cones, and there's
10 pictures in their memo, that he left some traffic
11 cones on the property from April the 3rd until he
12 finally removed them on April the 29th.

13 Twenty-six days later. And is arguing that having
14 left traffic cones on the property, his time to
15 file his mechanic's lien is extended until April
16 the 29th. Now, that's critical to this case
17 because his time ran -- if you calculate it, his
18 time to file the initial lien from April the 3rd
19 to July 3rd when he filed his lien is 91 days.

20 The statute says you have to file and serve your
21 lien within 90 days. So if April the 3rd is, in
22 fact, the date that he demobilized significantly
23 and pulled off the job site, he's a day late in
24 even filing this lien, forget about serving it.

25 Let's assume argumentatively that he

1 filed it timely, he still had six month to
2 foreclose the lien from the last day he did work.
3 That's April the 3rd. They filed their
4 foreclosure --

5 THE COURT: It's six months from the last
6 day he did work or six months from the date of
7 filing the lien?

8 MR. DRAISEN: Six months from the last
9 day he did work.

10 THE COURT: It is?

11 MR. DRAISEN: I believe so. It's six
12 months from the last day he did work. That's when
13 it runs from.

14 THE COURT: Okay.

15 MR. DRAISEN: It runs from the last day
16 of service.

17 THE COURT: I'm just -- I know it is for
18 filing the lien, I'm just curious about the
19 foreclosure.

20 MR. DRAISEN: We had that in a memo, by
21 the way, Judge. Both those statutes are cited.

22 THE COURT: All right.

23 MR. DRAISEN: Just they're there for you.

24 THE COURT: Okay.

25 MR. DRAISEN: So if you calculated it --

1 and I think that I initially -- you know,
2 normally, the way I do it is, I actually use 180
3 days, although the statute says six months,
4 because it's kind of crazy. Because the 90-day
5 statute says it's 90 days.

6 THE COURT: All right. Let's get back to
7 it.

8 MR. DRAISEN: Anyway -- you know, so,
9 anyway, if you get to 10/28, if you use six
10 months, April the 3rd to October the 3rd is six
11 months, but foreclosure lawsuit was filed on
12 October 28th, so that's 25 days later.

13 So even if the lien was timely filed and
14 perfected, if I gave them the fact that the
15 lien -- and I don't want to agree with that, but,
16 even if it was, they failed to foreclose the lien
17 timely by at least 25 days if April the 3rd is the
18 date.

19 Now, all this stuff is important because
20 Mr. Moats provided an affidavit attached to his
21 memorandum in opposition. And it's interesting to
22 me that his statements are contrary -- some of the
23 statements in his affidavit contradict his own
24 email a little bit. And what he says is, "Most
25 construction partially demobilized on April the

1 3rd, 2024, because of non-payment. However,
2 because the site was still under construction,
3 Moats did not remove all traffic control devices
4 and materials. Moats construction was working
5 onsite the evening of April the 3rd, 2024, same
6 date, to complete certain scopes of work and
7 remove related equipment."

8 And then he says, "As can be seen in the
9 attached April 12th photograph, Moats Construction
10 traffic control devices were still in use after
11 April 3rd."

12 And then he says on April 13th, "Moats
13 continued to demobilize and return to the project
14 to retrieve some of its traffic control devices,
15 but did not fully demobilize."

16 And then says, "Moats finished fully
17 demobilizing on April 29, 2024."

18 So Mr. Moats's affidavit says, We're out
19 of there on April the 3rd. We went back on the
20 12th and took some of our cones down, and then go
21 back on the 29th to take the rest of our cones
22 down, so we get to extend our mechanic's lien time
23 out until April the 29th.

24 Well, Judge, the problem with that is, if
25 you'll look at the brief, and this is a brief

1 reply -- the South Carolina Supreme Court has
2 already dealt with this two major times. In *Wood*
3 *vs. Hardy*, which is a 1959 case, the Supreme Court
4 said about the mechanic's liens, the Court held
5 that, "In order to extend the time for filing a
6 mechanic's lien, the work performed and materials
7 furnished must be required by the contract, and
8 what is done must be done in good faith for the
9 purpose of fully performing the obligation of the
10 contract and not for the mere purpose of extending
11 the time for filing the lien." That was in '59.

12 In 2006, in *Butler Contracting vs. Court*
13 *Street*, the Supreme Court further explained it and
14 said, "As the position about to be awarded has not
15 been substantially changed, when an unreasonable
16 period of time has elapsed and substantial
17 completion of the work, a performance of trivial
18 services or the furnishing of trivial materials
19 generally would not extend the time for filing a
20 certificate past the date of substantial
21 completion."

22 "If however, subsequent to the date of
23 substantial completion, trivial services or
24 materials are provided at the request of the
25 owner, rather than the initiative of the

1 contractor, the person asserting the lien, the
2 furnishing of such work and material would extend
3 the commencement period for filing a certificate
4 of mechanic's liens."

5 The emails that I gave you show that
6 W.H. Bass told him on April the 4th, *Don't come*
7 *back to my job.* Okay? So there is no reason
8 after April the 4th for Mr. Moats to go back and
9 do anything at the request of the owner, at all,
10 period. And he wasn't there to finish the scope
11 of work. He pulled off the job and was just there
12 to pull his cones up. So it wasn't completion of
13 the job or at the request of the owner.

14 So our argument is, Judge, that these are
15 not timely filed and he can't extend the time to
16 file these mechanic's liens and to foreclose them
17 because he left traffic cones there.

18 Incidentally, there's also a lien filed
19 with the same party, Mr. Moats, for Green Man.
20 And we moved to get rid of the Green Man
21 mechanic's liens as well. And I believe, if I'm
22 not mistaken, that you don't concede that the
23 Green Man liens are not timely filed?

24 MR. DRAISEN: I'm happy to go now to The
25 Green Man issue. I was given the information last

1 week that Green Man provides portable toilets.

2 Containers --

3 THE COURT: No, we're not going to Green
4 Man right now. I'm not smart enough to follow the
5 suit.

6 MR. DRAISEN: No, no. Judge, it's part
7 of the same suit. There are two sets of liens.
8 It's part of the same motion.

9 THE COURT: All right.

10 MR. DRAISEN: The reason I wanted to
11 point it out to the Court is that, if they are
12 conceding The Green Man liens were not filed
13 timely, they're still saying the date they pulled
14 off was April the 3rd, but there were no porta
15 johns or trash containers that were on the site
16 after the April the 3rd, so they can't make the
17 argument that it got extended beyond April the
18 3rd.

19 THE COURT: All right.

20 MR. DRAISEN: You understand.

21 THE COURT: It got it.

22 MR. DRAISEN: So our position is they are
23 not timely.

24 THE COURT: All right. Mr. Paavola?

25 MR. PAAVOLA: May it please the Court,

1 Your Honor? David Paavola on behalf of Moats
2 Construction and The Green Man. On the Green Man
3 liens, I will start by saying, we will dissolve
4 those liens. The information I have shows that
5 the last container provided on the job site was
6 removed April 12th. Six month would be October
7 12th. We didn't file in six months, so I told
8 Mr. Draisen we're going to remove those liens.

9 THE COURT: So you are stipulating that
10 those were not timely?

11 MR. PAAVOLA: Yes, Your Honor. We did
12 not foreclose within the six months.

13 THE COURT: Are you seeking fees for
14 that?

15 MR. DRAISEN: I don't know yet.

16 THE COURT: All right. Go ahead,
17 Mr. Paavola.

18 MR. PAAVOLA: Thank you, Your Honor.
19 Just as a brief background, I think in a perfect
20 world every party has a contract that they are
21 willing to do the work for. Here, that didn't
22 happen. There are no written contracts signed by
23 the parties by Moats Construction for the work
24 done on the property, unfortunately.

25 Mr. Moats was engaged by Mr. Edwards. We

1 attached -- and if Your Honor would like a copy of
2 our memos with the affidavit and exhibits.

3 THE COURT: Have you submitted that
4 already?

5 MR. PAAVOLA: I have.

6 THE COURT: Okay.

7 MR. PAAVOLA: What you will see is,
8 Mr. Moats engaged Mr. Edwards for the Whataburger
9 project back in the fall of '24, and throughout
10 the project Mr. Edwards refers to it as "his
11 project." Moats Construction demolished one of
12 the APB buildings as a part of this, but at all
13 times, they believed they were working for
14 Mr. Edwards. He's not a subcontractor. There's
15 not a subcontract that exists. Even though they
16 say they're a subcontractor, I've never seen that
17 subcontract.

18 And what's important, I think,
19 throughout, you know, we're submitting bills doing
20 the work. At various times, the defendants would
21 say, *Oh, you know, submit it to Whataburger, and*
22 *Whataburger says, no, it's not me. It's somebody*
23 *else. They submit it to Edwards and he says, No,*
24 *it's not me. Whataburger needs to pay that.*

25 So whatever contract APB Partners had

1 with Whataburger or W.H. Bass, we're not privy to
2 that. All we know is we're doing work. We're not
3 getting paid for it. They're moving around who's
4 paying what. We're not a part of that process.
5 So I don't think -- it's not clear that we were
6 always doing work for some other entity. They had
7 no notice of us. Obviously, they had notice of us
8 the entire time. We have claims against them for
9 work that we were not paid for.

10 This is a motion to dismiss, so it's just
11 based on the pleadings, although, because they
12 attached affidavits and we attached affidavits,
13 it's more like a motion for summary judgement. It
14 would be in the light most favorable to the
15 non-moving party, my client, Moats Construction.

16 If you look at Mr. Moats's affidavit, you
17 will see April 3rd is the emails, and based on the
18 affidavit, they did pull up the materials and
19 equipment on April 3rd. There's no doubt. But in
20 his affidavit you will see the cones were still
21 necessary to control affidavit going on the site
22 that wasn't finished. They were still functioning
23 as they were supposed to, as intended. We
24 attached photographs from April 12th with the
25 cones still being there.

1 Mr. Moats in his affidavit says, "We went
2 back to the site April 12th or 13th, met with the
3 City." The final piece to be finished was a sewer
4 line and water line, so there's no question about
5 where the water line caps were going to go. We
6 still went back April 12th or 13th to meet with
7 the City about this issue. They were still doing
8 work.

9 And then what he says is, "April 29th,
10 finally went back," got the rest of his materials
11 and demobilized.

12 So we think that's the last day of work,
13 is April 29th. At minimum, it's a disputed fact
14 that needs to be in discovery.

15 Under the *Butler* case and the *Wood v.*
16 *Hardy* case -- and the *Wood v. Hardy* question is,
17 was there unreasonable delay? And that's sort
18 of -- the first question was, if he's out there
19 meeting with the City on the 12th or 13th, or even
20 April 3rd, he's finalizing the demobilization, is
21 that unreasonable? That's a fact question.
22 Certainly, two weeks, three weeks, it doesn't seem
23 unreasonable in the construction industry. But,
24 again, that's a question of fact.

25 And if you get beyond that *Wood v. Hardy*

1 analysis, then the *Butler Contracting* analysis is,
2 this final step, was it additional work, was it
3 necessary for performance of the contract, done in
4 good faith, or was it not done to extend the
5 liens, which is what they're claiming, wrongfully
6 went out and tried to extend the lien, we
7 obviously dispute that. That's a question of
8 fact.

9 THE COURT: Let me ask you this,
10 Mr. Draisen said there was an email where your
11 people said, *Get your stuff off and go*, or
12 somebody did. Is there anything that contradicts
13 that subsequent to that saying, *Would you please*
14 *keep your cones here until such time*, whatever?

15 MR. PAAVOLA: The contact date
16 contradicts that, and even in -- you know, what my
17 client says in the affidavit is, even after April
18 3rd, W.H. Bass and himself were still working on
19 negotiating this issue of non-payment and
20 finishing the scope of work. My client hadn't
21 been paid for work back to October, six months.
22 So, obviously, at some point we've got to say, *I*
23 *can't work anymore*, but there was still -- there
24 were ongoing. That was in their April 9th email,
25 even in there they're talking about some

1 additional stuff.

2 So that's a facts question that we're
3 saying -- we're still in the process of figuring
4 out. Can we actually finish this?

5 April 30th, obviously, people are upset.
6 That's what led to this. That's what you see in
7 the emails and that's what you get. There's an
8 additional explanation in my client's affidavit,
9 attached photographs showing what really happened
10 after that.

11 So we think it's a question of fact that
12 we should be able to do discovery on and not
13 dismiss at this time.

14 THE COURT: All right. Thank you.

15 MS. WESTON: Good morning, Your Honor.
16 My name is Elizabeth Weston. I'm here on behalf
17 of United Community Bank. Just here to listen.
18 We haven't taken a position on the motion, but we
19 do reassert our first priority on this property.

20 THE COURT: Got you.

21 Let me look through your paperwork and I'll
22 give you an order.

23 MR. DRAISEN: Thank you, Your Honor.
24 Appreciate it.

25 (The hearing was concluded.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

October 19, 2025



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

State of South Carolina
County of Anderson

Court of Common Pleas

Moats Construction, Inc.	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2024-CP-04-02229
	)	
APB Partnership, LLC	)	
	)	
<u>Defendant.</u>	)	

August 27, 2025
Anderson, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

A P P E A R A N C E S:

David Lee Paavola, Esquire
Attorney for the Plaintiff

Daniel L. Draisen, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

P R O C E E D I N G S

* * * * *

THE COURT: All right. Moats Construction.

(Parties approached.)

THE COURT: All right. Now, historically, I'm trying to remember. I dissolved the lis pendens on this property.

MR. DRAISEN: Your Honor, this arises out of a mechanics lien. What you agreed to do was you ordered that the mechanics lien was not timely. And so the result of the mechanics lien being thrown out was that the underlying foreclosure action and the -- once they got a cause of action foreclosure of the mechanics lien, and the lis pendens were then cancelled as a result.

THE COURT: Okay. So, Mr. Paavola, you think that that -- because I ruled against you, you get to keep the lien on the -- on the record; is that right?

MR. PAAVOLA: Yes, Your Honor.

THE COURT: Do you have any authority for that?

MR. PAAVOLA: Yeah, we filed a memo yesterday with the Court and what ---

THE COURT: I was in trial yesterday. I haven't read them.

1 MR. PAAVOLA: I understand. The general rule
2 is that when you file a notice of appeal, it stays
3 the matters in the judgement. And so ---

4 THE COURT: If the stay is being admitted, it
5 gets kicked off.

6 MR. PAAVOLA: It stayed -- I'm sorry?

7 THE COURT: If it stays, the action is what it
8 was. It means that the -- the lien had been
9 dissolved and it's no longer there. That would be
10 the status on appeal.

11 MR. PAAVOLA: Your Honor, I think the reading
12 of the stay is that the stay that the Court matters
13 decided in the order of the relief granted is what
14 the rule says, so it would stay whatever relief ---

15 THE COURT: If I'm wrong, I'm wrong. I'm sure
16 there's a rule here that I'm not familiar with and I
17 just...

18 MR. DRAISEN: I have the rule. Do you want me
19 to hand it up?

20 THE COURT: Sure. Let -- let's show it to
21 Mr. Paavola.

22 MR. DRAISEN: I believe he has a copy.

23 MR. PAAVOLA: Okay.

24 MR. DRAISEN: It's actually discretionary upon
25 the Court, Judge, pursuant to Section 15-11-40. And

1 what it says, Judge, is the Court meets the actions
2 commenced in its discretion at the time or after the
3 action is in this case discontinued. May cancel or
4 order the cancellation of the Clerk of Court of the
5 lis pendens. In this case ---

6 THE COURT: What were the facts? I can't
7 remember.

8 MR. DRAISEN: This -- this is the Whataburger
9 property, Judge.

10 THE COURT: This is what?

11 MR. DRAISEN: The Whataburger restaurant.

12 THE COURT: Who?

13 MR. DRAISEN: Whataburger.

14 THE COURT: Oh, that's out there on Concord?

15 MR. DRAISEN: Concord and Main. Yes, sir.
16 This development was done by W.H. Bass. They built
17 the building for Whataburger. My client is the
18 underlying landowner to the property.

19 THE COURT: Is it your family?

20 MR. DRAISEN: What's that?

21 THE COURT: Is it your family?

22 MR. DRAISEN: It's Wes Edwards, my dad's
23 partner.

24 THE COURT: Okay.

25 MR. DRAISEN: And owned that whole -- whole

1 corner. And so we have a ground lease with them.
2 They built the building on it.

3 Mr. Moats was hired to do some -- some of the
4 site work on the property. We contend at first he
5 did some work for us. He was later then hired
6 directly by W.H. Bass to do work related to the
7 Whataburger construction. So our position and our
8 answer has been all along, we didn't hire him. We
9 don't have anything to do with it. If anybody owes
10 him any money, it's Whataburger, not us, but he
11 filed a mechanics lien.

12 We came into court and said the mechanics lien
13 was not perfected properly. It wasn't foreclosed
14 timely. Remember he had -- you may remember he had
15 cones out there, those orange cones, that he left.
16 And that was the substantial work that was left to
17 be done, and you ruled and said that's not enough.
18 That's not enough work for you to have extended the
19 deadline. That was the basis of your ruling.

20 THE COURT: I got it. Okay. I got it.

21 Now, Mr. Paavola, I keep cutting you off. I'll
22 be glad to hear from you.

23 MR. PAAVOLA: Yes, Your Honor. Under the
24 appellate court rules, the automatic stay goes into
25 effect under Rule 241 and states matters in the

1 order. So I guess what we're saying is, you issued
2 the order in June. The same day you issued the
3 order, the lis pendens was cancelled. I believe
4 that was probably on my end. That was probably an
5 administerial administrative oversight. The one
6 thing is we didn't have a ten-day period to move to
7 alter and amend, so it was cancelled the same day as
8 your order before our ten days to move to alter and
9 amend which we did before our notice of appeal.

10 So when we -- when we found out it cancelled --
11 that was cancelled, my guess is that was probably an
12 administrative oversight. Someone jumped the gun
13 before it was our time to do it because the general
14 rule, once you file the notice of appeal, everything
15 is stayed. It is status quo.

16 If they want to move to lift the stay, they can
17 do that, but they haven't done that. And so, you
18 know, that's -- that's how the rules provide.
19 Nothing to change. Should be status quo, unless
20 they're asking for a lis pendens stay. In that
21 case, they post the bond because the lis pendens is
22 lifted, the property was sold, and my client
23 ultimately is shown to be correct on appeal. Then
24 he's lost his right to propose the property and the
25 lis pendens to the property.

1 So that's why it's -- you know, they're really
2 putting this on their head. It should be stayed.
3 Everything status quo. If they want to move
4 otherwise, they can have them. And that's -- again,
5 I thought it was admin -- administrative oversight.
6 Of course, if they have to lift it.

7 THE COURT: All right.

8 MR. DRAISEN: Your Honor, our position is
9 essentially, it's sort of the cart before the horse
10 situation. I don't disagree that the proposition
11 that when the Court issued its order in this case,
12 they would've had ten days to file the motion to
13 reconsider. They did file it and the Court denied
14 it.

15 And then they -- then they filed the notice of
16 appeal. So as the procedural matter, I mean, number
17 one is, I'm not even sure what we're here on and
18 whether or not the Court has jurisdiction now that
19 the appeal has been filed, unless you go back to the
20 argument you just heard under Rule 241 in the other
21 case as to whether or not we're looking at a
22 supersedeas file of some kind, which the Court has
23 jurisdiction if they filed their appeal. We're here
24 today post-appeal arguing about whether or not the
25 Court should or shouldn't have released the lis

1 pendens in this case.

2 Our argument is, you properly released the lis
3 pendens in this case because when the mechanics lien
4 was dismissed, it was no longer a basis for the lis
5 pendens. They still have breach of contract and
6 quantam meruit causes the facts in this case.

7 So I think there's a jurisdictional problem
8 with coming in now on an argument about the lis
9 pendens because there's an appeal pending on the
10 whole dismissal of the mechanics lien. I think that
11 jurisdiction is now at the Court of Appeals.

12 THE COURT: All right. Gentlemen -- oh, go
13 ahead.

14 MR. PAAVOLA: Your Honor, I was just going to
15 say is that you can see it in the Court's docket
16 when the lis pendens was cancelled the day you
17 issued this report and before we even moved to
18 reconsider. I mean, it's clearly an
19 administrative -- it happened. Jumped the gun. It
20 happened before it was even proper to happen, if it
21 should've happened at all, but at least should've
22 waited until we had a chance to ask you to
23 reconsider. And that's not going to happen, so I
24 think we're just asking for the administrative fix,
25 and that's why we wrote the Court. We didn't -- we

1 didn't file a formal motion. We're just asking for
2 really the fix of what we thought was an oversight.

3 THE COURT: All right. Gentlemen, thank you.
4 I'll issue an order.

5 MR. DRAISEN: Thank you.

6 (At 11:09 a.m., the proceedings concluded.)

7 - - -

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 27th day of August, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 2, 2025

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

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Apr 10 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2024-CP-04-02229
Appellate Case No. 2025-001549
Appellate Case No. 2025-002012

Moats Construction, Inc. and The Green Man, LLC,

Appellants,

v.

APB Partnership, LLC, Wesley Edwards, 2916 N. Main, LLC, W.H. Bass, Inc., Whataburger Restaurants, LLC, and United Community Bank,

Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

/s/ David L. Paavola

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April 10, 2026
Cayce, South Carolina

R-000300