

08-1714-CD  
S&P Mortg. Co. vs Brunetti Builders

**FILED**

M 1:28 P.M. GK ICC ATTY

SEP 11 2008

William A. Shaw  
Prothonotary/Clerk of Courts

ATTY PAID 20.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

S&P MORTGAGE COMPANY, INC.,

CIVIL DIVISION

NO. 2008-1714-CD

Plaintiff,

**NO-LIEN AGREEMENT**

vs.

Code

Filed on behalf of  
Plaintiff

BRUNETTI BUILDERS,

Counsel of record for this  
party:

Defendant.

Louis P. Vitti, Esquire  
Supreme Court #01072

Louis P. Vitti & Assoc., P.C.  
916 Fifth Avenue  
Pittsburgh, PA 15219

(412) 281-1725

**NO-LIEN AGREEMENT**

This no-lien agreement is made this 8 day of September, 2008, by and between

S&P Mortgage Company, Inc. (hereinafter called "Owner")

AND

Brunetti Builders (hereinafter called "Contractor")

WITNESSETH

WHEREAS, by an agreement, hereinafter called "Agreement", the Contractor has agreed to perform certain work for the Owner on certain ground hereinafter described, which Agreement provides that no mechanic's lien shall be filed against the ground, structure or improvements, and the parties hereto desire to set forth their agreement concerning mechanic's liens for filing in the Prothonotary of the Court of Common Pleas of Clearfield County.

NOW, THEREFORE, the Contractor, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, in hand paid, the receipt whereof is hereby acknowledged, and as part of the Agreement, does hereby covenant and agree with the Owner as follows: The Contractor for himself and for his subcontractors, materialmen, mechanics and other persons under him hereby waives the right to any lien against the ground, structures and any improvements thereon for work or labor done or materials furnished and specifically agrees that the Contractor shall not file nor shall any subcontractor, materialman, mechanic or other person file any Mechanic or other lien or claim for work done or materials furnished in or about the performance of said Agreement or any modification thereof or addition thereto.

The ground upon which said work is to be done and which is covered by the foregoing provisions of this Agreement is described as follows:

*SEE ATTACHED EXHIBIT "A"*

IN WITNESS WHEREOF and with specific intention of being bound hereby and of so binding his heirs, successors, assigns and other, the Contractor has signed and seals this Agreement on and as of the date first above written.

ATTEST:



By:



BEGINNING at a 1" iron pipe set at the Southwestern most corner of the land hereby conveyed, said iron pipe also being the Northwestern most corner of Lot No. 1 of the aforementioned subdivision and also on the Eastern right of way line of the Baltimore & Ohio Railroad and running; thence North 14° 31' West 292.4 feet along the Eastern right of way of the Baltimore & Ohio Railroad to a 1" iron pipe set at the Northwestern most corner of the land hereby conveyed; thence South 79° 34' East 716.7 feet along the land of Lot No. 3 in the aforementioned subdivision to a point in LR 17029 at the Northeastern most corner of the land conveyed ; thence South 07° 39' West 265.5 feet along LR 17029 to a point at the Southeastern most corner of the land hereby conveyed; thence North 79° 34' West 606.2 feet along the land of Lot No. 1 in the aforementioned subdivision to a 1" iron pipe set at the Southwestern most corner of the land hereby conveyed and the point of beginning. Containing 4.0 acres. Being Lot No. 2 in the Shaffer Mining Subdivision, plot plan of which is hereto attached and made a part hereof.

HAVING erected thereon a dwelling known as RR 1, Box 236, Rockton, PA 15856 a/k/a 487 Sunset Lake Road, Rockton, PA 15856.

PARCEL NO. 129-E07-000-00062

BEING the same premises which Shaffer Mining Corp. by deed dated 09/14/1987 and recorded on 09/21/1987 in Clearfield County, Pennsylvania, Recorder of Deeds Office in Deed Book Volume 1183, page 112, granted and conveyed unto Daniel F. Bobby and Tina M. Bobby, husband and wife.

**CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between \_\_\_\_\_ ("BUILDER") and \_\_\_\_\_ ("SUBCONTRACTOR"), either of which may be individually referred to as "Party" or collectively referred to as "Parties".

WHEREAS, the BUILDER desires to hire the SUBCONTRACTOR to furnish labor, materials, equipment, and other related services as may be requested from time to time ("Services") in connection with the construction and repair of residential dwellings and other structures as will be identified as necessary by the BUILDER ("Property" or "Properties"); and

WHEREAS, the BUILDER requires that SUBCONTRACTOR provide and complete the Services on each Property in a workmanlike manner and unconditionally guarantee and warrant his Services and any materials and/or equipment furnished in connection with such Services will be of good quality and new, unless otherwise required or permitted by BUILDER; and

WHEREAS, the SUBCONTRACTOR's warranties herein shall be in addition to and not in limitation of any other warranty or remedy required by law; and

WHEREAS, the BUILDER requires that the SUBCONTRACTOR's Services meet or exceed all applicable requirements of governmental authorities, building codes, laws, as well as other industry standards and that SUBCONTRACTOR's Services shall pass all inspections by government authorities.

WHEREAS, as a condition for BUILDER hiring SUBCONTRACTOR to provide Services for any Property, BUILDER requires SUBCONTRACTOR to enter into this Agreement and to provide all Services on any Property on and after the date stated above under the terms of this Agreement,

NOW, therefore, in consideration mutual covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

**WITNESSETH:**

**ARTICLE I  
CONSTRUCTION**

1.1 Subject to and upon the terms and conditions set for in this Agreement, BUILDER hereby agrees to hire SUBCONTRACTOR and SUBCONTRACTOR hereby agrees to provide and perform faithfully the Services in a workmanlike manner on the Property or Properties that will identified as necessary by the BUILDER, in accordance with BUILDER's plans, drawings, and specifications incorporated by reference herein.

1.2

**ARTICLE II  
CONSTRUCTION PERIOD**

2.1 SUBCONTRACTOR understands and agrees that time is of the essence in the completion of all Services as such agrees to commence its Services on each Property for which BUILDER desires to have SUBCONTRACTOR provide Services.

2.2

**ARTICLE III  
FEE FOR CONSTRUCTION**

3.1 BUILDER and SUBCONTRACTOR shall agree upon the compensation to be paid to SUBCONTRACTOR for Services provided on each Property prior to commencement of Services on the Property.

**ARTICLE IV  
SUBCONTRACTOR RESPONSIBILITIES**

4.1 The Parties agree that SUBCONTRACTOR is a separate entity from BUILDER and as such, SUBCONTRACTOR is responsible for the payment of its employees and Subcontractors that it may employ on the project. SUBCONTRACTOR shall be responsible for the payment of all Federal, State, local taxes and payroll taxes.

4.2 In accordance with Article X, SUBCONTRACTOR shall carry liability insurance and worker's compensation Insurance covering its employees, workers, laborers and independent contractors and SUBCONTRACTORS.

**4.3** In accordance with Article VIII, SUBCONTRACTOR shall be responsible for all injuries or acts of negligence by its employees, workers and laborers and independent contractors and Subcontractors, and agrees to indemnify and hold BUILDER harmless on all such injuries or acts of negligence.

**4.4** SUBCONTRACTOR agrees that it will keep all Properties and surrounding areas on which it provides Services free from accumulation of waste or rubbish caused by any Services that it provides. SUBCONTRACTOR shall not be responsible for any unclean conditions caused by other contractors or subcontractors.

#### **ARTICLE V**

##### **REPRESENTATIONS AND WARRANTIES OF SUBCONTRACTOR**

**5.1** SUBCONTRACTOR represents and warrants that:

1. The execution and performance of this Agreement will not result in any violation of any federal, state or local statute, ordinance or regulation;
2. SUBCONTRACTOR has all governmental licenses and permits necessary to conduct the business and all such licenses and permits are in full force and effect;
3. SUBCONTRACTOR shall not store, release, generate, dispose of or use upon the property any hazardous materials, waste or substances as defined by any federal, state or local law regulation governing the release, use storage, generation or disposal of hazardous materials without prior permission of BUILDER and any government authority;
4. SUBCONTRACTOR expressly warrants, represents and guarantees that it will complete its Services for each Property in a workmanlike manner and unconditionally guarantees and warrants its work;
5. SUBCONTRACTOR expressly warrants, represents and guarantees that it will complete Services for each Property in accordance with industry standards, applicable governmental laws, building codes and in accordance with BUILDER's plans, drawings, requirements and specifications;
6. SUBCONTRACTOR shall reimburse BUILDER for all damage to any Property as a result of negligence or intentional wrongdoing on behalf of the SUBCONTRACTOR, its agents or its employees;
7. SUBCONTRACTOR shall not vary from BUILDER's plans, drawings and specifications without written approval from BUILDER; and
8. All change orders shall be in writing and subject to the terms and conditions stated herein.

#### **ARTICLE VI**

##### **INSPECTION AND APPROVAL**

**6.1** Until such time as SUBCONTRACTOR completes the Services on any one Property, BUILDER shall have the right, without notice to the SUBCONTRACTOR, to inspect the SUBCONTRACTOR's Services.

#### **ARTICLE VII**

##### **BREACH**

**7.1** SUBCONTRACTOR shall be in breach of contract if any one or more of the following occurs: SUBCONTRACTOR's work

1. is not done in a workmanlike manner;
2. does not meet or exceed all applicable requirements of governmental authorities, building codes, laws, as well as other industry standards;
3. does not pass all inspections by government authorities,
4. does not conform with BUILDER's plans, specifications, requirements.

**7.2** SUBCONTRACTOR shall promptly correct all deficient work within ten (10) days' notice from BUILDER. If SUBCONTRACTOR is unwilling or refuses to commence the project, delays completing the project, fails to complete the project or fails to correct said deficient work on the project, then SUBCONTRACTOR shall be responsible to BUILDER for damages, including but not limited to, BUILDER's cost to cover and correct said deficient items in need of correction, loss of use on BUILDER's money, interest charges as may be assessed to BUILDER by its bank for the period of delay caused by SUBCONTRACTOR, the cost of replacement materials, labor, etc. and other damages. BUILDER may withhold all monies then due and owing SUBCONTRACTOR for such breach.

**7.3** In the event that SUBCONTRACTOR breaches any term or provision of this Agreement, or defaults in its performance as required by this Agreement, BUILDER shall, in addition to any and all rights and remedies available to it under the laws of the Commonwealth of Virginia or any other provision of this Agreement, be entitled to recover from SUBCONTRACTOR its costs and attorneys fees to enforce the terms of this Agreement. The remedy set forth in the preceding sentence shall be in addition to any and all remedies at law or inequity which may be available to BUILDER.

## **ARTICLE VIII INDEMNIFICATION**

**8.1** To the fullest extent permitted by law, the SUBCONTRACTOR shall indemnify and hold harmless the owner, BUILDER, and BUILDER's agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the SUBCONTRACTOR's work under this Agreement, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the SUBCONTRACTOR, the SUBCONTRACTOR's Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a Party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a Party or person described in this Article VIII.

**8.2** In claims against any person or entity indemnified under this Article VIII by an employee of the SUBCONTRACTOR, the SUBCONTRACTOR's Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 8.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the SUBCONTRACTOR or the SUBCONTRACTOR's Subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE IX INSURANCE AND BONDS**

**10.1** The SUBCONTRACTOR shall purchase and maintain insurance of the following minimum types of coverage and limits of liability:

A. Comprehensive General Liability \$300,000 per occurrence and \$600,000 aggregate  
SUBCONTRACTOR's insurance must name BUILDER as a named insured and must be primary to any coverage purchased by BUILDER for any claims that arise out of the acts of the SUBCONTRACTOR.

**10.2** Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption while this Agreement is in effect and, if coverage is on a claims-made basis, for a period of five years after termination of this Agreement.

**10.3** Certificates of insurance acceptable to the BUILDER shall be delivered to the BUILDER by or on behalf of the SUBCONTRACTOR prior to commencement of Services for any Property. Such certificates and the insurance policies required by this Article X shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the BUILDER and must be made available to BUILDER at least annually as well as periodically upon request by BUILDER.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

**11.1** This Agreement shall be binding on the heirs, assigns, personal representatives and successors in interest of the Parties hereto. However, SUBCONTRACTOR shall not transfer or assign this Agreement without the expressed written approval of BUILDER.

**11.2** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and may not be modified, amended or terminated except by written agreement specifically referring to this Agreement signed by all Parties hereto.

**11.3** The Article and Section headings contained herein are for the purpose of convenience only and are not intended to define or limit the contents of said Sections or Articles.

**11.4** Each Party hereto shall cooperate, shall take such further action and shall execute and deliver such further documents as may be reasonably requested by any other Party in order to carry out the provisions and purposes of this Agreement.

## **ARTICLE XI GOVERNING LAW**

**12.1** This Agreement shall be construed in accordance and governed by the laws of the Commonwealth of Pennsylvania.

13.1 Any notice of communication required or allowed by this Agreement shall be sent certified mail, postage prepaid, to the Parties at the addresses given below:

Insert Builder Information

Insert Subcontractor Information

Brunetti Builders  
426 Pine St  
Crownsville PA 16833

ARTICLE XII  
NOTICES

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on this the \_\_\_\_\_ day.

BUILDER

SUBCONTRACTOR

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

9/9/08

Tod Brunetti