

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**RECEIVED**

AUG 26 2014

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Alexander S. Macaulay, Circuit Court Judge

Case No.: 2013-002176

Moats Construction Services, LLC..... Appellant,

v.

Bobby D. Sanders, Jr.; Staci Y. Sanders; Premier Southern Homes, LLC; Elite Mechanical Services, Inc.; Level Construction, LLC; Love Heating & Air, LLC; Solid Rock Construction Services, LLC; All Carolina Exteriors, LLC; American Concrete and Precast, Inc.; and Harbin Lumber Co., Inc., Defendants,

Of whom Bobby Sanders is the Respondent.

Bobby Sanders, Jr., and Staci Y. Sanders, Third Party Plaintiffs,

Of whom Bobby Sanders, Jr. is the Respondent,

v.

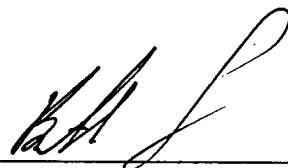
Henry Beal..... Third Party Defendant.

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**SUPPLEMENT TO THE RECORD ON APPEAL**

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I certify that this designation contains no matter which is irrelevant to this appeal.



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R. Batten Farrar (S.C. Bar No. 100077)  
Ronald G. Tate, Jr. (S.C. Bar No. 5475)  
Gallivan, White & Boyd, P.A.  
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(864) 271-5347

Attorney for Appellant

August 25, 2014

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Defendant's Exhibits 2.....1

**PREMIER  
SOUTHERN  
HOMES**

**CONSTRUCTION MANAGEMENT CONTRACT - FIXED FEE**  
THIS AGREEMENT, Made as of (Current Date). In the Year of (Current Year),

Between the Owner: Contact Name *Bobby D. Sanders Jr. and Staci Y. Sanders*  
Street Address *103 McClain Lake Dr*  
City, State Postal Code *Anderson SC 29625*  
Contact Telephone *(804) 261-7979*

And the Contractor: Company Name *Premier Southern Homes*  
License Number *RBB 20710*  
Company Address  
Company Phone *444-8864*

For the Project: Project Name *Sanders*  
Project Address *lot 33 sunny Ln, Anderson SC 29625*

Construction Lender: Lender Name *Wells Fargo Home Mortgage*  
Lender Address *Anderson*

**ARTICLE 1. CONTRACT DOCUMENTS**

1.1 The contract documents consist of this agreement, general conditions, construction documents, specifications, allowances, finish schedules, construction draw schedule, information disclosure statement, all addenda issued prior to execution of this agreement and all change orders or modifications issued and agreed to by both parties. All documents noted herein shall be provided to the Contractor by the Owner. These contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement.

**ARTICLE 2. SCOPE OF WORK**

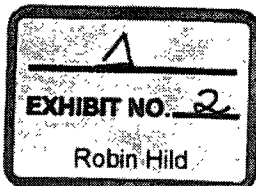
2.1 The Contractor agrees to function as an agent of the Owner to provide Management and Supervision services to construct the above mentioned structure and fixtures attached thereto in *Anderson, SC* according to the construction documents, allowances, finish schedules, all addenda, change orders, modifications and specifications set forth in the specification booklet.

**ARTICLE 3. TIME OF COMPLETION**

3.1 The approximate commencement date of the project shall be *8-20-07*. The approximate completion date of the project shall be *2-20-09* however any change orders and/or unusual weather might delay or otherwise affect the completion date. Barring inclement weather or owner related delays, the Contractor shall pay liquidated damages of *\$20.00* per day if the project is not completed within *7 (seven)* months. The contract execution date shall be *7-16-07* *From construction loan closing.*

**ARTICLE 4. CONSTRUCTION MANAGEMENT FEES**

4.1 The fees for construction management and supervision services shall be a fixed amount of *\$236,544*



Initialed by: Owner *[Signature]* Contractor *[Signature]*

4.2 Pre-construction estimates for construction costs and coordination are approximately *(236,544)*

4.3 The Owner and the Contractor acknowledge that the Owner will pay a sum of *( - 0 - )* upon signing of this contract and before construction management and supervision begins as a deposit and part of the total fees of this contract.

**ARTICLE 5. PROGRESS PAYMENTS**

5.1 The Owner will make payments to the contractor for construction management and supervision services every two weeks. Owner shall make payments to contractor within *( 7 )* after request by contractor. Should the owner fail to make payment, contractor may charge a penalty of *( 15% )* annually upon the unpaid amount until paid.

5.2 If payment is not received by the Contractor within *( 12 )* days after delivery of payment demand for services satisfactorily completed, contractor shall have the right to stop construction management and supervision or terminate the contract at his option. Termination by Contractor under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the services performed prior to such termination. Termination by Owner under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the services performed prior to such termination.

**ARTICLE 6. DUTIES OF THE CONTRACTOR**

6.1 All construction shall be in accordance to the provisions of the plans and specifications. All systems shall be in good working order.

6.2 All construction shall be completed in a workman like manner, and shall comply with all applicable national, state and local building codes and laws.

6.3 All construction shall be performed by appropriately licensed individuals to perform their said work, as outlined by law.

6.4 Contractor shall obtain all permits necessary for the work to be completed.

**ARTICLE 7. CHANGE ORDERS AND FINISH SCHEDULES**

7.1 A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. Additional time needed to complete change orders shall be taken into consideration in the project completion date.

7.2 Completed Finish Selection Schedules shall be submitted to the Contractor as follows:

7.2.1 Schedule #1 within *2* weeks after site clearing begins. *Brick color, shingle color*

7.2.2 Schedule #2 within *4* weeks after site clearing begins.

7.3 Any delays or changes in finish selection schedules will delay the projected completion date.

Initialed by: Owner *[Signature]* Contractor *[Signature]*

# PREMIER SOUTHERN HOMES

Construction Management Contract - Fixed Fee

Project Name *Janders*

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## ARTICLE 8. INSURANCE

8.1 The Owner will keep in force a Builder's Risk Insurance Policy on the said property to protect both owner's and contractor's interests until construction is completed.

8.2 The Owner will purchase and maintain property insurance to the full and insurable value of the project in case of a fire, vandalism, malicious mischief or other instances that may occur.

8.3 The Contractor shall purchase and maintain needed Workman's Compensation and Liability insurance coverage as required by law and deemed necessary for his own protection.

## ARTICLE 9. GENERAL PROVISIONS

9.1 If conditions are encountered at the construction site which are subsurface or otherwise concealed physical conditions or unknown physical conditions of an unusual nature, which differ naturally from those ordinarily found to exist and generally recognized as inherent in construction activities, the Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, and/or time required for, performance of any part of the work, will negotiate with the Contractor an equitable adjustment in the contract sum, contract time or both.

## ARTICLE 10. HAZARDOUS MATERIALS, WASTE AND ASBESTOS

10.1 Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, unless the scope of this agreement includes the specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Contractor shall notify the Owner immediately and allow the Owner/Contractor to contract with a properly licensed and qualified hazardous material contractor. Any such work shall be treated as a Change Order resulting in additional costs and time considerations.

## ARTICLE 11. ARBITRATION OF DISPUTES

11.1 Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## ARTICLE 12. WARRANTY

12.1 Warranty of the construction project against defects in workmanship or materials utilized shall be handled between the Owner and Subcontractors and/or Suppliers directly without involving the Contractor. The manufacturers warranty will prevail. No legal action of any kind relating to the project performance or this contract shall be initiated by either party against the other party after ( 8 years) beyond the completion of the project or cessation of work.

## ARTICLE 13. TERMINATION OF THE CONTRACT

Owner *[Signature]* Contractor *[Signature]*

# PREMIER SOUTHERN HOMES

Construction Management Contract - Fixed Fee  
Project Name: Sanders  
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13.1 Should the Owner or Contractor fail to carry out this contract, with all of its provisions, the following options and stipulations shall apply:

13.1.1 If the Owner or the Contractor shall default on the contract, the non-defaulting party may declare the contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of contract, including a reasonable attorney's fee. In the case of a defaulting Owner, the Earnest money herein mentioned shall be applied to the legally ascertained damages.

13.1.2 In the event of a default by the Owner or Contractor, the non-defaulting party may state his intention to comply with the contract and proceed for specific performance.

13.1.3 In the case of a defaulting Owner, the Contractor may accept, at his option the earnest money as shown herein as liquidated damages, should earnest money not cover the expenses to date, the Contractor may make claim to the Owner for all work executed and for proven loss with respect to equipment, materials, tools, construction equipment and machinery, including reasonable overhead, profit and damages applicable to the property less the earnest money.

## ARTICLE 14. ATTORNEY FEES

14.1 In the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

## ARTICLE 15. ACCEPTANCE AND OCCUPANCY

15.1 Upon completion, the project shall be inspected by the Owner and the Contractor, and any repairs necessary to comply with the contract documents shall be made by the Contractor.

15.2 The Owner shall not occupy the property until final payment has been received by the Contractor and a Certificate of Occupancy has been obtained.

15.3 Occupancy of the project by the Owner in violation of Article 15.2, shall constitute unconditional acceptance of the project and a waiver of any defects or uncompleted work.

WITNESS our hand and seal on this 14<sup>th</sup> day of July, 2007

Signed in the presence of:

Olga Clay - 7/16/07  
Witness

Olga Clappell  
Witness

[Signature]  
Contractor Signature

[Signature]  
Owner Signature  
Stacy Sanders

Initialed by: Owner [Initials] Contractor [Initials]

**Specification Addendum to the contract on**

Lot 33 Sunny Lane, Anderson SC 29625

Owner: **Bobby D. Sanders Jr., and Staci Y. Sanders**

Contractor: **Premier Southern Homes, Henry Beal**

Exterior:

Foundation: Crawl space, brick

Siding: Vinyl, four sides

Windows: Double Payne, Single hung, vinyl windows

Porches: Vinyl Railings, concrete filled

Roof: Architectural Shingles

Landscaping: Seed and Straw, 10 - 1 Gallon, 5- 3 Gallon Shrubs and 30 Yards mulch

Driveway: Concrete Drive (12x73)

Garage: One double garage door, finished and painted interior with automatic garage door openers

Interior:

Ceramic tile: Kitchen, breakfast, baths, utility room, rear dining, Foyer

Carpet: all other areas including the staircase and formal dining room.

Moldings: Standard floor molding, window and door casing, "picture" molding under the chair molding in the dining room, crown in the master bedroom.

HVAC: Heat Pump

Hot Water Heater: Electric

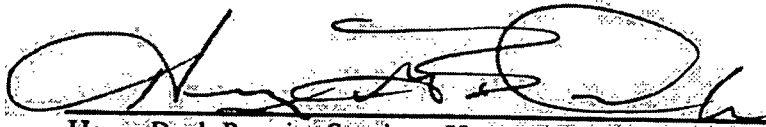
Kitchen: White cabinets with Corean countertop, stainless steel undermount sink

Bathrooms: White cabinets with cultured marble solid tops

Master bath: Garden tub, fiberglass corner shower insert.

Change master closet window to a 3/0 x 5/2

Master closet to have a white cabinet with laminate countertop per plan with an outlet attached.



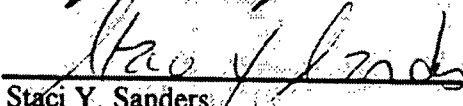
Henry Beal, Premier Southern Homes

7/14/07



Bobby D. Sanders, Jr.

7/14/07

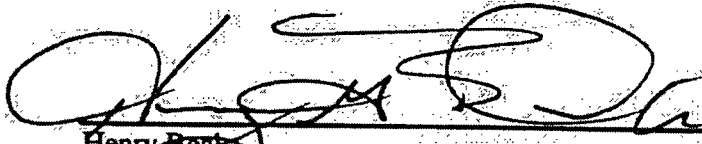


Staci Y. Sanders

7/14/07

Commission Addendum  
Lot 33 Sunny Lane, Anderson SC 29625

A real estate commission in the amount of 3.5% is paid by the builder to Terri's Team Real Estate in the form of the first draw at closing. The buyer are aware and authorize the lender to do so at closing.



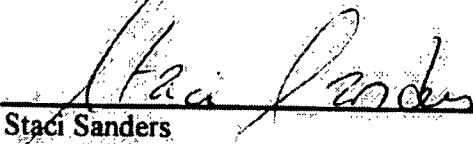
Henry Beat

7-16-07



Bobby Sanders

9/14/07



Staci Sanders

7/14/07

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Henry Beal. . . . . Third Party Defendant.

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**PROOF OF SERVICE**

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I do hereby certify that on the 25<sup>th</sup> day of August, 2014, I served a copy of the **SUPPLEMENT TO THE RECORD ON APPEAL** upon the attorney for the Respondent, and others as specified below, by placing in the U.S. Postal Mail:

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Stephanie C. Trotter  
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