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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2024-000753
Case No.: 2019-CP-10-01108

Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants,

And

Library Associates, LLC, Third-Party Plaintiff,

v.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Strong Tower Construction, LLC d/b/a Koch Corporation and Watson Electrical Construction Co., LLC are the Respondents.

RECORD ON APPEAL – VOLUME I

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2019-CP-10-1108

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-2275
Gulf Stream Construction Company, Inc.	)	
Plaintiff,	)	**ORDER TO CONSOLIDATE AND REFER TO THE CHARLESTON COUNTY MASTER-IN-EQUITY**
v.	)	
Library Associates, LLC; and Balfour Beatty Construction, LLC; and Metropolitan Life Insurance Company.	)	
Defendants.	)	

This matter comes before the Court by Motion of Defendant Library Associates, LLC for an Order from this Court, pursuant to S.C. Code Ann. Section 29-5-220 and Rule 42(a), SCRCP, consolidating this Mechanic's Lien foreclosure action with the action captioned *Balfour Beatty Construction, LLC v. Library Associates, LLC, et al., 2019-CP-10-01108*, and referring this action to the Master-In-Equity pursuant to Rule 53(b), SCRCP, and the Order Granting Referral to The Master-In-Equity Filed on October 7, 2019 in *Balfour Beatty Construction, LLC v. Library Associates, LLC, et al., 2019-CP-10-01108*.

Because of the nature of this matter, the Court hereby refers this matter to the Charleston County Master-In-Equity to hear and decide all matters in this matter and issue a final judgment. Any appeal from the decision of the Master-in-Equity shall be directly to the South Carolina Supreme Court or Court of Appeals pursuant to SCRCP 53(e). The Clerk is hereby directed to file this Order in the above referenced action and *Balfour Beatty Construction, LLC v. Library Associates, LLC, et al., 2019-CP-10-01108*.

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IT IS HEREBY ORDERED that Defendant/Third-Party Plaintiff Library Associates, LLC's Motion to Consolidate is **GRANTED.**

AND IT IS SO ORDERED.

The Honorable Jennifer B. McCoy
Presiding Judge

November _____, 2019

WE SO CONSENT:

s/M. Brent McDonald

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Charleston Common Pleas

Case Caption: Gulf Stream Construction Company Inc VS Library Associates Llc

Case Number: 2019CP1002275

Type: Order/Consolidate

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2019-11-14 16:17:08 page 4 of 4

ELECTRONICALLY FILED - 2019 Nov 18 9:08 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

2019-CP10-1108

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-2868
Strong Tower Construction, LLC d/b/a Koch Corporation	)	
Plaintiff,	)	**ORDER TO CONSOLIDATE AND REFER TO THE CHARLESTON COUNTY MASTER-IN-EQUITY**
v.	)	
Balfour Beatty Construction, LLC; Library Associates, LLC; and Metropolitan Life Insurance Company.	)	
Defendants.	)	

This matter comes before the Court by Motion of Defendant Library Associates, LLC for an Order from this Court, pursuant to S.C. Code Ann. Section 29-5-220 and Rule 42(a), SCRCP, consolidating this Mechanic's Lien foreclosure action with the action captioned *Balfour Beatty Construction, LLC v. Library Associates, LLC, et al., 2019-CP-10-01108*, and referring this action to the Master-In-Equity pursuant to Rule 53(b), SCRCP, and the Order Granting Referral to The Master-In-Equity Filed on October 7, 2019 in *Balfour Beatty Construction, LLC v. Library Associates, LLC, et al., 2019-CP-10-01108*.

Because of the nature of this matter, the Court hereby refers this matter to the Charleston County Master-In-Equity to hear and decide all matters in this matter and issue a final judgment. Any appeal from the decision of the Master-in-Equity shall be directly to the South Carolina Supreme Court or Court of Appeals pursuant to SCRCP 53(e). The Clerk is hereby directed to file this Order in the above referenced action and *Balfour Beatty Construction, LLC v. Library Associates, LLC, et al., 2019-CP-10-01108*.

ELECTRONICALLY FILED - 2019 Nov 18 9:08 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

IT IS HEREBY ORDERED that Defendant/Third-Party Plaintiff Library Associates, LLC's Motion to Consolidate is **GRANTED.**

AND IT IS SO ORDERED.

_____
The Honorable Jennifer B. McCoy
Presiding Judge

November _____, 2019

WE SO CONSENT:

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Charleston Common Pleas

Case Caption:	Strong Tower Construction LLC , plaintiff, et al VS Balfour Beatty Construction LLC
Case Number:	2019CP1002868
Type:	Order/Consolidate

So Ordered

s/Jennifer B. McCoy #2764

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1001108

Balfour Beatty Construction LLC
PLAINTIFF(S)

Library Associates LLC et al
DEFENDANT(S)

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.

☐ **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:

This matter came before the court on January 6, 2021 by Strong Tower Construction LLC d/b/a Koch Corporation's Motion for Summary Judgment filed October 19, 2020. The motion is respectfully DENIED at this time.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/06/2021 .

Eric Steven Bland for Welch, Roberts, Amburn & Hutto, Llc
Case Party Info Protected for Old North State Masonry LLC,Lithko Contracting LLC
Case Party Info Protected for Watson Electrical Construction Co LLC
Michael Edward Wright for Pleasant Places Inc
Robert Clayton Hughes, III for Premier Exteriors LLC
Samuel Melvil Wheeler for Strong Tower Construction LLC,Koch Corporation
Lithko Contracting Inc
Robert C. Byrd for Balfour Beatty Construction LLC
Jennifer Sue Ivey for Bernard MMC LLC
Walter Henry Bundy, Jr. for Library Associates LLC
Michael Brent McDonald for Library Associates LLC
David V. Brennan for Warco Construction Inc
George Hamlin O'Kelley, III for Metropolitan Life Insurance Company
Sarah Lynne Difranco for Cook & Boardman LLC
Allen L. West for Guy M Beaty Inc
Thomas C. Hildebrand, Jr. for Balfour Beatty Construction Group Inc,Balfour Beatty Construction LLC
Russell Britton Kelly for Trimark Foodcraft LLC,David Allen Company Inc
Scott Robert Miller for Warco Construction Inc,Tom Rochester & Associates,Southeastern Architectural Systems
Steven L. Smith for Strong Tower Construction LLC,Koch Corporation
Ian Wesley Freeman for Gulf Stream Construction Company Inc
Don Russell Terry for Watson Electrical Construction Co LLC,Old North State Masonry LLC,Lithko Contracting LLC
John Phillips Linton, Jr. for Bernard MMC LLC
Jaan Gunnar Rannik for Lowcountry Case & Millwork Inc
Robert L. Wylie, IV for Palmetto Automatic Sprinkler Company Inc
Michael A. Timbes for Quantum Coatings LLC
Tracy Thompson James
Rachel Igdal for Pleasant Places Inc
Ronald L. Richter, Jr. for Welch, Roberts, Amburn & Hutto, Llc
Scott Michael Mongillo for Welch, Roberts, Amburn & Hutto, Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

Case Caption:	Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al
Case Number:	2019CP1001108
Type:	Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS CASE NO.: 2019-CP-10-1108
Balfour Beatty Construction, LLC, Plaintiff, v. Library Associates, LLC and Metropolitan Life Insurance Company, Defendants.	
Library Associates, Inc., Third-Party Plaintiff, v. Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, and Balfour Beatty Construction Group, Inc., Third-Party Defendants.	ORDER GRANTING STRONG TOWER CONSTRUCTION, LLC D/B/A KOCH CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS CASE NO.: 2019-CP-10-2868
STRONG TOWER CONSTRUCTION, LLC, d/b/a KOCH CORPORATION, PLAINTIFF, VS. BALFOUR BEATTY CONSTRUCTION, LLC, LIBRARY ASSOCIATES, LLC, and METROPOLITAN LIFE INSURANCE COMPANY, DEFENDANTS.	)	

On August 16, 2021, the above-captioned case(s) came before this Court pursuant to Rule 56, SCRCP, on Strong Tower Construction, LLC d/b/a Koch Corporation's ("Koch") motion for summary judgment, or partial summary judgment, under its breach of contract cause of action against Balfour Beatty Construction, LLC ("BBC"). Present at this hearing were, Samuel M. Wheeler, attorney for Koch; Thomas C. Hildebrand, Jr. and Robert C. Byrd, attorneys for BBC; and Walter H. Bundy, Jr. and Michael B. McDonald, attorneys for Library Associates, LLC. Koch sought damages in the amount of $82,859.21, in addition to attorneys' fees and costs, as well as prejudgment and post-judgment interest. For the reasons set forth below, Koch's motion is GRANTED.

FACTS AND PROCEDURAL HISTORY

The above-captioned actions have been before this Court on numerous occasions and for a variety of highly contested issues. This Court is very familiar with the contentiousness of these cases, the complexity of the underlying project, and the time and energy that the parties and counsel have been and are investing to prepare for trial.

The above actions arose out of the construction of the Hotel Bennett, a luxury hotel in

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downtown Charleston, owned by Library Associates, LLC (the "Owner"). BBC acted as the general contractor for the project, and, under a subcontract with BBC, Koch was a subcontractor responsible for the installation of the ground level, storefront bronze windows and doors. (see Koch Mot. Summ. J., Oct. 19, 2020, Ex. A, Koch subcontract). After nonpayment of alleged contractually owed sums, Koch filed Case No. 2019-CP-10-2868 on May 30, 2019, asserting claims for breach of contract against BBC, for foreclosure of a mechanic's lien and constructive trust against the Owner, and for quantum meruit against both BBC and the Owner. By that time, Case No. 2019-CP-10-1108 had been filed by BBC, with Koch being named as a third-party defendant on May 15, 2019. (see Third-Party Summons and Compl.). These two cases were consolidated, as were many other cases brought separately by other third-party defendants, who were mainly subcontractors on the project and who were plaintiffs in their respective actions.

On or about October 19, 2020, Koch moved for summary judgment against BBC on its breach of contract action. (see Koch Mot. Summ. J., Oct. 19, 2020, and Exhibits). At the time, Koch sought the same amount it now seeks, $82,859.21, and it relied on the testimony of the Owner's representatives, Kim Brown and Jim Clements, to establish that the Owner was not asserting delays or damages associated with Koch's work, thus BBC had no reason to withhold contractually owed sums. (Id.). Koch arrived at $82,859.21 by using BBC's responses to Koch's discover requests. (Id.). BBC responded to Koch's requests, stating that it valued Koch's work at $104,859.21 and that it was claiming the amount from the Owner for work performed by Koch; however, BBC indicated in a subsequent response that it had a valid $22,000 back charge against Koch. (Id.). Therefore, to arrive at an undisputed figure, Koch gave credit to BBC for the back charge and requested the net amount, $82,859.21. (Id.). A day before the hearing on Koch's first motion, BBC filed a memo in opposition, arguing that issues

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of material fact existed because the two Owner's representatives, Brown and Clements, were not experts, and it was unknown how the Owner's experts might testify about delays or damages associated with Koch's work. (BBC Memo, January 5, 2021). This Court agreed that more discovery was needed to determine if any of the Owner's experts would testify about Koch's work, and, as such, it denied Koch's motion.

On or about May 6, 2021, Koch brought the instant motion, again requesting $82,859.21, and, this time, relying on the following depositions: On April 22, 2021, Jim Clements was deposed a second time, as a person named as an expert by the Owner in the areas of scheduling, supervision, sequencing, coordination, management and construction; On April 28 and 29, 2021, Kim Brown was deposed a second time, as the Rule 30(b)(6), SCRCP, deponent for the Owner; On May 3, 2021, Mark Boe, Capital Project Management, Inc., the Owner's rebuttal scheduling, management and construction expert, was deposed; on May 5 and May 6, 2021, Sam Hadley, Cotton & Company, the Owner's cost and lost profits expert, was deposed; and on June 23, 2021, Grady W. Query, a potential scheduling and delays expert identified by the Owner, was deposed. (Mot. for Summ. .J., May 6, 2021; Memo, Aug. 9, 2021). Koch argued that BBC could no longer rely on the absence of discovery or the absence of testimony concerning delay or damages because the Owner and all of its named experts had been deposed, and none of them took issue with Koch or could identify any damage attributable to Koch; therefore, nothing else would serve to reduce the amount claimed by Koch. (Id.). Koch argued that, with no risk of damages associated with Koch's work, BBC should be required to pay undisputed contractual sums. 1

Again, a day before a hearing on the instant motion, BBC filed a memorandum in

1 BBC has maintained throughout this litigation that it and its experts take the position that neither BBC nor its subcontractors delayed the project; it simply did not know what the Owner or Owner's experts might say.

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opposition, this time relying on a single request for admission that it sent to the Owner in which it asked, "[a]dmit that Library agrees and admits that it does not and will not hereafter, through the conclusion of this litigation, claim or assert through any witness (lay or expert), document, data, or argument of counsel that any breach, act, error or omission of Strong Tower Construction, LLC d/b/a Koch Corporation cause or contributed in any manner to the Claims and Damages as defined above." (BBC Memo, Aug. 16, 2021). The Owner denied the request, and BBC argued that, contrary to the testimony of everyone - the Owner and its experts - the Owner was leaving the door open for damages attributable to Koch's work; therefore, BBC might later have damages that it has to pass on to Koch, further reducing the figure that Koch sought in its motion. For this reason, BBC contended that genuine issues of material fact existed. At oral arguments, BBC attempted to rely on the request for admission, despite contrary testimony from all of the Owner's representatives and experts. Counsel for the Owner weighed in on the issue and cleared up any confusion about the merits of BBC's argument, when he stated that the request for admission was so broad that the Owner could not possibly admit it. And counsel reiterated that a denial of a broad request for admission should not supplant the clear testimony its own representatives and experts. At that point, this Court verbally granted Koch's motion and requested a written order from the parties.

STANDARD OF REVIEW

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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; see also *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997).

In determining whether any triable issues of fact exist, the evidence and all reasonable

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inferences therefrom must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Hamiter v. Retirement Div. of South Carolina*, 326 S.C. 93, 484 S.E.2d 586 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). However, the party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 545 S.E.2d 500 (2001). A party opposing summary judgment "must set forth or point to specific facts showing that there is a genuine issue of material fact." *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct.App.1994) (quoting *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct.App.1991)). See also *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) ("Where a [a party] relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by [the moving party], he was entitled to judgment as a matter of law.").

LEGAL DISCUSSION

I. There exist no genuine issues of material fact as to at least $82,859.21 owed by BBC to Koch under the parties' contract, entitling Koch to summary judgment on that amount under its breach of contract cause of action.

Koch has presented this Court with evidence that BBC owes it $82,859.21, and BBC has not presented any genuine issues of fact as to that amount. In responding to discovery requests, BBC valued Koch's work at $104,859.21, subject to a $22,000 back charge, resulting in a total amount of $82,859.21 due under BBC's contract with Koch. (Mot. Summ. J., May 6, 2021; Mot. Summ. J., Oct. 19, 2020). In other words, to get to an undisputed figure, Koch gave credit

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to BBC for its alleged back charge, and requested the net amount, $82,859.21. (Id.). Notably, BBC has not taken issue with this calculation or the approach for arriving at a minimum amount it owes Koch. It did not argue that the calculation was flawed or not based on work performed by Koch. Instead, BBC has simply continued to argue that genuine issues of fact exist because the Owner's representatives and experts might, at trial, allege damages for delays or for defective construction that should be passed through BBC to Koch, thus reducing Koch's damages. According to BBC, this Court cannot, therefore, arrive at a final figure, because it does not know yet what certain witnesses might say about Koch's work. This Court disagrees.

BBC has not presented this Court with anything tangible that would (1) substantiate its speculative argument about future testimony at trial or, more importantly, (2) meet the requirements of Rule 56, SCRCP, which mandates that BBC "set forth or point to specific facts showing that there is a genuine issue of material fact." *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct.App.1994) (quoting *Dickert v. Metropolitan Life Ins*. Co., 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct.App.1991)).

In reality, the representatives and experts of the Owner have all taken a position completely contrary to BBC's position and have consistently maintained that they take no issue with Koch's work. (see Facts *supra*; Mot. Summ. J., May 6, 2021; Memo, Aug. 9, 2021; Mot. Summ. J., Oct. 19, 2020).

In an attempt to establish a genuine issue of material, BBC relied solely on the Owner's denial of a request to admit, which BBC argues was aimed at eliminating any ability by the Owner to claim damages associated with Koch's work. (BBC Memo, Aug. 16, 2021). Because the Owner was unwilling to admit the request, BBC claims that the Owner left open the possibility of proving damages at trial associated with Koch's work. (Id.). Therefore, the exact amount to which Koch is entitled to under its contract with BBC might be further reduced.

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(Id.). In effect, BBC is claiming that more discovery is needed. This case is in excess of two years old, and it is beyond the discovery deadline. (see Order extending deadlines, May 10, 2021). All of the Owner's representatives and experts have been deposed, and none take issue with Koch's work. (Facts *supra*). BBC has had the opportunity to flesh out these alleged issues of facts in the numerous depositions of the people who may take a position with respect to Koch. Koch attended these depositions, asked the relevant questions about its work, and eliminated an issue about their testimony. (Koch Memo, Aug. 9, 2021). Any doubts about the Owner's position were laid to rest when, at oral arguments on Koch's motion, counsel for the Owner stood up and stated that the requests for admission were (1) simply too broad to admit and (2) should not replace the testimony on record in this case.

For all of the above reasons, BBC has failed to present a genuine issue of material fact as to a partial summary judgment award of $82,859.21, and Koch is entitled to judgment as a matter of law against BBC in the amount of $82,859.21 on its breach of contract claim.

II. Koch is entitled to prejudgment and post-judgment interest on $82,859.21.

As to prejudgment interest, Koch is entitled to prejudgment interest at the statutory rate of 8.75% per year. S.C. Code Ann. 34-31-20(A). "The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and if the sum is certain or capable of being reduced to certainty." *Smith-Hunter Const. Co., Inc. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005) (citing *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789 (1993)). "The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest." *Id*. "The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." *Id.*

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The amount Koch seeks was capable of being reduced to certainty, and it was in fact reduced to certainty. Both Koch and BBC ultimately made claims in these actions for damages associated with work on a highly sophisticated construction project. As general contractor, BBC's role was to account for sums it owed its subcontractors and amounts it was owed by the Owner. And in responding to interrogatories, BBC identified the exact amount at which it valued Koch's work - $104,859.21 minus a $22,000 back charge, totaling $82,859.21. In other words, the "measure of recovery" was "fixed by conditions existing at the time the claim arose." *Id.* Further, BBC's arguments concerning potential setoffs at trial do not impact an award of prejudgment interest. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 135, 631 S.E.2d 252, 259 (2006) (finding that a contractor's claim to "an offset does not prevent an award of prejudgment interest because it is the character of the claim and not the defense to it that determines whether prejudgment interest is allowable.").

The earlier of the above consolidated actions was filed by BBC on March 5, 2019, with Koch being named as a third-party defendant on May 15, 2019. This Court, therefore, awards prejudgment interest at the rate of 8.75%, on $82,859.21, from May 15, 2019, to the date that this Court verbally awarded Koch summary judgment, August 16, 2021, totaling $16,367.53. 2

As to post-judgment interest, the rate is set annually by the South Carolina Supreme Court. S.C. Code Ann. § 34-31-20(B). "[F]or the period January 15, 2021, through January 14, 2022, the legal rate of interest for judgments and money decrees is 7.25% compounded annually." S.C. Supreme Court Order 2021-01-04-01. Therefore, Koch will be entitled to post-judgment interest on $82,859.21 at the rate of 7.25%, compounded annually, beginning on the date this Order is issued and continuing to accrue at that rate until the judgment is paid in

2 Arguably, prejudgment interest should run from an earlier date, when this amount became due; however, for the purposes of summary judgment, it cannot be disputed that the date of Koch's involvement in the above actions sets the latest possible date on which claims arose. In effect, this amount is lower than it could have been.

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full.

III. Koch is entitled to an award of its attorneys' fees and costs.

"The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (citing *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989); *Hegler v. Gulf Ins. Co*., 270 S.C. 548, 243 S.E.2d 443 (1978); *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961). "When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown." *Id.*

Article 10 of Koch's subcontract with BBC contains multiple provisions with respect to how claims are to be prosecuted. Article 10.A contains an arbitration provision for disputes between Koch and BBC. (see Koch Mot. Summ. J., Oct. 19, 2020, Ex. A, Koch subcontract, Article 10, pp.9-10). Article 10.A contains a mechanism to award fees in an arbitration setting. (Id.). Article 10.B considers a separate claims process for disputes involving the Owner. (Id.). Article 10.C allows for BBC to stay claims between it and Koch, if Koch brings suit on claims that are subject to Article 10.A or 10.B. (Id.). In these cases, BBC brought its case, and Koch was named as a third-party defendant. Koch also brought a separate action for its claims. Both the cases are captioned above. At no point did BBC seek to compel arbitration or attempt to stay these actions based on Articles 10.A through 10.C. They were consolidated, referred to this Court and proceeded with litigation under our civil procedure rules. Conveniently, Article 10 of the contract contains a fourth provision, 10.D, that is a catch-all provision, covering situations in which claims simply proceed to litigation. It states, "[i]f Contractor elects not to invoke the arbitration procedures set forth in Article 10.A, then all claims, disputes and other matters in controversy between Contractor and Subcontractor arising out of or relating to the Subcontract and covered by Article 10.A will be resolved through litigation in the state court in the County of

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the Project or in the federal court closest to the location of the Project. The prevailing party will be entitled to recover its reasonable attorneys' fees and court costs in connection with any such litigation." (Id.). This Court, therefore, finds that the contract contains a provision allowing for the award of attorneys' fees in situations such as this, when the parties elected to proceed with prosecuting their claims in litigation.

To award attorneys' fees, this Court must look to the following "six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." *Blumberg* at 494, 660.

Because these cases were consolidated and referred to this Court, it has had the opportunity to observe all filings and hearings, as opposed to cases on the general docket, which could be heard by numerous judges over the life of a litigation. As stated above, this Court understands the complexity of this project and these cases. Based on this Courts' knowledge and the affidavit of counsel for Koch, this Court finds that, guided by the six factors set forth in Blumberg, Koch is entitled to an award of attorneys' fees in the amount of $64,927.50 and costs in the amount of $404.88.

As to the first and second factors, again, this Court is keenly familiar with these actions, which involve the construction of a luxury hotel over the course of several years. The cases were originally filed individually, along with individual cases from many of the other subcontractors. In addition to the above-captioned cases, Koch was named in two additional cases, Case No. 2019-CP-10-3005 and Case No. 2019-CP-10-3727. Just to get the cases off the ground, Koch was required to file pleadings in four cases and attend several hearings concerning consolidation and referral to this Court. Needless to say, there has been a considerable effort

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keeping tabs on the status of parties and the various cases which were consolidated. After consolidation and referral to this Court, it has been established through motions and oral arguments at a multitude of hearings that the cases have required the exchange of hundreds of thousands, if not millions, of documents in discovery; the taking of approximately forty depositions; the involvement of experts in fields ranging from cost analysis and delays to contract interpretation and lost profits; the filings of dozens and dozens of motions on almost all facets of the rules of procedure; the difficult task of scheduling depositions and hearings among dozens of attorneys and firm staff; and the exchange of communications between attorneys and the court regarding all of the above. And this is just what the Court sees, which does not consider the time and effort that all attorneys, including Koch's attorneys, have expended in wading through the project in an effort to pare down the facts and position for a potential trial. The trial itself is currently expended to run four weeks, which is an indication of the complexity of these cases. In his affidavit, Koch's counsel indicated that his firm expended 272.25 hours on these cases. Based on this Court's understanding of these cases, that figure is very reasonable. For example, if those hours were averaged over the 29 months these cases have been pending, counsel for Koch has worked, on average, less than 10 hours per month on the cases. As counsel for Koch stated in his affidavit, "the challenge of being involved in a case like this, with a relatively small claim, is having to strategically pick and choose involvement, while still ensuring that my client's rights have been protected." (Koch's Affidavit of Attorneys' Fees). The Court agrees with that assessment of this case and finds the time and labor expended by Koch's attorney is reasonable in relationship to the complexity and nature of the cases.

As to the third factor, Koch's attorneys are part of a firm that specializes in mechanics' liens and construction contract cases. Members of their firm appear frequently before this Court. They have a good reputation with this Court and in the Charleston area. In general, and

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in this case, this Court always finds Koch's attorneys to be well-prepared and strong advocates for their client.

The fourth factor is not relevant to this discussion, as the affidavit provided by counsel for Koch does not indicate that fees are contingent on success in these actions.

As to the fifth factor, the affidavit of counsel for Koch states that the hourly rate for the attorneys on these cases is $250 per hour for attorneys and $140 per hour for paralegals. This Court routinely hears requests for fees and is very familiar with the rates charged by lawyers in the Charleston area. $250 per hour for attorneys and $140 for paralegals are very reasonable rates and are actually below average for this region.

Lastly, with respect to the sixth factor, Koch's counsel was able to achieve a judgment prior to trial, which, as stated above, could last up to four weeks. Koch's counsel made a previous motion for summary judgment and, reacting to the Court's reasoning for denial of that motion, took the necessary steps to position its client for another motion. Further, Koch was able to achieve a judgment for approximately 80 percent of the value of work identified by BBC ($82,859.21/104,859.21). Obtaining a judgment on summary judgment and, depending on what Koch elects to do with respect to the remainder of its claim, potentially avoiding a month-long trial is a beneficial result.

Based on the contractual language, the Court's knowledge of these actions, the affidavit submitted by counsel for Koch, the complexity of these actions, the time that Koch had to invest to get this result, and the successful result achieved by Koch's counsel, the Court finds that the *Blumberg* factors weigh in favor of awarding attorneys' fees in the amount of $64,927.50 and costs in the amount of $404.88, as sworn to in the affidavit. In light of the *Blumberg* factors, these fees are reasonable. It should be noted that the contractual provision calls for fees to be awarded to the "prevailing party." These actions were initiated, in part, as mechanic's liens

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actions, with tens of millions of dollars in liens on the project. The Court would be remiss if it did not look to the mechanics' statute for some level of guidance. For the purpose of awarding fees, South Carolina's mechanics' lien statutes consider the prevailing party as the party who obtains a verdict closer to the amount he claims in the actions, considering counterclaims and offers of settlements prior to trial. S.C. Code Ann. § 29-5-10 and 29-5-20. And attorneys' fees can be awarded up to the value of the lien. *Id.* Koch obtained a judgment on nearly 80% of the value BBC placed on its work and nearly 67% of its original lien amount ($82,859.21/$124,080.21). Under either calculation, Koch would be awarded attorneys' fees under the lien statutes, and the fees sought do not exceed lien amounts or value calculations by BBC.

For all these reasons, this Court awards attorneys' fees to Koch in the amount of $64,927.50 and costs in the amount of $404.88.

CONCLUSION AND AWARDS

Based on the absence of genuine issues of material fact with respect to at least $82,859.21, Koch is entitled to judgment as a matter of law on that amount against BBC on Koch's breach of contract claim.

Based on the contractual attorneys' fees provision, this Court awards Koch attorneys' fees in the amount of $64,927.50 and costs in the amount of $404.88.

Further, the Court awards Koch prejudgment interest in the amount of $16,367.53 against BBC.

Lastly, this Court awards Koch post-judgment on $82,859.21 at the rate of 7.25%, compounded annually, accruing from the date this order is issued until the judgment is paid in full by BBC.

This Order shall be entered as a judgment in both of the above cases.

IT IS SO ORDERED!

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Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al

Case Number: 2019CP1001108

Type: Order/Summary Judgment

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC, Plaintiff, v. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants.	)	**CONSENT ORDER OF DISMISSAL WITH PREJUDICE AS TO CLAIMS BETWEEN STRONG TOWER CONSTRUCTION, LLC D/B/A KOCH CORPORATION AND LIBRARY ASSOCIATES, LLC** **(Does Not End Case)**
Library Associates, LLC, Third-Party Plaintiff, v. Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc. Third-Party Defendants.	)	

Pursuant to Rules 41(a)(2) and 43(k) of the South Carolina Rules of Civil Procedure, Strong Tower Construction, LLC d/b/a Koch Corporation ("Strong Tower") and Library Associates, LLC ("Library Associates"), by and through their respective undersigned counsel, hereby consent to **dismiss**

with prejudice all claims asserted, or that could have been asserted, between them, including all claims, counter-claims, and third-party claims filed or that could have been brought between them in this action, and including all such claims in Case No.: 2019-CP-10-2868, Case No.: 2019-CP-10-3005 and Case No.: 2019-CP-10-3727, which were consolidated into the above-captioned action. In relation to the claims between Strong Tower and Library Associates, each party agrees that the other bears no responsibility for their respective attorneys' fees, expenses or costs.

The Court finds the circumstances appropriate to dismiss the claims between Library Associates and Strong Tower with prejudice pursuant to Rule 41(a)(2) and Rule 43(k) of the South Carolina Rules of Civil Procedure as requested above. Accordingly, the Court hereby **dismisses with prejudice** all claims asserted or that could have been asserted between Library Associates and Strong Tower, including, all claims, counterclaims, and third-party claims filed or that could have been brought between them in this action, and including all such claims in Case No.: 2019-CP-10-2868, Case No.: 2019-CP-10-3005 and Case No.: 2019-CP-10-3727, which were consolidated into the above-captioned action. Neither Strong Tower nor Library Associates shall have responsibility for the other party's attorneys' fees, expenses or costs relating to the claims between them. This Order does not end the case or affect any claims against any other party.

IT IS SO ORDERED!

_____, 2021
Charleston, South Carolina

_____
Honorable Mikell R. Scarborough
Charleston County Master-In-Equity

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WE SO CONSENT:

s/Samuel M. Wheeler

_____

Counsel for Strong Tower Construction, LLC d/b/a Koch

s/Walter H. Bundy, Jr.

_____

Counsel for Library Associates, LLC

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Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al

Case Number: 2019CP1001108

Type: Order/Dismissal

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-01108

BALFOUR BEATTY CONSTRUCTION, LLC,

Plaintiff,

v.

LIBRARY ASSOCIATES, LLC; and METROPOLITAN LIFE INSURANCE COMPANY, a New York Corporation,

Defendants.

LIBRARY ASSOCIATES, INC.,

Defendant/Third-Party Plaintiff,

v.

LITHKO CONTRACTING, LLC; GUY M. BEATY, INC.; BERNARD MMC, LLC; GULF STREAM CONSTRUCTION COMPANY, INC.; PRECISION WALLS, INC.; PALMETTO AUTOMATIC SPRINKLER COMPANY, INC.; COOK & BOARDMAN, LLC; 1ST CHOICE GLASS, INC.; STRONG TOWER CONSTRUCTION, LLC d/b/a KOCH CORPORATION; WATSON ELECTRICAL CONSTRUCTION CO., LLC; TRIMARK FOODCRAFT, LLC; PLEASANT PLACES, INC.; DAVID ALLEN COMPANY, INC.; PREMIER EXTERIORS, LLC; ROBERT THOMAS IRON DESIGN, LLC; WARCO CONSTRUCTION, INC.; OLD NORTH STATE MASONRY, LLC; TOM ROCHESTER & ASSOCIATES d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS; FORTON COMPANY, LLC; LOWCOUNTRY CASE & MILLWORK,

ORDER GRANTING WATSON ELECTRICAL CONSTRUCTION CO., LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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INC.; QUANTUM COATINGS, LLC; BALFOUR BEATTY CONSTRUCTION GROUP, INC.,

Third-Party Defendants.

This matter came before the court pursuant to Rule 56, SCRCP, on Watson Electrical Construction Co., LLC's ("Watson") motion for summary judgment, or alternative motion for partial summary judgment, filed August 20, 2021, under its breach of contract cause of action against Balfour Beatty Construction, LLC ("BBC"). Present at this hearing were, Don R. Terry, attorney for Watson; Thomas C. Hildebrand, Jr. and Robert C. Byrd, attorneys for BBC; and Walter H. Bundy, Jr. and Michael B. McDonald, attorneys for Library Associates, LLC. Watson sought damages in the amount of $1,859,359, plus interest, costs, and attorneys' fees. For the reasons set forth below, Watson's motion is GRANTED in the amount of $921,671.39 plus prejudgment interest, post-judgment interest, costs and attorneys' fees.

UNDISPUTED FACTS

This civil action relates to the construction of the Hotel Bennett ("Project"), a hotel in downtown Charleston, South Carolina, owned by Library Associates, LLC (the "Owner"). BBC was the construction manager for the project, under a contract with the Owner. Watson was a subcontractor of BBC under a written agreement ("Subcontract"), pursuant to which Watson was responsible for the installation of certain electrical systems for the Project. The completion of the Project was delayed. BBC blames the Owner for the Project delays. The Owner blames BBC for the Project delays. Despite the Owner blaming BBC for Project delays, Watson offered the deposition testimony of BBC, the Owner, and Tim Spano, BBC's senior project manager for the Project, to show that Watson did not delay the completion of the Project. Additionally, despite the Owner blaming Project delays on BBC, BBC did not blame Watson for the Project delays. BBC

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failed to offer any facts though affidavit, deposition testimony or otherwise in opposition to Watson's motion that would show this court that there is a genuine issue of material fact about whether Watson delayed completion of the Project.

Through its motion, Watson sought damages in the amount of $1,859,359, which was supported by the affidavit of Mr. Carroll Lipscombe. Watson submitted the Rule 30(b)(6) deposition of BBC, to show that BBC failed to pay Watson for the labor, materials and services Watson performed at the Project. Watson also submitted portions of the deposition transcript of Mr. Timothy Spano, BBC's senior project manager for the Project, to show that the only reason the BBC did not pay Watson was that the Owner did not pay BBC. BBC did not show any facts, which could create a genuine issue of material of fact, in opposition to Watson's damages amount.

LEGAL DISCUSSION

A party opposing summary judgment "must set forth or point to specific facts showing that there is a genuine issue of material fact." *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct.App.1994) (quoting *Dickert v. Metropolitan Life Ins. Co*., 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct.App.1991)). See also *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) ("Where a [a party] relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by [the moving party], he was entitled to judgment as a matter of law.").

It is undisputed that Watson and BBC entered into a contract, and undisputed that BBC failed to pay Watson solely because the Owner failed to pay BBC. It is similarly undisputed that Watson did not delay the completion of the Project. Watson presented this Court with an affidavit

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to show that BBC owes Watson $1,859,359, and BBC did not present anything to show that the amount Watson claims is incorrect.

Instead of showing facts through affidavit, deposition testimony or otherwise in opposition to Watson's motion, BBC argued that genuine issues of material fact exist because the Owner's representatives and experts might, at trial, allege damages for delays or for defective construction that should be passed through BBC to Watson, therefore this Court cannot arrive at a figure owed to Watson. This Court disagrees because the Owner's Rule 30(b)(6) testimony, which is binding on the Owner, clearly establishes that the Owner is not aware of any delays Watson caused to the Project. This Court also disagrees with Balfour because this case is in excess of two years old, and it is beyond the discovery deadline. (see Order extending deadlines, May 10, 2021). The parties have taken the depositions of all of the Owner's representatives and experts, and BBC has had the opportunity to flesh out all alleged issues of fact in the numerous depositions of the people who may take a position with respect to Watson. Despite the extensive discovery in this case, including the depositions of the Owner and all its experts, BBC was unable to offer any competent evidence that could show that Watson delayed the completion of the Project, failed to complete its work, or performed defective work. If evidence exists that could show this Court that a there is a genuine issue of material fact about whether Watson delayed the Project, or whether Watson performed defective work, BBC failed to show this Court.

For all of the above reasons, BBC has failed to present a genuine issue of material fact in opposition to Watson's motion, Watson performed the work it was required to perform under the Subcontract, Watson's work was accepted by BCC and the Owner, and Watson is entitled to

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judgment as a matter of law against BBC in the amount of $921,671.39 on its breach of contract claim.1

As to prejudgment interest, Watson is entitled to prejudgment interest at the statutory rate of 8.75% per year. S.C. Code Ann. 34-31-20(A). Watson was made a party to this consolidated action on May 15, 2019. This Court, therefore, awards prejudgment interest to Watson at the rate of 8.75%, on $921,671.39, from May 15, 2019, to the date that this Court verbally awarded Watson summary judgment, August 31, 2021, totaling $185,375.89.

As to post-judgment interest, the rate is set annually by the South Carolina Supreme Court. S.C. Code Ann. § 34-31-20(B). "[F]or the period January 15, 2021, through January 14, 2022, the legal rate of interest for judgments and money decrees is 7.25% compounded annually." S.C. Supreme Court Order 2021-01-04-01. Therefore, Watson will be entitled to post-judgment interest on $921,671.39, at the rate of 7.25%, compounded annually, beginning on the date this Order is issued and continuing to accrue at that rate until the judgment is paid in full.

"The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (citing *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989); *Hegler v. Gulf Ins. Co*., 270 S.C. 548, 243 S.E.2d 443 (1978); *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961). "When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown." *Id.*

Article 10.D. of Watson's subcontract with BBC, which addresses disputes resolved by litigation, states, "The prevailing party will be entitled to recover its reasonable attorneys' fees and

1 This court holds as a matter of law, that Watson must provide additional evidence in support of the amount of damages it seeks from BBC above the $921,671.39 granted herein.

court costs in connection with any such litigation." (Id.). This Court, therefore, finds that the contract contains a provision entitling Watson to an award of attorneys' fees.

To award attorneys' fees, this Court must look to the following "six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." *Blumberg* at 494, 660.

Because these cases were consolidated and referred to this Court, it has had the opportunity to observe all filings and hearings, as opposed to cases on the general docket, which could be heard by numerous judges over the life of a litigation. This Court understands the complexity of this case. Based on this Courts' knowledge and the affidavit of counsel for Watson, this Court finds that, guided by the six factors set forth in Blumberg, Watson is entitled to an award of attorneys' fees and costs in the amount of $253,189.30.

As to the first and second factors, again, this Court is keenly familiar with these actions, which involve the construction of a luxury hotel over the course of several years. Multiple cases were originally filed individually, and all have been consolidated. Needless to say, there has been a considerable effort keeping tabs on the status of parties and the various cases which were consolidated. After consolidation and referral to this Court, it has been established through motions and oral arguments at a multitude of hearings that the cases have required the exchange of hundreds of thousands, if not millions, of documents in discovery; the taking of approximately forty depositions; the involvement of experts in fields ranging from cost analysis and delays to contract interpretation and lost profits; the filings of dozens of motions on almost all facets of the rules of procedure; the difficult task of scheduling depositions and hearings among dozens of

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attorneys and firm staff; and the exchange of communications between attorneys and the court regarding all of the above. And this is just what the Court sees, which does not consider the time and effort that all attorneys, including Watson's attorneys, have expended in wading through the project in an effort to pare down the facts and position for a potential trial. The trial itself is currently expected to run four weeks, which is an indication of the complexity of these cases. In his affidavit, Watson's counsel indicated that his firm expended 646.4 attorney hours, and 504 paralegal hours on these cases. Based on this Court's understanding of these cases, that figure is very reasonable.

As to the third factor, Watson's attorneys are part of a firm that specializes in construction law and litigation, including delay claims. Members of their firm appear frequently before Courts throughout the southeast and are well respected.

The fourth factor is not relevant to this discussion, as the affidavit provided by counsel for Watson does not indicate that fees are contingent on success in these actions.

As to the fifth factor, the affidavit of counsel for Watson states that the hourly rate for the attorneys on these cases is between $225.00 per hour and $350.00 per hour for attorneys, and between $100 per hour and $175 per hour for paralegals. This Court routinely hears requests for fees and is very familiar with the rates charged by lawyers in the Charleston area. Watson's attorney's rates are reasonable and are below the rates of other attorneys in this case.

Lastly, with respect to the sixth factor, Watson's counsel was able to achieve a partial judgment prior to trial, which could last up to four weeks. Watson was able to achieve a judgment for a substantial amount of its claim for amounts that BBC did not show facts in dispute. Obtaining a judgment on summary judgment and, depending on what Watson elects to do with respect to the remainder of its claim, potentially avoiding a month-long trial is a beneficial result.

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Based on the contractual language, the Court's knowledge of these actions, the affidavit submitted by counsel for Watson, the complexity of these actions, the time that Watson had to invest to get this result, and the successful result achieved by Watson's counsel, the Court finds that the *Blumberg* factors weigh in favor of awarding attorneys' fees and costs in the amount of $253,189.30, as sworn to in the affidavit. In light of the *Blumberg* factors, these fees are reasonable. It should be noted that the contractual provision calls for fees to be awarded to the "prevailing party." Watson's claims were made, together with a mechanic's lien foreclosure action. The Court would be remiss if it did not look to the mechanics' statute for some level of guidance. For the purpose of awarding fees, South Carolina's mechanics' lien statutes consider the prevailing party as the party who obtains a verdict closer to the amount he claims in the actions, considering counterclaims and offers of settlements prior to trial. S.C. Code Ann. § 29-5-10 and 29-5-20. Under the statutes, attorneys' fees can be awarded up to the value of the lien. *Id.* Watson made an offer under the statute, and amount of this partial summary judgment is for the exact amount of the offer of settlement Watson made and served, which would have made Watson the prevailing party under the mechanic's lien statute.

For all these reasons, this Court awards attorneys' fees and costs to Watson in the amount of $253,189.30.

CONCLUSION AND AWARDS

Based on the absence of genuine issues of material fact, Watson is entitled to judgment as a matter of law in the amount of $921,671.39 against BBC, plus attorneys' fees and costs in the amount of $253,189.30, and prejudgment interest in the amount of $185,375.89 against BBC.

Lastly, this Court awards Watson post-judgment on $921,671.39 at the rate of 7.25%, compounded annually, accruing from the date this order is issued until the judgment is paid in full by BBC.

This Order shall be entered as a judgment in this case in favor or Watson and against Balfour Beatty in the total amount of $1,360,236.58.

IT IS SO ORDERED!

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Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al

Case Number: 2019CP1001108

Type: Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-01108

BALFOUR BEATTY CONSTRUCTION, LLC,

Plaintiff,

v.

LIBRARY ASSOCIATES, LLC; and METROPOLITAN LIFE INSURANCE COMPANY, a New York Corporation,

Defendants.

LIBRARY ASSOCIATES, INC.,

Defendant/Third-Party Plaintiff,

v.

LITHKO CONTRACTING, LLC; GUY M. BEATY, INC.; BERNARD MMC, LLC; GULF STREAM CONSTRUCTION COMPANY, INC.; PRECISION WALLS, INC.; PALMETTO AUTOMATIC SPRINKLER COMPANY, INC.; COOK & BOARDMAN, LLC; 1ST CHOICE GLASS, INC.; STRONG TOWER CONSTRUCTION, LLC d/b/a KOCH CORPORATION; WATSON ELECTRICAL CONSTRUCTION CO., LLC; TRIMARK FOODCRAFT, LLC; PLEASANT PLACES, INC.; DAVID ALLEN COMPANY, INC.; PREMIER EXTERIORS, LLC; ROBERT THOMAS IRON DESIGN, LLC; WARCO CONSTRUCTION, INC.; OLD NORTH STATE MASONRY, LLC; TOM ROCHESTER & ASSOCIATES d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS; FORTON COMPANY, LLC; LOWCOUNTRY CASE & MILLWORK, INC.; QUANTUM COATINGS, LLC;

ORDER

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BALFOUR BEATTY CONSTRUCTION GROUP, INC.,

Third-Party Defendants.

This matter came before the court pursuant to S.C. Code §29-5-20, on Watson Electrical Construction Co., LLC's ("Watson") motion for entry of judgment ("Motion") against Library Associates, LLC ("Library"), wherein Watson seeks entry of a judgment against Library as a result of Watson's acceptance of Library's Offer of Settlement previously filed pursuant to S.C. Code § 29-5-20.

FACTS

On July 29, 2021, Library, pursuant to South Carolina Code § 29-5-20, filed and served an offer of settlement to pay Watson the sum of $100.00, exclusive of costs and attorneys' fees ("Library's Offer"). Thereafter, on September 3, 2021, Watson filed and served its written acceptance of Library's Offer.

LEGAL DISCUSSION

South Carolina's mechanic's lien statutes, beginning at S.C. Code §29-5-10 et seq, gives contractors, subcontractors and other person a lien on the real property for which labor is performed or furnished or for material furnished. In the mechanic's lien statutes, the legislature sought to encourage settlement, and therefore set up a process for making offers of settlement. See S.C. Code § 29-5-10 et seq. Initial offers of settlement may be made at least fifteen days before the trial term, and responsive offers may be made within ten days after receipt of an initial offer. Id. Each offer of settlement remains an acceptable offer so long as "acceptance in writing is filed and served on the party making the offer five days before commencement of the term." See South Carolina Code § 29-5-20(C) (stating "[a]n offer of settlement is considered rejected unless acceptance in writing is filed and served on the party making the offer five days before commencement of the term."

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To determine if Watson timely accepted Library's Offer, this Court considered Rule 6 of the South Carolina Rules of Civil procedure, which states,

> In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.
>
> Rule 6, SCRCP.

In order to timely accept Library's Offer, Watson had to accept the offer at least 5 days before the beginning of the term. Because the period of time for accepting Library's Offer is less than seven days, computing the date by which Watson must have accepted Library's Offer requires excluding weekends and holidays. The trial terms begins on September 13, 2021, Monday, September 6 was Labor Day, and therefore the deadline for Watson to accept Library's Offer was Friday, September 3, 2021. Since Watson accepted Library's Offer on September 3, 2021, Watson timely filed and served an acceptance of Library's Offer.

CONCLUSION AND AWARDS

Based on Watson's timely acceptance of Library's Offer, all claims between Watson and Library relating to and arising out of Watson's mechanic's lien are resolved, and Watson is entitled to judgment against Library in the amount of $100.00. Additionally, Watson is entitled to post-judgment interest on $100.00 at the rate of 7.25%, compounded annually, accruing from the date this order is issued until the judgment is paid in full by Library Associates, LLC.

This Order shall be entered as a judgment in this case.

IT IS SO ORDERED!

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Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al

Case Number: 2019CP1001108

Type: Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC	)	
Plaintiff,	)	**ORDER**
v.	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.	)	
Defendants.	)	
Library Associates, LLC,	)	
Third-Party Plaintiff,	)	
v.	)	
Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC, Old North State Masonry, LLC,	)	
Third-Party Defendants.	)	

This matter was tried before this Court on non-consecutive days beginning on September 13, 2021 and concluding on December 3, 2021[1] and filed by Plaintiff Balfour Beatty Construction, LLC (hereinafter "Contractor") against Library Associates, LLC (hereinafter "Owner"). Owner answered, counterclaimed, and filed a third-party complaint against various subcontractors and material suppliers. Numerous additional actions were filed by subcontractors and material

[1] The Court's Order was delayed in obtaining the completed transcript. The Court wishes to acknowledge the parties and counsel's patience in awaiting the transcript – which the Court finds to be well-prepared.

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suppliers to Contractor that were consolidated with the above captioned case. Most of those subcontractors and material suppliers are no longer parties hereto.[2]

Contractor pursued the following causes of action (1) foreclosure of a mechanic's lien against Owner's Property; (2) breach of contract against Owner; (3) quantum meruit/quasi contract; (4) attorneys' fees pursuant to S.C. Code Section 27-1-15; (5) abandonment, waiver, and/or estoppel; (6) cardinal change; (7) indemnity; (8) breach of implied warranty of plans and specifications; (9) first to breach; and (10) breach of contract accompanied by a fraudulent act.

Owner pursued the following causes of action against Contractor (1) breach of contract; (2) breach of contract accompanied by a fraudulent act; (3) indemnification; (4) declaratory relief; (5) unfair trade practices; and (6) civil conspiracy.

Owner additionally pursued causes of action against Third Party Defendants Lithko Contracting, LLC ("Subcontractor Lithko"), Old North State Masonry, LLC ("Subcontractor ONSM") and Watson Electrical Construction, LLC ("Subcontractor Watson") for (1) declaratory relief and (2) civil conspiracy.

Prior to the scheduled presentation of their cases in chief, Subcontractors Lithko, ONSM, and Watson dismissed their claims against Owner. Subcontractors Lithko and ONSM dismissed their respective mechanic's liens. As such, Owner is hereby deemed the prevailing party and is entitled to attorneys' fees and costs, pursuant to S.C. Code Ann. Section 29-5-10, et seq, as to those parties.

Based upon all the evidence and weighing the credibility of the witnesses, this Court makes the following findings of fact and conclusions of law.

[2] Some of these subcontractors have summary judgment orders in their favor that are subject to pending Rule 59(e), SCRCP motions filed by Contractor. This Order does not address those claims and rulings on those pending motions will be made by separate order. Each of those Subcontractors have dismissed any and all claims against Owner.

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I. The Contract

This case arises out of the construction of a luxury hotel in downtown Charleston, South Carolina known as the Hotel Bennett ("Project"). The contract for the construction of the Project is what is known in the industry as a "Cost Plus with a Guaranteed Max" contract. It is on a form originally created by the American Institute of Architects "AIA". Plaintiff's Ex. 56. The underlying forms in this matter consist of AIA-A133 ("Agreement"), Exhibit A to the Agreement, and the General Conditions known as AIA-A201. Id. In addition to the Agreement and the General Conditions, the Contract Documents include "Drawings, Specifications, Addenda issued prior to the execution of the contract, other documents listed in the Agreement and Modifications issued after the execution of the Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the work issued by the Architect." See Section 1.1.1 of the AIA-A201. These will sometimes be collectively referred to as the "Contract Documents."

At its essence, this contract provides that Contractor is entitled to be paid for eligible costs ("Costs of the Work") incurred for the work on the project plus a fee subject to a maximum amount ("GMP"). Section 2.2.1 of the AIA-A133. To be clear, the maximum amount is just that—it is not a minimum amount. Unlike a lump sum contract, Contractor is entitled only to the lesser of the "Cost of the Work" plus a fee or the "GMP". Section A.1.1 of Exhibit A to AIA-A133; Section 2.2.1 of the AIA-A133; Article 6 of the AIA-A133.

Owner, along with Owner's Representative Jim Clements, issued a request for proposal ("RFP") for this Project to interested bidders. Defendant's Ex. 103; Transcript, pp. 3142-3148. Contractor responded to the RFP. Defendant's Ex. 39. On September 22, 2014, Owner and Contractor entered into the Agreement-AIA-A133. Plaintiff's Ex. 56. Though the parties utilized

the AIA form, significant changes were made to the contract terms through extensive negotiations. Deposition Testimony of Mike Baumbach.

The AIA-A133 Agreement was broken down into two phases. The first phase was preconstruction phase to develop the GMP. Section 2.1 and 2.2 of AIA-A133; Transcript pp. 3154-3155. Contractor was paid a separate fee for the preconstruction phase. Article 4 of AIA-A133. The preconstruction portion stated that Contractor "shall, through preconstruction, review the constructability of the Architect's plans and specifications and shall notify the Owner and Architect in writing of any discovered defects, deficiencies, or recommended changes." Section 2.1.8.1 of the AIA-A133. Contractor, in fact, approached Owner and requested an additional $36,000.00 in preconstruction costs to further develop and evaluate the design development documents. Transcript, pp. 3166-3170. The Owner paid Contractor the additional preconstruction costs for "higher cost security." Id. Contractor and the Architect "worked in conjunction with each other" during the preconstruction period. Id.

The second phase of the AIA-133 Agreement was the construction phase. Section 2.3 of the AIA-A133. This phase began once the Contractor submitted the GMP and the Owner agreed to proceed. Section 2.2.1 of the AIA-A133. The GMP and the project schedule or duration are both created by Contractor. Transcript, pp. 3171-3173. Just prior to the submission of the GMP, Contractor informed Owner that it needed to add an additional $870,000.00 for general conditions to the GMP. Transcript, pp. 3175-3179. The Owner agreed to the additional sums. Id. In March of 2015, Exhibit A to the AIA-A133 was executed which included a GMP of $59,344,747.00 and a project duration of 28 months from the Notice to Proceed. Plaintiff's Ex. 56. Owner did not have any involvement in the creation of the schedule for the Project. Transcript, p. 3194. The Contractor was "solely responsible" for the schedule. Section 3.10.4.7 of the AIA-A201.

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The Notice to Proceed was issued on March 19, 2015. Defendant's Ex. 2.

II. The Role of This Court

The Contract Documents expressly acknowledge that claims and disputes will arise during the construction of the Project. Section 4.3 of the AIA-A201. "A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract." Section 4.3.1 of the AIA-A201. "The term 'Claim' also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract." Id. "Claims must be initiated by written notice." Id. "The responsibility to substantiate Claims shall rest with the party making the Claim." Id.

There are two contractual time limitations on Claims. Claims must be initiated within thirty (30) days, except for claims involving a claimed delay, and a request for extension of time which must be initiated within twenty (20) days. Sections 4.3.2 and 8.3.4 of the AIA-A201.

An initial decision by the Architect on all timely Claims, arising prior to the date Final Payment is due, is a condition precedent to either party instituting litigation. Section 4.4.1 of the AIA-A201. After an initial decision by the Architect, this Court then has jurisdiction to review that decision. Section 9.2 of the AIA-A133.

III. Failure of Condition Precedent

Section 4.4 of the AIA-A201 deals with resolution of claims and disputes between Contractor and Owner. Plaintiff Ex. 56. Section 4.4.1 states in pertinent part as follows:

"Decision of the Architect. Claims, including those alleging an error or omission by the Architect[3] but excluding those arising under sections 10.3 through 10.5[4], shall be referred

[3] As more fully explained herein, the only architect to testify at the trial of this matter, James McAuliffe, was called by Contractor over the objection of Owner; however, Mr. McAuliffe testified that he was not, and could not, testify that the Architect for this project committed an error or omission. Transcript pp. 852-853.

[4] These sections relate to hazardous materials. No claims have been made related to hazardous materials in this action.

initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the claim has been referred to the Architect with no decision having been rendered by the Architect."

On January 25, 2019, Contractor submitted a letter to Jim Clements that was identified as Contractor's "Consolidated Claim (Preliminary)." Plaintiff Exhibit 252. This will be referred to herein as the "four-page letter." The Architect was copied on the letter. Id. The four page letter contained no supporting documentation. Id. The letter stated, in part, that it was "based on a preliminary accounting of costs that have been incurred through the noted dates; however, because work on the Project continues a final accounting of costs presentable to the Owner cannot be done. Once the work by Balfour Beatty and its subcontractors is completed a full accounting of those additional costs will be provided by supplement or amendment." Id. There are no specific claims identified within the four page letter. Id. It does not refer to any specific requests for change order or unpaid certified pay applications. Id. The four page letter does, however, contain an "aggregate" amount of $22,452,282.51 for the claim.

Also on January 25, 2019, Contractor filed a mechanic's lien on Owner's property in the amount of $8,409,658.54. Defendant's Ex. 44. Contractor filed the mechanic's lien on the same day that it represented "work on the Project continues…". Plaintiff Ex. 252. Moreover, Mr. David Simonton testified on behalf of the Contractor that the last day of work on the project was April 26, 2019. Transcript, p. 1802.

To perfect and enforce a lien, one must timely complete the following three steps found in sections 29–5–90 and 29–5–120 of the South Carolina Code: (1) serve and file a notice or certificate of the lien, (2) commence a lawsuit to enforce the lien, and (3) file a lis pendens. *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., LLC,* 409 S.C. 331, 762 S.E.2d 561, 566-67 (2014). **"The trigger for determining when all three of these events must be performed**

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is the date when the supplier ceases furnishing labor or materials." Id. (emphasis supplied). "Section 29–5–90 requires that, **within ninety days after he ceases to furnish labor or materials** for a building or structure, the party asserting a lien must serve upon the owner (or person in possession of the property) and file with the register of deeds or clerk of court a notice or a certificate that includes a statement of the amount due him, together with a description of the property intended to be covered by the lien, the name of the owner of the property, if known, and other required information." (emphasis supplied).

I find that Contractor failed to perfect its Mechanic's Lien pursuant to S.C. Code Ann. Section 29-5-90.

Section 4.4.2 of the AIA-A201 states in pertinent part as follows:

"The Architect will review Claims and within ten days of receipt of the claim take one or more of the following actions: (1) request additional supporting data from the claimant…"

Plaintiff Ex. 56.

Section 4.4.4 of the AIA-A201 states in pertinent part as follows:

"If the Architect requests a party to…furnish additional supporting data, such party shall respond within ten days after the receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or additional supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part."

Pursuant to Sections 4.4.1, 4.4.2, and 4.4.4, the Architect responded on February 4, 2019 and requested "additional supporting data." Plaintiff Ex. 253. Specifically, the Architect stated:

"We have thoroughly analyzed the content of the letter. In the absence of any detail supporting the claim, we can draw no conclusion as to the legitimacy of the claim, except to say it appears to be grossly overstated. The owner disputes the claim. We have a duty to render an initial decision on this disputed claim within 10 days of receipt. To exercise that duty, we request additional supporting data on the claim. Please provide complete and verifiable detail substantiating each and every element of the claim. We must have specificity concerning the detail of impact on contract time and amount that might be your basis of any component of the claim. You have a

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duty to reply to this response to you [sic] claim within 10 days, however, given the serious nature and complexity of the claim, in this case only, we extend the deadline to 30 days."

Plaintiff Exhibit 253.

Contractor commenced this litigation on March 5, 2019,

(1) prior to the passage of 30 days from the Architect's February 4, 2019 letter;

(2) prior to the submission of the requested "additional supporting data";

(3) prior to any initial decision rendered by the Architect on the January 25, 2019 claim;

(4) prior to the submission of a "final claim" or "final accounting" by Contractor as identified in the January 25, 2019 letter;

(5) prior to the submission by Contractor of a final payment request or the documentation required pursuant to Section 7.2.1 of the AIA133[5];

(6) prior to the submission by BBC of a final accounting pursuant to Section 7.2.2 of the AIA133[6];

(7) while Contractor was still working on the Project;

(8) AFTER cutting off Owner's access to the project documents on the EGNYTE website (Transcript, pp. 2204-2207; Plaintiff's Ex. 258) and

(9) while there were no certified pay requests that required payment by the Owner (Transcript p. 2241; Transcript, p. 4316).

On March 6, 2019, subsequent to commencing the present litigation, Contractor submitted four volumes of additional documents "in response to the [Architect's] letter dated February 4, 2019." Defendant Ex. 11, 12, 13, and 14.

[5] Hadley testified a request for Final payment pursuant to Section 7.2.1 of the AIA133 has never been submitted. Transcript p. 3907.
[6] Hadley testified a request for Final accounting pursuant to Section 7.2.2 of the AIA133 has never been submitted. Transcript p. 3908.

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On April 26, 2019, Contractor wrote to the Architect and stated that: (1) requesting further information is not a rejection of the claim; (2) Contractor considers the Architect to have rejected its claim on April 24, 2019 (which was 50 days after it commenced litigation); and (3) that it demanded mediation pursuant to Section 15.2.6.1 of the AIA-A201. Plaintiff Ex. 264.

"If a contract contains a condition precedent, that condition must either occur or it must be excused before a party's duty to perform arises." *McGill v. Moore*, 672 S.E.2d 571, 381 S.C. 179 (2009) see also *Worley v. Yarborough Ford, Inc.*, 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct.App.1994) (recognizing that a condition precedent is a fact other than the lapse of time, which, unless excused, must exist or occur before a duty of immediate performance arises).

I find that Contractor failed to comply with the condition precedent of obtaining an initial decision from the Architect prior to commencing the present litigation. I find nothing to indicate that the condition precedent was excused by Owner. I further find, as will be discussed in more detail herein, that the "final claim" that was ultimately presented before this Court was submitted only in Contractor's reply case without any testimony from a witness authenticating, explaining, or swearing to the "final claim." Since the "final claim" was not created until sometime after November 4, 2021, the Architect did not and could not render an initial decision on the "final claim." Transcript pp. 4402-4410; Plaintiff's Exhibit 352. Furthermore, since the Contractor has never submitted a request for final payment, no final payment would be due and an initial ruling would still be required under the Contract Documents. Section 4.4.1 of the AIA-A201.

Though the failure of the condition precedent is fatal to the Contractor's claim, the Court will continue to make findings of fact and conclusions of law as additional and alternative support for the rulings contained herein.

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IV. Hadley Audit

At the trial, Owner offered the testimony of Ms. Sandra "Sam" Hadley as an expert in "accounting and auditing, construction accounting and auditing, and damage compilation in construction projects." Transcript pp. 3901-3902. Hadley was qualified as an expert in those fields without objection. Id. Hadley was employed by Cotton and Company and CPMI—construction accounting firms that are hired to "evaluate costs incurred on a project to ensure they complied with contract terms" on both private and public construction projects. Transcript p. 3888. Hadley is a certified public accountant, a certified government financial manager, certified fraud examiner, and certified in financial forensics. Transcript pp. 3890-3893; Defendant's Ex. 150.

I find Hadley was qualified, prepared, reliable, present at virtually the entire trial, and credible for every aspect of the testimony she provided. Additionally, I find Hadley performed the only audit or accounting that was done on this Project. Contractor did not provide a final accounting or an audit for the Project—notwithstanding the mandatory, fundamental, and unambiguous requirements the Contract Documents required it to do. Plaintiff Ex. 56.

Section 6.11.1 of the AIA133 states as follows:

"The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of four (4) years after final payment, or for such longer period as may be required by law."

Moreover, Section 7.1.11 of the AIA133 states as follows:

"The Owner has the right, at its sole discretion, to perform periodic examinations, audits, and verifications of the Construction Manager's cost accounting records and other Project documentation. The Contractor shall make all its records available to the Owner upon reasonable

advance notice and shall provide the Owner with copies of specific records from time to time upon reasonable request."

See also Sections 7.2.2 and 7.2.3 of the AIA-A133.

Pursuant to the foregoing sections of Contract Documents, on April 22, 2019, Hadley wrote to Contractor requesting specific documentation required to perform an audit of the project costs or "cost of the work" as that term is defined at Article 6 of the AIA-A133. Transcript pp. 3923-3925. On April 30, 2019, Contractor responded that it was refusing to produce any documentation, data, or response to support the contractually required audit. Defendant's Ex. 50; Transcript p. 3926; Transcript p. 2274.

As a direct and proximate result of Contractor's refusal to produce documents, data or accountings, Hadley was forced to rely on anecdotal information available to Owner. Transcript pp. 3926-3927. At the time of Contractor's refusal to produce documents, Contractor had also shut down Owner's access to the Egnyte document repository for the Project. Transcript, pp. 2204-2207; Plaintiff's Ex. 258. Contractor's witness Alec Dooley testified that the Egnyte site was a shared folder service that contained "everything". Transcript, p. 392. Based solely upon that anecdotal information, Hadley concluded, as of June 11, 2019, that there was approximately $7,700,000.00 of duplicative and potentially excessive mechanic's lien amounts. Transcript pp. 3926-3927. At this time, Contractor and its subcontractors had filed mechanic's liens in the total amount of $26,341,655.00. Transcript pp. 3927-3928.

As of September 17, 2019, Hadley was able to conclude that approximately $13,800,000.00 of the mechanic's lien amounts were duplicative and potentially excessive. Transcript pp. 3929-3930. All the while, Contractor continued to refuse to comply with the contractually required audit procedures. Id.

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On October 2, 2019, the Court[7] issued an order directing Contractor and certain subcontractors to produce specific documents related to the lien amounts. Transcript p. 3930. As a result of the October 2, 2019 Order, Hadley received responses from Contractor and subcontractors. Id. On November 27, 2019, Hadley was able to identify $17,400,000.00 in duplicative, potentially excessive, and uncorrelated mechanic's lien amounts. Transcript, p. 3931. Meanwhile, Contractor continued to refuse to comply with the audit provisions mandated by the Contract Documents. Id.

On March 17, 2020, upon motion of Owner, this Court entered an Order directing Contractor to comply with the audit provisions of the Contract Documents. March 17, 2020, Order Granting Owner's Motion for Affirmative Injunction; Transcript p. 3931.

On June 17, 2020, again upon motion of Owner, this Court issued an Order to Enforce which, for the second time, directed Contractor to comply with the audit provisions of the Contract Documents. June 17, 2020, Order to Enforce; Transcript, p. 3931. The Order to Enforce expressly found that the audit was a matter of "contract" and not "discovery" in litigation. Id.

During the month of July 2020, Hadley attempted to conduct the audit as required by the Contract Documents and twice ordered by this Court. Transcript pp. 3932-3939.

On August 3, 2020, Hadley again notified the Court and Contractor that Contractor was not allowing Hadley to perform the audit. Transcript, pp. 3939-3940. As of November 16, 2020, Hadley was unable to finish the audit work. Transcript, p. 3941. As of December 16, 2020, twenty (20) months after attempting to audit the records of Contractor, the only claim amount Hadley had from Contractor was the January 25, 2019, four-page claim letter in the amount of $22,452,287.00. Transcript, p. 3945.

[7] The Honorable Bentley Price issued this ruling prior to this action being referred to this Court.

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On September 10, 2021, over two and a half years after the January 25, 2019 four page claim letter in the amount of $22,452,287.00 and three days prior to the trial, Contractor submitted a new claim[8] in the amount of $11,872,194.00. Transcript, pp. 3945-3946. Two days later, on Sunday, September 12, 2021 (the day before the trial began) Contractor submitted yet another new claim in the amount of $13,064,917.00 Transcript, pp. 3946-3947.

As of the first week of trial, Hadley testified that Owner still did not have sufficient information from the Contractor for the Contractor's claim. Transcript, pp. 3947-3948. On September 20, 2021, Contractor submitted another new claim in the amount of $13,569,659.00. Id.

The next day, on September 21, 2021, Contractor submitted its fourth (4th) claim in eleven (11) days in the amount of $13,896,742.00. Transcript, p. 3948. This was the last "claim" that was provided to Hadley for audit and testimony[9]. Id. The September 21, 2021, claim was NOT the final claim submitted by Contractor, however. The final claim submitted by Contractor was on November 29, 2021 in Contractor's case in reply. No witness was offered to testify about, authenticate, explain, or swear to the final claim documents. Transcript pp. 4402-4411. The November 29, 2021 final claim was in the amount of $13,631,888.60. Plaintiff's Ex. 352.

Section 7.2.1 of the AIA133 states as follows:

"Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

[8] Due and owing to the fact that the Contractor failed to provide a final accounting and failed to provide supporting documentation for the January 25, 2019 "claim" and the September 10, 2021 "claim" (as well as the four [4] subsequent "claims"), this Court does not draw a distinction between a "new claim" and a "new claim amount."

[9] Ms. Hadley testified on November 2-3, 2021 in the trial of this matter.

.3 all close-out documents as required by the Contract Documents, including but not limited to, as-built drawings in paper and electronic format, instructions to the Owner's representatives on all building systems, and completion of all punch list items outstanding: and

.4 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:
The Construction Manager's final accounting is a complete and full accounting of costs incurred by the Construction Manager in performance of the Work, organized according to the Construction Manager's schedule of values and cost codes and correlated to the costs to be reimbursed under Article 6 of this Agreement."

I find that Contractor NEVER submitted a final payment request or the documentation required pursuant to Section 7.2.1 of the AIA133, prior to the commencement of the trial. Transcript p. 3907.

Moreover, Section 7.2.2 of the AIA133 states as follows:

"The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 60 days after delivery or the final accounting to the Architect by the Construction Manager. The Construction Manager's final accounting is a complete and full accounting of costs incurred by the Construction Manager in performance of the Work, organized according to the Construction Manager's schedule of values and cost codes and correlated to the costs to be reimbursed under Article 6 of this Agreement Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A20l-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting."

I find that Contractor NEVER submitted a final accounting or the documentation required pursuant to Section 7.2.2 of the AIA133. Transcript p. 3908.

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This Court has been perplexed as to why the Contractor refused and failed to perform the accounting or provide the documentation for the audit. Transcript p. 4008.[10] Owner has incurred $530,000.00 in costs from Cotton and Company to perform an audit of a contractually required final accounting that the Contractor failed to do. Transcript, pp. 3954-3955. In fact, during the trial, Hadley sat in the rear of the courtroom and continued to try and audit the Project and the numerous iterations of the new claims submitted by Contractor during trial. Transcript, pp. 3955-3957; Transcript pp. 4149-4150.

After two and a half years of attempting to audit the Contractor's records, Hadley, who this Court found both impressive and credible, concluded and testified to a reasonable degree of accounting and auditing certainty as follows:

(1) There were two guaranteed maximum price ("GMP") portions of this contract. Transcript, pp. 3910-3911. A GMP contract is a cost reimbursable contract that allows a contractor to get reimbursed for eligible costs of the work subject to the GMP. Id. The first GMP in this contract relates to the general conditions for Contractor. Transcript, p. 3911. The second GMP in this contract relates to the primary portion of the work which is the bulk of the costs paid to the subs. Id.
(2) The final reconciliation of the eligible costs of the work and the GMP for the general conditions is $3,319,212.00. Transcript, pp. 4109-4110.
(3) The final reconciliation of the eligible costs of the work and the GMP for the primary portion is $55,544,734.00. Transcript, pp. 4107-4108.
(4) Contractor was also due $66,779.00 for preconstruction services. Transcript, pp. 4110-4111.
(5) Contractor was entitled to a fee of 2.5 percent of the GMP. Transcript, pp. 4110-4111. The Contractor's fee would be in the amount of $1,483,090.00. Id.
(6) The total of the final reconciliations of the eligible costs of the work and the GMP for the general conditions and the primary portion of the contract as well as the preconstruction and construction fees is $60,413,815.00. Transcript, pp. 4110-4111.
(7) The Contractor has been paid $59,994,390.00 to date. Transcript, p. 4111.

[10] One of this Court's concerns stated during the trial was that Contractor's actions during the construction indicated to this Court that they had either not read the Contract or chose to follow their usual procedures rather than follow the express terms of the written Contract.

(8) Therefore, prior to the award of any set off amounts for liquidated or other damages, there remains a "delta" or maximum balance potentially owed to the Contractor of $419,425.00. Transcript, p. 4111; Transcript, pp. 4120-4121.

I find Hadley's conclusions to be credible, reasonable and consistent with the terms of the Contract Documents. I further find that, due and owing to the Contractor's failure to perform a final accounting for the Project and its repeated obfuscation of the auditing process, Hadley's conclusions are adopted as this Court's findings by the greater weight of the evidence.

V. Contractor's Requests for Change Order

At the outset, to the extent the costs contained in these requests for change orders ("RCO") are properly "costs of the work" as defined by the Contract Documents, Ms. Hadley has already included the costs of the RCO in her audit conclusions which have been adopted by this Court. Notwithstanding the foregoing, the Court herein considers the terms of the RCOs as additional support for its ruling or, as alternative findings of amounts due, in the event that a subsequent review of this Court's findings is required.

Article 7 of the AIA-A201 provides that the Contract Sum and Contract Time can only be adjusted by Change Order, Construction Change Directive or minor changes by Architect.

Contractor submitted two exhibits related to requests for change orders ("RCO") on the Project-Plaintiff's Ex. 329 and Plaintiff's Exhibit 12. Plaintiff's Ex. 329 is an excel spreadsheet that contains no supporting documentation or data. It simply contains an "RCO" column in the amount of $2,306,397. Plaintiff's Ex. 12 is a notebook containing numerous RCOs with some supporting documentation and data. However, the amounts for RCOs in Plaintiff's Ex. 12 and Plaintiff's Ex. 329 do not correlate to one another. Transcript pp. 3598-3600. Since Plaintiff's Ex. 329 contains no supporting documentation, the Court considers Plaintiff's Ex. 12 and the RCO's contained therein.

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RCO 27: This RCO is dated on January 13, 2016 in the amount of $124,089.00. It purports to relate to the "1000 Year Storm Delay & Recovery Cost". It is unexecuted. The RCO has no supporting documentation or subcontractor invoices. Owner, however, produced the actual executed change order 27 dated January 26, 2016 in the amount of $0.00 for the same "1000 year Storm Delay." Defendant's Ex. 144. Moreover, the $115,969.21 contained in the unexecuted RCO 27 was actually already paid by the Owner. Transcript, pp. 3602-3607.

Ruling: Contactor is not entitled to resubmit an RCO that predates an executed change order for the same work. Section 7.2.1 of the AIA-A201. Moreover, Contractor is not entitled to be paid twice. RCO 27 is denied. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 75: This RCO is undated in the amount of $5,989.93. It contains no supporting documentation or subcontractor invoices. It is unexecuted. Transcript, p. 3607.

Ruling: Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Since this RCO is undated, Contractor cannot meet its burden to show that it complied with the contractual time limitations. Contractor also failed to show that the Architect gave an initial ruling on RCO 75 as required. Section 4.4.1 of the AIA-A201. Additionally, Contractor must provide sufficient information to support the RCO. Section 7.1.2 of the AIA-A201; Section 7.2.2 of the AIA-A201. RCO 75 is denied.

RCO 88R1: This RCO is dated March 7, 2019—two days after this action was filed by Contractor—in the amount of $56,414.30. It is unexecuted. It does contain supporting documentation from Subcontractor Lithko. However, the supporting documentation is dated from 2015-2016—in excess of three (3) years prior to the date of RCO 88R1. Moreover, RCO 88R1 does not include any back charges to Subcontractor Lithko as recognized by Contractor. Transcript, pp. 3608-3622; Defendant's Exhibit 28. Finally, Subcontractor Lithko withdrew its claims at the trial of this action.

Ruling: The RCO postdates the filing of this action by the Contractor. It necessarily follows that the Architect could not and did not give an initial ruling on RCO 88R1 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Based upon the supporting documentation, this claim is in excess of three (3) years old. RCO 88R1 is also not proper due and owing to the internal change order (Defendant's Ex. 28) where the back charges that were for the Owner's benefit were "internally" deleted by Contractor and Subcontractor Lithko. Section 6.7.3 of the AIA-A133. The deleted back charges exceed the amount of RCO 88R1. Finally, Lithko no longer has a claim, and, therefore, the amounts claimed in RCO 88R1 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. RCO 88R1 is denied.

RCOs 103R1 and 118: These RCOs are dated December 16, 2017 and June 6, 2017. They are in the amounts of $290,257.91 and $21,036.56, respectively. They are unexecuted. They both relate to invoices from Subcontractor BMCC. Subcontractor BMCC dismissed its claim in this action, and was actually paid directly by Owner. Transcript, pp. 3622-3630.

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Ruling: Subcontractor BMCC dismissed its claim after being paid directly by the Owner; therefore, the amounts claimed in RCOs 103R1 and 188 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCOs 103R1 and 118 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and these RCOs would be granted.

RCO 122R1: This RCO is dated November 27, 2017. It states it is for a "structural delay claim." The RCO is in the amount of $1,012,042.00. It is unexecuted. The breakout of the RCO has Contractor "General Conditions" in the amount of $321,255.00. There is no supporting documentation for this General Conditions amount. It contains $119,277.00 for "hoisting, staging and logistics." The remainder of the RCO is for Subcontractors Watson Electrical, PASCO, BMCC, and Lithko. All of these subs have dismissed their claims. Watson Electrical was granted Summary Judgment against Contractor; however, Watson Electrical's attorney swore under oath that the amounts awarded for Summary Judgement did not involve the Owner. See September 9, 2021 Affidavit of Don Terry, Esq.; see also September 13, 2021 Order (citing to Section 10.D. of Watson's Subcontract); see Defendant ONSM Ex. 2 (containing Section 10.D. and only providing for attorneys' fees on "claims not involving the Owner"). With regard to PASCO, Contractor's Subcontractor Status Report shows that PASCO is owed nothing on this Project and, in fact, owes Contractor $107,261.19 for back charges. Defendant's Ex. 63; Transcript, pp. 3633-3635. With regard to BMCC, Owner has paid that subcontractor directly. Transcript, pp. 3635-3636. Finally, Lithko's back up documentation for their portion of RCO122R1 is inadequate and predates a lien waiver it executed for September 30, 2016 saying there were no claims outstanding as of that date and all were waived. Defendant's Ex. 69; Transcript pp. 3638-3648.

Ruling: Subcontractors Watson Electrical, Lithko, PASCO, and BMCC dismissed their claims; therefore, the amounts claimed in RCO 122R1 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Additionally, Contractor must provide sufficient information to support the RCO. Section 7.1.2 of the AIA-A201; Section 7.2.2 of the AIA-A201. There is no back up documentation for the "General Conditions" or "hoisting, staging and logistics." Finally, the extended "General Conditions" could only be recoverable if it was shown that the requested changes "directly impact the critical path." Section 5.3.1 of the AIA-A133. Contractor did not provide any testimony related to RCO 122R1's impact on the critical path. There are no actual dates even listed on the RCO. Contractor failed to even attempt to enter into evidence any project schedules for that rough time period in 2016. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid in the amount of $487,321.00 and this RCO would be granted.

RCO 159: This RCO is August 21, 2017. It is in the amount of $242,633.32. It is unexecuted. It states it is for FFE changes. The Subcontractor involved is Westley Contracting; however, Westley Contracting has never made a claim. Indeed, Plaintiff's Ex. 329 does not show any RCO money going to Westley. Transcript, p. 3652. Moreover, of the nineteen (19) entries on the cover letter, the work for sixteen (16) of them was never done. Transcript, p. 3652. None of the attachments purportedly backing up RCO 159 are attached to the copy in Plaintiff's Ex. 12. Transcript, pp. 3653-3655.

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Ruling: Subcontractor Westley Contracting never made a claim; therefore, the amounts claimed in RCO 159 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Moreover, it is undisputed that the vast majority of the claims work was never done. Additionally, Contractor must provide sufficient information to support the RCO. Section 7.1.2 of the AIA-A201; Section 7.2.2 of the AIA-A201. It failed to even attempt to include the attachments outlined in the cover letter. Contractor also failed to show that the Architect gave an initial ruling on RCO 159 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and RCO would be granted.

RCO 161: This RCO is dated August 26, 2017. It is unexecuted. It is in the amount of $17,376.00. The subcontractors involved are Subcontractor BMCC and Subcontractor Precision Walls. Both subcontractors have dismissed their claims after being paid directly by the Owner. Transcript, pp. 3655-3656. The supporting documentation dates from 11 months to 20 months prior to the date of the RCO.

Ruling: Subcontractors Precision Walls and BMCC dismissed their claims; therefore, the amounts claimed in RCO 161 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Moreover, Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This claim is untimely. Contractor also failed to show that the Architect gave an initial ruling on RCO 161 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 178: This RCO is dated October 10, 2017 in the amount of $2,142.00. It is unexecuted. The subcontractor involved is Subcontractor Westley Contracting; however, Westley Contracting has never made a claim. Indeed, Plaintiff's Ex. 329 does not show any RCO money going to Westley Contracting. Transcript, p. 3658.

Ruling: Subcontractor Westley Contracting never made a claim; therefore, the amounts claimed in RCO 178 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 178 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 184: This RCO is dated November 9, 2017 in the amount of $57,467.82. It is unexecuted. It states that it is for Hurricane Irma Prep and Recovery. The subcontractor's involved are Subcontractor Premier Exteriors and Subcontractor First Choice Glass. Both of those subcontractors have dismissed their claims. BBC claims direct expenses and an increase in the contract sum in the amount of $15,515.00. However, even if this were a delay under the Contract Documents, it would be a Class 2 delay for weather and no increase in the contract price is recoverable when a delay is a Class 2 delay. See Sections 8.3.2 and 8.3.3 of the AIA-A201.

Ruling: Subcontractors Premier Exteriors and First Choice Glass have dismissed their claims; therefore, the amounts claimed in RCO 184 could never be "costs of the work" as defined by the

Contract Documents. Section 6.3 of the AIA-A133. Moreover, a Class 2 delay can never result in an increase in contract price. See Sections 8.3.2 and 8.3.3 of the AIA-A201. Contractor also failed to show that the Architect gave an initial ruling on RCO 184 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to one (1) day extension and for Contractor's cost of work.

RCO 212R1: This RCO is dated October 19, 2018 in the amount of $21,253.00. It is executed by the Owner. The subcontractor involved is Subcontractor Robert Thomas. The Owner paid Subcontractor Robert Thomas directly, and Subcontractor Robert Thomas dismissed its claim. Transcript, pp. 3660-3664.

Ruling: Because the Owner paid Subcontractor Robert Thomas directly, in RCO 212R1 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. RCO 212R1 is denied.

RCO 215: This RCO is dated August 14, 2018 in the amount of $14,937.63. It is unexecuted. It states that it is for "Lutron Lighting Control Revision." The subcontractor involved is Subcontractor Watson Electrical. Plaintiff's Ex. 329 does not show any RCO money going to Watson Electrical. Transcript, p. 3664. Further, Subcontractor Watson Electrical has dismissed its claims in this action. Watson Electrical was granted Summary Judgment against Contractor; however, Watson Electrical's attorney swore under oath that the amounts awarded for Summary Judgement did not involve the Owner. See September 9, 2021 Affidavit of Don Terry, Esq.; see also September 13, 2021 Order (citing to Section 10.D. of Watson's Subcontract); see Defendant ONSM Ex. 2 (containing Section 10.D. and only providing for attorneys' fees on "claims not involving the Owner"). Finally, the supporting documentation is dated thirteen (13) months before the RCO.

Ruling: Subcontractor Watson Electrical has dismissed their claims; therefore, the amounts claimed in RCO 215 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This claim is untimely. Contractor also failed to show that the Architect gave an initial ruling on RCO 215 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid for cost of work and this RCO would be granted.

RCO 221: RCO 221 is dated February 6, 2018 in the amount of $846.12 for window tinting. The subcontractor involved is Subcontractor Koch/Strongtower. They are no longer pursuing claims against the Owner. Subcontractor Koch/Strongtower was granted summary judgment for claims against Contractor not involving the Owner. See Koch/Strongtower December 1, 2021 Memorandum (adopting Low Country Case & Millwork's explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner").

Ruling: Subcontractor Koch/Strongtower has dismissed their claims; therefore, the amounts claimed in RCO 221 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 221 as required. Section 4.4.1 of the AIA-A201. RCO 221 is denied.

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RCO 223: This RCO is undated and unsigned by the Contractor in the amount of 3,304.78. It is unexecuted. It contains no supporting documentation.

Ruling: Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Since this RCO is undated, Contractor cannot meet its burden to show that it complied with the contractual time limitations. Contractor also failed to show that the Architect gave an initial ruling on RCO 223 as required. Section 4.4.1 of the AIA-A201. Additionally, Contractor must provide sufficient information to support the RCO. Section 7.1.2 of the AIA-A201; Section 7.2.2 of the AIA-A201. RCO 223 is denied.

RCO 227: This RCO is dated April 19, 2018 in the amount of $9,169.01. It states it is for "warehousing and handling-mirrors for a period beginning on May 22, 2017. The Contract Documents say that installation of the Owner provided mirrors is included in the original contract sum. Plaintiff Ex. 56; Transcript, pp. 3668-3669.

Ruling: Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Further, the Contractor failed to meet its burden that this was a change. Plaintiff Ex. 56; Transcript, pp. 3668-3669. Contractor also failed to show that the Architect gave an initial ruling on RCO 223 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid for cost of work and this RCO would be granted.

RCO 246: This RCO is dated September 4, 2018 in the amount of $31,157.12. It is unexecuted. It states it is for "elevator cab finishes." The subcontractors involved are Subcontractor Low Country Case & Millwork and Subcontractor Watson Electrical. They are no longer pursuing claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner"). Subcontractor Watson Electrical has dismissed its claims in this action. Watson Electrical was granted Summary Judgment against Contractor; however, Watson Electrical's attorney swore under oath that the amounts awarded for Summary Judgement did not involve the Owner. See September 9, 2021 Affidavit of Don Terry, Esq.; see also September 13, 2021 Order (citing to Section 10.D. of Watson's Subcontract); see Defendant ONSM Ex. 2 (containing Section 10.D. and only providing for attorneys' fees on "claims not involving the Owner"). The change was also necessitated due and owing to an error in the shop drawings that was the responsibility of the Contractor. Transcript, pp. 3670-3671.

Ruling: Subcontractors Low Country and Watson have dismissed their claims; therefore, the amounts claimed in RCO 246 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 246 as required. Section 4.4.1 of the AIA-A201. Further, the Contractor failed to meet its burden that this was a change. Contractor also failed to show that the Architect gave an initial ruling on RCO 223 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid for cost of work and this RCO would be granted.

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RCO 249: This RCO is dated August 10, 2018 in the amount of $5,129.09. It is unexecuted. The subcontractor for this RCO is Subcontractor Premier Exteriors. They have dismissed their claims in this action.

Ruling: Subcontractor Premier Exteriors has dismissed their claims; therefore, the amounts claimed in RCO 249 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 249 as required. Section 4.4.1 of the AIA-A201. RCO 249 is denied.

RCO 250: This RCO is dated August 13, 2018 in the amount of $1,462.80. It is unexecuted. The subcontractor involved in this RCO is Subcontractor First Choice Glass. They have dismissed their claims in this action. The supporting documentation is from 2016. Transcript, pp. 3672-3673.

Ruling: Subcontractor First Choice Glass has dismissed their claims; therefore, the amounts claimed in RCO 250 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 250 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. RCO 250 is denied.

RCO 251: This RCO is dated August 31, 2018 in the amount of $22,305.58. It is unsigned by Contractor. It is unexecuted. It states it is for "Dining Room Millwork Change." The subcontractor involved is Subcontractor Low Country Case & Millwork. They are no longer pursuing claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner").

Ruling: Subcontractor Low Country has dismissed their claims; therefore, the amounts claimed in RCO 251 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 251 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 253: This RCO is dated August 14, 2018 in the amount of $10,055.16. It is unexecuted. It states it is for "Add Crown at Dome Rotundas." The subcontractor involved is Subcontractor Low Country Case & Millwork. They are no longer pursuing claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner").

Ruling: Subcontractor Low Country has dismissed their claims; therefore, the amounts claimed in RCO 253 could never be "costs of the work" as defined by the Contract Documents. Section 6.3

of the AIA-A133. Further, Contractor failed to meet its burden of proof that this was a change. Transcript, pp. 3674-3675. RCO 253 is denied.

RCO 254: This RCO in the amount of $41,082.30 was withdrawn at trial by Contractor. Transcript, pp. 1224-1225.

Ruling: RCO 254 is WITHDRAWN.

RCO 255: This RCO is dated August 31, 2018 in the amount of $11,789.32. It is unexecuted. It states it is for "Add Trim to Conceal Pocket Door Header" The subcontractor involved is Subcontractor Low Country Case & Millwork. They are no longer pursuing claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner"). The supporting documentation for the RCO is nine (9) months prior. Moreover, the reason given for the change was to conceal faulty work. Transcript, p. 3677.

Ruling: Subcontractor Low Country has dismissed their claims; therefore, the amounts claimed in RCO 255 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 255 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof that this was a change. RCO 255 is denied.

RCO 258: This RCO is dated March 28, 2019—three weeks after this action was filed by Contractor—in the amount of $65,782.09. It is unexecuted. It states it is for additional mock-up revisions. Each of the subcontractors involved in the RCO have either made no claims or have dismissed their claims. Moreover, the back-up documentation 2017 and 2018. Finally, the Owner actually performed the demolition of the mock-up with its own contractor. Transcript, p. 3680.

Ruling: The RCO postdates the filing of this action by the Contractor. It necessarily follows that the Architect could not and did not give an initial ruling on RCO 258 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Based upon the supporting documentation, this claim is untimely. Further, because the subcontractors have dismissed their claims, the amounts claimed in RCO 258 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor failed to meet its burden that it even performed the work. Contractor also failed to show that the Architect gave an initial ruling on RCO 258 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 259: This RCO is dated August 30, 2018 in the amount of $33,398.68. It is unexecuted. It states it is for "Hudson Street Storm Repair." The Subcontractor involved is Gulf Stream. They have dismissed their claims.

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Ruling: Because Gulf Stream have dismissed their claims, the amounts claimed in RCO 259 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 259 as required. Section 4.4.1 of the AIA-A201. RCO 259 is denied.

RCO 260: This RCO is dated March 1, 2019 in the amount of $5,586.12. It is unsigned by the Contractor. It is unexecuted. The subcontractor involved is Subcontractor Quantum. They have dismissed their claims. The supporting documentation is from November 27, 2018.

Ruling: Because Quantum has dismissed their claims, the amounts claimed in RCO 260 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 260 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Based upon the supporting documentation, this claim is untimely. RCO 260 is denied.

RCO 261: This RCO in the amount of $71,723.42 was withdrawn by Contractor at the trial of this matter. Transcript, pp. 1230-1231.

Ruling: RCO 261 is WITHDRAWN.

RCO 262: This RCO is dated August 31, 2018 in the amount of $15,635.00. It states it is for "TV wall revisions." It is unexecuted. The subcontractors involved are Subcontractor Precision Walls and Subcontractor Watson Electrical. Each has dismissed their claims in this action. The supporting documentation is dated August 2017 and January 2018.

Ruling: Subcontractors Precision Walls and Watson Electrical have dismissed their claims; therefore, the amounts claimed in RCO 262 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 262 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid for GMP and cost of work and this RCO would be granted.

RCO 264: This RCO is dated September 4, 2018 in the amount of $14,390.21. It is unsigned by the Contractor. It is unexecuted. It states it is for "sprinkler heads in TV walls." The subcontractor involved is Subcontractor PASCO. They were responsible for the selection of the sprinkler head locations. Transcript, pp. 3693-3694. Subcontractor PASCO has dismissed its claims in this action. The supporting documentation is from January 8, 2018. Contractor's Subcontractor Status Report shows that PASCO is owed nothing on this Project and, in fact, owes Contractor $107,261.19 for back charges. Defendant's Ex. 63; Transcript, pp. 3633-3635.

Ruling: Subcontractor PASCO dismissed their claims; therefore, the amounts claimed in RCO 264 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-

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A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 264 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Contractor failed to meet its burden that the Owner is responsible for this work. RCO 264 is denied.

RCO 266: This RCO is dated September 7, 2018 in the amount of $2,203.74. It is unexecuted. It states that it is for "additional framing and sheetrock requests." The subcontractor involved in Subcontractor Precision Walls. They have dismissed their claims in this action. The supporting documentation is dated April 2017.

Ruling: Subcontractor Precision Walls has dismissed their claims; therefore, the amounts claimed in RCO 266 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 266 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. RCO 266 is denied.

RCO 267: This RCO is dated September 7, 2018 in the amount of $7,922.44. It is not signed by the Contractor. It is not executed. It states it is for "Rooftop Bar Millwork." The subcontractor involved is Subcontractor Low Country Case & Millwork. The supporting documentation is from June 14, 2017.

Ruling: Subcontractor Low Country has dismissed their claims; therefore, the amounts claimed in RCO 267 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 267 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. RCO 267 is denied.

RCO 268: This RCO is dated September 24, 2018 in the amount of $51,979.21. It is unexecuted. It states it is for "allowance reconciliation." The subcontractors involved in this RCO are Subcontractors Low Country, SEAS, and First Choice Glass. They have all dismissed their claims in this action. Transcript, pp. 3701-3702. The supporting documentation is from July of 2018.

Ruling: Subcontractors Low Country, SEAS, and First Choice Glass have dismissed their claims; therefore, the amounts claimed in RCO 268 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 268 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 270: This RCO is dated March 12, 2019—a week after this action was filed by Contractor—in the amount of $49,885.72. It is unexecuted. It states it is for "framing and drywall change

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orders." The subcontractor involved is Subcontractor Precision Walls. They have dismissed their claims. Moreover, the supporting documentation is from 2017 and 2018.

Ruling: Subcontractor Precision Walls has dismissed their claims; therefore, the amounts claimed in RCO 270 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 270 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 271: This RCO is dated March 12, 2019—a week after this action was filed by Contractor—in the amount of $41,394.11. It is unexecuted. It states it is for "painting change orders." The subcontractor involved is Subcontractor Quantum. They have dismissed their claims. Moreover, the supporting documentation is from 2018. Finally, the supporting documentation references back charges to other subcontractors and defective work of other subcontractors. Transcript, pp. 3705-3710.

Ruling: Subcontractor Quantum has dismissed their claims; therefore, the amounts claimed in RCO 271 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 271 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 271 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 272: This RCO is dated March 7, 2019—two days after this action was filed—in the amount of $19,286.37. It is unexecuted. It states that it is for "ornamental metal change orders". The subcontractor involved is Subcontractor Tate Ornamental. They have never made a claim. The supporting documentation is from 2017- 2018.

Ruling: Subcontractor Tate Ornamental has never made a claim for these costs; therefore, the amounts claimed in RCO 272 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 272 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 273: This RCO is undated, unsigned and is addressed to and from the same person at Contractor. It is in the amount of $111,644.29. The subcontractor involved is Subcontractor David Allen. They have dismissed their claims in this action. It contains insufficient supporting documentation to understand when the alleged costs were incurred or how they may have been a or who is responsible for the change.

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Ruling: Contractor failed to meet its burden in all regards on RCO 273, including all notice provisions in the Contract Documents. Subcontractor David Allen has dismissed their claims; therefore, the amounts claimed in RCO 273 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 273 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 273 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 274: This RCO is undated, unsigned and is addressed to and from the same person at Contractor. It is in the amount of $30,537.68. The subcontractor involved is Subcontractor Quantum. They have dismissed their claims in this action. The supporting documentation is from 2018.

Ruling: Contractor failed to meet its burden in all regards on RCO 274, including all notice provisions in the Contract Documents. Subcontractor Quantum has dismissed their claims; therefore, the amounts claimed in RCO 274 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 274 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 274 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 275: This RCO is dated April 12, 2019—five weeks after this lawsuit was filed. It is in the amount of $67,384.91. It is not signed by the Contractor. It is unexecuted. The subcontractors involved are Subcontractors David Allen, Quantum, Precision Walls, BMCC, and Low Country. All have dismissed their claims. The supporting documentation for the RCO is from late 2017 to early 2018. Finally, the supporting documentation reveals that the costs claimed in RCO 275 is related to defective work. Transcript, pp. 3714-3724.

Ruling: Subcontractors David Allen, Quantum, Precision Walls, BMCC, and Low Country have dismissed their claims; therefore, the amounts claimed in RCO 275 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 275 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 275 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 276: This RCO is dated March 13, 2019—eight (8) days after this lawsuit was filed by Contractor. It is in the amount of $78,632.10. It is unexecuted. The subcontractor involved is

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Subcontractor Low Country Case & Millwork. They have dismissed their claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner"). The supporting documentation is from 2017-2018. Finally, RCO 276 contains amounts previously paid by the Owner and amounts contained in other RCOs. Transcript, pp. 3724-3731.

Ruling: Subcontractor Low Country dismissed their claims; therefore, the amounts claimed in RCO 276 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 276 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Contractor failed to meet its burden of proof to show that the work in RCO 276 was the responsibility of the Owner. Contractor has already been paid for costs it claims in the RCO. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 277: This RCO is dated March 13, 2019—eight (8) days after this lawsuit was filed by Contractor. It is in the amount of $138,304.56. It is unexecuted. The subcontractor involved is Subcontractor Miscellaneous Steel Industries. They have never made a claim for any of these amounts. The supporting documentation is dated 2015-2017.

Ruling: Subcontractor Miscellaneous Steel Industries has never made a claim for these costs; therefore, the amounts claimed in RCO 277 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 277 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 278: This RCO is dated March 29, 2019—three (3) weeks after this lawsuit was filed by Contractor. It is in the amount of $8,511.80. It is unexecuted. The subcontractor involved is Subcontractor Koch/Strongtower. They are no longer pursuing claims against the Owner. Subcontractor Koch/Strongtower was granted summary judgment for claims against Contractor not involving the Owner. See Koch/Strongtower December 1, 2021 Memorandum (adopting Low Country Case & Millwork's explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner"). The supporting documentation is from June 25, 2018.

Ruling: Subcontractor Koch/Strongtower has dismissed their claims; therefore, the amounts claimed in RCO 278 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 278 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the

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AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 279: This RCO is undated and unsigned by the Contractor. It is unexecuted. It is in the amount of $228,811.20. In the cover letter there is a chart with 43 line entries. Attached to the cover letter are tabs A through X. Transcript, p. 3735-3736. All of the subcontractors identified on Tabs A through X have dismissed their claims. This RCO was never submitted to the Owner. Transcript, p. 3738.

Ruling: Contractor failed to meet its burden in all regards on RCO 279, including all notice provisions in the Contract Documents. All subcontractors involved dismissed their claims; therefore, the amounts claimed in RCO 279 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 279 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 279 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

For all the reasons stated herein, I find that Contractor is NOT contractually entitled to recover for any of the RCOs contained in Plaintiff's Ex. 12. I further find that the Contractor submitted forty-one (41) requests for change orders, totaling in excess of $2.3 million,[11] for which it had no entitlement due to its failure to follow the Contract terms. This is particularly true given:

(1) Contractor refused to perform a final accounting. Transcript p. 3908;

(2) Contractor refused to comply with the contractually required audit for the entirety of this action. Defendant's Ex. 50; Transcript p. 3926; Transcript p. 2274;

(3) Contractor purposefully shut down Owner's access to the Egnyte site. Transcript, pp. 2204-2207; Plaintiff's Ex. 258;

(4) Contractor came into this Court and sought to recover amounts it had previously been paid by Owner, but it had not in turn paid to subcontractors as it certified that it had paid and as was required by law to do so. See Testimony of Kim Brown and Sam Hadley;

(5) Every single subcontractor that filed a mechanic's lien dismissed it and withdrew their claims prior to or during the trial of this action; and

(6) Balfour failed to put up a single subcontractor witness to explain the forty-one (41) RCOs, notwithstanding the fact that the subcontractors that either never made a claim or dismissed their claims made up in excess of 90% of the RCO amounts.

[11] As stated above the amounts for RCOs contained in Plaintiff's Ex. 12 and Plaintiff's Ex. 329 do not match. Therefore, the Court does not have an exact number.

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Contractor's Critical Path Schedule

The Contract Documents expressly require what is known as a "Critical Path Method" or "CPM" schedule. Section 3.10.4.2 of the AIA-A201. The Contractor is "solely responsible" for the schedule. Section 3.10.4.7 of the AIA-A201. Contractor must show that any changes "directly impact the critical path." Section 5.3.1 of the AIA-A133. On this Project, Contractor employed Joe Lauricella, an in-house scheduling manager to create and manage the CPM schedule. Transcript, pp. 384-385. This Court notes that Mr. Lauricella was not presented as a witness by Contractor at trial and was informed he was no longer employed by the Plaintiff.

Contractor was required to submit an initial schedule that, if followed, would allow Contractor to complete the work by the substantial completion date of July 2017. Section 3.10.4.1 of the AIA-A201; Transcript pp. 4248-4249. This initial schedule was required to be submitted to the Architect and Owner within fourteen (14) days of the Notice to Proceed. Section 3.10.4.1 of the AIA-A201. This initial CPM schedule is referred to as the "as-planned schedule." Transcript, p. 4250. In Contractor's "as-planned schedule," there was a four (4) month bust because it failed to include the removal of the tower crane required to set the ninth-floor pool in place. Transcript pp. 4250-4251; Transcript pp. 2671-2674. This bust in the as-planned schedule by Contractor impacted all portions of the Contractor's updated schedules that were required by Section 3.10.4.5 of the AIA-A201; Transcript, pp. 2673-2674. In fact, it took Contractor nineteen (19) months—over two-thirds of the as-planned project duration of twenty-eight (28) months—before they inserted it into the logic of an updated schedule. Id.[12] This practice of changes in the logic of the CPM schedules, removal of restraints and the reduction and increases in durations by the

[12] The Court further finds this project delay accounted for the Contractor's decision to recall David Simonton from retirement in December 2017 to try and put the Project back on track to completion by taking over as its Project Manager.

Contractor - without notice to the Owner - was systemic on this Project and will be discussed more specifically below.

In the absence of Lauricella, Contractor offered the testimony of Mark Doran—a scheduling expert. Doran testified that the Project was originally scheduled to be completed by July 30, 2017. Transcript, p. 724. He testified that the Project was not complete until December 28, 2021—a difference of 516 days. Id. He concluded that, of the five hundred and sixteen (516) days of delay to the Project, Owner was responsible for four hundred and ninety-four (494) days, neither party was responsible for twenty-one (21) days, and Contractor was responsible for a single (1) day of delay. Transcript, pp. 808-814.

Owner offered the testimony of Mark Boe, who was qualified as an expert in the field of scheduling, delay claims, and construction claims. Transcript, pp. 2607-2609. Boe gave several opinions.

1. He concluded that the "four notebooks" submitted on March 6, 2019 were essentially useless. Transcript, pp. 2615-2662; Plaintiff's Ex. 261.
2. Boe concluded that Doran used the wrong CPM methodology. Transcript, p. 2665. The methodology utilized by Doran to essentially conclude that the Contractor was not responsible for any delay on this Project failed to meet industry standards for CPM scheduling as recognized in learned treatises. Transcript, pp. 2667-2705; Defendant's Exs. 89-90.
3. Boe concluded that Doran made a significant error even when employing a rejected methodology as Doran ignored the Contractor's own critical path as identified by the Contractor's own employees and schedulers contemporaneously with the work itself. Transcript, pp. 2666-2669. Doran was forced to ignore or reject the Contractor's actual schedules in order to reach his conclusion. Id.
4. Boe concluded that, like Contractor's as-planned schedule, Doran failed to consider the removal of the tower crane in his conclusions of the critical path and delay analysis. Transcript, pp. 2669-2674. This was a significant error because Doran had the tower crane on his critical path. Id.
5. Boe concluded that even with Doran's improper methodology he failed to identify any cause and effect for any of his delay claim. Transcript, pp. 2674-2675.

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6. And finally, Boe concluded that Doran ignored significant delays and manpower problems caused by the Contractor's subcontractors. Transcript, pp. 2675-2676; 2716-2768; Defendant's Ex. 91; Transcript, pp. 2794-2871.

Owner also offered the testimony of Grady Query, III, who was also qualified as an expert in scheduling, delay claims, and construction claims. Transcript, p. 2949. Query actually dealt with Lauricella during the Project. Transcript, p. 2950. Unlike Doran, Query analyzed Contractor's actual contemporaneous CPM schedules and gave several opinions.

1. Contractor deleted activities and actual dates from its schedules which hindered the ability to review Contractor's schedules. Transcript pp. 2968-2969.
2. He concluded that the Contractor's schedule "has such significant fatal flaws that it is neither an effective forecasting or coordination tool." Transcript, pp. 2970-2971.
3. Query explained how predecessor and successor activities worked on a CPM schedule. Transcript, pp. 2973-2978. He explained how Contractor manipulated the predecessor and successor activities with "restraints" or "constraints." Transcript, pp. 2978-2982. Query concluded that Contractor's use of inappropriate constraints on one-third of all its activities gave false information and makes an activity appear critical when it is not. Id. Query testified that the use of even a single inappropriate constraint on a federal project would lead to the rejection of the schedule. Id. He concluded that Contractor used an exorbitant amount of restraints or constraints that inappropriately dictated logic and gave false data on the scheduled activities. Transcript, pp. 2989-2992. These inappropriate changes in the logic of the schedule violated the terms of the Contract Documents. Id; Section 4.10.4.1 of the AIA-A201.
4. Query concluded that Contractor was changing activity ID codes in the schedule. Transcript, pp. 3002-3004. This practice changes how a given activity appears on the critical path and it is a "serious problem." Id.
5. He concluded that critical milestones listed in the schedule were inaccurate. Transcript, pp. 3008-3009.
6. Query concluded that the schedules the Contractor employed could never "accurately predict" when the Contractor was going to finish the job. Transcript, pp. 3010-3012.
7. And finally, Query concluded that the failure to accurately schedule the completion of the Project directly impacted the Owner's ability to hire staff and supply services for the opening of the Project. Id.

I find that the Contractor failed to comply with its scheduling obligations under Section 3.10 of the AIA-A201. I find that, as a direct result of the Contractor's failure to schedule the

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Project in accordance with the terms of the Contract Documents, the only witness who testified as to scheduling for Contractor, Doran, ignored all the Contractor's schedules. [13] I further find that the methodology utilized by Doran violated industry standards and contained numerous errors that significantly impacted any weight this Court could give to Doran's conclusions. As such, I find that the Contractor failed to meet its burden of proof to support an extension of Contract Time. I find the testimony of Boe and Query to be more credible, informative and supported by the greater weight of the evidence. Finally, I find the Contract Time extension was not included in the RCOs submitted to this Court and was not ruled upon by the Architect as required by Section 4.4.1 of the AIA-A201.

Section 2.3.1.3 of the AIA-A133 provides "In the event the Construction Manager does not achieve Substantial Completion of the Work within the Contract Time, including approved extensions, the Contractor shall pay to the Owner as liquidated damages and not as a penalty the (*sic*) Nine Thousand Five Hundred Dollars ($9,000.00)[14] per day for each calendar day the actual time of performance to achieve Substantial Completion exceeds the authorized contract time, which amount shall not exceed the amount of the Contractor's stated Fee."

The Project had an initial Substantial Completion date of July 30, 2017. Plaintiff's Ex. 56. The Contract Time was extended by twenty (20) days to August 19, 2017. Defendant's Ex. 144. Contractor did not achieve Substantial Completion until February 15, 2019. Plaintiff's Ex. 260. This is a period of Five Hundred and Forty-Five Days. Given the duration of the delay and the

[13] Doran analogized the initial critical path schedule to the cooking of the turkey and preparation of Thanksgiving dinner – a good analogy but apparently not followed by the Contractor on this project.

[14] The Court notes the $9,500.00 difference between the written amount and the numerical amount. However, because the Contract contained a cap on the amount of liquidated damages and the cap is reached due to the duration of the delay, the discrepancy need not be resolved.

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cap on liquidated damages, Hadley did the calculation of liquidated damages in the amount of $1,483,090.00. Transcript, pp. 4120-4121.

I find that the amount of liquidated damages is $1,483,090.00. While entitlement to liquidated damages was disputed, the record contains no contradictory calculation of the amount.

VI. Contractor's Claims

I find that the Contractor failed to meet its burden of proof on any of its causes of action. This failure, coupled with Hadley's audit conclusions, demonstrates that Contractor is not entitled to any additional payments under the Contract Documents.

A. Damages

In addition to the RCO Notebook (Plaintiff's Ex. 12) discussed above, Contractor submitted two damage claims into evidence—both over the objection of the Owner. The first were Plaintiff's Exs. 329[15], 330 and 331 excel spreadsheets produced to the Defendant during the trial on September 21, 2021 ("September 21, 2021 Claim"). Transcript, p. 3948. The documents contain no supporting documentation. Plaintiff's Ex. 329 contains the most information; however, the testimony offered by Contractor regarding Plaintiff's Ex. 329 was very limited. Transcript, pp. 2378-2400. No testimony was offered as to how the Plaintiff's Ex. 329 related to any requests for change orders or any of the testimony of Contractor's other witnesses. It was simply described by Contractor's comptroller as a total cost claim plus interest.[16] Transcript, pp. 2378-2379; Transcript, pp. 2456-2459.

On the contrary, Hadley spent a considerable amount of time and effort evaluating the September 21, 2021 Claim within the context of her audit. Transcript, pp. 3958-4104. Hadley discovered duplication, accounting irregularities, double charges, deletion of back charges that

[15] Contractor's Project manager for the entire Project had no role in the preparation of Plaintiff's Ex. 329.
[16] As this is a GMP Contract, the Court allowed this Exhibit into evidence, but discounts its weight as evidence.

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were for the Owner's benefit, payments made to Contractor by Owner that were not paid to Subcontractors and were claimed again before this Court, failure of documentation, and inconsistencies with documentation that was provided when she performed her audit in the courtroom during trial. Id. At the conclusion of her review of the September 21, 2021 claim and her audit, Hadley concluded, to a reasonable degree of accounting and auditing certainty:

> "So given the magnitude of errors and the fact that there's a lot of money on there that Library [Owner] has already paid, and there is a significant amount of money that's duplicative of other amount on there, you can't rely on this document to make payments to BBC [Contractor] because I have identified duplication errors and unsupported documents that are too significant to rely on it in part or in whole."
>
> Transcript, p. 4104.

I find by a greater weight of the evidence that the September 21, 2021 claim is unreliable. I find, given the lack of supporting documentation, the magnitude of errors, and the fact that there is no proximate causation for Contractor's submission of "total costs," this Court gives no weight to the September 21, 2021 claim. As such, Contractor failed to meet its burden of proof for its claim. Section 4.3.1 of the AIA-A201.

The second damage claim submitted into evidence, over the Owner's objection, was offered in Contractor's reply case on November 29, 2021. Plaintiff's Exs. 352-353. "Any Plaintiff in a civil action must first produce and disclose the entire evidence in support of his case; after the defendant has offered all of his evidence, the plaintiff may reply. Reply testimony should be limited to rebuttal of matters raised in defense; it should not be used to complete plaintiff's case in chief." *McGaha v. Mosley*, 283 S.C. 268, 322 S.E.2d 461 (S.C. App. 1984). There was not a witness offered to explain it, authenticate it, swear to its accuracy, or to be cross-examined on it. It was simply handed up to the Court by the attorney for Contractor. Transcript, pp. 4402-4411. Owner had no ability or opportunity to compare it to the September 21, 2021 claim.

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I find, given the unreliability of Contractor's September 21, 2021 claim, the submission of the November 29, 2021 claim in reply and without any testimony to explain it, and the fact that there is no proximate causation for Contractor's submission of "total costs," this Court gives no weight to the November 29, 2021 claim. As such, Contractor failed to meet its burden of proof for its claim. Section 4.3.1 of the AIA-A201.

I further find that Contractor's failure to perform the contractually required final accounting, failure to submit a final pay application, and failure to comply with the audit provisions of the contract for over two years supports the Court's conclusion that the spreadsheet claims are unreliable.

This Court is unable to determine that any of the amounts on the September 21, 2021 and November 29, 2021 claims constitute "costs of the work" due to the lack of supporting documentation for the two claims. See Article 6 of the AIA-A133.

This litigation started with the January 25, 2019 "four page letter" claim in the amount of $22,452,287.00 that had no supporting documentation. Notwithstanding the fact that the Contractor filed this action prior to submitting what it contended was the supporting documentation to the Architect as contractually required, the only supporting data for any of the claims is the "four notebooks." Defendant's Exs. 11, 12, 13, 14. Contractor testified in its SCRCP Rule 30(b)(6) deposition that everything anyone needed to analyze the claim was in the "four notebooks" Contractor 30(b)(6) Deposition, pp. 107-109. However, the Contractor failed to put up a witness to adequately explain, describe or show any causal connection between any of the claims and the "four notebooks." Neither Jim Clements, Hadley, or Boe gave the "four notebooks" any weight. Likewise, this Court is unable to make a correlation or proximate causation of any

kind between the "four notebooks" and the Contractor's September 21, 2021 and November 29, 2021 claims.

Finally, I find that the existence and terms of the Joint Prosecution and Defense Agreements between Contractor and certain subcontractors make difficult any determination that any of the amounts claimed in the September 21, 2021 and November 29, 2021 claims could be "costs of the work." Plaintiff Ex. 209.

B. Lien Foreclosure

Due and owing to the fact that the Contractor is not owed any amounts under the Contract, it follows that Contractor's foreclosure action must be dismissed. The Court does not ignore however that, for over two years, over $26,341,655.00 of mechanic's liens were filed on Owner's property. Transcript pp. 3927-3928. The testimony is that the mechanic's liens were excessive and duplicative. Transcript, p. 3931.

Owner is hereby deemed the prevailing party and is entitled to attorneys' fees and costs pursuant to S.C. Code Ann. Section 29-5-10, et seq.

C. Breach of Contract

"The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009).

Here, the only element met by Contractor is the existence of the contract. Owner is not in breach of the contract as no breach has been shown. In fact, Contractor's representative, David Simonton testified that all certified payment applications were paid. Transcript, p. 4316. Moreover, Contractor failed to demonstrate that it is owed any sums under the contract. Contractor's breach of contract cause of action is dismissed.

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D. Quantum Meruit/Quasi Contract

"Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Webb v. First Federal Savings and Loan Ass'n.*, 300 S.C. 507, 388 S.E.2d 823 (Ct.App.1989). "If the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit." *Swanson v. Stratos*, 564 S.E.2d 117, 350 S.C. 116 (S.C. App. 2002).

Here, we have an express contract under which no money is owed. Contractor may not then recover under a theory of quantum meruit/quasi contract. Otherwise, the terms of a cost plus contract with a guaranteed maximum price could never be enforceable. Accordingly, Contractor's quantum meruit/quasi contract cause of action is dismissed.

E. Section 27-1-15 Claim

S.C. Code Section 27-1-15 states as follows:

> Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

Here, there is no evidence that Owner failed to "reasonably" and "fairly" investigate the merits of Contractor's claims. In fact, the evidence is that Owner attempted to investigate and audit the claims for over two years. This effect was undertaken by Owner despite Contractor's

contractual duty to perform the audit. Contractor's S.C. Code Section 27-1-15 cause of action is dismissed.

F. Waiver

"A waiver is the intentional relinquishment of a known right." *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 338, 676 S.E.2d 139, 145 (Ct. App. 2009).

There was no evidence in this case the Owner intentionally waived any rights. In fact, the Contract Documents specifically do not allow for waiver unless there is a signed writing, which I do not find in the record. Section 13.4.2 of the AIA-A201. Contractor's waiver cause of action is dismissed.

G. Cardinal Change

Cardinal Change is not a cause of action. See Rule 12(b)(6), SCRCP. Moreover, out of the forty-one (41) RCOs submitted by Contractor it could not prove entitlement to a single one. Contractor's Cardinal Change cause of action is dismissed.

H. Indemnity

The only indemnity provision in the Contract Documents is found at Section 3.18 of the AIA-A201. However, none of the language of that section applies to any of the damages sought by Contractor. Moreover, due and owing to the fact that Contractor has not proven entitlement to any damages, there necessarily could NOT be any amounts to recover for indemnification. Contractor's indemnification cause of action is dismissed.

I. Breach of Warranty of Plans and Specifications

In South Carolina, there exists an implied warranty of fitness of plans and specifications. *Hill v. Polar Pantries*, 219 S.C. 263, 64 S.E.2d 885 (1951). Here, however, none of the plans and specifications were entered into evidence by the Contractor. The Contractor did not provide any

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expert testimony that the Architect's plans or specifications fell below the standard of care. In fact, the only witness offered by the Contractor testified that he was NOT going to testify the Architect's plans fell below the standard of care. Transcript pp. 852-853.[17] Further, Contractor's failure to prove any damages is also fatal to this cause of action. Contractor's breach of implied warranty of fitness of plans and specifications is dismissed.

J. First To Breach

There is not a cause of action in South Carolina for "First to Breach." See Rule 12(b)(6), SCRCP. Additionally, the evidence is that Contractor first breached the contract within fourteen (14) days of the Notice to Proceed by submitting a busted as-planned schedule that omitted the removal of the tower crane. Transcript, pp. 4246-4251. Contractor's first to breach cause of action is dismissed.

K. Breach of Contract Accompanied by A Fraudulent Act

The elements of a claim for breach of contract accompanied by a fraudulent act as "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). In the present case, Contractor has failed to prove even a breach of the contract. There is also no evidence that Owner engaged in any fraudulent acts at any time. Contractor's breach of contract accompanied by a fraudulent act is dismissed.

[17] While Contractor complained at length that the Architect's plans were neither "100% +" nor were they "Bimmed," Contractor had reviewed the plans in the pre-construction phase before proceeding and further acknowledged that the Contract did not require the plans to be "Bimmed."

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VII. Owner's Claims Against Contractor and Subcontractors

In addition to the liquidated damages to be awarded to the Owner in the amount of $1,483,090.00, I find that Owner met its burden of proof as follows:

A. Breach of Contract

"The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009).

I find that Owner and Contractor entered into a valid and enforceable contract. I find that Contractor breached the following provisions of the Contract:

1. Contractor "accepted the relationship of trust and confidence" and "covenant[ed] with the Owner to cooperate with the Architect and exercise [Contractor's] skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish and supply at all times an adequate supply of workers and materials; and to perform the work in an expeditious and economical manner consistent with the Owner's interests. Section 1.2 of the AIA-A133.
2. Contractor was to be "solely responsible for the acts and omissions of its subcontractors." Section 2.1.6 of the AIA-A133. Contractor was to make the Owner an intended third party beneficiary of "all agreements" between Contractor and subcontractors. Id. I find that Contractor breached this provision.
3. Contractor is solely responsible for scheduling, phasing and coordination of the work. Section 2.3.1.4 of the AIA-A133; Section 3.10 of the AIA-A201. I find that Contractor breached this provision.
4. Contractor "shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes." I find Contractor breached this provision.
5. Contractor was required to account for back charges to be assessed between its subcontractors for the benefit of the Owner. Section 6.7.3 of the AIA-A133. I find Contractor breached this provision.
6. Contractor was required to keep "full and detailed accounting records" and to "substantiate all costs incurred." Section 6.11.1 of the AIA-A133. I find the Contractor breached this provision.
7. Contractor was required to submit to an audit of its books and records. Sections 6.11.1 and 7.1.11 of the AIA-A133. I find the Contractor breached this provision.

8. Contractor was required to summarize its cost records and maintain complete "back up documentation." Section 7.1.4 of the AIA-A133. I find the Contractor breached this provision.
9. Contractor was required to submit a final accounting for the Project. Section 7.2 of the AIA-A133. I find the Contractor breached this provision.
10. Contractor was required to provide all "management staff with whatever additional supervisory personnel are required to ensure that the Work will be completed by the Contractual date of Substantial Completion. Section 3.3.4 of the AIA-A201.
11. Contractor was required to employ a competent superintendent and necessary assistants. Section 3.9.1 of the AIA-A201.
12. Contractor was required to be solely responsible for all of the scheduling requirements. Section 3.10.1 of the AIA-A201. I find Contractors breached these provisions.
13. Contractor was required to bond-off subcontractor liens. Section 9.3.1.2 of the AIA-A201. I find Contractor breached this provision.
14. Contractor was required to promptly, and at its own expense, correct defective work. Section 12.2.1 of the AIA-A201. I find the Contractor breached this provision.

Section 2.4 of the AIA-A201 states, in pertinent part, that "If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents" and the Owner provides notice to the Contractor of such failure, Owner may proceed to perform the work itself. Owner put Contractor on notice of the defective work. Defendant's Exs. 104 and 105. Owner then performed the work through other contractors. Transcript, pp. 3819-3827. Owner incurred costs performing work or self-performing work that Contractor was contractually required to perform, but Contractor either failed to perform the work or the work was defective and not in compliance with the Contract Documents. Defendant's Ex. 146B; Transcript, p. 3817. This work included warranty work, laundry costs, labor, cleaning fees, repair work, painting work, punch list repair work, fixtures, and pool repairs. Transcript, pp. 3819-3827; Transcript pp. 3247-3255; Transcript, pp. 3267-3272. Defendant's Exhibit 146B contains proper and complete supporting documentation. The total amount of the Owner supplied work is $2,256,764.00.

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I find the Owner was required to perform work that the Contractor failed to perform. I find that the amount of $2,256,764.00 is reasonably supported and directly and proximately caused by the Contractor's failure to perform the contractually agree to work.

B. Breach of Contract Accompanied by a Fraudulent Act

The elements of a claim for breach of contract accompanied by a fraudulent act as "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002).

I find Contractor's failure to perform its own accounting and repeated obfuscation of the accounting and audit process constituted not only a breach of the contract but that it was accompanied by fraudulent intent. I find that the true purpose of trying to avoid the audit was not for the reasons stated by Contractor in Defendant's Ex. 50, but instead to avoid, for as long as possible, the discovery that Contractor's claim was not $22,452,287.00 or any of the iterations of Contractor's spreadsheets. The actual claim, once Hadley was finally able to perform her work, is determined to be $419,425.00. Transcript, p. 4111; Transcript, pp. 4120-4121. This amount is prior to the award of any amounts of set off for liquidated damages or other damages.

Ultimately, I find that the Contractor is owed nothing. I find that Contractor breached this Contract, and the breach was accompanied by a fraudulent act. The Court asks:

What is the purpose of filing duplicative and excessive liens? What is the legitimate purpose of refusing to do an accounting or allow one's books and records to be audited?

The Court concludes that there is not a legitimate one. The only purpose would be to attempt to force an Owner into submission. This is especially true given Contractor's repeated

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assertions that the Owner did not have sufficient funds to pay their claim. See Paragraph 52 of Plaintiff's Second Amended Complaint.

I further find the Contractor's undisclosed internal change orders violate the express terms of the Contract Documents and the essence of a cost-plus contract to be further evidence of fraudulent intent.

This Court, therefore, orders a bifurcated hearing on punitive damages pursuant to S.C. Section 15-32-510 et seq. for Contractor's breach of contract accompanied by a fraudulent act.

C. Declaratory Relief/Indemnification

I find and do declare, pursuant to S.C. Code Sections 15-53-30 and -40, based upon the accounting work and audit performed by Hadley, the mechanic's liens filed by Contractor and Subcontractors Lithko, Watson and ONSM are or were duplicative and excessive. The only remaining mechanic's lien is the Contractor's lien which is dismissed pursuant to the Court's rulings herein. As such, I order, pursuant to S.C. Code Ann. Section 15-53-100, Contractor and Subcontractors Lithko, Watson and ONSM to pay all costs incurred by Owner for the services of Hadley. At the trial, Ms. Hadley stated that her costs incurred were in the approximate amount of $530,000.00. Transcript, pp. 3954-3955. Owner shall prepare and file an affidavit of Hadley's costs within thirty (30) days from the entry of this Order.

D. Unfair Trade Practices

To recover in an action under the UTPA, the claimant must show: (1) the opposing party engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the claimant suffered monetary or property loss as a result of the opposing party's unfair or deceptive act(s). S.C. Code Ann. §§ 39-5-10 to -560; *Wright v. Craft*, 640 S.E.2d 486, 372 S.C. 1 (Ct. App. 2006).

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I find that Contractor engaged in acts which were unfair and deceptive in the conduct of trade or commerce. I find that these acts which were capable of repetition, were in fact repeated; however, I find that this is a private contract dispute between these parties which does not affect the public interest. Accordingly, this cause of action is dismissed.

E. Civil Conspiracy

"[A] plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston Cnty. Sch. Dist*., 433 S.C. 562, 861 S.E.2d 774 (S.C. 2021).

I find that Contractor combined with Subcontractors Lithko, ONSM, and Watson entered into a Joint Defense and Prosecution Agreement. Owner contends the Agreement, by itself, was lawful, but sought to achieve an unlawful purpose of extorting money from the Owner.

The Court finds the communications undertaken through this Agreement to be privileged under the Common Interest Rule. Transcript pp. 5036-5043. Because the defense and prosecution of claims among co-Defendants is recognized as a legitimate legal process, I find no overt act in furtherance of the Agreement, in this instance, will support a recovery under the civil conspiracy cause of action. See *Tobaccoville USA v. McMaster*, 387 S.C. 287, 692 S.E.2d 526 (2010). Also *Paradis v. Charleston Cnty. Sch. Dist.,* supra.

IT IS THERFORE ORDERED AS FOLLOWS:

I. Judgment is to be entered in favor of Library Associates, LLC on its breach of contract cause of action against Balfour Beatty Construction, LLC in the amount of **$3,320,329.00.** This amount is arrived at by adding the liquidated damages sum ($1,483,090.00) and the cost to complete damages ($2,256,764.00) for a subtotal of

$3,739,854.00. The contract balance of $419,425.00 is then subtracted for a setoff to arrive at the judgment amount of $3,320,329.00.

II. Judgment is to be entered in favor of Library Associates, LLC on breach of contract accompanied by a fraudulent act cause of action against Balfour Beatty Construction in the amount of $**3,320,329.00**.

III. A hearing on punitive damages will be set by future Order of this Court.

IV. Library Associates, LLC is hereby instructed to submit its attorneys' fees and costs petition as the prevailing party against Balfour Beatty Construction, LLC, Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC and Old North State Masonry, LLC under the mechanic's lien statute, S.C. Code Section 29-5-10, et seq., within thirty (30) days of the date of this Order.

V. Library Associates, LLC is further instructed to submit an affidavit of Hadley's costs pursuant to S.C. Code Ann. Section 15-53-100 within thirty (30) days of this Order.

IT IS SO ORDERED!

_____
Mikell R. Scarborough
Charleston County Master-In-Equity

_____, 2023

ELECTRONICALLY FILED - 2023 Oct 06 2:31 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2023 Oct 06 2:31 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al

Case Number: 2019CP1001108

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-10-06 13:53:11 page 47 of 47

ELECTRONICALLY FILED - 2024 Apr 04 3:39 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** Balfour Beatty Construction, LLC, Plaintiff, v. Library Associates, LLC; and Metropolitan Life, a New York Corporation Defendants, --- Library Associates, LLC, Third-Party Plaintiff, v. Lithko Contracting, LLC, *et al.* Third-Party Defendants.	)	**IN THE COURT OF COMMON PLEAS** **NINTH JUDICIAL CIRCUIT** CASE NO.: 2019-CP-10-01108 **ORDER DENYING BALFOUR BEATTY CONSTRUCTION, LLC'S MOTION TO RECONSIDER GRANT OF SUMMARY JUDGMENT IN FAVOR OF STRONG TOWER CONSTRUCTION, LLC.** **- AND -** **ORDER GRANTING STRONG TOWER'S MOTION TO CERTIFY JUDGMENT AS FINAL** ***(Ending the case as to Strong Tower)***

On March 13, 2024, this matter came before the Court on Balfour Beatty Construction, LLC's ("BBC") Motion for Reconsideration of the grant of partial summary judgment to, and entry of judgment in favor of Strong Tower Construction, LLC ("Strong Tower"), in addition to on Strong Tower's Motion to Certify its partial summary judgment as final. For the reasons set forth in Strong Tower's briefing and as argued at the hearing of this matter on March 13, 2024, BBC's Motion is **DENIED**. The September 9, 2021, grant of partial summary judgment and entry of judgment in favor of Strong Tower is confirmed and finalized, with post-judgment interest accruing from the date of the original judgment, September 9, 2021, at a rate of 7.25% per annum. [1]

[1] *Calhoun v. Calhoun*, 339 S.C. 96, 104, 529 S.E.2d 14, 19 (2000) ("[W]hen a money judgment is finalized, whether in a lower court or in an appellate court, the interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.").

ELECTRONICALLY FILED - 2024 Apr 04 3:39 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

With the denial of BBC's Motion, and for the reasons set forth in Strong Tower's briefing and as argued at the hearing of this matter on March 13, 2024, Strong Tower's Motion to Certify is **GRANTED**. With this grant of Strong Tower's Motion, no claims brought by or against Strong Tower remain, and the Court certifies the judgment in favor of Strong Tower as a final judgment pursuant to Rule 54(b), S.C.R.C.P. and directs entry of the same in favor of Strong Tower. This ends the case as to Strong Tower.[2]

IT IS SO ORDERED.

Dated _____

_____
Mikell R. Scarborough
Master in Equity

[2] The above-captioned case represents a consolidation of several actions either initiated by Strong Tower or in which Strong Tower is named as a party, including Case No. 2019-CP-10-2868, Case No. 2019-CP-10-3005, and Case No. 2019-CP-10-3727. By virtue of this order, those cases are ended as to Strong Tower, and, to the extent necessary, this order can be filed in those cases as proof of Strong Tower's judgment and certification of its judgment.

ELECTRONICALLY FILED - 2024 Apr 04 3:39 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al

Case Number: 2019CP1001108

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

ELECTRONICALLY FILED - 2024 Apr 04 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 **CP-**10-01108

BALFOUR BEATTY CONSTRUCTION, LLC, et al.	LIBRARY ASSOCIATES, LLC; et al.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Samuel M. Wheeler	**Attorney for :** ☐ Plaintiff ☒ Third-Party 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

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : The grant of summary judgment to Strong Tower Construction, LLC is confirmed and finalized, post-judgment interest to run from the date of the original judgment. The judgment is hereby certified as final pursuant to SCRCP 54(b), ending the case as to Strong Tower only.

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)**
Strong Tower Construction, LLC	Balfour Beatty Construction, LLC	$ 164,559.12, plus interest as noted in the written order
		$
		$

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.

Mikell R. Scarborough	3062	
Circuit Court Judge	**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 THIRD-PARTY DEFENDANT(S) STRONG TOWER CONSTRUCTION, LLC.**
	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.

ELECTRONICALLY FILED - 2024 Apr 04 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2024 Apr 04 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

ELECTRONICALLY FILED - 2024 Apr 04 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2024 Apr 04 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

Charleston Common Pleas

Case Caption:	Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al
Case Number:	2019CP1001108
Type:	Master/Order/Form 4

So Ordered

s/Mikell R. Scarborough 3062

ELECTRONICALLY FILED - 2024 Apr 12 11:39 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** Balfour Beatty Construction, LLC, Plaintiff, v. Library Associates, LLC; and Metropolitan Life, a New York Corporation Defendants, --- Library Associates, LLC, Third-Party Plaintiff, v. Lithko Contracting, LLC, *et al.* Third-Party Defendants.	)	**IN THE COURT OF COMMON PLEAS** **NINTH JUDICIAL CIRCUIT** CASE NO.: 2019-CP-10-01108 **ORDER DENYING BALFOUR BEATTY CONSTRUCTION, LLC'S MOTION FOR RECONSIDERATION OF WATSON ELECTRICAL CONSTRUCTION, LLC'S SUMMARY JUDGMENT**

This matter came before the Court on Balfour Beatty Construction, LLC's ("Balfour") Motion for Reconsideration ("the Motion") of this Court's Order Granting Summary Judgment to, and entry of judgment in favor of, Watson Electrical Construction, LLC ("Watson"). For the reasons set forth in Watson's briefings and argued at the hearing of this Motion on March 13, 2024, Balfour's Motion is **DENIED**. The September 10, 2021 grant of summary judgment and entry of judgment in favor of Watson is confirmed and finalized, with post-judgment interest accruing from the date of the original judgment[1] at a rate of 7.25% per annum.[2]

[1] *Calhoun v. Calhoun*, 339 S.C. 96, 104, 529 S.E.2d 14, 19 (2000) ("[W]hen a money judgment is finalized, whether in a lower court or in an appellate court, the interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.").

[2] As of the date the Motion was heard, $299,331.62 in post-judgment interest has accrued.

IT IS SO ORDERED.

Dated _____

_____
Mikell R. Scarborough
Master in Equity

ELECTRONICALLY FILED - 2024 Apr 12 11:39 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2024 Apr 12 11:39 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

Charleston Common Pleas

Case Caption:	Balfour Beatty Construction LLC VS Library Associates LLC , defendant, et al
Case Number:	2019CP1001108
Type:	Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Balfour Beatty Construction, LLC)
Plaintiff(s))

CIVIL ACTION COVERSHEET

vs.

2019 - CP - 10 - 1108

Library Associates, LLC and Metropolitan Life Insurance Company, a New York Corporation)
Defendant(s))

FILED
2019 MAR -5 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Submitted By: Thomas C. Hildebrand, Jr.
Address: Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

SC Bar #: 2501
Telephone #: 843.727.2653
Fax #: 843.727.2680
Other:
E-mail: tomhildebrand@parkerpoe.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION *(Check all that apply)*

If Action is Judgment/Settlement do not complete

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) ____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____

- ☐ Notice/File Med Mal (230)
- ☐ Other (299) ____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) ____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☒ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) ____

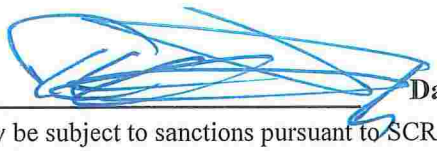
Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) ____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) ____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Incapacitated Adult Settlement (790)
- Other (799) ____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm. (991)
- ☐ Other (999) ____

Special/Complex/Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) ____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of-State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature:  **Date:** 3/5/19

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanction

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Balfour Beatty Construction, LLC, Plaintiff, vs. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: LIS PENDENS

FILED
2019 MAR -5 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT

Notice is hereby given that an action has been or within 20 days will be commenced by the Plaintiff above-named against the Defendant above-named for the foreclosure of the following mechanic's lien which encumbers the property described herein:

Mechanic's Lien of Balfour Beatty Construction, LLC in the amount of Eight Million Four Hundred Nine Thousand Six Hundred Fifty-Eight and 54/100 Dollars ($8,409,658.54) and filed in the RMC Office for Charleston County, South Carolina. The property covered and affect by the mechanic's lien and this Lis Pendens is more fully described as follows:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By:_____
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

March 5, 2019

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Balfour Beatty Construction, LLC, Plaintiff, vs. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: SUMMONS

FILED
2019 MAR -5 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the below-signed at their office located at 200 Meeting Street, Suite 301, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By: _____
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

March 5, 2019

PPAB 4722919v1

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Balfour Beatty Construction, LLC, Plaintiff, vs. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: COMPLAINT (Non Jury) (Referral to Master-in-Equity Requested)

FILED
2019 MAR -5 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff Balfour Beatty Construction, LLC ("Balfour" or "Plaintiff") by way of Complaint against Library Associates, LLC ("Library Associates") and Metropolitan Life Insurance Company, a New York Corporation ("Met Life") (collectively "Defendants") through its below signed attorneys, alleges and says:

JURISDICTION AND VENUE

1. Balfour is a limited liability corporation organized under the laws of the State of Delaware with its principal place of business in Dallas, Texas. It transacts business in the State of South Carolina and the County of Charleston.

2. Library Associates is a limited liability corporation organized and existing under the laws of the State of South Carolina and transacts business in Charleston County.

3. Met Life is a corporation organized under the laws of the State of New York and transacts business in South Carolina.

4. Venue and Jurisdiction are appropriate in this court as the project that is the subject of this litigation is in Charleston County and most of the acts related to this action took place in Charleston County.

5. The contract for the construction of the project (described in more detail below) provides that this dispute is to be decided as a non-jury matter before the Charleston County Master-in-Equity.

BACKGROUND FACTS

6. Balfour is a general contractor that constructs various projects, including large commercial projects, in states throughout the United States. Balfour is a licensed South Carolina unlimited general contractor, license number 110668.

7. Library Associates owns the property and improvements thereon which are the subject of this action. Library Associates is sometimes referred to herein as "Owner".

8. Library Associates is principally owned and controlled by Charleston developer Michael Bennett.

9. Met Life provided construction financing to Library Associates for the Project and has a security interest in the property that is the subject of this action.

10. By contract dated September 22, 2014, Balfour contracted with Library Associates to construct a luxury hotel to be built on the site of the old Charleston library, which is adjacent to Marion Square in downtown Charleston. The contract between Balfour and Library Associates is incorporated herein by reference and is referred to herein as the "Contract".

11. The "Project" identified in the Contract is the "Hotel at Marion Square, 404 King Street, Charleston, South Carolina", but the Owner subsequently changed the name and the project is now called the Hotel Bennett (the "Hotel" or the "Project").

12. Owner contracted with Winford Lindsay Architect as the architect for the

Project (the "Architect") and Architect is identified and designated as such in the Contract.

13. The Architect was obligated to provide the necessary and required design documents, including the drawings and specifications (the "Design Documents") for the Project and also, during construction, to provide certain contract administration not otherwise performed by the Owner through its owner's representative.

14. Architect is specifically designated in the Contract as an express "Owner's representative" and as such had ongoing obligations as an owner's representative during construction. (Contract General Conditions ¶ 4.2.1)

15. The Contract provided that the Owner was to designate in writing "a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization" (Contract General Conditions ¶ 2.1.1) and that representative was required to render decisions promptly and furnish information expeditiously to avoid unreasonable delay to Balfour. (Contract ¶ 3.2). The Owner did so designate Jim Clements and Matrix Program Management Services, LLC as the Owner's Designated Representative (hereinafter "Owner's Representative").

ERRORS, OMISSIONS, WRONGFUL ACTS AND BREACHES BY OWNER

16. Shortly after Balfour's work commenced, unordinary, unanticipated and unforeseen problems and issues developed that damaged Balfour (as detailed below) and that were caused by the errors, omissions, wrongful acts and breaches of Library Associates and the consultants, agents, and representatives of Library Associates, to specifically include, but not limited to, the Architect and the Owner's Representative. The errors, omissions, wrongful acts and breaches of Owner, and for which Owner is

responsible and liable, are referenced hereinafter as the "Breaches" and include, but are not limited to, the following:

(a) Failure to provide information or services required of the Owner in a reasonably prompt and timely manner and in accordance with the Contract.

(b) Failure to provide an Owner's Representative who was in fact appropriately authorized, permitted and able to make prompt and timely decisions, bind the Owner and who could furnish information expeditiously so as to avoid delays and impacts to the Project and Balfour. The Owner's Representative regularly and repeatedly failed to make prompt and timely decisions and failed to promptly and timely forward information.

(c) Failure to timely and promptly pay amounts due and owing to Balfour, to specifically include undisputed and reasonably undisputed amounts owed.

(d) Making major changes while the Project was underway resulting in major changes to the layout of the building and systems in the building without adequate compensation to Balfour. Two examples include: (1) decisions by the Owner well after construction had commenced to upscale the hotel to a higher luxury rating leading to changes in room layouts which drove major system changes and, (2) the Owner's failure to select a hotel operator until late in the Project which then led to many changes, including changes in the levels of finishes in guest rooms and public spaces to adjust to the operator's branding requirements. Additionally, there were continual design and materials changes during construction that were seemingly made or proposed simply to address the Owner's constantly changing and shifting visions of the Project. Many changes were mandated by the Owner, and persons for whom the

Owner is responsible, that resulted in significant cascading effects on other work that resulted in higher costs and delays. All of these design changes, and more, caused delays and damages for which Balfour has not been compensated.

(e) The Owner and its agents and representatives actively interfered with and disrupted Balfour and the Project. Examples include instances where Owner communicated possible changes to the building and thereafter failed to promptly make decisions as to such proposed changes, sometimes abandoning the proposed changes after months of indecision - leading to, among other things, delays, disruptions, impacts, accelerations, and interference to and with Balfour.

(f) Failure to procure appropriate Builders' Risk insurance in accordance with the requirements of the Contract and failure and refusal to compensate Balfour for losses incurred which were or should have been covered by appropriate and required Builders' Risk insurance.

(g) Failure to provide contract documents, to include drawings and specifications, ("Contract Documents") that were reasonably free from errors and omissions and which included all items necessary for the proper execution and completion of the work by Balfour.

(h) Failure to provide Contract Documents that were properly coordinated. The degree to which the design was uncoordinated together with the level of work, time, cost and effort that fell on and was demanded by Owner to Balfour to coordinate the design and keep construction progress was unforeseeable.

(i) Failure of the Owner to either authorize or direct its design consultants, to specifically include but not limited to the Architect, to provide adequate,

timely and sufficient services, including building information modeling ("BIM"), for the preconstruction and construction phases of the Project so as to timely and proactively identify and address (with approximate lead time) deficiencies in the design and the uncoordinated nature of the design. The Architect's BIM capabilities were unreasonably, improperly and fundamentally inadequate which led the Architect to fail to keep pace with the coordination process and to provide information in workable formats or work with information in relevant, required and appropriate industry standard formats. An example of a significant impact from these deficiencies includes, but is not limited to the fact that the progress of construction caught up to the design coordination at the fifth floor which shut down and interrupted the construction of the concrete structure. Also, Balfour was prevented from executing a typical buyout, submittal and shop drawing process for the fit up of the building, which compressed that work and caused inefficiencies.

(j) Failure to timely furnish information and services required by Balfour to efficiently construct the Project.

(k) Failure to promptly or timely provide decisions and approvals.

(l) Repeated failures to refrain from directly communicating with Balfour's employees and subcontractors rather than communicating with Balfour's authorized representative, all with the purpose and/or result of undermining Balfour's leadership on the Project and making performance of the work more difficult and costly.

(m) Delays, disruptions, impacts, accelerations and damage caused to the Project by the Owner's separate contractors resulting in Balfour incurring additional costs and delays, including costs to repair resulting damage.

(n) Failure of the design to conform with applicable laws, ordinances, codes, rules and regulations as well as reasonable, prudent, relevant and applicable standards and standards of care.

(o) Failure to reasonably interpret and administer allowances set forth in the Contract, including the refusal to execute change orders for costs exceeding allowance amounts and refusal to act reasonably and promptly in selecting materials and equipment covered by allowances.

(p) Abandonment and waiver (express and/or implied) by the Owner of much, if not all, of the claims, administrative changes and change order provisions which were drafted by the Owner and set forth in the Contract.

(q) Requiring Balfour to provide work that went beyond what was depicted in the drawings or provided in the specifications – or reasonably inferable from those documents – all without the provision of additional compensation and extensions of time.

(r) The Owner's abandonment and waiver (express and/or implied) of many or all Contract provisions by selectively enforcing provisions only when the Owner believed the circumstances were favorable to it.

(s) Failure on the part of the Architect and Owner's design consultants to reasonably and impartially interpret and administer the Contract.

(t) Failure to extend the contract completion dates and compensate Balfour for delay costs and damages.

17. As a result of the Breaches described herein Balfour has suffered actual and direct damages to include, but not limited to, extended overhead, loss of profit,

interest, costs and attorneys' fees. These damages relate to and arise from the Breaches enumerated above and the resulting impacts, interference, disruptions, coordination failures, accelerations (actual and constructive) and changes.

FIRST CAUSE OF ACTION
Foreclosure of Mechanic's Lien

18. Balfour realleges the Paragraphs above as if repeated herein verbatim.

19. Balfour, pursuant to its Contract with Library Associates, furnished labor, materials and services used in the construction of the Project.

20. Balfour has performed all conditions precedent to the Contract with Library Associates.

21. At all times during the performance by Balfour the Property was owned by Library Associates.

22. Met Life claims an interest in the Property and is named herein pursuant to that interest which relates to the provision of construction financing for the Project.

23. Balfour gave and served Library Associates and Met Life with its notice of statement of account and its Mechanic's Lien within 90 days after which Balfour supplied labor, materials and services for the Project as provided for by law.

24. On January 25, 2019, Balfour, within 90 days of the last date upon which it supplied the labor, materials and services to the Property, filed in the Office of the Register of Deeds for Charleston County its notice of statement of account for Mechanic's Lien which was a just and true account of the amount due Plaintiff at Book 0741, Page 428, of the records, a copy of which is attached hereto as Exhibit "A".

25. Balfour claims a Mechanic's Lien on the Property as more particularly described and attached hereto as Exhibit B within the Mechanic's Lien.

26. Balfour is entitled to an order of foreclosure of its Mechanic's Lien on the subject real estate for the amount of its account and costs and requiring that the property be sold and that the proceeds of the sale after deducting all lawful charges and expenses be applied to the debt of Balfour including reasonable attorney's fees and costs incurred.

SECOND CAUSE OF ACTION
(Breach of Contract)

27. Balfour realleges the Paragraphs above as if repeated herein verbatim.

28. Owner has breached the Contract with Balfour in the particulars that include the Breaches detailed herein, all to Balfour's damage as detailed herein.

THIRD CAUSE OF ACTION
(Quantum Meriut/Quasi Contract)

29. Balfour realleges the Paragraphs above as if repeated herein verbatim.

30. Balfour conferred benefits in the form of work and materials as described herein and as will be proven. The benefits were not conferred gratuitously but were conferred with an expectation of compensation and reimbursement.

31. Owner knew or should have known that Balfour expected compensation and reimbursement for the benefits provided and the costs and damages incurred, and Owner chose to accept the benefits with such knowledge. As a result, Owner has been unjustly enriched in an amount to be proven at trial and as otherwise discussed herein. Despite its unjust enrichment, Owner has refused to compensate Balfour for the damages incurred.

FOURTH CAUSE OF ACTION
(South Carolina Code §27-1-15)

32. Balfour realleges the Paragraphs above as if repeated herein verbatim.

33. On January 29, 2019 Balfour sent a letter to Owner by certified mail demanding payment for the balance then due for the labor and materials provided by Balfour to the Owner and the Project. See attached Exhibit "B". Pursuant to South Carolina Code §27-1-15, Owner had a duty to make a reasonable and fair investigation of the merits of Balfour's claim and to pay the claim, or whatever portion of it was determined to be valid, within 45 days of the date of the certified letter. Owner has failed and refused to make a reasonable and fair investigation of Balfour's claim and has failed and refused to pay any portion of the same.

34. Pursuant to South Carolina Code §27-1-15, and for the reasons stated herein, Owner is liable for and Balfour is entitled to the amount of Balfour's claim plus attorneys' fees and interest from the date Balfour sent the certified letter to Owner.

FIFTH CAUSE OF ACTION
(Abandonment, Waiver and/or Estoppel)

35. Balfour realleges the Paragraphs above as if repeated herein verbatim.

36. Shortly after construction began, problems and issues began that were caused by and/or the responsibility of the Owner, as more fully detailed herein. Balfour provided ongoing general and specific notice, both oral and in writing, to the Owner of the Breaches and damages it was incurring and would incur as a result of the Breaches and the delays, changes , impacts, non-payments, accelerations and damages resulting therefrom. With full actual and/or constructive knowledge of Balfour's claims, issues and damages (current and potential) the Owner directed, induced and demanded Balfour to proceed and continue to provide all work and materials to complete the Project.

37. The Owner, by directing, inducing and demanding Balfour to proceed with

the work despite notice of Balfour's claims, and by accepting the ongoing benefits and work provided by Balfour without demanding additional claims documentation or demanding that Balfour stop work, waived, abandoned and is estopped from enforcing or attempting to enforce any contractual claims provisions in defense of Balfour's claims. Owner, by not demanding additional claims documentation or demanding that Balfour stop work in response to Balfour's notice to Owner of the Breaches, intended to induce and cause Balfour to rely, and did induce and cause Balfour to reasonably rely on Owner's silence and non-enforcement, all to Balfour's damage as stated herein.

SIXTH CAUSE OF ACTION
(Cardinal Change)

38. Balfour realleges the Paragraphs above as if repeated herein verbatim.

39. The Breaches of the Owner, in part or in whole, effected a change and changes to the Contract that were so profound and of such great magnitude that they required Balfour to perform duties and a scope of work materially different from what was originally bargained for and fundamentally altered Balfour's original undertaking and amounted to a practical repudiation of the original contract by Owner, and thereby constituted cardinal changes allowing Balfour recovery of all damages incurred even if not otherwise redressable under the Contract, and thereby rendering Owner liable and in breach and liable for all damages claimed herein.

SEVENTH CAUSE OF ACTION
(Indemnity)

40. Balfour realleges the Paragraphs above as if repeated herein verbatim.

41. As a result of Owner's Breaches, various subcontractors, materialmen and/or suppliers of Balfour have filed claims and/or mechanic's liens for damages they

have suffered because of the Breaches and refusals by Owner to pay Balfour sums due. As a result, Balfour has and will incur damages related to those claims and liens and is entitled to recovery from Owner of all damages arising out of and/or related to those claims and liens by virtue of contractual, express, implied and/or equitable indemnity, and entitling Balfour to recover from Owner any sums paid to settle such claims and/or any judgments rendered against Balfour relating to such claims and to include Balfour's damages, costs and attorneys' fees relating to and arising out of any such claims.

SEVENTH CAUSE OF ACTION
(Damages and Request for Relief)

42. Balfour realleges the Paragraphs above as if repeated herein verbatim.

43. As a result of the errors, omissions, nonpayments, wrongful acts and Breaches of Owner as described above, Balfour is entitled to:

(a) Foreclosure of the mechanic's lien and sale of the Project and Property and providing that the proceeds be paid to Balfour after deducting all lawful charges and expenses, and providing Balfour payment of the debt and to include attorneys' fees and costs.

(b) All damages arising out of and related to the causes of action noted above, to include damages related to extended time, delays, changes, impacts, disruptions, accelerations, abandonment, cardinal change, failure to coordinate, unproductivity, owners' interference, failure to procure and disburse insurance, changes and improper design.

(c) Statutory interest, costs and attorneys' fees pursuant to South Carolina Code §27-1-15 and 10, et. seq.

(d) Any and all unpaid contractual and extra-contractual damages and sums due and/or proven.

(e) Interest.

(f) Costs and attorneys' fees.

(g) Lost profits and extended overhead.

(h) Indemnity damages related to any claims of subcontractors, materialmen and/or suppliers.

(i) Damages pursuant to the Contract to include interests, costs and attorneys' fees.

(j) Together with all other damages, remedies and relief to which Balfour is entitled in law or equity.

WHEREFORE, Plaintiff demands foreclosure of its mechanic's lien and the proceeds of the sale applied to the debt owed Balfour, and judgment against Owner for the damages and relief herein and for such other and further relief, to include any and all appropriate equitable and further relief as the Court may deem just and appropriate.

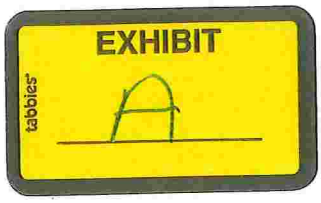
PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By:_____
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

March 5, 2019



STATE OF SOUTH CAROLINA	)	IN THE REGISTER OF DEEDS
	)	
COUNTY OF CHARLESTON	)	
	)	
Balfour Beatty Construction, LLC,	)	**NOTICE AND CERTIFICATE OF MECHANIC'S LIEN**
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation;	)	RECEIVED 1/25/19 PER CLERK ROD OFFICE JBA CHARLESTON COUNTY, SC 0774 - 273
	)	
Respondents.	)	
	)	

Petitioner's South Carolina General Contractor's License Number: 110668

TO THE ABOVE-NAMED RESPONDENTS:

NOTICE IS HEREBY GIVEN that a Mechanic's Lien is claimed pursuant to S.C. Code Ann. § 29-5-10 and 20 *et. seq.* (1976, as amended) by Balfour Beatty Construction, LLC, above-named, and is being filed in the Office of the Register of Deeds for Charleston County, South Carolina on behalf of the above-named Petitioner for labor, equipment and/or materials furnished and actually used in the erection, alteration or improvements to the real estate more fully described in **Exhibit A**, attached hereto and incorporated herein by reference. The undersigned Petitioner has furnished, within ninety (90) days of the date hereof, labor, services and materials in improving said real estate by virtue of an agreement with and/or the consent of the owners of said real estate. Petitioner craves reference to **Exhibit B** attached hereto and incorporated herein by reference, which is a just and true Statement of Account of the monies due to the Petitioner for such labor, services or materials provided at the request of or with the consent of the owners of said real estate or with their authorization.

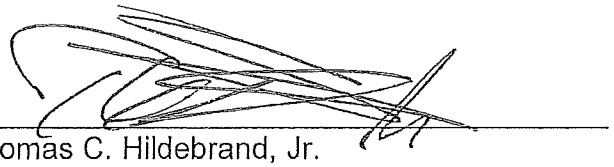
The value of the labor and materials furnished, with all just credits given, totals

Eight Million Four Hundred Nine Thousand Six Hundred Fifty-Eight and 54/100 Dollars ($8,409,658.54), as is evidenced by the Verified Statement of Account.

That by virtue thereof, by the serving and filing of this Notice and Certificate, and pursuant to the provisions of the Code of Laws of South Carolina in such cases as have been made and provided, Petitioner has and claims a lien interest to secure the payment of the debt so due and the cost of enforcing said lien upon the property, buildings and/or structures hereinabove mentioned and upon the real property described in **Exhibit A**.

WHEREFORE, Petitioner claims a Mechanics Lien of Eight Million Four Hundred Nine Thousand Six Hundred Fifty-Eight and 54/100 Dollars ($8,409,658.54), plus interest, attorney's fees, all other damages incurred and the costs and disbursements of this action.

PARKER POE ADAMS & BERNSTEIN, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401



Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

Robert C. Osborne III
843.727.2662 (direct dial)
robertosborne@parkerpoe.com

Attorneys for Balfour Beatty Construction, LLC

January 25, 2019
Charleston, South Carolina

EXHIBIT "A"

Property Address: 404 King Street, Charleston, SC 29403

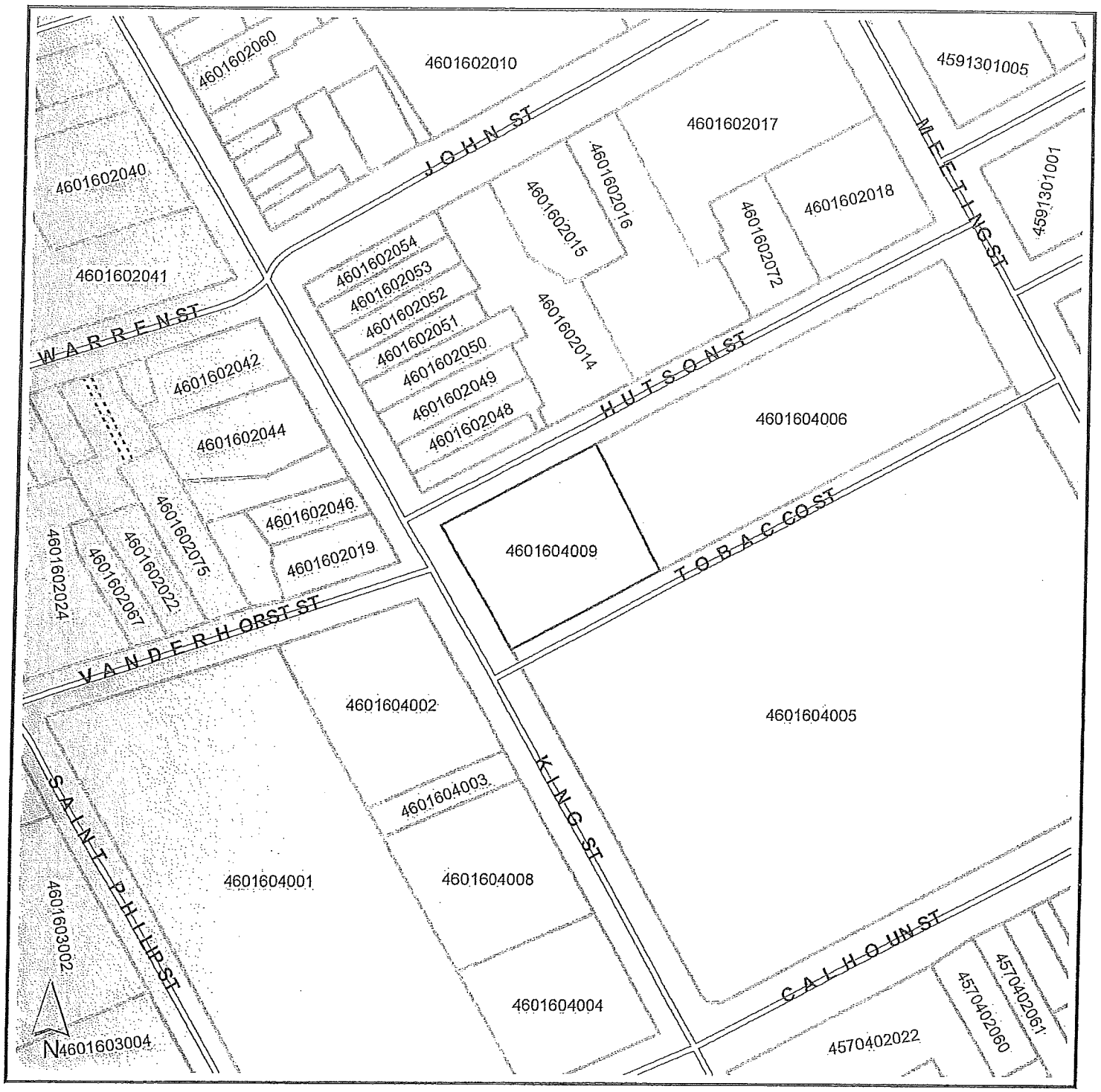
Owner of Property: Library Associates, LLC

Description of Property subject to lien:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009



Charleston County SC

0 90 180 360 Feet

1 inch = 144 feet

Parcel ID: 4601604009
OWNER1: LIBRARY ASSOCIATES LLC
ACREAGE: 0.72
PLAT_BOOK_PAGE: L11- 0185
DEED_BOOK_PAGE: 0102-032
Jurisdiction: CITY OF CHARLESTON

CHARLESTON COUNTY
SOUTH CAROLINA

Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information.

Author: Charleston County SC
Date: 1/24/2019

EXHIBIT "B"

STATEMENT OF ACCOUNT

Claimant/ Mechanic Lienor:	Balfour Beatty Construction, LLC
Owner:	Library Associates, LLC
Nature of labor, materials and/or Equipment supplied:	Labor, materials and supplies to construct a hotel
Property Subject:	See Exhibit "A" to Notice and Certificate of Mechanic's Lien
Total Amount Due:	$8,409,658.54 plus interest thereon and attorney's fees

****

I hereby certify that the amount due to Balfour Beatty Construction, LLC, for the labor, materials and supplies necessary to construct a hotel on Owner's property, after all just credits and debits as of this date is Eight Million Four Hundred Nine Thousand Six Hundred Fifty-Eight and 54/100 ($8,409,658.54), plus interest accruing thereon and attorney's fees and costs/expenses.

Balfour Beatty Construction, LLC

By: _____
David Simonton

Its: Vice President, Operations

SWORN TO BEFORE ME
this 25th day of January, 2019

Kimberly S. Nagy (L.S.)
Kimberly S. Nagy (Printed Name)
Notary Public for South Carolina
My Commission expires 3/12/23 (SEAL)



Charleston County ROD

101 Meeting Street, Suite 200 <> Charleston, SC 29401
PO Box 726 <> Charleston, SC 29402
V: 843.958.4800 <> F: 843.958.4803
www.charlestoncounty.org

Michael Miller
Register of Deeds

RECORDER'S RECEIPT

Received From:

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET
SUITE 301
CHARLESTON SC 29402-0160

DATE:	25-Jan-19
INVOICE #:	X000408449
DRAWER:	Drawer 2
CLERK:	JBA
TIME:	02:07:28 PM

Description	# Total Pgs	# Bill'd Pgs	Ex / Tr Page Cost	# Refs	Chat	Pstg	Value in OOO	Unit Price	Extra Ref Cost	County Fee	State Fee	Item Total
Mech/Lien	6	5	$ 1					$10.00		$ -	$ -	$ 11.00
										$ -	$ -	$ -
										$ -	$ -	$ -
										$ -	$ -	$ -
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										$ -	$ -	$ -
										$ -	$ -	$ -
										$ -	$ -	$ -
											TOTAL	**$ 11.00**

Paid:

Check #	Amount
12482	$ 11.00
Check Total	**$ 11.00**
Cash Total	

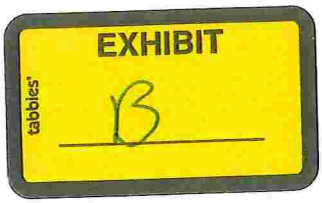
Total Paid: $ 11.00

Balance: $ -

***Please note:**

The ROD Office retains any recording fee overages of $5 or less. Due to Charleston County Auditing Procedures for the ROD Overage Account, your request for refund must be made in writing on Company letterhead and signed by the requesting party. Please send a self-addressed stamped envelope with your request. Thank you.

It is our pleasure to serve you!



Balfour Beatty

January 29, 2018

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Jim Clements
Matrix Program Management
322 Prince St.
Georgetown, SC 29440

Re: The Hotel at Marion Square - Demand for Payment to Balfour Beatty for $8,409,658.54

Dear Mr. Clements:

Balfour Beatty Construction, LLC has expended labor, services and materials as general contractor for the Hotel at Marion Square under contract with Library Associates, LLC and is currently owed $8,409,658.54 as witnessed by the attached Verified Statement of Account. Demand is hereby made for payment of $8,409,658.54 as provided by South Carolina Code §27-1-15, as amended.

Sincerely,

BALFOUR BEATTY CONSTRUCTION, LLC

By:_____
David Simonton, V.P.

cc: Michael Bennett (via Certified Mail)
17 Lockwood Drive
Charleston, SC 29401

Bundy McDonald
TRIAL LAWYERS

M. BRENT MCDONALD
brent@bundymcdonald.com
843-492-0221 (Direct)
843-901-9233 (Cell)

May 3, 2019

VIA Hand Delivery
The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street Suite 106
Charleston, SC 29401

RE: Balfour Beatty Construction v. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Company.
Case No.: 2019-CP-10-01108

Dear Ms. Armstrong:

Enclosed for filing please find one original and one copy of Defendant Library Associtates, LLC's Answer to Plaintiff's Summons & Complaint and Counterclaim in the above referenced matter. Please file the original and return a filed copy of the Answer and Counterclaim to my courier

By copy of this letter I am serving the said Answer and Counterclaim on all counsel of record as shown by the Certificate of Service attached.

If you have any questions or need additional information, plesase call me at your convenience. With kind regards, I remain

Sincerely,

M. Brent McDonald

MBM/kjw
Enclosure as Noted
cc: Gray B. Taylor, Esquire
Thomas C. Hildebrand, Jr., Esquire
Robert C. Byrd, Esquire
Taylor M. Morris, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC	)	
	)	
	)	
Plaintiff,	)	**LIBRARY ASSOCIATES, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIMS**
	)	
v.	)	
	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.	)	
	)	
	)	
	)	
Defendants.	)	
	)	

COMES NOW Library Associates, LLC (hereinafter referred to as "Answering Defendant") and hereby submits this Answer to the Plaintiff's Complaint and Counterclaims. Answering Defendant responds and alleges as follows:

1. That each and every allegation of the complaint not hereinafter expressly admitted is denied and strict proof is demanded thereof.
2. Answering Defendant is without sufficient information to either admit or deny the allegations of Paragraph 1. To the extent any response is required of the Answering Defendant, they are denied as alleged.
3. Paragraph 2 is admitted.
4. Paragraph 3 is admitted.
5. Paragraph 4 is admitted only to the extent that Venue and Jurisdiction are appropriate before the Charleston County Master-in-Equity (Non-Jury) pursuant to the Contract Documents (Section 9.2 of the A133) which are the subject of this action.

6. Paragraph 5 is admitted.

7. With regard to Paragraph 6, Answering Defendant admits that Plaintiff represented that it constructs large commercial projects throughout the United States. Further, Answering Defendant admits that Plaintiff holds an unlimited general contractor's license in South Carolina that requires that the work performed under its license is supervised by a General Qualifying Party identified as Russell Brockelbank, Aton Stoneking, or John Rankin. To the extent there are any other allegations in Paragraph 6, they are denied.

8. Paragraph 7 is admitted.

9. Paragraph 8 is denied as alleged.

10. Paragraph 9 is admitted.

11. With regard to Paragraph 10, the Answering Defendant admits only that it contracted with Plaintiff to construct a luxury hotel in Charleston, South Carolina. Answering Defendant craves reference to the Contract Documents and denies all allegations inconsistent therewith.

12. Paragraph 11 is admitted.

13. Paragraph 12 is admitted.

14. With regard to Paragraph 13, Answering Defendant admits only that the Architect contracted to provide design documents and certain contract administration in accordance with his Contract with Answering Defendant and industry standards. Answering Defendant craves reference to its Contract with the Architect and denies all allegations inconsistent therewith. The remainder of the allegations in Paragraph 13 are denied as alleged.

15. Paragraph 14 is denied as alleged. Answering Defendant craves reference to the Contract Documents and its Contract with the Architect for the actual language of the Architect's contractual obligations.

16. Paragraph 15 is admitted only to the extent that Jim Clements of Matrix Program Management Services, LLC was identified in the Contract Documents as Owner's Designated Representative. The remainder of Paragraph 15 is denied as alleged. Answering Defendant craves reference to the Contract Documents for the actual language related to the Owner's Designated Representative.

17. Paragraph 16 and all its subparts [(a)-(t)] are denied as alleged.

18. Paragraph 17 is denied as alleged.

19. With regard to Paragraph 18, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

20. Paragraph 19 is denied as alleged.

21. Paragraph 20 is denied as alleged. By way of further response, Plaintiff has failed to perform obligations and conditions precedent as outlined in the Answering Defendant's counterclaims.

22. With regard to Paragraph 21, Answering Defendant only admits that it owned the Property during the construction of the Project. The remainder of the allegations in Paragraph 21 are denied as alleged.

23. With regard to Paragraph 22, Answering Defendant only admits that Met Life claims an interest in the property pursuant to a construction loan. The remainder of the allegations in Paragraph 22 are denied as alleged.

24. Paragraph 23 is denied as alleged.

25. Paragraph 24 is denied as alleged.

26. Paragraph 25 is denied as alleged.

27. Paragraph 26 is denied as alleged.

28. With regard to Paragraph 27, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

29. Paragraph 28 is denied as alleged.

30. With regard to Paragraph 29, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

31. Paragraph 30 is denied as alleged.

32. Paragraph 31 is denied as alleged.

33. With regard to Paragraph 32, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

34. Paragraph 33 is denied as alleged.

35. Paragraph 34 is denied as alleged.

36. With regard to Paragraph 35, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

37. Paragraph 36 is denied as alleged.

38. Paragraph 37 is denied as alleged.

39. With regard to Paragraph 38, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

40. Paragraph 39 is denied as alleged.

41. With regard to Paragraph 40, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

42. Paragraph 41 is denied as alleged.

43. With regard to Paragraph 42, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

44. Paragraph 43 and all its subparts [(a)-(j)] are denied as alleged.

45. To the extent any response is required from Answering Defendant to the allegations made or relief requested in the WHEREFORE clause, all allegations made therein and relief requested therein are denied as alleged.

FOR A FIRST AFFIRMATIVE DEFENSE

46. Plaintiff's claims against Answering Defendant are barred due and owing to the doctrine of prior breach of the Contract Documents.

FOR A SECOND AFFIRMATIVE DEFENSE

47. Plaintiff's claims are barred by the applicable statutes of limitations.

FOR A THIRD AFFIRMATIVE DEFENSE

48. Plaintiff's claims are barred due and owing to the doctrines of laches, waiver, abandonment and estoppel.

FOR A FOURTH AFFIRMATIVE DEFENSE

49. The Plaintiff's claims are barred or limited by the contributing, concurring, intervening, superseding or insulating fault or breach of persons or entities other than the Answering Defendant, including but not limited to Plaintiff, other Defendants, and unnamed parties.

FOR A FIFTH AFFIRMATIVE DEFENSE

50. Plaintiff's claims are barred for failing to plead facts sufficient to establish a valid cause of action as to Answering Defendant.

FOR A SIXTH AFFIRMATIVE DEFENSE

51. Some or all of Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SEVENTH AFFIRMATIVE DEFENSE

52. Some or all of the Plaintiffs' claims are barred by Payment and Release.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

53. Plaintiff has failed to comply with conditions precedent to the Contract Documents as more fully stated herein.

FOR A NINTH AFFIRMATIVE DEFENSE

54. Plaintiff's claim should be barred or reduced due and owing to the doctrine of offset.

FOR A TENTH AFFIRMATIVE DEFENSE

55. Plaintiff's claim should be barred for the failure to comply with all of the provisions in S.C. 29-5-10, *et seq.*

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

56. Plaintiff's claim should be barred or reduced due and owing to the Plaintiff's failure to complete or perform the work as required under the Contract Documents.

FOR A TWELFTH AFFIRMATIVE DEFENSE

57. Plaintiff's claims are barred for failure to provide proper notice of any alleged claim or breach.

FOR A THIRTEENTH AFFIMATIVE DEFENSE

58. Some or all of the Plaintiff's claims are barred by the Parole Evidence Doctrine.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

59. Plaintiff's claimed are barred due and owing to the prior breach of express or implied warranties.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE

60. Plaintiff is not entitled to an award of attorneys' fees.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

61. Plaintiff has claimed monetary amounts in its Mechanic's Lien that, upon information and belief, are not recoverable pursuant to S.C. Code Ann. Section 29-5-10 *et seq.*

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

62. Upon information and belief, some of Plaintiff's claims are barred due and owing to Plaintiff's failure to fully comply with the South Carolina licensing provisions and regulations to perform construction management or general contracting services.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

63. The Plaintiff's Complaint is alleged in conclusory terms. Therefore, Answering Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, Answering Defendant reserves the right to plead additional affirmative defenses, if and to the extent such affirmative defenses are applicable in this action.

FOR A NINTEENTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Breach of Contract as to Balfour Beatty Construction, LLC)

NOW COMES Answering Defendant and hereby submits this Counterclaim pursuant to Rule 13 of the South Carolina Rules of Civil Procedure against Plaintiff Balfour Beatty Construction, LLC (hereinafter referred to as "Plaintiff").

64. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

65. Answering Defendant is organized under the laws of the State of South Carolina and is authorized to do business in the State of South Carolina, County of Charleston.

66. Answering Defendant entered into a contract with Plaintiff for the construction of the Hotel Bennett Project (the "Project") that is the subject of this action.

67. Plaintiff has breached the contract with Answering Defendant by acts or omissions of Plaintiff, Plaintiff's employees, Plaintiff's subcontractors and their agents and employees, and other persons and entities performing portions of the work for, or on behalf of, the Plaintiff or any of its subcontractors. The acts and omissions include, but are not limited to, the following particulars:

a. Failure to achieve substantial completion or final completion of the Project within the Contract Time in a willful or wanton or grossly negligent manner;

b. Breach of the relationship of trust and confidence with the Answering Defendant;

c. Failure to properly cooperate with the Answering Defendant;

d. Failure to exercise its skill and judgment in furthering the interests of the Answering Defendant;

e. Failure to furnish efficient construction administration and management services and supervision;

f. Failure to furnish at all times an adequate supply of workers and materials;

g. Failure to perform the work on the Project in an expeditious and economical manner consistent with the Answering Defendant's interest.

h. Failure to properly perform preconstruction phase services;

i. Failure to properly schedule and phase the work and coordinate subcontractors;

j. Failure to bond off subcontractor mechanic's liens;

k. Failure to complete and perform work in accordance with the Contract Documents;

l. Improperly refusing to perform work required by the Contract Documents which required Answering Defendant to incur the time and costs of carrying out the work;

m. Failure to supervise and direct the work using the Plaintiff's best skill and attention;

n. Failure to inspect portions of the work already performed to determine that such portions are in proper condition to receive subsequent work;

o. Failure to provide management staff and additional supervisory personnel to ensure that the work was completed by the contractual date of substantial completion.

p. Failure to provide and pay for labor, materials, equipment and other facilities and services necessary for the proper execution and completion of the work;

q. Failure to continue to perform work on the Project in accordance with the Architect's Initial Decision rendering;

r. Failure to perform work in a good and workmanlike manner;

s. Failure to employ at all times a competent superintendent(s);

t. Improperly changing the superintendent without Answering Defendant's consent;

u. Failure to proceed with adequate forces to achieve substantial completion within the contract time.

68. As a direct and proximate cause of the breach(es) of contract by the Plaintiff as well as other acts and omissions, Answering Defendant has been actually, directly, indirectly, consequentially, incidentally, and specially damaged all in an amount to be shown at trial.

FOR A TWENTIETH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Indemnification as to Balfour Beatty Construction, LLC)

69. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

70. Plaintiff's subcontractors, materialmen, suppliers as well as those claiming through them have and continue to file mechanic's liens and other claims related to the Project.

71. Plaintiff has refused to bond off such liens as required by the Contract Documents.

72. Answering Defendant is entitled to be contractually, equitably, or impliedly indemnified for any damages sustained, including costs and attorneys' fees, as a direct and proximate result of the Plaintiff's subcontractors, materialmen and suppliers filing or foreclosing on such liens.

WHEREFORE, having answered the Complaint of Plaintiff and asserted Counterclaims, Answering Defendant would pray as follows:

1. That the Complaint of the Plaintiff herein against Answering Defendant be dismissed in its entirety with prejudice and that the Mechanic's Lien be dissolved and released from the Property;
2. That the Answering Defendant be awarded costs, expenses and attorneys' fees;
3. That the Court enter judgment for Answering Defendant on its claims for breach of contract by and for the terms stated herein, including actual, direct, indirect, consequential, incidental, and special damages to be shown at trial;
4. That the Court enter a judgment for indemnity damages, including costs and attorneys' fees, related to subcontractor claims or mechanic's liens.
5. That the Answering Defendant be awarded prejudgment interest.
6. Together with all other damages or relief, whether legal or equitable, that the Court may deem just and proper.

[Signature Page Follows]

BUNDY MCDONALD, LLC

W. H. Bundy, Jr., Esq. (SC Bar #1012)
M. Brent McDonald, Esq. (SC Bar #78057)
1516 Old Trolley Road, 2nd Floor
P.O. Box 50427
Summerville, SC 29485
Phone: 888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorneys for Defendant Library Associates, LLC

May 3, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
v.	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.	)	
Defendants.	)	

I, Kathy Jo Wentland, paralegal with Bundy McDonald, LLC, hereby certify that true and correct copy of Defendant Library Associates, LLC's Answer to Plaintiff's Summons and Complaint and Counterclaims, was served on all parties this 3th day of May 2019, as follows:

SERVED VIA US MAIL, EMAIL & HAND DELIVERY
Thomas C. Hildebrand, Jr., Esquire
Robert C. Bryd, Esquire
Taylor M. Morris, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
taylormorris@parkerpoe.com
ATTORNEYS FOR BALFOUR BEATTY CONSTRUCTION, LLC

SERVED VIA US MAIL & EMAIL
Gray B. Taylor, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd, Suite 200
Mt. Pleasant, SC 29464
gray.taylor@buistbyars.com
ATTORNEY FOR METROPOLITAN LIFE INSURANCE COMPANY, A NEW YOUR CORPORATION

Kathy Jo Wentland

Kathy Jo Wentland

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

May 15, 2019

VIA Hand Delivery
The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street Suite 106
Charleston, SC 29401

RE: Balfour Beatty Construction v. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Company.
Case No.: 2019-CP-10-01108

Dear Ms. Armstrong:

Enclosed for filing please find one original and one copy of Defendant/Third-Party Plaintiff Library Associates, LLC's Amended Answer, Counterclaims, Summons and Third-Party Complaint in the above referenced matter. Please file the original and return a filed copy of the Pleading to my courier.

By copy of this letter I am serving the said Pleading on all counsel of record as shown by the Certificate of Service attached.

If you have any questions or need additional information, plesase call me at your convenience. With kind regards, I remain

Sincerely,

W.H. Bundy, Jr.

WHB/kjw
Enclosure as Noted
cc: Gray B. Taylor, Esquire (via US Mail & Email)
Thomas C. Hildebrand, Jr., Esquire (via US Mail & Email)
Robert C. Byrd, Esquire (via US Mail & Email)
Taylor M. Morris, Esquire (via US Mail & Email)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC	)	
Plaintiff,	)	**SUMMONS**
v.	)	**(JURY TRIAL DEMANDED)**
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.	)	
Defendants.	)	
Library Associates, Inc.,	)	
Third-Party Plaintiff,	)	
v.	)	
Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.	)	
Third-Party Defendants.	)	

TO THE THIRD-PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Third-Party Complaint upon the subscriber, Bundy McDonald, LLC 1516 Old Trolley Rd, 2nd Floor, Summerville, South Carolina 29485, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

Bundy McDonald, LLC
W.H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com
Attorneys For Defendant/Third-Party Plaintiff Library Associates, LLC.

May 15, 2019
Summerville, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC Plaintiff, v. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation. Defendants.	)	**AMENDED ANSWER AND COUNTERCLAIMS OF LIBRARY ASSOCIATES, LLC AND THIRD PARTY COMPLAINT**
Library Associates, LLC, Third-Party Plaintiff, v. Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, and Balfour Beatty Construction Group, Inc. Third-Party Defendants.	)	

COMES NOW Library Associates, LLC (hereinafter referred to as "Answering Defendant") and hereby submits this Amended Answer to the Plaintiff's Complaint and Counterclaims and Third Party Complaint. Answering Defendant responds and alleges as follows:

1. That each and every allegation of the complaint not hereinafter expressly admitted is denied and strict proof is demanded thereof.
2. Answering Defendant is without sufficient information to either admit or deny the allegations of Paragraph 1. To the extent any response is required of the Answering Defendant, they are denied as alleged.
3. Paragraph 2 is admitted.
4. Paragraph 3 is admitted.
5. Paragraph 4 is admitted only to the extent that Venue and Jurisdiction are appropriate before the Charleston County Master-in-Equity (Non-Jury) pursuant to the Contract Documents (Section 9.2 of the A133) which are the subject of this action.
6. Paragraph 5 is admitted.
7. With regard to Paragraph 6, Answering Defendant admits that Plaintiff represented that it constructs large commercial projects throughout the United States. Further, Answering Defendant admits that Plaintiff holds an unlimited general contractor's license in South Carolina that requires that the work performed under its license is supervised by a General Qualifying Party identified as Russell Brockelbank, Aton Stoneking, or John Rankin. To the extent there are any other allegations in Paragraph 6, they are denied.
8. Paragraph 7 is admitted.
9. Paragraph 8 is denied as alleged.

10. Paragraph 9 is admitted.

11. With regard to Paragraph 10, the Answering Defendant admits only that it contracted with Plaintiff to construct a luxury hotel in Charleston, South Carolina. Answering Defendant craves reference to the Contract Documents and denies all allegations inconsistent therewith.

12. Paragraph 11 is admitted.

13. Paragraph 12 is admitted.

14. With regard to Paragraph 13, Answering Defendant admits only that the Architect contracted to provide design documents and certain contract administration in accordance with his Contract with Answering Defendant and industry standards. Answering Defendant craves reference to its Contract with the Architect and denies all allegations inconsistent therewith. The remainder of the allegations in Paragraph 13 are denied as alleged.

15. Paragraph 14 is denied as alleged. Answering Defendant craves reference to the Contract Documents and its Contract with the Architect for the actual language of the Architect's contractual obligations.

16. Paragraph 15 is admitted only to the extent that Jim Clements of Matrix Program Management Services, LLC was identified in the Contract Documents as Owner's Designated Representative. The remainder of Paragraph 15 is denied as alleged. Answering Defendant craves reference to the Contract Documents for the actual language related to the Owner's Designated Representative.

17. Paragraph 16 and all its subparts [(a)-(t)] are denied as alleged.

18. Paragraph 17 is denied as alleged.

19. With regard to Paragraph 18, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

20. Paragraph 19 is denied as alleged.

21. Paragraph 20 is denied as alleged. By way of further response, Plaintiff has failed to perform obligations and conditions precedent as outlined in the Answering Defendant's counterclaims.

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24. Paragraph 23 is denied as alleged.

25. Paragraph 24 is denied as alleged.

26. Paragraph 25 is denied as alleged.

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29. Paragraph 28 is denied as alleged.

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31. Paragraph 30 is denied as alleged.

32. Paragraph 31 is denied as alleged.

33. With regard to Paragraph 32, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

34. Paragraph 33 is denied as alleged.

35. Paragraph 34 is denied as alleged.

36. With regard to Paragraph 35, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

37. Paragraph 36 is denied as alleged.

38. Paragraph 37 is denied as alleged.

39. With regard to Paragraph 38, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

40. Paragraph 39 is denied as alleged.

41. With regard to Paragraph 40, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

42. Paragraph 41 is denied as alleged.

43. With regard to Paragraph 42, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

44. Paragraph 43 and all its subparts [(a)-(j)] are denied as alleged.

45. To the extent any response is required from Answering Defendant to the allegations made or relief requested in the WHEREFORE clause, all allegations made therein and relief requested therein are denied as alleged.

FOR A FIRST AFFIRMATIVE DEFENSE

46. Plaintiff's claims against Answering Defendant are barred due and owing to the doctrine of prior breach of the Contract Documents.

FOR A SECOND AFFIRMATIVE DEFENSE

47. Plaintiff's claims are barred by the applicable statutes of limitations.

FOR A THIRD AFFIRMATIVE DEFENSE

48. Plaintiff's claims are barred due and owing to the doctrines of laches, waiver, abandonment and estoppel.

FOR A FOURTH AFFIRMATIVE DEFENSE

49. The Plaintiff's claims are barred or limited by the contributing, concurring, intervening, superseding or insulating fault or breach of persons or entities other than the Answering Defendant, including but not limited to Plaintiff, other Defendants, and unnamed parties.

FOR A FIFTH AFFIRMATIVE DEFENSE

50. Plaintiff's claims are barred for failing to plead facts sufficient to establish a valid cause of action as to Answering Defendant.

FOR A SIXTH AFFIRMATIVE DEFENSE

51. Some or all of Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SEVENTH AFFIRMATIVE DEFENSE

52. Some or all of the Plaintiffs' claims are barred by Payment and Release.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

53. Plaintiff has failed to comply with conditions precedent to the Contract Documents as more fully stated herein.

FOR A NINTH AFFIRMATIVE DEFENSE

54. Plaintiff's claim should be barred or reduced due and owing to the doctrine of offset.

FOR A TENTH AFFIRMATIVE DEFENSE

55. Plaintiff's claim should be barred for the failure to comply with all of the provisions in S.C. 29-5-10, *et seq.*

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

56. Plaintiff's claim should be barred or reduced due and owing to the Plaintiff's failure to complete or perform the work as required under the Contract Documents.

FOR A TWELFTH AFFIRMATIVE DEFENSE

57. Plaintiff's claims are barred for failure to provide proper notice of any alleged claim or breach.

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58. Some or all of the Plaintiff's claims are barred by the Parole Evidence Doctrine.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

59. Plaintiff's claimed are barred due and owing to the prior breach of express or implied warranties.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE

60. Plaintiff is not entitled to an award of attorneys' fees.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

61. Plaintiff has claimed monetary amounts in its Mechanic's Lien that, upon information and belief, are not recoverable pursuant to S.C. Code Ann. Section 29-5-10 *et seq.*

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

62. Upon information and belief, some of Plaintiff's claims are barred due and owing to Plaintiff's failure to fully comply with the South Carolina licensing provisions and regulations to perform construction management or general contracting services.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

63. The Plaintiff's Complaint is alleged in conclusory terms. Therefore, Answering Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, Answering Defendant reserves the right to plead additional affirmative defenses, if and to the extent such affirmative defenses are applicable in this action.

FOR A NINTEENTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Breach of Contract as to Balfour Beatty Construction, LLC)

NOW COMES Answering Defendant and hereby submits this Counterclaim pursuant to Rule 13 of the South Carolina Rules of Civil Procedure against Plaintiff Balfour Beatty Construction, LLC (hereinafter referred to as "Plaintiff").

64. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

65. Answering Defendant is organized under the laws of the State of South Carolina and is authorized to do business in the State of South Carolina, County of Charleston.

66. Answering Defendant entered into a contract with Plaintiff for the construction of the Hotel Bennett Project (the "Project") that is the subject of this action.

67. Plaintiff has breached the contract with Answering Defendant by acts or omissions of Plaintiff, Plaintiff's employees, Plaintiff's subcontractors and their agents and employees, and other persons and entities performing portions of the work for, or on behalf of, the Plaintiff or any of its subcontractors. The acts and omissions include, but are not limited to, the following particulars:

a. Failure to achieve substantial completion or final completion of the Project within the Contract Time in a willful or wanton or grossly negligent manner;

b. Breach of the relationship of trust and confidence with the Answering Defendant;

c. Failure to properly cooperate with the Answering Defendant;

d. Failure to exercise its skill and judgment in furthering the interests of the Answering Defendant;

e. Failure to furnish efficient construction administration and management services and supervision;

f. Failure to furnish at all times an adequate supply of workers and materials;

g. Failure to perform the work on the Project in an expeditious and economical manner consistent with the Answering Defendant's interest.

h. Failure to properly perform preconstruction phase services;

i. Failure to properly schedule and phase the work and coordinate subcontractors;

j. Failure to bond off or otherwise discharge subcontractor, sub subcontractor, and supplier mechanic's liens;

k. Failure to complete and perform work in accordance with the Contract Documents;

l. Improperly refusing to perform work required by the Contract Documents which required Answering Defendant to incur the time and costs of carrying out the work;

m. Failure to supervise and direct the work using the Plaintiff's best skill and attention;

n. Failure to inspect portions of the work already performed to determine that such portions are in proper condition to receive subsequent work;

o. Failure to provide management staff and additional supervisory personnel to ensure that the work was completed by the contractual date of substantial completion.

p. Failure to provide and pay for labor, materials, equipment and other facilities and services necessary for the proper execution and completion of the work;

q. Failure to continue to perform work on the Project in accordance with the Architect's Initial Decision rendering;

r. Failure to perform work in a good and workmanlike manner;

s. Failure to employ at all times a competent superintendent(s);

t. Improperly changing the superintendent without Answering Defendant's consent;

u. Failure to proceed with adequate forces to achieve substantial completion within the contract time.

68. As a direct and proximate cause of the breach(es) of contract by the Plaintiff as well as other acts and omissions, Answering Defendant has been actually, directly, indirectly, consequentially, incidentally, and specially damaged all in an amount to be shown at trial.

FOR A TWENTIETH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Indemnification as to Balfour Beatty Construction, LLC)

69. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

70. Plaintiff's subcontractors, materialmen, and suppliers as well as those claiming through them have filed and continue to file mechanic's liens and other claims related to the Project. As more fully stated below, some or all of the filed liens contain amounts that are not subject to a mechanic's lien as a matter of law.

71. Plaintiff has refused to bond off or otherwise discharge such liens as required by the Contract Documents.

72. Answering Defendant is entitled to be contractually, equitably, or impliedly indemnified for any damages sustained, including costs and attorneys' fees, as a direct and proximate result of the Plaintiff's subcontractors, materialmen and suppliers filing or foreclosing on such liens.

FOR A TWENTY FIRST DEFENSE AND BY WAY OF A COUNTERCLAIM
(Declaratory Judgment as to Balfour Beatty Construction, LLC)

73. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

74. Answering Defendant brings this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10 *et seq.*, seeking a declaration of rights between the Plaintiff and Answering Defendant.

75. There exists a justiciable controversy between Plaintiff and Answering Defendant.

76. The Contract Documents state, in pertinent part, as follows: "If any Subcontractor, sub-subcontractor, laborer, or supplier of materials files a lien or notice of claim for unpaid labor or materials against the Owner's property, the Contractor agrees to immediately bond such lien in accordance with applicable law or to otherwise cause such lien to be discharged, at the Contractor's sole expense, so long as the Owner is not in default of the payment of any uncontested amount and such non-payment is the cause for the non-payment to the Sub-contractor. The Contractor shall not be relieved of its obligation to bond off liens even if Contractor disputes the obligation to pay the lienor."

77. Plaintiff has refused to bond off or otherwise discharge Subcontractor, sub-subcontractor, and material supplier liens.

78. Answering Defendant hereby seeks a declaration from this Court as follows:

    a. Declare that the Plaintiff shall immediately bond off or otherwise cause the Subcontractor, sub-subcontractor, and material supplier liens to be discharged at Plaintiff's sole expense;

    b. Declare, pursuant to S.C. Code Ann. Section 15-53-120, that should the Plaintiff fail to immediately bond off or otherwise discharge all the Subcontractor, sub-subcontractor, and material supplier liens, Plaintiff's claimed lien shall be reduced or discharged in an amount equal to any remaining Subcontractor, sub-subcontractor, and material supplier liens.

BY WAY OF A THIRD PARTY COMPLAINT

(Declaratory Judgment pursuant to S.C. Code Ann. Section 15-53-10, *et seq.*)

79. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

80. Answering Defendant, by way of a Third Party Complaint, seeks a Declaratory Judgment from this Court against Third Party Defendants Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC Lowcountry Case & Millwork, Inc., and Quantum Coatings, LLC (hereinafter sometimes collectively referred to as "Subcontractor/Materialmen Lien Claimants").

81. Answering Defendant seeks a Declaratory Judgment from this Court against Third Party Defendant Balfour Beatty Construction Group, Inc.

82. Upon information and belief, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., ("Lithko") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Lithko alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Lithko has caused to be filed two mechanic's liens attached hereto as **Exhibit**

A. Moreover, Lithko has filed a foreclosure action on the alleged mechanic's liens in Civil Action No. 2018-CP-10-936.

83. Upon information and belief, Guy M. Beaty, Inc. ("Guy M. Beaty") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, Guy M. Beaty alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Guy M. Beaty has caused to be filed a mechanic's lien attached hereto as **Exhibit B**. Moreover, Guy M. Beaty has filed a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-400.

84. Upon information and belief, Bernhard MCC, LLC ("Bernhard") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, Bernhard alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Bernhard has caused to be filed a mechanic's lien attached hereto as **Exhibit C**.

85. Upon information and belief, Gulfstream Construction Company, Inc. ("Gulfstream") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, Gulfstream alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Gulfstream has caused to be filed a mechanic's lien attached hereto as **Exhibit D**. Moreover, Gulfstream has filed a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-2275.

86. Upon information and belief, Precision Walls, Inc. ("Precision Walls") is a corporation organized under the laws of a state other than South Carolina. At all times relevant,

Precision Walls alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Precision Walls has caused to be filed a mechanic's lien attached hereto as **Exhibit E**.

87. Upon information and belief, Palmetto Automatic Sprinkler Company, Inc. ("Palmetto Sprinkler") is a corporation organized under the laws of the State of South Carolina. At all times relevant, Palmetto Sprinkler alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Palmetto Sprinkler has caused to be filed a mechanic's lien attached hereto as **Exhibit F**.

88. Upon information and belief, Cook and Boardman, LLC ("Cook and Boardman") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Cook and Boardman alleges that it supplied materials to Plaintiff for the Project which is the subject of this action pursuant to a contract with Plaintiff. Cook and Boardman has caused to be filed a mechanic's lien attached hereto as **Exhibit G**.

89. Upon information and belief, 1st Choice Glass, Inc. ("1st Choice") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, 1st Choice alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. 1st Choice has caused to be filed a mechanic's lien. The mechanic's lien and partial satisfaction is attached hereto as **Exhibit H**. Moreover, 1st Choice has filed a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-2424.

90. Upon information and belief, Strong Tower Construction, LLC d/b/a Koch Corporation ("Koch") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Koch alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Koch has caused to be filed a mechanic's lien attached hereto as **Exhibit I**.

91. Upon information and belief, Watson Electrical Construction Co., LLC ("Watson") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Watson alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Watson has caused to be filed a mechanic's lien attached hereto as **Exhibit J**.

92. Upon information and belief, Trimark Foodcraft, LLC ("Trimark") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Trimark alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Trimark has caused to be filed a mechanic's lien attached hereto as **Exhibit K**.

93. Upon information and belief, Pleasant Places, Inc. ("Pleasant Places") is a corporation organized under the laws of the State of South Carolina. At all times relevant, Pleasant Places alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Pleasant Places has caused to be filed a mechanic's lien attached hereto as **Exhibit L**. Moreover, Pleasant Places has filed a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-2399.

94. Upon information and belief, David Allen Company, Inc. ("David Allen") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, David Allen alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. David Allen has caused to be filed a mechanic's lien attached hereto as **Exhibit M**.

95. Upon information and belief, Premier Exteriors, LLC ("Premier Exteriors") is a limited liability company organized under the laws of the State of South Carolina. At all times relevant, Premier Exteriors alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Premier Exteriors has caused to be filed a mechanic's lien attached hereto as **Exhibit N**.

96. Upon information and belief, Robert Thomas Iron Design, LLC ("Robert Thomas") is a limited liability company organized under the laws of the State of South Carolina. At all times relevant, Robert Thomas alleges that it supplied materials for the Project which is the subject of this action to the Plaintiff pursuant to a contract with Plaintiff. Robert Thomas has caused to be filed a mechanic's lien attached hereto as **Exhibit O**.

97. Upon information and belief, Warco Construction, Inc. ("Warco") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, Warco alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Warco has caused to be filed a mechanic's lien attached hereto as **Exhibit P**.

98. Upon information and belief, Old North State Masonry, LLC ("Old North") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Old North alleges that it supplied labor or materials for the Project

which is the subject of this action pursuant to a contract with Plaintiff. Old North has caused to be filed a mechanic's lien attached hereto as **Exhibit Q**.

99. Upon information and belief, Tom Rochester & Associates, Inc. d/b/a Southeastern Architectural Systems ("SEAS") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, SEAS alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. SEAS has caused to be filed a mechanic's lien attached hereto as **Exhibit R**.

100. Upon information and belief, Forton Company, LLC ("Forton") is a limited liability company organized under the laws of the State of South Carolina. At all times relevant, Forton alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Forton has caused to be filed a mechanic's lien attached hereto as **Exhibit S**.

101. Upon information and belief, Lowcountry Case & Millwork, Inc. ("Lowcountry") is a corporation organized under the laws of the State of South Carolina. At all times relevant, Lowcountry alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Lowcountry has caused to be filed a mechanic's lien attached hereto as **Exhibit T**. Moreover, Lowcountry has filed a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-2249.

102. Upon information and belief, Quantum Coatings, LLC ("Quantum") is a limited liability company organized under the laws of the State of South Carolina. At all times relevant, Quantum alleges that it supplied labor or materials for the Project which is

the subject of this action pursuant to a contract with Plaintiff. Quantum has caused to be filed a mechanic's lien attached hereto as **Exhibit U**.

103. Upon information and belief, Balfour Beatty Construction Group, Inc. (hereinafter "BB Construction Group") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, BB Construction Group agreed to act as a guarantor of the contract for construction for the Project.

104. This Court has jurisdiction over the subject matter and the parties hereto and venue is proper in this forum.

FOR A FIRST THIRD PARTY CAUSE OF ACTION AGAINST SUBCONTRACTOR/MATERIALMEN LIEN CLAIMANTS
(Declaratory Judgment)

105. Answering Defendant and Third Party Plaintiff repeats and realleges the allegations of this entire pleading as if fully stated herein verbatim.

106. Subcontractor/Materialmen Lien Claimants allege that they performed work or supplied materials for the Project by contract with the Plaintiff or some other person than the Owner.

107. The aggregate amount of the liens filed by the Subcontractor/Materialmen Lien Claimants exceed the amount due from the Answering Defendant/Third Party Plaintiff to the Plaintiff due and owing to the fact that Answering Defendant/Third Party Plaintiff does not owe Plaintiff any further sums on the contract amount.

108. Some or all of the liens filed by the Subcontractor/Materialmen Lien Claimants contain accounted or claimed items or amounts that do not, as a matter of law, give rise to a mechanic's lien pursuant to S.C. Code Ann. Section 29-5-20.

109. Answering Defendant/Third Party Plaintiff, by and through its undersigned counsel, requested in writing that Subcontractor/Materialmen Lien Claimants provide to the Answering Defendant/Third Party Plaintiff documentation to explain and support the amount of their respective liens and statements of account. Most of the Subcontractor/Materialmen Lien Claimants failed to provide any supporting documentation.

110. Some or all of the liens filed by the Subcontractor/Materialmen Lien Claimants contain accounted or claimed items or amounts that the Subcontractor/Materialmen Lien Claimant willfully and knowingly knew were more than is his due under S.C. Code Ann. Section 29-5-20.

111. Answering Defendant/Third Party Plaintiff brings this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10 *et seq.*, seeking a declaration of rights between Answering Defendant/Third Party Plaintiff and Subcontractor/Materialmen Lien Claimants.

112. There exists a justiciable controversy between Answering Defendant/Third Party Plaintiff and Subcontractor/Materialmen Lien Claimants.

113. Answering Defendant/Third Party Plaintiff seek declarations from this Court as follows:

a. Declare that the aggregate amount of the Subcontractor/Materialmen Lien Claimants be reduced to the amount owed by Answering Defendant/Third Party Plaintiff to Plaintiff on the contract amount, if any, as Answering Defendant/Third Party Plaintiff alleges that it owes nothing to Plaintiff;

b. Declare which portions of the Subcontractor/Materialmen Lien Claimants' statement of accounts contain amounts that are not subject to a claim for a mechanic's lien under S.C. Code Section 29-5-20 and reduce the Subcontractor/Materialmen Lien Claimants' liens by such amount;

c. Pursuant to S.C. Code Ann. Sections 29-5-100, declare which portions of the Subcontractor/Materialmen Lien Claimants' liens contain accounted or claimed items or amounts that the Subcontractor/Materialmen Lien Claimant willfully and knowingly knew were more than is his due under S.C. Code Ann. Section 29-5-20;

d. Declare that a Subcontractor/Materialmen Lien Claimant who willfully and knowingly claimed amounts that were more than his due under S.C. Code Ann. Section 29-5-20 to have his lien discharged.

FOR A SECOND THIRD PARTY CAUSE OF ACTION AGAINST BB CONSTRUCTION GROUP
(Declaratory Judgment)

114. Answering Defendant and Third Party Plaintiff repeats and realleges the allegations of this entire pleading as if fully stated herein verbatim.

115. Upon information and belief, Plaintiff is wholly owned (100%) by BB Construction Group.

116. BB Construction Group did so agree and contract to act as a guarantor of the contract for construction of the Project.

117. Answering Defendant/Third Party Plaintiff brings this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10

et seq., seeking a declaration of rights between Answering Defendant/Third Party Plaintiff and BB Construction Group.

118. There exists a justiciable controversy between Answering Defendant/Third Party Plaintiff and BB Construction Group.

119. Answering Defendant/Third Party Plaintiff seek declarations from this Court as follows:

a. Declare that BB Construction Group is the guarantor of the contract for construction for the Project and that any damages, attorneys' fees, costs or other relief awarded against Plaintiff arising out of the construction contract shall be recoverable, jointly and severally, from Plaintiff and BB Construction Group.

WHEREFORE, having answered the Complaint of Plaintiff and asserted Counterclaims and the Third Party Complaint, Answering Defendant would pray as follows:

1. That the Complaint of the Plaintiff herein against Answering Defendant be dismissed in its entirety with prejudice and that the Plaintiff's mechanic's lien be dissolved and released from the Property;
2. That the Answering Defendant be awarded costs, expenses and attorneys' fees;
3. That the Court enter judgment for Answering Defendant on its claims for breach of contract by and for the terms stated herein, including actual, direct, indirect, consequential, incidental, and special damages to be shown at trial;
4. That the Court enter a judgment for indemnity damages, including costs and attorneys' fees, related to subcontractor claims or mechanic's liens.
5. That the Answering Defendant be awarded prejudgment interest.
6. That the Court issue the following declarations:

a. Declare that the Plaintiff shall immediately bond off or otherwise cause the Subcontractor, sub-subcontractor, and material supplier liens to be discharged at Plaintiff's sole expense;

b. Declare, pursuant to S.C. Code Ann. Section 15-53-120, that should the Plaintiff fail to immediately bond off or otherwise discharge all the Subcontractor, sub-subcontractor, and material supplier liens, Plaintiff's claimed lien shall be reduced or discharged in an amount equal to any remaining Subcontractor, sub-subcontractor, and material supplier liens.

c. Declare that the aggregate amount of the Subcontractor/Materialmen Lien Claimants be reduced to the amount owed by Answering Defendant/Third Party Plaintiff to Plaintiff on the contract amount, if any, as Answering Defendant/Third Party Plaintiff alleges that it owes nothing to Plaintiff;

d. Declare which portions of the Subcontractor/Materialmen Lien Claimants' statement of accounts contain amounts that are not subject to a claim for a mechanic's lien under S.C. Code Section 29-5-20 and reduce the Subcontractor/Materialmen Lien Claimants' liens by such amount;

e. Pursuant to S.C. Code Ann. Sections 29-5-100, declare which portions of the Subcontractor/Materialmen Lien Claimants' liens contain accounted or claimed items or amounts that the Subcontractor/Materialmen Lien Claimant willfully and knowingly knew were more than is his due under S.C. Code Ann. Section 29-5-20;

f. Declare that a Subcontractor/Materialmen Lien Claimant who willfully and knowingly claimed amounts that were more than his due under S.C. Code Ann. Section 29-5-20 to have his lien discharged.

g. Declare that BB Construction Group is the guarantor of the contract for construction for the Project and that any damages, attorneys' fees, costs or other relief awarded against Plaintiff arising out of the construction contract shall be recoverable, jointly and severally, from Plaintiff and BB Construction Group.

7. Together with all other damages or relief, whether legal or equitable, that the Court may deem just and proper.

BUNDY MCDONALD, LLC

W. H. Bundy, Jr., Esq. (SC Bar #1012)
M. Brent McDonald, Esq. (SC Bar #78057)
1516 Old Trolley Road, 2nd Floor
P.O. Box 50427
Summerville, SC 29485
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walter@bundymcdonald.com
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Attorneys for Library Associates, LLC

May 15, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
v.	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.	)	
Defendants.	)	
Library Associates, Inc.,	)	
Third-Party Plaintiff,	)	
v.	)	
Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.	)	
Third-Party Defendants.	)	

I, Kathy Jo Wentland, paralegal with Bundy McDonald, LLC, hereby certify that true and correct copy of Defendant/Third-Party Plaintiff Library Associates, LLC's Amended Answer, Counterclaims, Summons and Third-Party Complaint, was served on all parties this 15th day of May 2019, as follows:

SERVED VIA US MAIL & EMAIL
Thomas C. Hildebrand, Jr., Esquire
Robert C. Bryd, Esquire
Taylor M. Morris, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
taylormorris@parkerpoe.com
ATTORNEYS FOR BALFOUR BEATTY CONSTRUCTION, LLC

SERVED VIA US MAIL & EMAIL
Gray B. Taylor, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd, Suite 200
Mt. Pleasant, SC 29464
gray.taylor@buistbyars.com
ATTORNEY FOR METROPOLITAN LIFE INSURANCE COMPANY, A NEW YOUR CORPORATION

Kathy Jo Wentland

Kathy Jo Wentland

BP0606660

#PGS: 7

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

LITHKO CONTRACTING, LLC f/k/a LITHKO CONTRACTING, INC.,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

NOTICE AND CERTIFICATE OF MECHANIC'S LIEN

SC Contractor License No.: 120270

PERSONALLY appeared before me Andrew S. Culicerto, who being duly sworn, deposes and says as follows:

That he is the attorney for, and acting on behalf of the Plaintiff/Petitioner and Mechanic's Lien Claimant herein, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. ("Plaintiff/Petitioner"), and hereby claims and files, pursuant to S.C. Code Ann. §29-5-10, a Mechanic's lien for labor and/or materials and/or equipment actually used in improving the real estate and property owned by Library Associates, LLC, located in Charleston, Charleston County, South Carolina. The labor and materials were performed and supplied by Plaintiff on the following property:

404 King Street
Charleston, SC 29403
Charleston County Parcel ID No.: 4601604009
(as more particularly described in **Exhibit "A"**)

The reasonable price of such labor and materials so performed or so furnished and which is due is the amount of $392,743.28. A verified statement of account is attached hereto as **Exhibit "B"** and is incorporated by reference herein.

Respondent Metropolitan Life Insurance Company is named due to its mortgage interest in the subject property.

The work done by the Plaintiff/Petitioner was done under contract with Defendant/Respondent Balfour Beatty Construction, LLC, for the construction and improvements to the property located at 404 King Street, Charleston, South Carolina 29403. The labor and materials provided by Plaintiff/Petitioner were with the express knowledge, consent, acquiescence, and request of Respondents.



The first provision of labor and/or services by Plaintiff/Petitioner at the Project was on or about August 13, 2015. Plaintiff/Petitioner continues to provide labor and materials at the Project for the improvement of real property as of December 22, 2016.

Ninety days have not elapsed since the completion of said work.

Plaintiff/Petitioner, after deducting all the just credits and offsets, now claims a mechanic's lien in the amount of $392,743.28 on the real property described above and owned by Defendant/Respondent Library Associates, LLC, and on all buildings and improvements thereon, under the ownership and/or control of the Defendant/Respondent, plus attorneys' fees and costs of this action as provided by South Carolina Code Annotated 29-5-10 et seq. as amended.

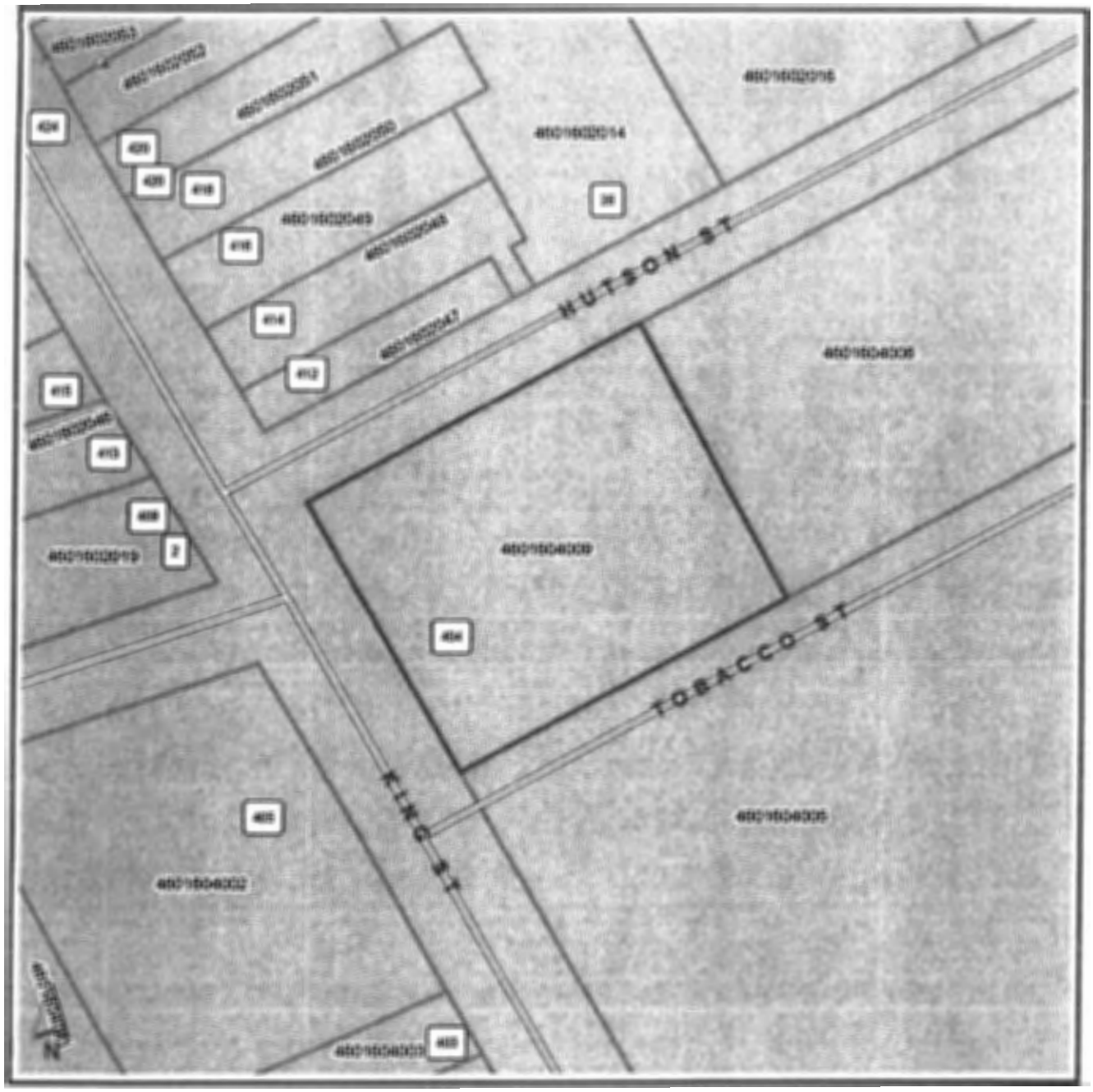
DATED: December 28th, 2016.

Andrew S. Culicerto
SHUMAKER, LOOP & KENDRICK, LLP
South Carolina Bar No: 74480
101 South Tryon Street, Suite 2200
Charlotte, North Carolina 28280
Phone: (704) 375-0057
Facsimile: (704) 332-1197
E-mail: aculicerto@slk-law.com
Attorney for Plaintiff/Petitioner

SWORN BEFORE ME this 28th day of December, 2016.

My Commission Expires: 7/21/21

ADAM L. KLESKI
Notary Public
Mecklenburg County, NC



Marion Square Hotel

Parcel ID: 4601604009
Owner1: LIBRARY ASSOCIATES LLC
Prop St Number: 404
Prop St Name: KING
Prop Type: ST
Acreage: 0.00
Class Code: 500 - General Commercial

Plat Book Page: L11- 0185
Deed Book Page: 0102-032
Jurisdiction: CITY OF CHARLESTON

0 40 80 160 Feet
1 inch = 66 feet

EXHIBIT
A

CHARLESTON COUNTY
SOUTH CAROLINA

Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information.

Author: Charleston County SC
Date: 12/13/2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

LITHKO CONTRACTING, LLC f/k/a LITHKO CONTRACTING, INC.,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

STATEMENT OF ACCOUNT

SC Contractor License No.: 120270

I hereby certify that on this 28th day of December, 2016, Andrew Rogers personally appeared before me, who, being duly sworn, deposes and says:

1. That he is the Regional Business Analyst of Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., an Ohio corporation authorized to do business under the laws of the State of South Carolina and has been duly authorized by said business to make this Affidavit.

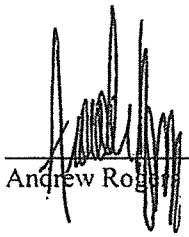
2. That there is justly due and owing by Balfour Beatty Construction, LLC, over and above any discount and without deduction or set-off, the sum of money set out in the foregoing pleading amounting to $392,743.28.

3. That the said indebtedness represents merchandise sold/money advanced/services performed by Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. to or for Balfour Beatty Construction, LLC under a contract.

4. That Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.

5. That Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. keeps regular books of account and that the keeping of said books of account is in the charge of or under the supervision of the affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that Balfour Beatty Construction, LLC is indebted to Lithko Contracting, Inc. in the manner and amount herein set forth.

EXHIBIT
B



Andrew Roger

SWORN BEFORE ME this 28th day of December, 2016.

My Commission Expires: 7/21/21

ADAM L. KLESKI
Notary Public
Mecklenburg County, NC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

LITHKO CONTRACTING, LLC f/k/a LITHKO CONTRACTING, INC.,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

VERIFICATION

SC Contractor License No.: 120270

PERSONALLY APPEARED before me, Andrew Rogers, who first being duly sworn, deposes and says that he is the Regional Business Analyst for Plaintiff/Petitioner, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc.; that he has read the foregoing Notice and Certificate of Mechanic's Lien and Statement of Account; that the materials set forth herein are true of his own knowledge, except those matters and things therein alleged on information and belief, and as to those he believes them to be true.

Further, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. is a BD5 General Contractor and holds License Number 120270 with the South Carolina Board of Labor, Licensing, and Regulation.

Andrew Rogers, Regional Business Analyst
Lithko Contracting, LLC f/k/a Lithko Contracting, Inc.

Sworn to and subscribed before me this
the 14th day of December, 2016.

Notary Public, State of North Carolina
My Commission Expires: 7/21/21

ADAM L. KLESKI
Notary Public
Mecklenburg County, NC

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

SHUMAKER, LOOP & KENDRICK
ATTORNEYS AT LAW
128 SOUTH TRYON STREET, STE 1800
CHARLOTTE, NC 28202

RECORDED

Date: December 29, 2016
Time: 12:24:00 PM

Book	Page	DocType
0606	660	Mech/Lien

Charlie Lybrand, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCS LLC AL

RECIPIENT:
LITHKO CONTRACTING ETC

Original Book:

Original Page:

# of Sats:

Note:

# of Pages: 7
# of References:

Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ 2.00
Postage	$ -
Chattel	$ -
TOTAL	$ 12.00

DRAWER: Drawer 1
CLERK: KLH

0606 — Book
660 — Page
12/29/2016 — Recorded Date
7 — # Pgs

Original Book
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D — Doc Type
12:24:00 — Recorded Time

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

LITHKO CONTRACTING, LLC f/k/a LITHKO CONTRACTING, INC.,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

NOTICE AND CERTIFICATE OF SECOND MECHANIC'S LIEN

SC Contractor License No.: 120270

BP0618460

#PGS: 7

PERSONALLY appeared before me Andrew S. Culicerto, who being duly sworn, deposes and says as follows:

That he is the attorney for, and acting on behalf of the Plaintiff/Petitioner and Second Mechanic's Lien Claimant herein, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. ("Plaintiff/Petitioner"), and hereby claims and files, pursuant to S.C. Code Ann. §29-5-10, a Second Mechanic's lien for labor and/or materials and/or equipment actually used in improving the real estate and property owned by Library Associates, LLC, located in Charleston, Charleston County, South Carolina. The labor and materials were performed and supplied by Plaintiff on the following property:

404 King Street
Charleston, SC 29403
Charleston County Parcel ID No.: 4601604009
(as more particularly described in **Exhibit "A"**)

The reasonable price of such labor and materials so performed or so furnished and which is due is the amount of $118,476.54, in addition to the amounts set forth as due and owing in Plaintiff/Petitioner's Notice and Certificate of Mechanic's Lien filed December 29, 2016, in Book 0606, Page 660, in the amount of $392,743.28. A verified statement of account is attached hereto as **Exhibit "B"** and is incorporated by reference herein.

Respondent Metropolitan Life Insurance Company is named due to its mortgage interest in the subject property.

The work done by the Plaintiff/Petitioner was done under contract with Defendant/Respondent Balfour Beatty Construction, LLC, for the construction and improvements to the property located at 404 King Street, Charleston, South Carolina 29403. The

labor and materials provided by Plaintiff/Petitioner were with the express knowledge, consent, acquiescence, and request of Respondents.

The first provision of labor and/or services by Plaintiff/Petitioner at the Project was on or about August 13, 2015. Plaintiff/Petitioner continues to provide labor and materials at the Project for the improvement of real property as of February 17, 2017.

Ninety days have not elapsed since the completion of said work.

Plaintiff/Petitioner, after deducting all the just credits and offsets, now claims a second mechanic's lien in the amount of $118,476.54 on the real property described above and owned by Defendant/Respondent Library Associates, LLC, and on all buildings and improvements thereon, under the ownership and/or control of the Defendant/Respondent, plus attorneys' fees and costs of this action as provided by South Carolina Code Annotated 29-5-10 et seq. as amended.

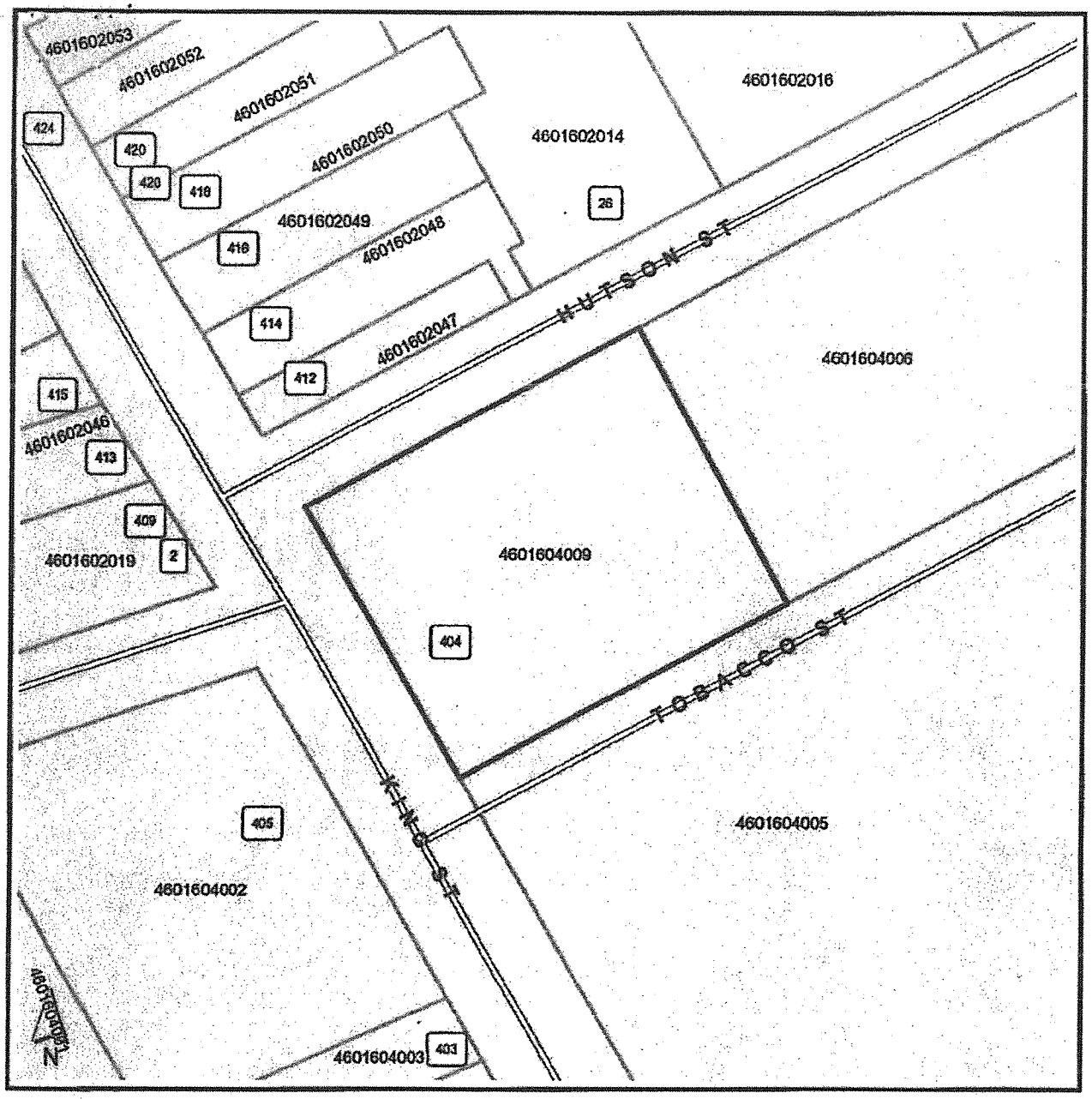
DATED: February 20th, 2017.

Andrew S. Culicerto
SHUMAKER, LOOP & KENDRICK, LLP
South Carolina Bar No: 74480
101 South Tryon Street, Suite 2200
Charlotte, North Carolina 28280
Phone: (704) 375-0057
Facsimile: (704) 332-1197
E-mail: aculicerto@slk-law.com
Attorney for Plaintiff/Petitioner

SWORN BEFORE ME this 20th day of February, 2017.

My Commission Expires: 6/3/2020

ALEXANDRA L. RUSSELL NOTARY PUBLIC My Comm. Exp. 06/03/2020 MECKLENBURG COUNTY, NC



Marion Square Hotel

Parcel ID: 4601604009
Owner1: LIBRARY ASSOCIATES LLC
Prop St Number: 404
Prop St Name: KING
Prop Type: ST
Acreage: 0.00
Class Code: 500 - General Commercial

Plat Book Page: L11- 0185
Deed Book Page: 0102-032
Jurisdiction: CITY OF CHARLESTON

0 40 80 160 Feet
1 Inch = 66 feet

EXHIBIT
Stahler
A

CHARLESTON COUNTY
SOUTH CAROLINA

Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information.

Author: Charleston County SC
Date: 12/13/2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

LITHKO CONTRACTING, LLC f/k/a LITHKO CONTRACTING, INC.,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

STATEMENT OF ACCOUNT

SC Contractor License No.: 120270

I hereby certify that on this 17th day of February, 2017, Andrew Rogers personally appeared before me, who, being duly sworn, deposes and says:

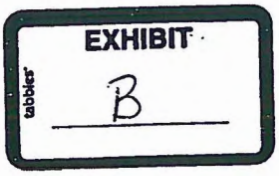
1. That he is the Regional Business Analyst of Lithko Contracting, LLC f/k/a Lithko Contracting, Inc.; an Ohio corporation authorized to do business under the laws of the State of South Carolina and has been duly authorized by said business to make this Affidavit.

2. That there is justly due and owing by Balfour Beatty Construction, LLC, over and above any discount and without deduction or set-off, the sum of money set out in the foregoing pleading amounting to $118,476.54, in addition to the amounts set forth as due and owing in Plaintiff/Petitioner's Notice and Certificate of Mechanic's Lien filed December 29, 2016, in Book 0606, Page 660, in the amount of $392,743.28.

3. That the said indebtedness represents merchandise sold/money advanced/services performed by Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. to or for Balfour Beatty Construction, LLC under a contract.

4. That Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.

5. That Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. keeps regular books of account and that the keeping of said books of account is in the charge of or under the supervision of the affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that Balfour Beatty Construction, LLC is indebted to Lithko Contracting, Inc. in the manner and amount herein set forth.



Andrew Rogers

SWORN BEFORE ME this 17th day
of February, 2017.

Linda H. Carder

My Commission Expires: 6/12/2017

LINDA H. CARDER
NOTARY PUBLIC
Mecklenburg County
North Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

LITHKO CONTRACTING, LLC f/k/a LITHKO CONTRACTING, INC.,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

VERIFICATION

SC Contractor License No.: 120270

PERSONALLY APPEARED before me, Andrew Rogers, who first being duly sworn, deposes and says that he is the Regional Business Analyst for Plaintiff/Petitioner, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc.; that he has read the foregoing Notice and Certificate of Second Mechanic's Lien and Statement of Account; that the materials set forth herein are true of his own knowledge, except those matters and things therein alleged on information and belief, and as to those he believes them to be true.

Further, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc. is a BD5 General Contractor and holds License Number 120270 with the South Carolina Board of Labor, Licensing, and Regulation.

Andrew Rogers, Regional Business Analyst
Lithko Contracting, LLC f/k/a Lithko Contracting, Inc.

Sworn to and subscribed before me this
the 17th day of February, 2017.

Linda H. Carder

Notary Public, State of North Carolina
My Commission Expires: 6/17/2017

LINDA H. CARDER
NOTARY PUBLIC
Mecklenburg County
North Carolina

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

SHUMAKER, LOOP & KENDRICK
ATTORNEYS AT LAW
101 SOUTH TYRON STREET, SUITE 2200
CHARLOTTE, NC 282280-0002

RECORDED

Date:	February 21, 2017
Time:	4:33:59 PM

Book	Page	DocType
0618	460	Mech/Lien

Charlie Lybrand, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCIATES LLC AL

RECIPIENT:
LITHKO CONTRACTING ETC

Original Book: 0606

Original Page: 660

# of Sats:

Note:

# of Pages: 7

# of References:

Recording Fee	$	10.00
Extra Reference Cost	$	-
Extra Pages	$	2.00
Postage	$	-
Chattel	$	-
TOTAL	$	12.00

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CLERK: JBA

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Book	Page	Recorded Date	# Pgs

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Original Book	Original Page	Doc Type	Recorded Time

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE OFFICE OF THE REGISTER OF DEEDS

GUY M. BEATY, INC.,

Plaintiff,

v.

LIBRARY ASSOCIATES, LLC; BALFOUR BEATTY CONSTRUCTION, LLC; BERNHARD MCC, LCC,

Defendants.

NOTICE OF MECHANIC'S LIEN & CERTIFICATE OF MECHANIC'S LIEN

NOTICE IS HEREBY GIVEN Bernhard MCC, LCC ("Bernhard") is indebted to Plaintiff/Lien Claimant, Guy M. Beaty, Inc. ("Claimant"), in the principal amount of not less than One Hundred Ten Thousand One Hundred Ninety-Five and 85/100 Dollars ($110,195.85) for labor and materials provided by Claimant pursuant to a written contract with Bernhard. Claimant provided materials and labor for insulation of HVAC and plumbing improvements on the subject property, which is owned by Library Associates, LLC (the "Library") and is commonly identified as the Hotel at Marion Square, 404 King St., Charleston, Charleston County, South Carolina 29401 (the "Property"). The improvements to the Property were made pursuant to the Library's express and/or implied authorization, and pursuant to Balfour Beatty Construction, LLC's ("Balfour") and Bernhard's collective interest in improvements made by Claimant to the Property. A more specific legal description of the Property is provided in Exhibit A, attached hereto and incorporated herein by reference.

ALL-STATE LEGAL®
EXHIBIT
B
187

Claimant's first day of work for the Property was December 17, 2015 and Claimant last furnished labor and materials to the Property within ninety (90) days of this filing, on September 25, 2018. Claimant provided all labor and materials for the Property at the request and instruction of Bernhard, and with the express and/or implied authorization of the property owner, the Library, and General Contractor Balfour.

Despite Claimant's due and just demand for payment for the labor and supplies provided for the Property, Bernhard has failed to pay Claimant in full for Claimant's improvements to the Property. Claimant's Affidavit and Verified Statement of Account attesting to such nonpayment is filed contemporaneously herewith and is incorporated herein by reference.

Based on the foregoing, Claimant is entitled to and hereby claims a Mechanic's Lien to the extent of the Library's interest in the Property, as well as Balfour's and Bernhard's collective interest in the improvements made by Claimant to the Property, and all structures situated thereon, in an amount not less than One Hundred Ten Thousand One Hundred Ninety-Five and 85/100 Dollars ($110,195.85), plus attorneys' fees, interest, and costs of this action, as provided by Title 29 of the South Carolina Code.

This the 1st day of ~~October~~ November 2018.

Sworn and subscribed before
me this 1st day of ~~October~~ November 2018.

Carol G. Werth

Notary Public for North Carolina

My commission expires: 01-28-2020

CAROL A. WERTH
Notary Public
Mecklenburg County
NORTH CAROLINA

HAMILTON STEPHENS STEELE + MARTIN, PLLC

By: _____

Allen L. West, SC Bar No. 15674
525 N. Tryon Street, Suite 1400
Charlotte, NC 28202
Telephone: (704) 344-1117
Facsimile: (704) 244-1483
E-mail: awest@lawhssm.com
Attorneys for Guy M. Beaty, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day he served a copy of the foregoing and attached **NOTICE OF MECHANIC'S LIEN AND CERTIFICATE OF MECHANIC'S LIEN** via United States certified mail, postage prepaid and return receipt requested, properly addressed to the following:

Library Associates, LLC
c/o Michael R. Bennett, Registered Agent
17 Lockwood Blvd., Suite 400
Charleston, SC 29401

Bernhard MCC, LLC
c/o CT Corporation System, Registered Agent
160 Mine Lake Ct., Suite 200
Raleigh, NC 27615-6417

Balfour Beatty Construction, LLC
c/o Corporation Service Company, Registered Agent
2626 Glenwood Avenue, Suite 550
Raleigh, NC 27608

Bernhard MCC, LLC
c/o CT Corporation System, Registered Agent
3001 17th Street
Metairie, LA 70002-3805

Balfour Beatty Construction, LLC
c/o Corporation Service Company, Registered Agent
3100 McKinnon Street
Dallas, TX 75201-1044

This the 1st day of ~~October~~ November 2018.

HAMILTON STEPHENS STEELE + MARTIN, PLLC

By: _____

Allen L. West
525 N. Tryon Street, Suite 1400
Charlotte, NC 28202
Telephone: (704) 344-1117
Facsimile: (704) 244-1483
E-mail: awest@lawhssm.com
Attorneys for Guy M. Beaty

Exhibit A
Description of Property

ALL that certain piece, parcel or tract of land situate, lying and being on the south side of Hutson Street, in the City of Charleston, State of South Carolina, shown and designated as "2,190 Square Feet 0.050 Acres from Lot 2 Being Added to Lot 1" as shown on a plat thereof entitled "PLAT Of THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said 0.050 acres (2,190 square feet) having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston recorded March 15, 1997 in Book L-253, Page 629 in the RMC Office for Charleston County, South Carolina.

Formerly Portion of TMS No. 460-16-02-006, now a portion of TMS No. 460-16-04-009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE OFFICE OF THE
REGISTER OF DEEDS

GUY M. BEATY, INC.,

Plaintiff,

v.

LIBRARY ASSOCIATES, LLC; BALFOUR BEATTY CONSTRUCTION, LLC; BERNHARD MCC, LCC,

Defendants.

AFFIDAVIT AND VERIFIED STATEMENT OF ACCOUNT

Jim Mills, being duly sworn, makes the following statement under oath and under penalty of perjury:

1. I have served as the General Manager of Guy M. Beaty, Inc. ("GMB" or "Claimant"). I am over the age of eighteen and am competent to testify regarding the matters set forth in this Affidavit. As the General Manager of GMB, I am authorized to make this Affidavit and Verified Statement on Claimant's behalf. This Affidavit is based upon my personal knowledge and belief or is reflected in records maintained by Claimant in the regular and ordinary course of business.

2. Pursuant to a written contract executed by Claimant and Bernhard MCC, LCC ("Bernhard"), and at the request and instruction of Bernhard and with the express and/or implied authorization of Defendants, Claimant provided certain labor and materials to that real property owned by Library Associates, LLC (the "Library") located at and commonly identified as the Hotel at Marion Square, 404 King St., Charleston, Charleston County, South Carolina 29401, and more

specifically identified in Exhibit A to the Notice of Mechanic's Lien and Certificate of Mechanic's Lien that Claimant files contemporaneously herewith (the "Property").

3. As of the date of this Affidavit and Verified Statement of Account, the unpaid value of the contract rate and the reasonable value of the labor and materials Claimant provided for the Property is One Hundred Ten Thousand One Hundred Ninety-Five and 85/100 Dollars ($110,195.85), as set forth more particularly on the spreadsheet attached hereto as Exhibit A and incorporated by reference. Exhibit A identifies each of Claimant's payment applications, less those payments made by Bernhard.

4. I attest that the amount owed is true and correct and that no part of sum noticed has been paid by discount or otherwise, except that for which credit has been given. I attest that I have reviewed the Notice of Mechanic's Lien and Certificate of Mechanic's Lien ("Notice") filed contemporaneously herewith, and that the matters and things alleged herein and in the aforementioned Notice are true to the best of my knowledge, except those matters and things alleged on information and belief, and as to those, I believe them to be true.

On behalf of
GUY M. BEATY, INC.

By: _____
Jim Mills

Sworn and subscribed before
me this 29th day of October 2018.

_____
Notary Public for South Carolina
My commission expires: 4-27-2026

SANDRA P CORNWELL NOTARY PUBLIC EXP. APRIL 27, 2026 SOUTH CAROLINA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day he served a copy of the foregoing and attached **AFFIDAVIT AND VERIFIED STATEMENT OF ACCOUNT** via United States certified mail, postage prepaid and return receipt requested, properly addressed to the following:

Library Associates, LLC
c/o Michael R. Bennett, Registered Agent
17 Lockwood Blvd., Suite 400
Charleston, SC 29401

Bernhard MCC, LLC
c/o CT Corporation System, Registered Agent
160 Mine Lake Ct., Suite 200
Raleigh, NC 27615-6417

Balfour Beatty Construction, LLC
c/o Corporation Service Company, Registered Agent
2626 Glenwood Avenue, Suite 550
Raleigh, NC 27608

Bernhard MCC, LLC
c/o CT Corporation System, Registered Agent
3001 17th Street
Metairie, LA 70002-3805

Balfour Beatty Construction, LLC
c/o Corporation Service Company, Registered Agent
3100 McKinnon Street
Dallas, TX 75201-1044

This the 1st day of ~~October~~ November, 2018.

HAMILTON STEPHENS STEELE + MARTIN, PLLC

By: _____

Allen L. West
525 N. Tryon Street, Suite 1400
Charlotte, NC 28202
Telephone: (704) 344-1117
Facsimile: (704) 244-1483
E-mail: awest@lawhssm.com
Attorneys for Guy M. Beaty, Inc.

EXHIBIT A

Marion Square Sub Contract # 8350255-00002

Conract amount:	$ 517,000.00
Change Orders :	$ 20,423.00
	$ 537,423.00
Ticket # 3466	$64.65
Ticket # 7929	$944.97
Ticket # 7918	$1,583.21
Ticket # 7917	$1,612.48
Ticket # 7950	$2,343.48
Ticket # 7952	$615.96
Ticket # 9954	$721.60
Outstanding CCD's and Tickets	$48,457.00
Paid	$(475,681.50)
Balance owed	$ 110,195.85

Billed to date $585,880.35

Last day worked 9/25/2018

BP0775800

PGS: 7

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BERNHARD MCC, LLC,
Plaintiff,

v.

LIBRARY ASSOCIATES, LLC and BALFOUR BEATTY CONSTRUCTION, LLC,
Defendants.

IN THE REGISTER OF DEEDS

NOTICE AND CERTIFICATE OF MECHANIC'S LIEN

NOTICE IS HEREBY GIVEN that the Plaintiff, **BERNHARD MCC, LLC** ("BMCC" OR "Plaintiff"), License Number G120031, pursuant to S.C. Code Ann. § 29-5-10 and 20 *et seq.* (1976, as amended), claims a lien against the property as owned by **LIBRARY ASSOCIATES, LLC** ("Owner") in the principal amount of not less than Six Million Five Hundred Thirty-Nine Thousand Nine Hundred Ninety-Two and 14/100 Dollars ($6,539,992.14), for labor and materials provided by Plaintiff pursuant to a written agreement with **BALFOUR BEATTY CONSTRUCTION, LLC** ("Balfour"). Plaintiff provided labor and materials for HVAC and plumbing improvements on the subject property, situated on the real estate described in **EXHIBIT A** ("Property"), attached hereto and incorporated herein by reference. The Property is commonly referred to as the Hotel at Marion Square, 404 King St., Charleston, Charleston County, South Carolina 29401.

The undersigned Petitioner has furnished, within ninety (90) days of the date hereof, labor and materials for HVAC and plumbing improvements on the subject property by virtue of an agreement with the general contractor, Balfour. The improvements were made pursuant to the express and/or implied authorization of the owner. The value of the labor and materials furnished, with all just credits given, totals **Six Million Five Hundred Thirty-Nine Thousand Nine**

ALL-STATE LEGAL EXHIBIT C

BP0775800

PGS: 7

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** BERNHARD MCC, LLC, Plaintiff, v. LIBRARY ASSOCIATES, LLC and BALFOUR BEATTY CONSTRUCTION, LLC, Defendants.	**IN THE REGISTER OF DEEDS** **NOTICE AND CERTIFICATE OF MECHANIC'S LIEN**

NOTICE IS HEREBY GIVEN that the Plaintiff, **BERNHARD MCC, LLC** ("BMCC" OR "Plaintiff"), License Number G120031, pursuant to S.C. Code Ann. § 29-5-10 and 20 *et seq.* (1976, as amended), claims a lien against the property as owned by **LIBRARY ASSOCIATES, LLC** ("Owner") in the principal amount of not less than Six Million Five Hundred Thirty-Nine Thousand Nine Hundred Ninety-Two and 14/100 Dollars ($6,539,992.14), for labor and materials provided by Plaintiff pursuant to a written agreement with **BALFOUR BEATTY CONSTRUCTION, LLC** ("Balfour"). Plaintiff provided labor and materials for HVAC and plumbing improvements on the subject property, situated on the real estate described in **EXHIBIT A** ("Property"), attached hereto and incorporated herein by reference. The Property is commonly referred to as the Hotel at Marion Square, 404 King St., Charleston, Charleston County, South Carolina 29401.

The undersigned Petitioner has furnished, within ninety (90) days of the date hereof, labor and materials for HVAC and plumbing improvements on the subject property by virtue of an agreement with the general contractor, Balfour. The improvements were made pursuant to the express and/or implied authorization of the owner. The value of the labor and materials furnished, with all just credits given, totals **Six Million Five Hundred Thirty-Nine Thousand Nine**

Hundred Ninety-Two and 14/100 Dollars ($6,539,992.14), as is evidenced by the Affidavit and Verified Statement of Account filed contemporaneously herewith and incorporated by reference.

That by virtue of the aforesaid labor and materials furnished to the Property, by the serving and filing of this Notice and Certificate, and pursuant to the provisions of the Code of Laws of South Carolina in such cases as have been made and provided, Plaintiff has and claims a lien interest to secure the payment of the debt so due and the cost of enforcing said lien upon the property, buildings and/or structures hereinabove mentioned and upon the real property described in **EXHIBIT A.**

WHEREFORE, Plaintiff claims a Mechanics Lien in an amount no less than **Six Million Five Hundred Thirty-Nine Thousand Nine Hundred Ninety-Two and 14/100 Dollars ($6,539,992.14)**, plus interest, attorney's fees, all other damages incurred and the costs and disbursements of this action.

This 5 day of February 2019 in Charleston, South Carolina.

RESPECTFULLY SUBMITTED:

WALKER GRESSETTE FREEMAN LINTON, LLC

John Linton (SC Bar # 79130)
Walker Gressette Freeman Linton, LLC
66 Hassell Street
Charleston, SC 29401
Telephone: 843.727.2238
Fax: 843.727.2238

EXHIBIT A

Property Address: 404 King Street, Charleston, SC29403

Owner of Property: Library Associates, LLC

Description of Property subject to lien:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** BERNHARD MCC, LLC, Plaintiff, v. LIBRARY ASSOCIATES, LLC and BALFOUR BEATTY CONSTRUCTION, LLC, Defendants.	**IN THE REGISTER OF DEEDS** **AFFIDAVIT AND VERIFIED STATEMENT OF ACCOUNT**

Personally, appeared before me, Bernhard MCC, LLC (License Number G120031), by Philip T. Catanzaro, its President, who, first being duly sworn, deposes and states that he has personal knowledge of the matters stated herein, excepting only those matters stated upon information and belief. Pursuant to a contract with Balfour Beatty Construction, LLC (the "Contracting Party"), Bernhard MCC, LLC provided certain valuable materials and associated labor for the improvement of the Property described in the attached Notice and Certificate of Mechanic's Lien (the "Property") within the last ninety (90) days. The last time Bernhard MCC, LLC worked at the Property was on January 29, 2019. Upon information and belief, the subject Property is owned by Library Associates, LLC ("Owner") and such materials and labor were furnished to the Property at the request of or by consent of the Owner or some person or agent having authority from or rightfully acting for such Owner or authorized by the Owner.

The undersigned further states that there is past due and owing to Bernhard MCC, LLC for the provision of the materials and labor referenced herein the principal sum certain of not less than Six Million Five Hundred Thirty-Nine Thousand Nine Hundred Ninety-Two and 14/100 Dollars ($6,539,992.14), as evidenced by the Statement of Account attached hereto and incorporated herein as **Exhibit 1**, plus prejudgment interest, costs, and reasonable attorneys' fees, and that all just and lawful offsets, discounts, payments and credits have been allowed.

BERNHARD MCC, LLC

By: Philip T. Catanzaro
Its President

SWORN to and subscribed before me this

4th day of February, 2019

NOTARY PUBLIC FOR _____
My Commission Expires: _____

DAWN K. BUJOL
NOTARY PUBLIC #153437
State of Louisiana, Parish of Jefferson
My Commission is issued for life

EXHIBIT "1"

STATEMENT OF ACCOUNT

Date: February 4, 2019

Property Address: 404 King St., Charleston, Charleston County, South Carolina 29401

Owner: Library Associates, LLC

Contracting Party: Balfour Beatty Construction, LLC

Personally, appeared before me, Bernhard MCC, LLC (License Number G120031), by Philip T. Catanzaro, its President, who, first being duly sworn, deposes and states that Bernhard MCC, LLC as of the date of this Affidavit and Verified Statement of Account, the unpaid value of the contract rate and the reasonable value of the labor, services and materials furnished by Bernhard MCC, LLC for the benefit of Owner named above at the Property named above is **Six Million Five Hundred Thirty-Nine Thousand Nine Hundred Ninety-Two and 14/100 Dollars ($6,539,992.14)**, as set forth below:

BMCC Contract Balance	$137,917.73
Change Orders Approved for Less than Amount Sought by BMCC	$130,106.62
Unapproved Proposed Change Orders	$871,282.45
Extended General Conditions	$1,919,282.82
Overtime	$19,982.40
Per Diem	$364,837.50
General Clean Up	$123,872.12
BIM	$197,388.30
Core Drill	$71,153.95
Material Escalation	$229,050.10
Chemical Treatment	$12,000.00
Subcontractor Extended General Conditions Claims	$253,202.40
Productivity Claim	$2,140,450.00
Total:	**$6,539,992.14**

The undersigned further states that this Statement of Account is a true and just account of the amount due to Bernhard MCC, LLC, with all just credits given, for building materials and associated labor furnished to and actually used in the course of construction on the Property of Owner, by virtue Bernhard MCC, LLC's contract with Balfour Beatty Construction, LLC to furnish labor and materials to and for the benefit of the Owner.

BERNHARD MCC, LLC

Philip T. Catanzaro

By: Philip T. Catanzaro
Its President

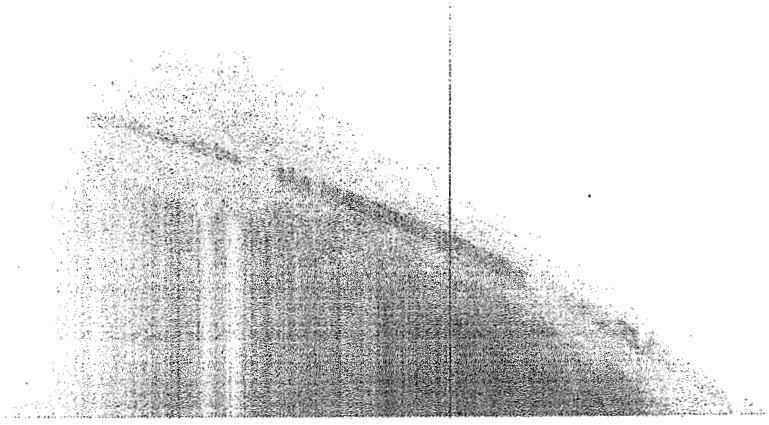
SWORN to and subscribed before me this

4th day of February, 2019

NOTARY PUBLIC FOR _____

My Commission Expires: _____

DAWN K. BUJOL
NOTARY PUBLIC #153437
State of Louisiana, Parish of Jefferson
My Commission is issued for life



RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

WALKER GRESSETE FREEMAN & LINTON
PO BOX 22167

CHARLESTON SC 29413

RECORDED

Date:	February 5, 2019
Time:	11:15:57 AM

Book	Page	DocType
0775	800	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCS AL

RECIPIENT:
BERNHARD MCC LLC

Original Book:

Original Page:

# of Pages: 7
# of Sats:
# of References:

Note:

Recording Fee	$	10.00
Extra Reference Cost	$	-
Extra Pages	$	2.00
Postage	$	-
Chattel	$	-
TOTAL	$	12.00

DRAWER: Drawer 4
CLERK: SLW

0775	800	02/05/2019	7
Book	Page	Recorded Date	# Pgs

		D	11:15:57
Original Book	Original Page	Doc Type	Recorded Time

BP0775799 # PGS: 6

STATE OF SOUTH CAROLINA	)	IN THE REGISTER OF DEEDS
	)	
COUNTY OF CHARLESTON	)	
	)	
Gulf Stream Construction Company, Inc.,	)	
	)	
Petitioner and Lien Claimant,	)	**NOTICE AND CERTIFICATE OF MECHANIC'S LIEN**
	)	
v.	)	
	)	
Library Associates, LLC and Balfour Beatty Construction, LLC,	)	
	)	
Respondents.	)	

TO THE RESPONDENTS ABOVE NAMED:

THERE IS NOW DUE and owing to Petitioner Gulf Stream Construction Company, Inc. (hereinafter "Gulf Stream") the sum of One Hundred Nineteen Thousand One Hundred Fifty-Two Dollars and Seventeen Cents ($119,152.17), for materials and labor provided by Petitioner as shown by the Affidavit of Mechanic's Lien and Statement of Account attached hereto and made a part hereof.

SAID DEBT is due to Petitioner for materials and labor furnished and used in the construction work or in otherwise improving the real estate owned by Library Associates, LLC, hereinafter described by virtue of an agreement with Balfour Beatty Construction, LLC (hereinafter the "Contracting Party").

AS SHOWN on the attached Affidavit of Mechanic's Lien and Statement of Account, the Petitioner furnished materials and associated labor for such improvements within the last ninety (90) days of the date hereof.

BY VIRTUE thereof, and by the filing of this Notice and Certificate, and pursuant to Sections 29-5-10 *et seq.*, SC Code of Laws, the Petitioner has and claims a lien to secure the payment of the above-stated indebtedness so due, plus prejudgment interest and the costs, including attorneys' fees, of enforcing said lien upon the improvements hereinabove mentioned, and upon the following described real property, to-wit:

404 King Street
Charleston, South Carolina 29403
TMS No. 460-16-04-009

LEGALLY DESCRIBED AS:

See Attached Exhibit A

EXHIBIT D

ALL-STATE LEGAL®

WHEREFORE, the Petitioner claims a Mechanic's Lien against the Property in the sum of $119,152.17, together with the interest thereon, and costs, including reasonable attorney's fees.

WALKER GRESSETTE FREEMAN & LINTON, LLC

Ian W. Freeman (S.C. Bar #72736)
P.O. Box 22167
Charleston, SC 29413
Tel: 843-727-2242
E-mail: Freeman@WGFLlaw.com
ATTORNEYS FOR PETITIONER AND LIEN CLAIMANT GULF STREAM CONSTRUCTION COMPANY, INC.

Charleston, South Carolina
February 4, 2019

EXHIBIT A

Property Address: 404 King Street, Charleston, SC29403

Owner of Property: Library Associates, LLC

Description of Property subject to lien:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT .OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009

STATE OF SOUTH CAROLINA	)	IN THE REGISTER OF DEEDS
	)	
COUNTY OF CHARLESTON	)	
	)	
Gulf Stream Construction Company, Inc.,	)	**AFFIDAVIT OF MECHANIC'S LIEN**
	)	
Petitioner and Lien Claimant,	)	
	)	
v.	)	
	)	
Library Associates, LLC and Balfour Beatty Construction, LLC,	)	
	)	
Respondents.	)	

Personally, appeared before me, Gulf Stream Construction Company, Inc., by Shawn Sullivan its Assistant Controller, who, first being duly sworn, deposes and states that he has personal knowledge of the matters stated herein, excepting only those matters stated upon information and belief. Pursuant to a contract with Balfour Beatty Construction, LLC (the "Contracting Party"), Gulf Stream Construction Company, Inc. provided certain valuable materials and associated labor for the improvement of the Property described in the attached Notice and Certificate of Mechanic's Lien (the "Property") within the last ninety (90) days. The last time Gulf Stream Construction Company, Inc. worked at the Property was within the last ninety (90) days. Upon information and belief, the subject Property is owned by Library Associates, LLC ("Owner") and such materials and labor were furnished to the Property at the request of or by consent of the Owner or some person or agent having authority from or rightfully acting for such Owner or authorized by the Owner.

The undersigned further states that there is past due and owing to Gulf Stream Construction Company, Inc. for the provision of the materials and labor referenced herein the principal sum certain of One Hundred Nineteen Thousand One Hundred Fifty-Two Dollars and Seventeen Cents ($119,152.17), as evidenced by the Statement of Account attached hereto and incorporated herein as **Exhibit I**, plus prejudgment interest, costs, and reasonable attorneys' fees, and that all just and lawful offsets, discounts, payments and credits have been allowed.

Gulf Stream Construction Company, Inc.

Shawn M Sullivan

By: Shawn Sullivan
Its Assistant Controller

SWORN to and subscribed before me this
1st day of February, 2019

Shere A. Hills

NOTARY PUBLIC FOR CHARLESTON
My Commission Expires: 5/26/26

SHERE A. HILLS NOTARY PUBLIC STATE OF SOUTH CAROLINA My Comm. Expires May 26, 2026

EXHIBIT "I"

STATEMENT OF ACCOUNT

Date: February ___, 2019

Property Address: 404 King Street
Charleston, South Carolina 29403

Owner: Library Associates, LLC

Contracting Party: Balfour Beatty Construction, LLC

Personally, appeared before me, Gulf Stream Construction Company, Inc., by Shawn Sullivan its Assistant Controller, who, first being duly sworn, deposes and states that Gulf Stream Construction Company, Inc. has provided materials and labor for the benefit of Owner named above as described herein as follows:

Total materials and labor supplied	$1,542,810.46
Less payments to date	- $1,423,658.29
Balance on account	$119,152.17

The undersigned further states that this Statement of Account is a true and just account of the amount due to Gulf Stream Construction Company, Inc., with all just credits given, for building materials and associated labor furnished to and actually used in the course of construction on the Property of Owner, by virtue Gulf Stream Construction Company, Inc.'s contract with the Contracting Party to furnish materials to and for the benefit of the Owner.

Gulf Stream Construction Company, Inc.

Shawn M Sullivan

By: Shawn Sullivan
Its Assistant Controller

SWORN to and subscribed before me this
1st day of February, 2019

Shere A. Hills

NOTARY PUBLIC FOR CHARLESTON

My Commission Expires: 5/26/26

SHERE A. HILLS NOTARY PUBLIC STATE OF SOUTH CAROLINA My Comm. Expires May 26, 2026

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

WALKER GRESSETE FREEMAN & LINTON
PO BOX 22167

CHARLESTON SC 29413

RECORDED

Date:	February 5, 2019
Time:	11:13:22 AM

Book	Page	DocType
0775	799	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCS AL

RECIPIENT:
GULF STREAM CONST CO

Original Book:

Original Page:

# of Sats:

Note:

# of Pages:	6
# of References:	
Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ 1.00
Postage	$ -
Chattel	$ -
TOTAL	$ 11.00

DRAWER: Drawer 4
CLERK: SLW

0775 — Book
799 — Page
02/05/2019 — Recorded Date
6 — # Pgs

Original Book
Original Page
D — Doc Type
11:13:22 — Recorded Time

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Precision Walls, Inc.,)
)
Plaintiff,)
)
v.)
)
Library Associates, LLC, Metropolitan Life)
Insurance Company and Balfour Beatty)
Construction, LLC,)
)
Defendants.)
)

BP0775778

PGS: 6

NOTICE AND CERTIFICATE OF MECHANIC'S LIEN

License Number: 13494

TO THE ABOVE-NAMED DEFENDANT:

NOTICE IS HEREBY GIVEN that a Mechanic's Lien is claimed pursuant to *S.C. Code Ann.* § 29-5-10 and 20 et. seq. (1976, as amended) by Precision Walls, Inc., above-named, and is being filed in the Office of the Register of Deeds for Charleston County, South Carolina on behalf of the above-named Plaintiff for labor, equipment and/or materials furnished and actually used in the erection, alteration or improvements to the real estate more fully described in Exhibit A attached hereto and incorporated herein by reference and that the undersigned Plaintiff has furnished labor, services and materials in improving said real estate by virtue of an agreement with and/or the consent of the owners of said real estate. Plaintiff craves reference to Exhibit B attached hereto and incorporated herein by reference, which is a just and true statement of account of monies due to the Plaintiff for such labor, services or materials provided at the request of or with the consent of the owners of said real estate or with their authorization.

That by virtue thereof, by the serving and filing of this Notice and Certificate, and pursuant to the provisions of the Code of Laws of South Carolina in such cases as have been made and provided, the Plaintiff has and claims a lien to secure the payment of the debt so due and the cost of enforcing

ALL-STATE LEGAL®
EXHIBIT
E

said lien upon the property, buildings and/or structures hereinabove mentioned and upon the real property described in Exhibit A attached hereto.

By:_____

Joey R. Floyd, SC Bar No.: 68491
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
1735 St. Julian Place, Suite 200
Columbia, South Carolina 29260
(803) 252-7693
Attorneys for the Plaintiff

January 31, 2019

Columbia, SC

SWORN to before me this 31st day of January, 2019

_____(SEAL)
Notary Public for South Carolina
Printed Name of Notary: Leigh Dominick
My Commission Expires: 4/24/28

EXHIBIT "A"

Property Address: 404 King Street, Charleston, South Carolina

Owner of Property(ies): Library Associates, LLC

Description of Property(ies) subject to lien:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 KING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the same property conveyed to Library Associates, LLC by deed of The County of Charleston, dated March 14,1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina, in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in the RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS No. 460-16-04-009

EASEMENT PARCEL

TOGETHER WITH the easement rights arising under that certain Easement and Encroachment Agreement by and between Library Associates, LLC and Washington Light Infantry and Sumter Guards Board of Officers, Inc. dated as of December 16, 2014, recorded in the RMC Office of Charleston County on December 23, 2014, in Book 0448, at Page 211.

SUBLEASEHOLD PARCEL

TOGETHER WITH the subleasehold estate created in favor of Library Associates, LLC pursuant to that certain Sublease Agreement by and among City Council of Charleston, a/k/a the City of Charleston ("Landlord"), Library Associates, LLC (Subtenant "A") and Old Citadel Associates, LLC (Subtenant "B"), (collectively referred to as "Subtenants") dated December 21, 2001, and recorded December 31, 2001 at Book S-392, Page 832, in the RMC Office for Charleston County, as amended by that Recognition Agreement by and among Library Associates, LLC ,The Washington Light Infantry and Sumter Guards Board of Officers, Inc., the City Council of Charleston, and Metropolitan Life Insurance Company, dated March 19, 2015, recorded in the RMC Office of Charleston County, on March 19, 2015, in Book 0463, at Page 654, and by that Recognition Agreement by and among Library Associates, LLC , the City Council of Charleston, and Metropolitan Life Insurance Company, dated March 19, 2015, recorded in the RMC Office of Charleston County, on March 19, 2015, in Book 0463 at Page 655.

EXHIBIT "B"
STATEMENT OF ACCOUNT

Claimant/ Mechanic Lienor: Precision Walls, Inc.

Owner: Library Associates, LLC

Nature of labor, materials and/or Equipment supplied:

a. Delegated design for engineered metal truss roof system and all cold formed metal framing
b. Metal Roof Trusses and metal decking
c. Cold formed metal framing
d. Exterior sheathing
e. Installation of hollow metal frames in metal stud walls only
f. Polyisocyanurate insulation, rigid insulation, and batt insulation
g. FRP Columns & GRG domes
h. Non-load bearing interior metal stud framing
i. Firestopping and sound caulking and head of wall and bottom of wall only
j. Installation of access panels
k. Drywall Assemblies
l. Acoustical Ceiling Grid and Tile
m. Operable partitions
n. Associated labor and materials with the above-referenced work

Property Subject: See Exhibit "A" to Notice and Certificate of Mechanic's Lien

Total Amount Due: $1,236,284.65 plus interest and attorney's fees

****

I hereby certify that the amount due to Precision Walls, Inc. for the above-referenced labor, materials and/or accessories supplied to the Owner's property, after all just credits and debits as of this date is the amount shown above, plus interest at the contract rate and/or statutory prejudgment rate and attorney's fees.

Precision Walls, Inc.

By: _____
Tom Sneed
Its: CFO

SWORN to before me this 31st day of January 2019

_____ (SEAL)
Notary Public for ~~South~~ North Carolina
Printed Name of Notary: Kristen Stojka
My Commission Expires: 4-12-21

KRISTEN STOJKA NOTARY PUBLIC WAKE COUNTY, NC MY COMM EXP APRIL 12 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Precision Walls, Inc.,)
)
Plaintiff,)
)
v.) **CERTIFICATE OF SERVICE**
)
Library Associates, LLC, Metropolitan Life)
Insurance Company and Balfour Beatty)
Construction, LLC,)
)
Defendants.)
)

I, Leigh Dominick, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff/Lien Claimant, do hereby certify that on the 4th day of February, 2019, I served the pleadings/documents set forth below on the person(s) identified below, by depositing copies thereof in the U.S. Mail, (Certified Mail, Return Receipt Requested, Delivery Restricted to Addressee), in an envelope securely sealed:

Pleadings/Documents Served:

Notice and Certificate of Mechanic's Lien (with Exhibits A & B), dated Jan. 31, 2019

Person(s) Served:

Michael R. Bennett., Registered Agent
Library Associates, LLC
17 Lockwood Blvd., Suite 400
Charleston, SC 29401

Metropolitan Life Insurance Company
c/o Managing Director, Real Estate
Investments
10 Park Avenue
Morristown, NJ 07962

Balfour Beatty Construction, LLC
c/o Corporation Service Company
1703 Laurel Street
Columbia, SC 29201

Leigh Dominick

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

BRUNER POWELL ROBBINS WALL & MULLINS
1735 ST. JULIAN PL., SUITE 200
PO BOX 61110
COLUMBIA, SC 29260-1110

RECORDED

Date:	February 5, 2019
Time:	10:08:47 AM

Book	Page	DocType
0775	778	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCIATES ETC

RECIPIENT:
PRECISION WALLS INC

Original Book:

Original Page:

# of Pages: 6
# of Sats:
# of References:

Note:

Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ 1.00
Postage	$ -
Chattel	$ -
TOTAL	$ 11.00

DRAWER: Drawer 3
CLERK: ECP

0775 Book | 778 Page | 02/05/2019 Recorded Date | 6 # Pgs

Original Book | Original Page | D Doc Type | 10:08:47 Recorded Time

0777-405

Recording Requested By:
And Return To:

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RECEIVED 2-13-19
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PALMETTO AUTOMATIC SPRINKLER COMPANY, INC.,)

Petitioner,)

vs.)

LIBRARY ASSOCIATES, LLC,)

Respondent.)

NOTICE AND CERTIFICATE OF MECHANIC'S LIEN (SUBCONTRACTOR) (CLAIMANT WITHOUT DIRECT CONTRACT WITH OWNER)

PERSONALLY APPEARED, before me, DEREK GOODPASTER, who being duly sworn deposes and states as follows:

That he is the authorized representative of Palmetto Automatic Sprinkler Company, Inc. which claims a Mechanic's Lien upon real estate in Charleston County as is more fully described below;

That by virtue of an agreement between Palmetto Automatic Sprinkler Company, Inc. and Balfour Beatty Construction, LLC, and with the knowledge or consent of Owner Library Associates, LLC, Petitioner did supply labor and/or materials for the improvement of the real property described hereinbelow;

That said labor and materials supplied consisted of labor and materials utilized in the installation of all fire sprinkler components of the following building or structure:

Hotel at Marion Square, 404 Kings Street, Charleston, SC 29403
(see Property Description attached)

Said labor and materials were supplied within 90 days of the date hereof; specifically, labor and materials were supplied beginning on December 8, 2015 and ending on December 6, 2018.

EXHIBIT
F
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That there is now due and owing to the Petitioner the sum of $219,369.93 as is more fully shown on the Verified Statement of Account attached hereto and incorporated herein by reference, together with interest, the cost of this action and a reasonable attorney's fee.

Petitioner claims a Mechanic's Lien upon the above described property, with the buildings, structures and other improvements thereon, for payment of $219,369.93 with interest at the legal rate from the date when due, and for the costs which may arise in enforcing such lien, including a reasonable attorney's fee.

Petitioner is required to be licensed or registered in accordance with S.C. Code Ann. § 29-5-45. The S.C. License or Registration No. FSC1810.

PETITIONER:

PALMETTO AUTOMATIC SPRINKLER COMPANY, INC.

BY: _____
DEREK GOODPASTER

ITS: **BRANCH MANAGER**

SWORN TO AND SUBSCRIBED BEFORE ME THIS 18 **DAY OF** January, **2019.**

_____
NOTARY PUBLIC FOR SOUTH CAROLINA

Printed name: Sherry A. Strickland

MY COMMISSION EXPIRES: 6/28/2022

LEGAL DECSRIPTION

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.671 acres, more or less, as shown on a plat thereof entitled "PLAT SHOWING THE PROPERTY LINE ADJUSTMENT & SUBDIVISION OF TWO LOTS OWNED BY THE COUNTY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Paul C. Lawson, Jr., S.C. Reg. Land Surveyor No. 14191, of Ashley Surveying, Inc., dated August 26, 1994, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book DA, at Page 333; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

TMS No. 460-16-04-009

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PALMETTO AUTOMATIC SPRINKLER COMPANY, INC.,

Petitioner,

vs.

LIBRARY ASSOCIATES, LLC,

Respondent.

VERIFIED STATEMENT OF ACCOUNT

Total Invoice for Materials and/or Labor furnished for the improvement of the property shown on the Notice and Certificate of Mechanic's Lien	$687,521.18
TOTAL DUE AS OF THE DATE HEREOF	**$219,369.93**

CERTIFICATION

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley

I hereby certify that the foregoing is a true and correct Statement of Account of the sums owed to Palmetto Automatic Sprinkler Company, Inc. exclusive of statutory attorney's fees and costs.

PALMETTO AUTOMATIC SPRINKLER COMPANY, INC.

BY: _____
DEREK GOODPASTER

ITS: **BRANCH MANAGER**

SWORN TO AND SUBSCRIBED BEFORE ME THIS 18 **DAY OF** January, **2019.**

_____
NOTARY PUBLIC FOR SOUTH CAROLINA

Printed name: Sherry A. Strickland

MY COMMISSION EXPIRES: 6/28/2022

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BP0778699

PGS: 5

COOK & BOARDMAN, LLC,

Lien Claimant,

vs.

LIBRARY ASSOCIATES, LLC

Owner.

NOTICE AND CERTIFICATE OF LIEN (Material Supplier – No Contractor's License Required)

To: Library Associates, LLC
c/o Michael R. Bennett, Registered Agent
17 Lockwood Blvd. Ste 400
Charleston, SC 29401
OWNERS OF PROPERTY INVOLVED

NOTICE IS HEREBY GIVEN that Claimant, by and through the undersigned counsel, does hereby file a mechanic's lien against the real estate described below and the improvements thereon in the principal amount of Three Hundred Fifty-Eight Thousand Seven Hundred Ninety-Six and 25/100 Dollars ($358,796.25), plus reasonable attorney's fees, additional interest on the amounts due, and the costs of this action and the enforcement thereof.

1. General Description of real property where labor performed or material furnished:

All of that piece, parcel or tract of land with any buildings and improvements thereon, situate, lying and being in the City of Charleston, Charleston County, South Carolina located at 404 King Street, known as "Hotel at Marion Square" and being the same property shown and designated as "Lot 1 New Area" on that Plat entitled "Plat of the Adjustment of Property Lines Between Lot 1, 404 King Street & Lot 2, 337 Meeting Street" recorded in Plat Book L11 at Page 0185 which is also known as TMS: 460-16-04-009.

2. General description of undersigned lien claimant's contract, including the names of the parties thereto:

Cook & Boardman, LLC ("Cook & Boardman") contracted with Balfour Beatty Construction, LLC ("Balfour Beatty"), to provide doors and frames labor and materials, which were used to improve the subject property. Upon information and belief, at all relevant times, Balfour Beatty was acting pursuant to a contract with the owner of the property.

EXHIBIT G

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3. The date that materials were first furnished:

November 16, 2015

4. The date that materials were last furnished:

February 12, 2019

The principal amount of the lien claimed under the above described contract is Three Hundred Fifty-Eight Thousand Seven Hundred Ninety-Six and 25/100 Dollars ($358,796.25). As part of this lien, Cook & Boardman also seeks to recover reasonable attorney's fees, additional interest on the amounts due, and the costs of this action, as allowed by South Carolina Code § 29-5-20.

Cook & Boardman, through undersigned counsel, gives this notice of lien pursuant to South Carolina law and claims all rights to which it is entitled under Chapter 29 of the South Carolina Code.

This the 19th day of February, 2019.

POYNER SPRUILL LLP

Sarah L. DiFranco
S.C. Bar No. 79830
301 South College Street, Suite 2300
Charlotte, NC 28202
Telephone: (704) 342-5250
Facsimile: (704) 342-5264
E-mail: sdifranco@poynerspruill.com
ATTORNEYS FOR LIEN CLAIMANT

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing *Notice and Certificate of Lien* by Federal Express, addressed to the following persons at the following addresses, which are the last addresses known to me:

Library Associates, LLC
c/o Michael R. Bennett, Registered Agent
17 Lockwood Blvd. Ste 400
Charleston, SC 29401

I hereby certify that I have this day served copies of the foregoing *Notice and Certificate of Lien* by certified mail, return receipt requested, addressed to the following persons at the following addresses, which are the last addresses known to me:

Balfour Beatty Construction, LLC
c/o Corporation Service Company, Registered Agent
1703 Laurel Street
Columbia, SC 29201

This the 19th day of February, 2019.

Sarah L. DiFranco
S.C. Bar No. 79830
301 South College Street, Suite 2300
Charlotte, NC 28202
Telephone: (704) 342-5250
Facsimile: (704) 342-5264
E-mail: sdifranco@poynerspruill.com
ATTORNEYS FOR LIEN CLAIMANT

STATE OF NORTH CAROLINA)
)
COUNTY OF FORSYTH)

VERIFICATION AND
STATEMENT OF ACCOUNT

I hereby certify that on this 14th day of February, 2019, personally appeared before me Dan Adams, who, being duly sworn, deposes and says as follows:

1. That he is Regional Credit Manager for Cook & Boardman, LLC ("Cook & Boardman"), is duly authorized by said business to make this Affidavit and as such is acquainted with the transactions set forth in the Notice and Certificate of Lien herein.

2. That Cook & Boardman's customer, Balfour Beatty Construction, LLC, owes Cook & Boardman the sum of money set forth in the foregoing Notice and Certificate of Lien, over and above any discount without deduction or set-off, in the amount of $358,796.25, plus interest, costs and reasonable attorney's fees, as allowed by South Carolina Code § 29-5-20.

3. That said indebtedness represents materials sold by Cook & Boardman to Balfour Beatty Construction, LLC.

4. That Cook & Boardman has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.

5. That Cook & Boardman keeps regular books of account and that undersigned affiant is familiar with the books of account. The entries in said books of account are made in the ordinary course of business. Said entries show that Balfour Beatty Construction, LLC is indebted to Cook & Boardman in the manner and amount herein set forth.

Dan Adams
Dan Adams

Sworn to and subscribed before me
this 14th day of February, 2019.

Jennifer C Fire
Notary Public for the State of North Carolina

JENNIFER C FIRE
Notary Public
Davidson County, North Carolina
My Commission Expires June 3, 2019

My Commission Expires: 06/03/2019

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

Filed By:

POYNER & SPRUILL LLP

301 S COLLEGE STREET STE 2900
CHARLOTTE NC 28202 ENV

RECORDED

Date: February 21, 2019
Time: 10:46:39 AM

Book	Page	DocType
0778	699	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCIATES ETC

RECIPIENT:
COOK & BOARDMAN LLC

Original Book:

Original Page:

# of Pages: 5
# of Sats:
# of References:

Note:

Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00

DRAWER Drawer 3
CLERK ECP

0778 Book

699 Page

02/21/2019 Recorded Date

5 # Pgs

Original Book

Original Page

D Doc Type

10:46:39 Recorded Time

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE OFFICE OF THE
REGISTER OF DEEDS

1st CHOICE GLASS, INC.,

Plaintiff/Lien Claimant,

v.

LIBRARY ASSOCIATES, LLC; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants.

BP0779020

PGS: 9

NOTICE OF MECHANIC'S LIEN & CERTIFICATE OF MECHANIC'S LIEN

NOTICE IS HEREBY GIVEN that Balfour Beatty Construction, LLC ("Balfour Beatty"), as general contractor, is indebted to Plaintiff/Lien Claimant, 1st Choice Glass, Inc. ("Claimant"), in the principal amount of Three Hundred Sixty Thousand, Ninety-Five and 98/100 Dollars ($360,095.98) for labor and materials provided by Claimant pursuant to a contract with Balfour Beatty. Claimant installed windows, terrace doors, entrances, exterior and interior glass and glazing (the "Services") on the subject property, which is owned by Library Associates, LLC (the "Library") and is commonly identified as the Hotel Bennett and/or Hotel at Marion Square, 404 King Street, Charleston, South Carolina 29401 (the "Property"). Upon information and belief, the improvements to the Property were made with the Library's express and/or implied authorization, and pursuant to Balfour Beatty's interest in improvements made by Claimant to the Property. A more specific legal description of the Property is provided in Exhibit A, attached hereto and incorporated herein by reference.

Claimant is a licensed commercial contractor in South Carolina, License No. G115850. Claimant last furnished labor and materials to the Property within ninety (90) days of the date of this filing and as recently as the date of the filing. Claimant provided all labor and materials for



the Property at the request and instruction of Balfour Beatty, and, upon information and belief, with the express and/or implied authorization of the property owner, the Library.

Despite Claimant's due and just demand for payment for the labor and supplies provided for the Property, Balfour Beatty has failed to pay Claimant in full for Claimant's improvements to the Property. Claimant's Affidavit and Verified Statement of Account attesting to such nonpayment is filed contemporaneously herewith and is incorporated herein by reference.

Based on the foregoing, Claimant is entitled to and hereby claims a Mechanic's Lien on the Property and all structures situated thereon in the amount of Three Hundred Sixty Thousand, Ninety-Five and 98/100 Dollars ($360,095.98), plus attorneys' fees, interest, and costs of this action, as provided by Title 29 of the South Carolina Code.

This the 21st day of February, 2019.

Sworn and subscribed before
me this 21 day of February, 2019.

Notary Public for Mecklenburg County

My commission expires: 10/6/2021

CARMELA MASTRIANNI NOTARY PUBLIC MECKLENBURG COUNTY, NC

HAMILTON STEPHENS
STEELE + MARTIN, PLLC

By:

Tracy T. James, SC Bar No. 73613
525 N. Tryon Street, Suite 1400
Charlotte, NC 28202
Telephone: (704) 344-1117
Facsimile: (704) 244-1483
E-mail: tjames@lawhssm.com
Attorneys for 1st Choice Glass, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day she served a copy of the foregoing and attached **NOTICE OF MECHANIC'S LIEN & CERTIFICATE OF MECHANIC'S LIEN** via United States certified mail, postage prepaid and return receipt requested, properly address to the following:

Library Associates, LLC
c/o Michael R. Bennett,
Registered Agent
17 Lockwood Blvd., Suite 400
Charleston, SC 29401

Balfour Beatty Construction, LLC
c/o Corporation Service Company,
Registered Agent
1703 Laurel Street
Columbia, SC 29201

This the 21st day of February, 2019.

Tracy T. James

HAMILTON STEPHENS
STEELE + MARTIN, PLLC
525 North Tryon Street, Suite 1400
Charlotte, NC 28202

EXHIBIT A

Property Address: 404 King Street, Charleston, South Carolina

Owner: Library Associates, LLC

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing approximately 0.671 to 0.722 acres more or less, as shown on a plat thereof entitled "PLAT SHOWING THE PROPERTY LINE ADJUSTMENT & SUBDIVISION OF TWO LOTS OWNED BY THE COUNTY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Paul C. Lawson, Jr., S.C. Reg. Land Surveyor No. 14191, of Ashley Surveying, Inc., dated August 26, 1994, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book DA, at Page 333; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference; and/or as shown and designated to "2,190 Square Feet 0.050 acres from Lot 1" as shown on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011 and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said 0.050 acres (2,190 square feet) having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING the same 50% undivided interest conveyed to Hofford-Library, LLC, by deed of Library Associates, LLC, dated December 30, 2008 and recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina, in Book 0027 at Page 418; and/or BEING a portion of the same property conveyed to Library Associates, LLC, a South Carolina limited liability company, by deed of The County of Charleston dated March 14, 1995 and recorded March 15, 1995 in Book L-253, at Page 625 in the RMC Office for Charleston County, South Carolina; and/or BEING the same property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina, in Book 0102, Page 032; and/or BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston recorded March 15, 1997 in Book L-253, Page 629, in the RMC Office of Charleston County, South Carolina; and/or BEING a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2001, recorded in RMC Office for Charleston County on June 17, 2001, in Book 0192, at page 809.

TMS No. 460-16-04-009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE OFFICE OF THE
REGISTER OF DEEDS

1st CHOICE GLASS, INC.,

Plaintiff,

v.

LIBRARY ASSOCIATES, LLC; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants.

AFFIDAVIT AND VERIFIED STATEMENT OF ACCOUNT

Mike R. Tsuikes, being duly sworn, makes the following statement under oath and under penalty of perjury:

1. I have served as President and Chief Executive Officer of 1st Choice Glass, Inc. ("Claimant"). I am over the age of eighteen and am competent to testify regarding the matters set forth in this Affidavit. As the President and Chief Executive Officer of Claimant, I am authorized to make this Affidavit and Verified Statement on Claimant's behalf. This Affidavit is based upon my personal knowledge and belief or is reflected in records maintained by Claimant in the regular and ordinary course of business.

2. Pursuant to a written contract executed by Claimant and Balfour Beatty Construction, LLC ("Balfour Beatty"), and at the request and instruction of Belfour Beatty and with the express and/or implied authorization of Library Associates, LLC (The "Library"), the owner, Claimant provided certain labor and materials to that real property owned by the Library located at and commonly identified as the Hotel Bennett and/or Hotel at Marion Square, 404 King Street, Charleston, Charleston County, South Carolina 29401, and more specifically identified in

Exhibit A to the Notice of Mechanic's Lien and Certificate of Mechanic's Lien that Claimant filed contemporaneously herewith (the "Property").

3. Claimant's South Carolina commercial contractor license number is G115850.

4. The contract sum to date is Two Million Two Hundred Sixty Seven Thousand Nine Hundred Three and and 63/100 Dollars ($2,267,903.63), and the total amount paid to date by Balfour Beatty to Claimant is One Million Nine Hundred Seven Thousand Eight Hundred Seven and 65/100 Dollars ($1,907,807.65).

5. Therefore, as of the date of this Affidavit and Verified Statement of Account, the contracted rate and the reasonable value of the labor and materials provided to the Property by Claimant for which Claimant has not been paid is Three Hundred Sixty Thousand, Ninety-Five and 98/100 Dollars ($360,095.98).

6. I attest that the amount owed is true and correct and that no part of sum noticed has been paid by discount or otherwise, except that for which credit has been given. I attest that I have reviewed the foregoing Notice of Mechanic's Lien and Certificate of Mechanic's Lien and that the matters and things alleged therein are true to the best of my knowledge, except those matters and things alleged on information and belief, and as to those, I believe them to be true.

This the 20th day of February, 2019.

Sworn and subscribed before
me this 20th day of February, 2019.

Heidi A. Hall

Notary Public for NC
County of Union
My commission expires: May 10, 2021

On behalf of
1st Choice Glass, Inc.

By: _____
Mike R. Tsuikes

NORTH CAROLINA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day she served a copy of the foregoing and attached **AFFIDAVIT AND VERIFIED STATEMENT OF ACCOUNT** via United States certified mail, postage prepaid and return receipt requested, properly address to the following:

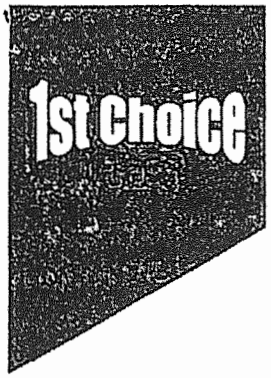
Library Associates, LLC
c/o Michael R. Bennett,
Registered Agent
17 Lockwood Blvd., Suite 400
Charleston, SC 29401

Balfour Beatty Construction, LLC
c/o Corporation Service Company,
Registered Agent
1703 Laurel Street
Columbia, SC 29201

This the 21st day of February, 2019.

HAMILTON STEPHENS
STEELE + MARTIN, PLLC

Tracy T. James
525 North Tryon Street, Suite 1400
Charlotte, NC 28202
Telephone: (704) 344-1117
Facsimile: (704) 244-1483
E-mail: tjames@lawhssm.com
Attorneys for 1st Choice Glass, Inc.



The Hotel at Marion Square

Contract amount $1,939,445.00

Change Order $328,458.63

Total Contract Amount $2,267,903.63

Amount Paid $1,907,807.65

Balance Owed $360,095.98

Billed to date $2,267,903.63

Last day worked within 90 days of this statement

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

HAMILTON STEPHENS STEELE MARTIN LLC
ATTN: ROBIN KELLEY, PARALEGAL
525 N. TRYON STREET, SUITE 1400
CHARLOTTE NC 28202

RECORDED

Date:	February 22, 2019
Time:	2:00:46 PM

Book	Page	DocType
0779	020	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCIATES LLC AL

RECIPIENT:
1ST CHOICE GLASS INC

Original Book:

Original Page:

# of Sats:

Note:

# of Pages:	9
# of References:	

Recording Fee	$	10.00
Extra Reference Cost	$	-
Extra Pages	$	4.00
Postage	$	-
Chattel	$	-
TOTAL	$	14.00

DRAWER	Drawer 2
CLERK	JBA

0779	020	02/22/2019	9
Book	Page	Recorded Date	# Pgs

		D	14:00:46
Original Book	Original Page	Doc Type	Recorded Time

BP0784171

PGS: 14

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE OFFICE OF THE REGISTER OF DEEDS

1st CHOICE GLASS, INC.,

Plaintiff/Lien Claimant,

v.

LIBRARY ASSOCIATES, LLC; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants.

PARTIAL RELEASE OF FUNDS AND PARTIAL SATISFACTION OF NOTICE OF MECHANIC'S LIEN & CERTIFICATE OF MECHANIC'S LIEN

Lien #: BP0779020
Book No. 0779, Page 020

TO: REGISTER OF DEEDS FOR CHARLESTON COUNTY, SOUTH CAROLINA:

WHEREAS, the undersigned, as attorney of record for 1st Choice Glass, Inc. ("Plaintiff"), filed with the Charleston County Register of Deeds a Notice of Mechanic's Lien and Certificate of Mechanic's Lien in the amount of Three Hundred Sixty Thousand, Ninety-Five and 98/100 Dollars ($360,095.98), together with interest and the costs of this action including a reasonable attorneys' fee, which was filed and recorded with the Charleston County Register of Deeds on February 22, 2019 at Book No. 0779, Pages 020-028, Lien No. BP0779020 (the "Lien"), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, Plaintiff acknowledges and agrees that subsequent to the date of recording, Plaintiff received partial payment in the amount of One Hundred Eighty-Five Thousand, Two Hundred Eighty-Five and 49/100 Dollars ($185,285.49);

NOW, THEREFORE, in accordance with S.C. Code Ann. § 29-5-430, the undersigned, as authorized agent for Plaintiff, hereby acknowledges partial release of the Lien, to reduce the amount of the Lien to One Hundred Seventy-Four Thousand, Eight Hundred Ten and 49/100 Dollars ($174,810.49).

[SIGNATURE PAGE ATTACHED]

This the 19th day of March 2019.

HAMILTON STEPHENS STEELE + MARTIN, PLLC

By: _____
Tracy T. James, SC Bar No. 73618
525 N. Tryon Street, Suite 1400
Charlotte, NC 28202
Telephone: (704) 344-1117
Facsimile: (704) 244-1483
E-mail: tjames@lawhssm.com
Attorneys for 1st Choice Glass, Inc.

Sworn and subscribed before
me this 19 day of March 2019.

Notary Public: Carmela Mastrianni
Notary Public for North Carolina

My commission expires: 10-6-2021.

CARMELA MASTRIANNI NOTARY PUBLIC MECKLENBURG COUNTY, NC

EXHIBIT A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day she served a copy of the foregoing and attached **PARTIAL SATISFACTION OF NOTICE OF MECHANIC'S LIEN AND CERTIFICATE OF MECHANIC'S LIEN** via United States certified mail, postage prepaid and return receipt requested, properly addressed to the following:

Library Associates, LLC
c/o Michael R. Bennett,
Registered Agent
17 Lockwood Blvd., Suite 400
Charleston, SC 29401

Balfour Beatty Construction, LLC
c/o Corporation Service Company,
Registered Agent
1703 Laurel Street
Columbia, SC 29201

This the 18th day of March 2019.

HAMILTON STEPHENS STEELE + MARTIN, PLLC

By: _____

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

HAMILTON STEPHENS STEELE MARTIN LLC
525 N TRYON ST STE 1400
ATTN: ROBIN KELLEY
CHARLOTTE NC 28202

RECORDED

Date:	March 19, 2019
Time:	3:46:53 PM

Book	Page	DocType
0784	171	Misc/Rel

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCS LLC AL

RECIPIENT:
1ST CHOICE GLASS INC

Original Book: 0779

Original Page: 020

# of Sats:

Note:

# of Pages:	14
# of References:	

Recording Fee	$	6.00
Extra Reference Cost	$	-
Extra Pages	$	12.00
Postage	$	1.00
Chattel	$	-
TOTAL	$	19.00

DRAWER: Drawer 1
CLERK: KLH

0784	171	03/19/2019	14
Book	Page	Recorded Date	# Pgs

0779	020	D	15:46:53
Original Book	Original Page	Doc Type	Recorded Time

BP0781071

PGS: 5

Return to:
Allan R. Popper
Lienguard Inc.
1000 Jorie Blvd., Ste. 270
Oak Brook IL 60523

File No.: 111638-19-1

NOTICE OF MECHANIC'S LIEN
(S.C. Code Ann. §:29-5-90)

TO: **Library Associates, LLC** **OWNER**
17 Lockwood Drive, Suite 400
Charleston, SC 29401-1155

CLERK OF COURT OR REGISTER OF DEEDS OF **CHARLESTON** COUNTY

FROM: **Strong Tower Construction, LLC** **CLAIMANT**
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

PLEASE TAKE NOTICE that **Strong Tower Construction, LLC, d/b/a Koch Corporation,** has provided certain labor or materials to **Balfour Beatty Construction, LLC, 1930 Camden Road, Suite 280, Charlotte, NC 28210, Contractor**, for which claimant has not been paid in full.

Claimant has furnished the following materials: ***Glazing, related materials and/or labor.***

Said labor or materials were furnished in connection with the property located and described as:

Parcel #: 460-16-04-009, see Legal Description attached hereto, all in Charleston, County of Charleston, State of South Carolina

Commonly known as: **Hotel Bennett, 404 King Street, Charleston, SC 29403**

A just and true account of the amount due **Strong Tower Construction, LLC, d/b/a Koch Corporation**, with all just credits given, which is **$124,080.21** is attached.

The name of the owner(s), if known, is: **Library Associates, LLC, identified above**, Owner.

Claimant is not required to be licensed or registered as contemplated by S.C. Code Ann. 29-5-15.

DATED: **February 28, 2019**

Submitted, Signed and Prepared by:
Stacie M. Tennyson
Asst. Finance Manager
Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

ALL-STATE LEGAL®
EXHIBIT
I

SC

The foregoing is true to my knowledge
Strong Tower Construction, LLC
d/b/a Koch Corporation

BY: Stacie M Tennyson

Stacie M Tennyson

ASST FINANCE MANAGER

Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

STATE OF Kentucky)

COUNTY OF Jefferson)

This instrument was subscribed to and sworn before me on 2/28/19, by Stacie M Tennyson, for **Strong Tower Construction, LLC, d/b/a Koch Corporation**, on behalf of said claimant.

Whitney Ann Rosenberger
Notary Public

VERIFIED STATEMENT OF ACCOUNT

Strong Tower Construction, LLC d/b/a Koch Corporation	Petitioner	)
versus		)
Library Associates, LLC	Respondent	)

Account Balance as of:	**January 17, 2019**	**$1,369,338.26**
Payments Received:		**$1,245,258.05**
Balance Due as of:	**February 28, 2019**	**$124,080.21**

STATE OF Kentucky)

COUNTY OF Jefferson)

I, HEREBY CERTIFY that the foregoing is a true and correct statement of account due to Petitioner in connection with this Mechanic's Lien.

Strong Tower Construction, LLC
d/b/a Koch Corporation

BY: Stacie M Tennyson

Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

Sworn to and subscribed before me this 28th day of February 2019

Whitney Ann Rosenberger
Notary Public

File #111638-19-1

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

AFFIDAVIT OF SERVICE

On **February 28, 2019**, the Notice and Certificate of Mechanics Lien was served upon **Library Associates, LLC**, the owner(s) or the person(s) in possession of the real estate described therein, by delivering to them by certified mail, article **#9407 1108 9876 5029 9813 90** at the address of **17 Lockwood Drive, Suite 400, Charleston, SC 29401-1155.**

BY: _____

ALLAN R. POPPER, of Lienguard, Inc., Agent for
Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

Subscribed and Sworn to before me on **February 28, 2019**,
by ALLAN R. POPPER, of Lienguard, Inc., Agent for
Strong Tower Construction, LLC
d/b/a Koch Corporation

Florence Santarsieri

Florence Santarsieri, Notary Public

OFFICIAL SEAL
FLORENCE SANTARSIERI
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 9/6/20

File No.: 111638-19-1

CC: Great American Insurance Company
301 E. 4th Street
Cincinnati, OH 45202

Bond #20646

CC: Metropolitan Life Insurance Company
200 Park Avenue
New York, NY 10166

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

LIENGUARD INC
1000 JORIE BLVD
SUITE 270
OAK BROOK IL 60523

RECORDED

Date: March 5, 2019
Time: 10:40:32 AM

Book	Page	DocType
0781	071	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCIATES LLC

RECIPIENT:
STRONG TOWER CONST LLC AL

Original Book:

Original Page:

# of Pages: 5
# of Sats:
# of References:

Note:

Recording Fee	$	10.00
Extra Reference Cost	$	-
Extra Pages	$	-
Postage	$	-
Chattel	$	-
TOTAL	$	10.00

DRAWER Drawer 4
CLERK SLW

0781 Book
071 Page
03/05/2019 Recorded Date
5 # Pgs

Original Book
Original Page
D Doc Type
10:40:32 Recorded Time

BP0781875

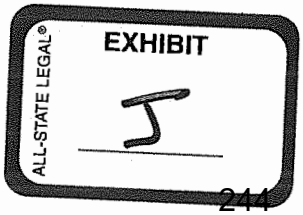
PGS: 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
WATSON ELECTRICAL CONSTRUCTION CO. LLC.,)
)
Claimant,)
)
vs.)
)
LIBRARY ASSOCIATES, LLC and METROPOLITAN LIFE INSURANCE COMPANY,)
)
and)
)
BALFOUR BEATTY CONSTRUCTION, LLC,)
)
General Contractor.)

NOTICE AND CERTIFICATE OF MECHANICS LIEN

NOTICE IS HEREBY GIVEN pursuant to S.C. Code Ann. §29-5-10, et. seq. that the Claimant **WATSON ELECTRICAL CONSTRUCTION CO. LLC. ("Watson")** claims and holds a lien upon real property hereinafter described, together with all improvements thereon, for the sum of **One Million Eight Hundred Fifty-Nine Thousand Three Hundred Fifty-Nine and 00/100 dollars** ($1,859,359.00) plus interest, reasonable attorney's fees for the collection of said sum, and for the cost of this action.

This lien is intended to attach and to affect the ownership interest of Owner and Contractor in those portions of the premises described as ("property"):



PROPERTY DESCRIPTION: That certain real property located at 404 King Street, Charleston, Charleston County, South Carolina, and identified as PIN number 4601604009 of the Charleston County, South Carolina registry.

Said sum is due and owing to the Claimant for labor and materials furnished in making improvements to the real property hereinafter described by virtue of an agreement with and consent of the persons or entities exercising possessory rights over the subject real property. The said labor and materials were actually used in improving said property within ninety (90) days prior to the date hereof.

That by virtue thereof, by the service and the filing of this Notice and Certificate, and pursuant to the provisions of the statutes, the Claimant has and claims a lien to secure the payment of the debt due and the costs, interest and attorney's fees involved in enforcing said lien upon real property located in Charleston County, South Carolina and being more particularly described as the property described above.

A verified statement of account and the amount due thereon for labor and materials actually provided is attached hereto as **Exhibit "A".**

The subcontractor is required to be licensed or registered as contemplated by S.C. Code. Ann. § 29-5-15. The S.C. License or Registration number for Watson is M106527.

THIS THE 7th day of March, 2019

Don R. Terry, Esq., SC Bar # 101395
SMITH TERRY & JOHNSON
11525 N. Community House Rd., Suite 425
Charlotte, NC 28277

FILE NUMBER_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
WATSON ELECTRICAL CONSTRUCTION CO. LLC.,)
)
Claimant,)
)
vs.) **VERIFIED**
)
LIBRARY ASSOCIATES, LLC and METROPOLITAN LIFE INSURANCE COMPANY,) **STATEMENT OF ACCOUNT**
)
and)
)
BALFOUR BEATTY CONSTRUCTION, LLC)
)
General Contractor)

Personally, appeared before me, Carroll M. Lipscombe, Jr. who being duly sworn, deposes and states that I am the Chief Financial Officer of Watson Electrical Construction Co. LLC ("Watson"), and I am authorized to give this Affidavit. I am familiar with the accounts owed for services performed by Watson for the Owner's benefit on the property described in the Lien Claim. The amount owed to Watson in total is **One Million Eight Hundred Fifty-Nine Thousand Three Hundred Fifty-Nine and 00/100 dollars** ($1,859,359.00) and is derived from the outstanding pay applications, change requests, and or claims.

Carroll M. Lipscombe, Jr.- CFO
Watson Electrical Construction Co. LLC

Sworn to by:
Laura Edwards Marshburn
(Notary Public)
This 1th day of March 2019

My Commission expires on: 02 - 01 - 2023

Laura Edwards Marshburn
NOTARY PUBLIC
Nash County, NORTH CAROLINA
My Commission Expires February 1, 2023

EXHIBIT
tabbies
A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he served a copy of the foregoing **NOTICE AND CERTIFICATE OF MECHANICS LIEN** upon the parties listed below by depositing a copy thereof in the United States mail in Charlotte, North Carolina, postage pre-paid, certified, return receipt requested and addressed as follows:

Library Associates, LLC
c/o Michael R. Bennett
17 Lockwood Blvd, Suite 400
Charleston, SC 29401

Balfour Beatty Construction, LLC
c/o Corporation Service Co.
1703 Laurel Street
Columbia, SC 29201

This the 7th day of March, 2019.

By: _____
Lynette Lemon

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

NANCY TAYLOR
11525 N. COMMUNITY HOUSE RD
SUITE 425
CHARLOTTE, NC 28277

RECORDED

Date:	March 8, 2019
Time:	11:34:45 AM

Book	Page	DocType
0781	875	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCS LLC AL

RECIPIENT:
WATSON ELECTRICAL ETC

Original Book:

Original Page:

# of Sats:

Note:

# of Pages:	5
# of References:	

Recording Fee	$	10.00
Extra Reference Cost	$	-
Extra Pages	$	-
Postage	$	-
Chattel	$	-
TOTAL	$	10.00

DRAWER	Drawer 5
CLERK	JSW

0781 — Book
875 — Page
03/08/2019 — Recorded Date
5 — # Pgs

Original Book
Original Page
D — Doc Type
11:34:45 — Recorded Time

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TRIMARK FOODCRAFT, LLC Claimant, BALFOUR BEATTY CONSTRUCTION, LLC and LIBRARY ASSOCIATES, LLC Respondents,	IN THE OFFICE OF THE REGISTER OF DEEDS STATEMENT AND NOTICE OF MECHANIC'S LIEN

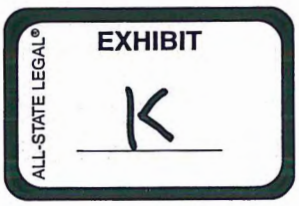
The undersigned, being duly sworn deposes and says:

The statements herein are a just and true account of the MATERIALS AND LABOR (PROVIDE FOOD SERVICE EQUIPMENT. SET IN PLACE.) furnished by TRIMARK FOODCRAFT, LLC to BALFOUR BEATTY CONSTRUCTION, LLC for the use upon the premises hereinafter described, and the amount justly due and owing TRIMARK FOODCRAFT, LLC by BALFOUR BEATTY CONSTRUCTION, LLC is the sum of EIGHTY EIGHT THOUSAND, TWO HUNDRED NINETY TWO AND 17/100 DOLLARS ($88,292.17), as may be seen by reference to Exhibit "A" attached hereto, plus interest, costs, and attorney fees.

The undersigned further states that said MATERIALS AND LABOR were furnished pursuant to an agreement with BALFOUR BEATTY CONSTRUCTION, LLC with the knowledge and consent of BALFOUR BEATTY CONSTRUCTION, LLC and LIBRARY ASSOCIATES, LLC for the improvement of the premises hereinafter described, and that the said MATERIALS AND LABOR were last supplied to BALFOUR BEATTY CONSTRUCTION, LLC for use upon the premises on 01/22/2019. The various amounts are for MATERIALS AND LABOR supplied and are true and correct amounts with all just credits given.

The undersigned further states that the said MATERIALS AND LABOR were furnished for use in construction of or improvements to buildings located on real property owned by LIBRARY ASSOCIATES, LLC, said real property is shown in Exhibit "B" attached.

The undersigned further states that for the amount due, i.e., the sum of EIGHTY EIGHT THOUSAND, TWO HUNDRED NINETY TWO AND 17/100 DOLLARS ($88,292.17), TRIMARK FOODCRAFT, LLC claims a lien upon the said premises.



SWORN and subscribed before me this
20th day of March, 2019.

Samuel A. Whitener
Notary Public
My Commission Expires: June 9, 2020

SAMUEL A. WHITENER
NOTARY PUBLIC
FORSYTH COUNTY
NORTH CAROLINA
My Commission Expires June 9, 2020

MR. SPENCER FOX, CONTROLLER
TRIMARK FOODCRAFT, LLC
2601 HOPE CHURCH ROAD
WINSTON SALEM, NC 27103
Telephone: (336) 768 - 7520

GENERAL CONTRACTOR'S LICENSE NUMBER IS 110668

EXHIBIT A

TRUE STATEMENT OF ACCOUNT

Total Amount for Materials and/or Labor	$1,033,108.22
Payments Made	$ 944,816.05
BALANCE DUE	$ 88,292.17

Personally appeared before me, MR. SPENCER FOX, who being first duly sworn, deposes and says that she/he is the CONTROLLER for TRIMARK FOODCRAFT, LLC, that she/he has actual authority to execute this affidavit by and on behalf of TRIMARK FOODCRAFT, LLC; that she/he is familiar with the status of the account of BALFOUR BEATTY CONSTRUCTION, LLC, and that the foregoing is a true and accurate statement of account.

SWORN and subscribed before me this
20th day of March, 2019.

Samuel A. Whitener
Notary Public
My Commission Expires: June 9, 2020

SAMUEL A. WHITENER
NOTARY PUBLIC
FORSYTH COUNTY
NORTH CAROLINA
My Commission Expires June 9, 2020

H. Fox
MR. SPENCER FOX, CONTROLLER
TRIMARK FOODCRAFT, LLC
2601 HOPE CHURCH ROAD
WINSTON SALEM, NC 27103
Telephone: (336) 768 - 7520

EXHIBIT B

Property Upon Which Mechanic's Lien is Claimed by TRIMARK FOODCRAFT, LLC

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.671 acres, more or less, as shown on a plat thereof entitled "PLAT SHOWING THE PROPERTY LINE ADJUSTMENT & SUBDIVISION OF TWO LOTS OWNED BY THE COUNTY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Paul C. Lawson, Jr., S.C. Reg. Land Surveyor No. 14191, of Ashley Surveying, Inc., dated August 26, 1994, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book DA, at Page 333; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

Being the same 50% undivided interest conveyed to Hofford-Library, LLC, by deed of Library Associates, LLC, dated December 30, 2008 and recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina, in Book 0027 at Page 418; Being a portion of the same property conveyed to Library Associates, LLC, a South Carolina limited liability company, by deed of The County of Charleston dated March 14, 1995 and recorded March 15, 1995 in Book L-253 at Page 625 in the RMC Office for Charleston County, South Carolina;

TMS No. 460-16-04-009

AS PART CONSIDERATION for the within conveyance, the Grantee, jointly and severally with the Grantor herein, does hereby agree to assume and pay that certain Promissory Note in favor of South Caorlina Bank and Trust, N.A. dated October 17, 2007, and the Mortgage securing same dated October 17, 2007, recorded in the RMC Office for Charleston County in Book O-641, at Page 387, said Note and Mortgage having a present principal balance of approximately $1,200,000.00.

STATE OF SOUTH CAROLINA	)	IN THE RMC OFFICE
	)	
COUNTY OF CHARLESTON	)	BP0784368 # PGS: 4
	)	
Pleasant Places, Inc.,	)	
	)	
Plaintiff,	)	**NOTICE AND CERTIFICATE OF MECHANIC'S LIEN**
	)	
vs.	)	
	)	
Library Associates, LLC, a South Carolina limited liability company, and Balfour Beatty Construction, LLC,	)	
	)	
Defendants.	)	
	)	

TO: THE DEFENDANTS ABOVE-NAMED AND ALL OTHER CONCERNED:

YOU WILL PLEASE TAKE NOTICE that Pleasant Places, Inc. ("Pleasant Places"), by virtue of the attached Verified Statement of Account, does hereby claim a Mechanic's Lien against the real property hereinafter described (the "Property"); said Lien being in the principal amount $33,253.48 for labor and/or material furnished and actually used in the improvement of the Property; said materials having been furnished by Pleasant Places at the request of Balfour Beatty Construction, LLC by and with the consent of the Defendants Library Associates, LLC, a South Carolina limited liability company as the owner(s) of the Property. The Property upon which the Lien is attached is more particularly described in Exhibit "A" attached hereto. Pleasant Places is not required to be licensed by the South Carolina Department of Labor Licensing and Regulation, and is exempt from the requirements of S.C. Code Section 29-5-15. Balfour Beatty Construction, LLC holds a general contractor's license No. 110668 pursuant to S.C. Code Section 40-11-30 and Pleasant Places, as a subcontractor, is exempt from the licensing requirements by S.C. Code Section 40-11-270(c).

ROBERTSON HOLLINGSWORTH MANOS & RAHN, LLC
550 King Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Fax: 843-853-9045
Email: mew@roblaw.net; igdalr@roblaw.net

BY: Rachel Igdal
Michael E. Wright
Rachel Igdal
Attorneys for the Plaintiff

Charleston, South Carolina
March 20, 2019

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STATE OF SOUTH CAROLINA)
) Verified Statement of Account
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, John G. Artigues, who first being duly sworn, deposes and says that he is the Vice President of Pleasant Places, Inc. ("Pleasant Places"); that Pleasant Places furnished labor and material for the improvement of the real property (the "Property") described in the attached Notice and Certificate of Mechanic's Lien; that said labor and material was furnished by Pleasant Places to Balfour Beatty Construction, LLC with the notice and consent of the owner of the Property; that ninety (90) days have not elapsed since the labor and material was last furnished to the Property; that although demand has been made for the sum due, it has not been paid; and, that there is now past due and owing to Pleasant Places the principal sum of $33,253.48, plus interest, reasonable attorney's fees, and costs.

CURRENT AMOUNT DUE: $33,253.48

PLEASANT PLACES, INC.

By: _____
John G. Artigues

Its: Vice President

SWORN to and subscribed before me this
11 day of March, 2019

_____
Notary Public for South Carolina
My Commission Expires: 2/27/28

ANGELA CARDUCCI
Notary Public, State of South Carolina
My Commission Expires 2/27/2028

EXHIBIT "A"
Legal Description

ALL that certain piece, parcel or tract of land, with he buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing approximately 0.671 to 0.722 acres more or less, as shown on a plat thereof entitled "PLAT SHOWING THE PROPERTY LINE ADJUSTMENT & SUBDIVISION OF TWO LOTS OWNED BY THE COUNTY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Paul C. Lawson, Jr., S.C. Reg. Land Surveyor No. 14191, of Ashley Surveying, Inc., dated August 26, 1994, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book DA, at Page 333; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference; and/or shown and designated to "2,190 Square Feet 0.050 acres from Lot 1" as shown on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011 and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said 0.050 acres (2,190 square feet) having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING the same 50% undivided interest conveyed to Hofford-Library, LLC, by deed of Library Associates, LLC, dated December 30, 2008 and recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina, in Book 0027 at Page 418; and/or BEING a portion of the same property conveyed to Library Associates, LLC, a South Carolina limited liability company, by deed of The County of Charleston, dated March 14, 1995 and recorded March 15, 1995 in Book L-253, at Page 625 in the RMC Office for Charleston County, South Carolina; and/or BEING the same property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina, in Book 0102, Page 032; and/or BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston recorded March 15, 1997 in Book L-253, Page 629, in the RMC Office of Charleston County, South Carolina; and/or BEING a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2001, recorded in RMC Office for Charleston County on June 17, 2001, in Book 0192, at Page 809.

TMS No. 460-16-04-009

Property Address: 404 King Street, Charleston, South Carolina

...DER'S PAGE

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...he original document

...d By:
ROBERTSON HOLLINGSWORTH MANOS & RAHN
550 KING STREET STE 300
CHARLESTON SC 29403 (MAILBACK)

RECORDED

Date: March 20, 2019
Time: 11:03:14 AM

Book	Page	DocType
0784	368	Mech/Lien

Michael Miller, Register
Charleston County, SC

# of Pages: 4
# of Sats:
# of References:

MAKER:
LIBRARY ASSOCIATES ETC

Note:

RECIPIENT:
PLEASANT PLACES INC

Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00

Original Book:

Original Page:

DRAWER Drawer 2
CLERK JBA

0784 Book

368 Page

03/20/2019 Recorded Date

4 # Pgs

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BP0784731

PGS:
5

STATE OF SOUTH CAROLINA

IN THE REGISTER OF DEEDS

COUNTY OF CHARLESTON

David Allen Company, Inc.,	)	
	)	
Petitioner,	)	
	)	
v.	)	NOTICE AND CERTIFICATE
	)	OF MECHANIC'S LIEN
Library Associates, LLC;	)	
Metropolitan Life Insurance Company and	)	
Balfour Beatty Construction, LLC.	)	
	)	
Respondent	)	

Please take notice that the undersigned lien claimant being a Subcontractor asserting rights under S.C. Code Ann. §29-5-10 and 20 *et. Seq.* (1976 as amended), claims a lien on the real property described herein

1) The name and address of the Subcontractor claiming payment:

David Allen Company, Inc.
150 Rush Street
Raleigh, NC 27603

2) Name of the person with whom the claimant contracted or by whom he was employed:

Balfour Beatty Corporation
1930 Cambden Road
Charlotte, NC 28203

3) A description of the labor, services, or materials furnished and the contract price or value thereof:

Performed installation of hard tile, stone, countertops, and resinous flooring per plans and specifications on the property described herein.
Total value of labor and services furnished amount to $3,662,627.78

4) Description of the project where labor, services, or materials were used sufficient for identification:

404 King Street, Charleston SC 29403. ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof

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entitled "PLAT OF THE ADJUSTMEENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" PREPARED BY f. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14 2011, and recorded in the RMC Office Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the same property conveyed to Library Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC dated December 30, 2008, recorded December 31, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina, in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in the RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS No. 460-6-04-009

5) Date upon which the first and last item of labor or service or materials was furnished:

First date of labor or service: October 25, 2017
Last date of labor or service: January 31, 2019

6) The amount claimed to be due:

$295,592.96

DAVID ALLEN COMPANY, INC.

By: _____
Joseph Martin, V.P. of Finance

SWORN to and subscribed before me,
this 12 day of March, 2019

_____
NOTARY PUBLIC for North Carolina
My Commission Expires: 8/30/2022

DIANA F CYLE NOTARY PUBLIC WAKE COUNTY N.C. COMMISSION EXPIRES AUG. 30 2022

2

VERIFIED STATEMENT OF ACCOUNT

I hereby certify that on this 12 day of March, 2019, personally appeared before me Joseph Martin, who, being duly sown deposes and says:

1. That he is the Vice President of Finance of David Allen Company, Inc. and has been duly authorized by said business to make this statement.

2. That there is justly due and owing by Balfour Beatty Construction, LLC, the sum of monthly set out in the foregoing instrument amounting to $295,592.96 with interest from January 31, 2019, attorney fees, and court costs.

3. That the said indebtedness represents labor and services performed by the lien claimant.

4. That the lien claimant keeps regular books of account and that the keeping of said books of account is in the charge or under the supervision of the affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that the Respondent is indebted to the lien claimant in the amount of $295,592.96 plus interest at the contract rate and/or statutory prejudgment rate, attorney's fees, and court costs.

David Allen Company, Inc.

By: _____
Joseph Martin
Vice President of Finance

SWORN TO BEFORE ME
This 12 day of March, 2019

_____
Notary Public for North Carolina
Printed ~~Nate~~ Name of Notary: Diana F Cole
My Commission Expires: 8/30/2022

DIANA F COLE NOTARY PUBLIC WAKE COUNTY N.C. COMMISSION EXPIRES AUG. 30 2022

CERTIFICATE OF SERVICE

The attached Notice of Mechanic's Lien will be served on the named entities by certified mail and personal service

Michael R. Bennett., Registered Agent
Library Associates, LLC
17 Lockwood Blvd., Suite 400
Charleston, SC 29401

Metropolitan Life Insurance Company
c/o Managing Director, Real Estate Investments
10 Park avenue
Morristown, NJ 07962

Balfour Beatty Construction, LLC
c/o Corporation Service Company
1703 Laurel Street
Columbia, SC 29201

This is the 12 day of March, 2019.

Respectfully submitted,

DAVID ALLEN COMPANY, INC.

Joseph Martin, V.P. of Finance

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

MAIL CUSTOMER
DAVID ALLEN CO/ATTN: TIFFANY GIDLEY
150 RUSH STREET
RALEIGH NC 27603

RECORDED

Date:	March 21, 2019
Time:	12:08:39 PM

Book	Page	DocType
0784	731	Mech/Lien

Michael Miller, Register
Charleston County, SC

Maker: LIBRARY ASSOCS LLC AL

Recipient: DAVID ALLEN CO INC

Original Book:

Original Page:

# of Pages: 5
# of Sats:
# of Refs:

Note:

Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00

Drawer: Drawer 1
Clerk: KLH

0784 Book

731 Page

03/21/2019 Recorded Date

5 # Pgs

Original Book

Original Page

D Doc Type

12:08:39 Recorded Time

4-1-19

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE OFFICE OF THE
REGISTER OF DEEDS

PREMIER EXTERIORS, LLC,)
(License No. 51201),)
)
Petitioner,)
)
v.)
)
LIBRARY ASSOCIATES, LLC,)
BALFOUR BEATTY CONSTRUCTION,)
LLC, and METROPOLITAN LIFE)
INSURANCE COMPANY,)
)
Respondents.)

BP0786720

PGS: 8

NOTICE AND CERTIFICATE OF MECHANIC'S LIEN

TO: THE RESPONDENTS ABOVE NAMED AND ALL OTHERS CONCERNED.

YOU WILL PLEASE TAKE NOTICE THAT pursuant to S.C. Code Ann. § 29-5-10 *et seq.*, PREMIER EXTERIORS, LLC ("Premier"), by virtue of the Verified Statement of Account attached hereto as Exhibit "A" and incorporated herein by reference, does hereby claim a lien on the real property owned by LIBRARY ASSOCIATES, LLC ("Owner") known **as 404 King Street, Charleston, SC 29403** and more fully described in the attached Exhibit "B" (the "Property"), incorporated herein by reference, said lien being in the principal amount of **NINETY-SIX THOUSAND EIGHT HUNDRED SIXTY-SEVEN AND 00/100 DOLLARS ($96,867.00)** for labor and materials furnished to and actually used in the improvement of the Property. Said labor and materials were furnished to the Property by Premier at the insistence of BALFOUR BEATTY CONSTRUCTION, LLC, the general contractor for said improvements and respondent herein, with the knowledge and consent of Owner. Premier furnished said labor and materials to

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Property less than ninety (90) days prior to the date of filing and service of this Notice and Certificate Mechanic's Lien.

METROPOLITAN LIFE INSURANCE COMPANY, LLC is named as a Respondent herein by virtue of its mortgage on the Property.

Premier is a South Carolina limited liability company doing business in the State of South Carolina and it has a specialty contractor license issued by the South Carolina Department of Labor, Licensing and Regulation. Premier's license number is 51201.

WHEREFORE, Premier claims a Mechanic's Lien for the sum of **NINETY-SIX THOUSAND EIGHT HUNDRED SIXTY-SEVEN AND 00/100 DOLLARS ($96,867.00)**, plus reasonable attorney's fees, interest and the costs of this action.

This 25th day of March 2019.

RAHIMI, HUGHES & PADGETT, LLC

BY: _____

ROBERT C. HUGHES, III
(SC State Bar No. 74526)
35 Bull Street, Suite 590
Savannah, GA 31401
(912) 421-9988 (p)
(912) 421-9989 (f)
ATTORNEYS FOR PETITIONER
PREMIER EXTERIORS, LLC

SWORN to and subscribed before me this
25th day of March, 2019.

_____
Notary Public
My commission expires: 8/30/2021

ELLEN C ADAMS NOTARY PUBLIC My Commission Expires 08-30-2021 CHATHAM COUNTY, GEORGIA

EXHIBIT "A"

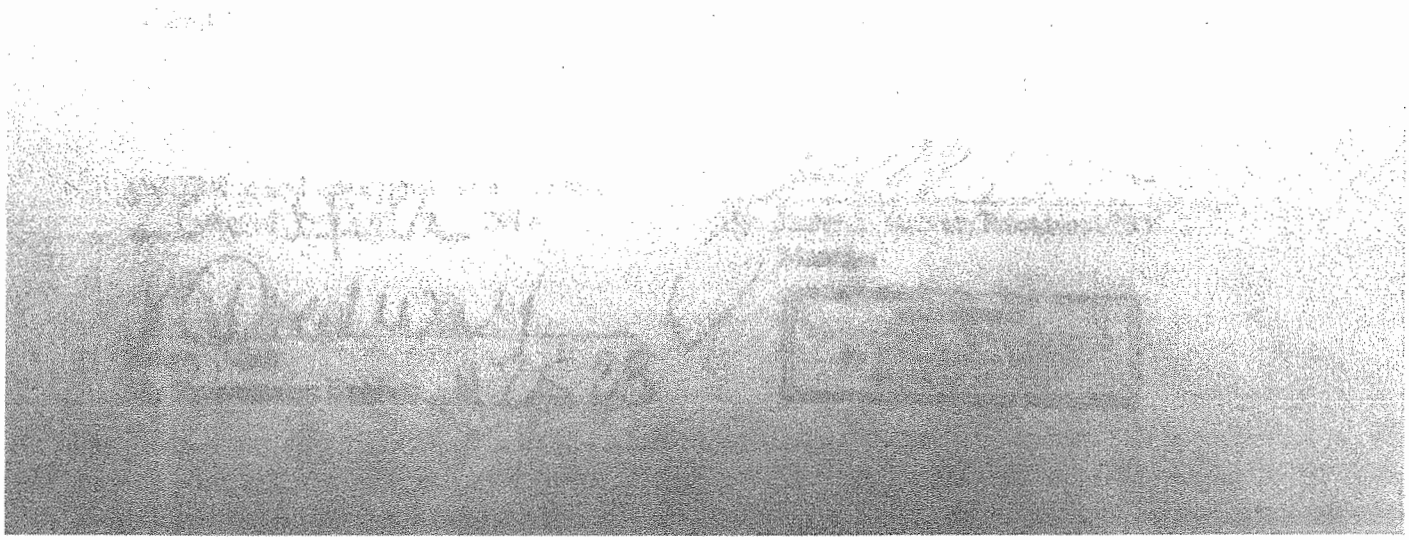


EXHIBIT "A"

STATE OF SOUTH CAROLINA)
) **VERIFIED STATEMENT OF ACCOUNT**
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, JUSTIN A. HARVEY, who being duly sworn, deposes and says as follows:

1. I am the President, Chief Executive Officer and Manager of Premier Exteriors, LLC ("Premier"), a limited liability company formed under the laws of the State of South Carolina and registered to do business in the State of South Carolina.

2. I have been duly authorized by Premier to make this Statement of Account on Premier's behalf.

3. I am over the age of 18. I am competent to testify to the matters herein and have personal knowledge thereof.

4. Premier is licensed as a specialty contractor by the South Carolina Department of Labor, Licensing and Regulation and has been issued license number 51201.

5. Pursuant to Premier's construction contract with Balfour Beatty Construction, LLC, ("Contractor"), and with the knowledge and consent of the owner, Library Associates, LLC (the "Owner"), Premier furnished labor and materials to the property owned by the Owner located at 404 King Street, Charleston, South Carolina 29403 (the "Property"), and more fully described in Exhibit "B" to Premier's Notice and Certificate of Mechanic's Lien filed contemporaneously herewith.

6. Less than ninety (90) days have elapsed since the last labor and materials were furnished by Premier to the Property; although demand has been made by Premier for the sum due, it has not been paid. There is now past due and owing from Contractor and Owner to Premier the principal sum of NINETY-SIX THOUSAND EIGHT HUNDRED SIXTY-SEVEN AND 00/100 DOLLARS ($96,867.00), as evidenced by the following statement of account, plus reasonable attorney's fees, interest and costs.

CURRENT AMOUNT DUE: $96,867.00 principal plus interest, attorney's fees and costs

PREMIER EXTERIORS, LLC

SWORN to and subscribed before me this
25 day of March, 2019.

By: Justin A. Harvey, President/CEO/
Manager

Notary Public
My Commission Expires: 11.25.23

KIM TREDWAY
Notary Public, South Carolina
My Commission Expires
November 25, 2023

EXHIBIT "B"

erty Address: 404 King Street, Charleston, SC 29403

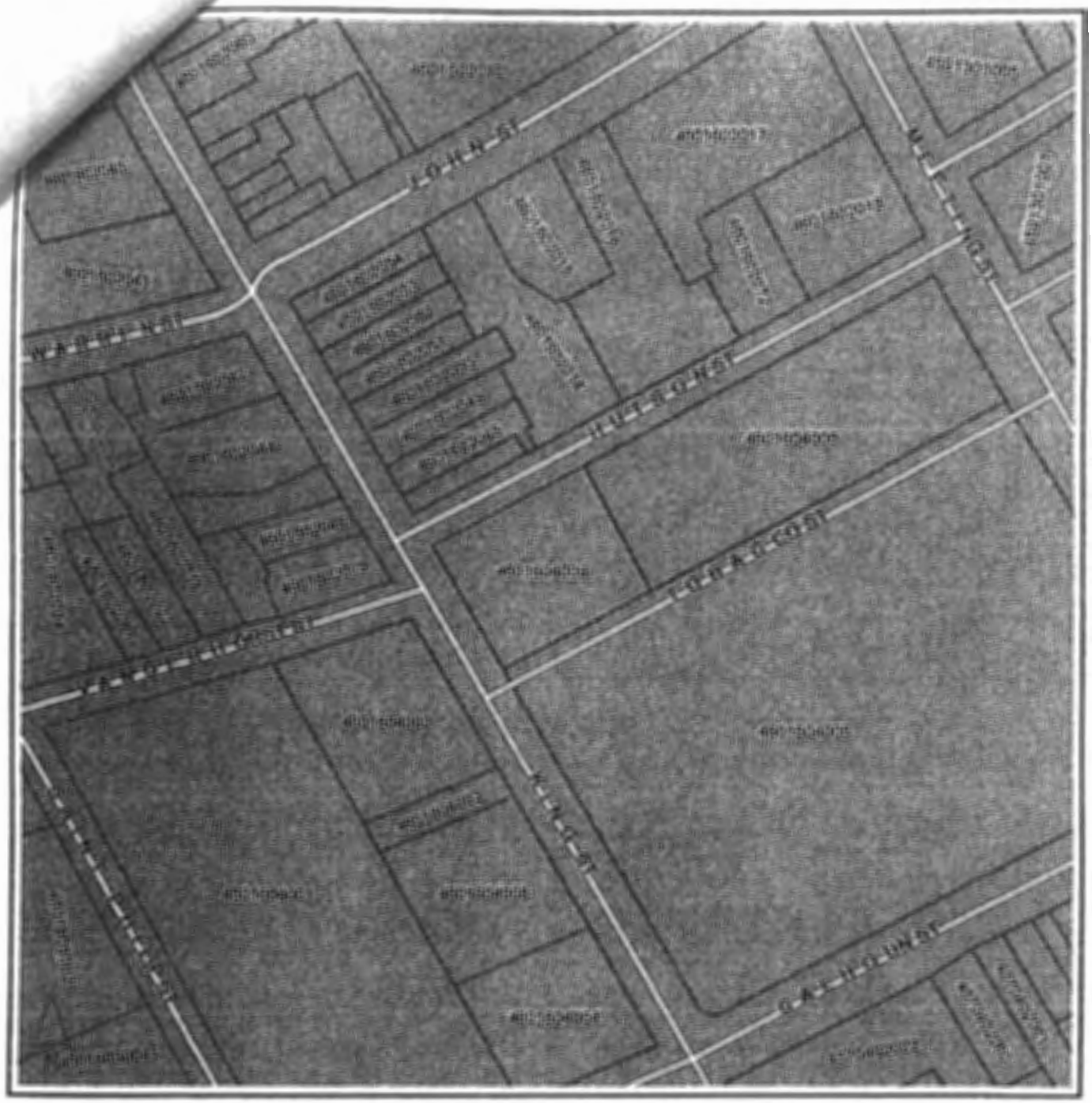
Owner of Property: Library Associates, LLC

Description of Property subject to lien:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009



Charleston County SC

0 90 180 360 Feet

1 Inch = 144 Feet

Parcel ID: 4601604009
OWNER1: LIBRARY ASSOCIATES LLC
ACREAGE: 0.72
PLAT_BOOK_PAGE: L11- 0185
DEED_BOOK_PAGE: 0102-032
Jurisdiction: CITY OF CHARLESTON

CHARLESTON COUNTY SOUTH CAROLINA

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Author: Charleston County SC
Date: 1/24/2018

DER'S PAGE

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Filed By:

FED EX CUSTOMER
RAHIMI HUGHES & PADGETT LLC
33 BULL STREET STE 590
SAVANNAH GA 31401 ENV

RECORDED

Date:	April 1, 2019
Time:	11:25:17 AM

Book	Page	DocType
0786	720	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCIATES LLC AL

RECIPIENT:
PREMIER EXTERIORS LLC

Original Book:

Original Page:

# of Sats:

Note:

# of Pages:	8
# of References:	

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Extra Reference Cost	$	-
Extra Pages	$	3.00
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CLERK ECP

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Book	Page	Recorded Date	# Pgs

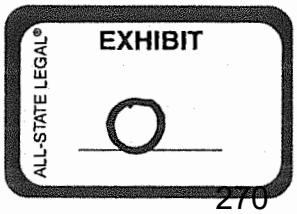
		D	11:25:17
Original Book	Original Page	Doc Type	Recorded Time

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ROBERT THOMAS IRON DESIGN, LLC, LIEN CLAIMANT, vs. LIBRARY ASSOCIATES, LLC; and METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION, RESPONDENTS.	)	IN THE RMC OFFICE FOR CHARLESTON COUNTY **NOTICE AND CERTIFICATE OF MECHANIC'S LIEN** **ROBERT THOMAS IRON DESIGN IS A MATERIALS SUPPLIER NOT A CONTRACTOR; THEREFORE, S.C. CODE ANN. § 29-5-15 IS INAPPLICABLE**

TO: THE OWNERS AND INTERESTED PARTIES ABOVE-NAMED AND ALL OTHERS CONCERNED:

There is now due and owing to materials supplier Robert Thomas Iron Design, LLC the sum of Ten Thousand Eight Hundred Twenty and 00/100 ($10,820.00) Dollars, representing the sum to which the materials furnished are reasonably worth as evidenced by the attached Verified Statement of Account and Verification, plus late fees, interest, reasonable attorneys' fees, and costs. **See Verified Statement of Account and Verification, attached as Exhibit A, incorporated herein by reference.**

By virtue of the attached Verified Statement of Account and Verification and the Laws of the State of South Carolina, Robert Thomas Iron Design, LLC does hereby claim a Mechanic's Lien on the real estate, hereinafter described, for materials furnished and used in the improvement situated on the below-described real estate, together with attorneys' fees, interest, late fees and court costs. Such materials having been delivered to Balfour Beatty Construction, LLC who by agreement and with the consent of the owner of the real property or a person or entity with the authority of the owner were making improvements to the real property owned by



Library Associates, LLC and located at 404 King St., Charleston, SC 29403 whereby Robert Thomas Iron Design, LLC furnished materials to Balfour Beatty Construction, LLC, for incorporation into the improvements located on **Exhibit B**, all within 90 days from the date hereof and all with the notice and consent of some person or agent having authority from or rightly acting for such owner, or with their knowledge and consent, for the procuring of and/or purchasing of such materials and labor for the improvement of the real property. The property upon which this lien is attached is legally described as follows:

SEE EXHIBIT B ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE FOR LEGAL DESCRIPTION

TMS: 460-16-04-009
Property Address: 404 King St., Charleston, SC 29403

MCCULLOUGH KHAN, LLC

BY: _____

Ross A. Appel, Esq.
359 King Street, Suite 200
Charleston, SC 29401
(843) 937-9798
(843) 937-0706 (fax)
ross@mklawsc.com

ATTORNEYS FOR
ROBERT THOMAS IRON DESIGN, LLC

4/8, 2019
Charleston, South Carolina

SWORN to before me this 8th day of April, 2019

_____
Notary Public for South Carolina
My Commission Expires: 10-12-27

DEBORAH DAVIS
My Commission Expires
NOTARY PUBLIC
10-12-2027
STATE OF SOUTH CAROLINA

EXHIBIT A

VERIFIED STATEMENT OF ACCOUNT AND VERIFICATION

TO: Library Associates, LLC (owner)
Balfour Beatty Construction, LLC (general contractor)
Robert Thomas Iron Design, LLC (subcontractor)

RE: Mechanic's Lien claimed by Robert Thomas Iron Design, LLC for Materials and Labor furnished to Balfour Beatty Construction, LLC for incorporation & improvements on real property owned by Library Associates, LLC

Amount of Lien: $10,820.00 with all set-offs and credits accounted therein as of March 20, 2019 plus late charges, attorney's fees, costs and continual accruing late charges.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, Robert Thomas, member of Robert Thomas Iron Design, LLC, who, being duly sworn, deposes and says that (1) the above Statement of Account is true and correct, no part of which has been paid by discount or otherwise and (2) he has read the Notice and Certificate of Mechanic's Lien and that the allegations contained therein are true and accurate to his knowledge.

Robert Thomas Iron Design

Robert Thomas

By: Robert Thomas

Its: President

SWORN to before me this 5 day

of April, 2019

Notary Public for: South Carolina
My Commission Expires: 10-12-27

DEBORAH DAVIS
My Commission Expires
NOTARY PUBLIC
10-12-2027
STATE OF SOUTH CAROLINA

EXHIBIT B

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009

Property Address: 404 King St., Charleston, SC 29403

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE REGISTER OF DEEDS OFFICE

WARCO CONSTRUCTION, INC.,
License No. 14903

Plaintiff/Petitioner,

vs.

LIBRARY ASSOCIATES, LLC; BALFOUR BEATTY CONSTRUCTION, LLC; and METROPOLITAN LIFE INSURANCE COMPANY,

Defendants/Respondents.

NOTICE AND CERTIFICATE OF MECHANIC'S LIEN

TO: THE RESPONDENTS ABOVE-NAMED AND ALL OTHERS CONCERNED:

NOTICE IS HEREBY GIVEN that a mechanic's lien is being filed in the Register of Deeds Office for Charleston County, South Carolina on behalf of Petitioner, Warco Construction, Inc. ("Warco") for labor, services, equipment and materials furnished by Warco and actually used in the construction of improvements located at the following property: that certain real property described in Exhibit A hereto (the "Property") and generally known as the Hotel Bennett located at 404 King Street, Charleston, Charleston County, South Carolina, in which Library Associates, LLC ("Owner"), Balfour Beatty Construction, LLC ("Debtor") and Metropolitan Life Insurance Company ("Mortgage Holder"), may have and/or claim an interest. Notice of this mechanic's lien is hereby given to Owner, Debtor and Mortgage Holder to the extent of their interest(s) in the

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EXHIBIT
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274

subject real property. Warco furnished said labor, services, equipment and materials in connection with the construction of improvements on the real property described in Exhibit A hereto, including, but not limited to, the furnishing of labor, materials, tools and equipment for installation of off-site interior mock-ups, toilet and bath accessories, corner guards and caps, cosmetic caulking, sealants and fire-stopping, metal and Treeform wood lockers, fire extinguishers, semi-recessed cabinets and wall mounts, linen chute and trash chute, and PVC composite shutters for all exterior windows from 2nd floor to 9th floor, pursuant to a written contract with Debtor (with license no. 112078) upon information and belief, with the consent and authorization of the Owner. Warco licensed by the State of South Carolina holding license number 14903.

Warco has and claims a mechanic's lien on Owner's, Debtor's and Mortgage Holder's interest(s) including, but not limited to, any of Owner's fee or leasehold interests in the real property described in Exhibit A. Said property and improvements on which Warco provided labor, services, equipment and materials and claims a lien is further generally known as the Hotel Bennett located at 404 King Street, Charleston, Charleston County, South Carolina. The first provision of labor, services, equipment and materials by Warco for the improvement of the real property described in Exhibit A was on or about February 25, 2016. The last provision of labor, services, equipment and materials by Warco for the improvement of the real property described in Exhibit A was January 18, 2019.

YOU WILL FURTHER TAKE NOTICE that a true and correct copy of this Notice and Certificate of Mechanic's Lien is herewith served upon you along with the Statement of Account and Verification of Warco, which are attached hereto as Exhibit B and Exhibit C, respectively, and incorporated herein. This lien is claimed by Warco pursuant to S.C. Code Ann. §29-5-10, *et seq.*, as a result of labor, services, equipment and material provided by Warco within ninety (90) days of the date hereof, for the improvement of the real property described in Exhibit A, for which Warco is

owed $237,128.21, no part of which has been paid by credit, discount or otherwise. Additionally, Warco has a claim on said interests of Owner, Debtor and Mortgage Holder in the real property described in Exhibit A to secure payments of an additional sum to cover the costs and disbursements of any action to foreclose this mechanic's lien, including reasonable attorneys' fees, costs and interest, all pursuant to the provisions of S.C. Code Ann. §29-5-10, *et seq.*

DATED: April 11, 2019.

WARCO CONSTRUCTION, INC.

Witness #1

Witness #2

By: Hannibal G Warren Jr
Name: HANNIBAL G WARREN JR
Title: PRESIDENT

STATE OF North Carolina
COUNTY OF Mecklenburg

Sworn to and subscribed in my presence this 11 day of April, 2019.

Heather N. Brame, Notary Public
(Printed Name of Notary Public)

"OFFICIAL SEAL"
Notary Public - North Carolina
County of Mecklenburg
Heather N. Brame
My Commission Expires 1/22/2022

My Commission Expires: 01/22/2022

(NOTARIAL SEAL)

Scott Miller, SC State Bar No. 101964
smiller@jahlaw.com
JOHNSTON, ALLISON & HORD, P.A.
1065 East Morehead Street
Charlotte, NC 28204
Telephone No.: (704) 332-1181
Facsimile No.: (704) 376-1628
Counsel for Petitioner

EXHIBIT A

All that certain piece, parcel or tract of land with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 KING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

DERIVATION: Being a portion of the same property conveyed to Library Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina, in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina, in Book 0102, Page 032; and also being a portionof the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in the RMC Office for Charleston County, South Carolina, on June 17, 2011, in Book 0192, Page 809.

TAX NO. 460-16-04-009

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE REGISTER OF DEEDS OFFICE

WARCO CONSTRUCTION, INC.,
License No. 14903

Plaintiff/Petitioner,

vs.

LIBRARY ASSOCIATES, LLC; BALFOUR BEATTY CONSTRUCTION, LLC; and METROPOLITAN LIFE INSURANCE COMPANY,

Defendants/Respondents.

STATEMENT OF ACCOUNT

PERSONALLY APPEARED before me, HANNIBAL G. WARREN JR. who being first duly sworn deposes and states:

1. That I am the PRESIDENT of Warco Construction, Inc. ("Warco"); and

2. That the sum of Two Hundred Thirty-Seven Thousand One Hundred Twenty-Eight and 21/100 Dollars ($237,128.21) is the amount due and owed to Warco for labor, services, materials and equipment supplied in connection with the construction of certain improvements located on the property described in Exhibit "A", to the Notice and Certificate of Mechanic's Lien.

3. Upon information and belief, the above listed Respondents may have interests in the real property described in Exhibit "A" to the Notice and Certificate of Mechanic's Lien.

FURTHER AFFIANT SAITH NAUGHT.

SIGNATURES APPEAR ON NEXT PAGE

WARCO CONSTRUCTION, INC.

By: Hannibal G Warren Jr
Name: HANNIBAL G WARREN JR
Title: PRESIDENT

STATE OF North Carolina
COUNTY OF Mecklenburg
Sworn to and subscribed in my presence
this 11 day of April, 2019.

Heather N. Brame
Heather N. Brame, Notary Public
(Printed Name of Notary Public)

My Commission Expires: 01/22/2022

"OFFICIAL SEAL"
Notary Public - North Carolina
County of Mecklenburg
Heather N. Brame
My Commission Expires 1/22/2022

(NOTARIAL SEAL)

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE REGISTER OF DEEDS OFFICE

WARCO CONSTRUCTION, INC.,
License No. 14903

Plaintiff/Petitioner,

vs.

LIBRARY ASSOCIATES, LLC; BALFOUR BEATTY CONSTRUCTION, LLC; and METROPOLITAN LIFE INSURANCE COMPANY,

Defendants/Respondents.

VERIFICATION

PERSONALLY APPEARED before me, HANNIBAL G WARLEY JR who being first duly sworn affirms that he is the PRESIDENT of Warco Construction, Inc. ("Warco"), that he has read the foregoing Notice and Certificate of Mechanic's Lien; that the matters set forth therein are true and accurate and that the amounts alleged therein to be past due and owed to Warco are true and accurate.

WARCO CONSTRUCTION, INC.

By: Hannibal G Warley Jr
Name: HANNIBAL G WARLEY JR
Title: PRESIDENT

STATE OF North Carolina
COUNTY OF Mecklenburg
Sworn to and subscribed in my presence this 11 day of April, 2019.

Heather N. Brame
Heather N. Brame, Notary Public
(Printed Name of Notary Public)

"OFFICIAL SEAL"
Notary Public - North Carolina
County of Mecklenburg
Heather N. Brame
My Commission Expires 1/22/2022

My Commission Expires: 01/22/2022

(NOTARIAL SEAL)

982193 v.1

BP0777044

PGS: 7

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

OLD NORTH STATE MASONRY, LLC,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

NOTICE AND CERTIFICATE OF MECHANIC'S LIEN

SC Contractor License No.: 109146

PERSONALLY appeared before me Mary B. Ramsay, who being duly sworn, deposes and says as follows:

That he is the attorney for, and acting on behalf of the Plaintiff/Petitioner and Mechanic's Lien Claimant herein, Old North State Masonry, LLC ("Plaintiff/Petitioner"), and hereby claims and files, pursuant to S.C. Code Ann. §29-5-10, a Mechanic's lien for labor and/or materials and/or equipment actually used in improving the real estate and property owned by Library Associates, LLC, located in Charleston, Charleston County, South Carolina. The labor and materials were performed and supplied by Plaintiff on the following property:

404 King Street
Charleston, SC 29403
Charleston County Parcel ID No.: 4601604009
(as more particularly described in **Exhibit "A"**)

The reasonable price of such labor and materials so performed or so furnished and which is due is the amount of $1,400,731.94. A verified statement of account is attached hereto as **Exhibit "B"** and is incorporated by reference herein.

Respondent Metropolitan Life Insurance Company is named due to its mortgage interest in the subject property.

The work done by the Plaintiff/Petitioner was done under contract with Defendant/Respondent Balfour Beatty Construction, LLC, for the construction and improvements to the property located at 404 King Street, Charleston, South Carolina 29403. The labor and materials provided by Plaintiff/Petitioner were with the express knowledge, consent, acquiescence, and request of Respondents.



The first provision of labor and/or services by Plaintiff/Petitioner at the Project was on or about November 16, 2015. Plaintiff/Petitioner last provided labor and materials at the Project for the improvement of real property on January 16, 2019.

Ninety days have not elapsed since the completion of said work.

Plaintiff/Petitioner, after deducting all the just credits and offsets, now claims a mechanic's lien in the amount of $1,400,731.94 on the real property described above and owned by Defendant/Respondent Library Associates, LLC, and on all buildings and improvements thereon, under the ownership and/or control of the Defendant/Respondent, plus attorneys' fees and costs of this action as provided by South Carolina Code Annotated 29-5-10 et seq. as amended.

DATED: February 12, 2019.

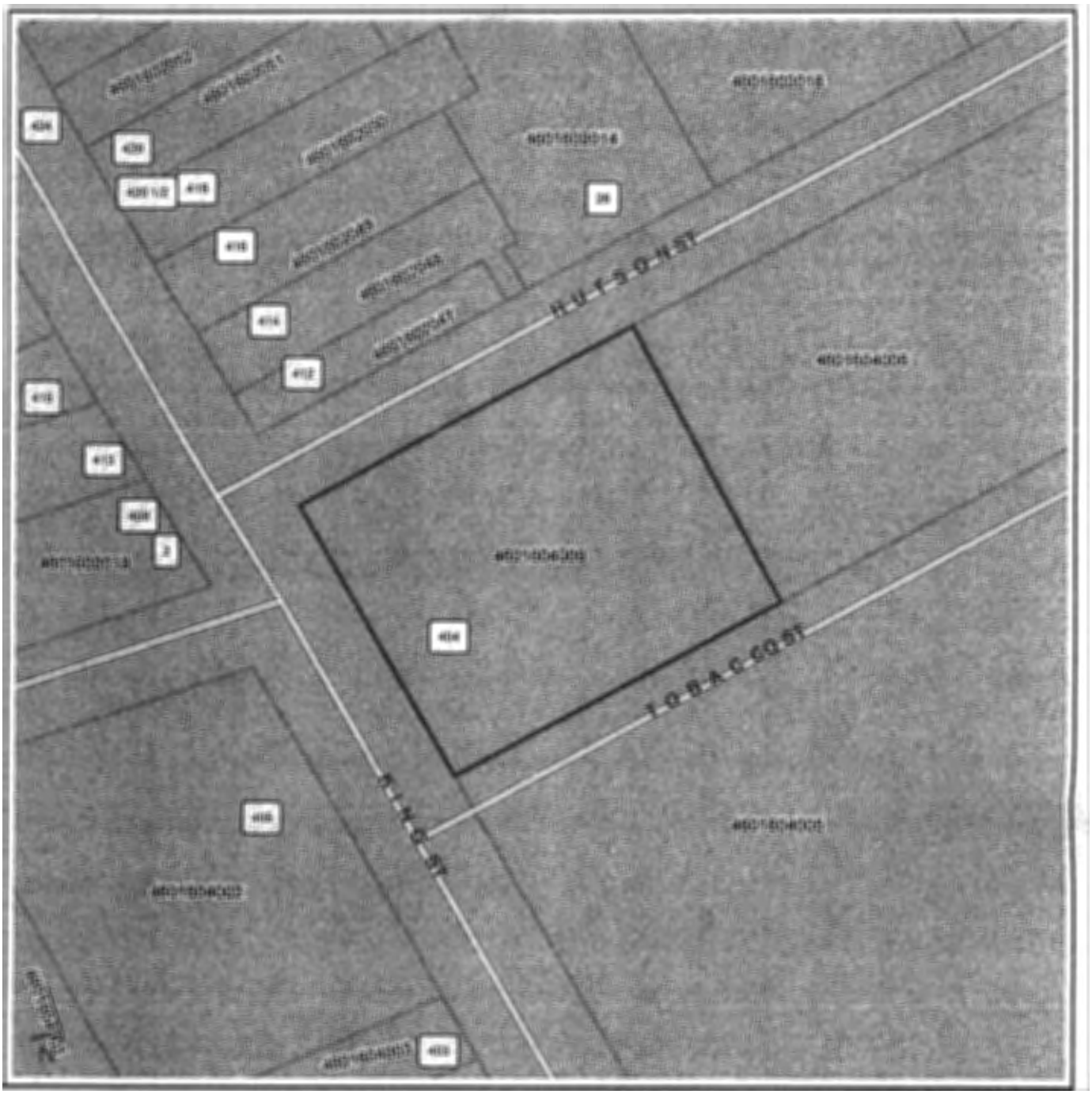
H. Michael Bowers, SC Bar No.: 00801
Mary B. Ramsay, SC Bar No.: 78856
Shumaker, Loop & Kendrick, LLP
176 Croghan Spur Road, Suite 400
Charleston, SC 29407
Ph. 843.996.1900
Fax 843.996.1999

Attorneys for Plaintiff/Petitioner

SWORN BEFORE ME this 12th day of February 2019.

Christina B. Nestor
My Commission Expires: 2-17-20

CHRISTINA B. NESTOR NOTARY PUBLIC SOUTH CAROLINA



Parcel ID: 4601604009

0 40 80 160 Feet

1 inch = 66 feet

Parcel ID: 4601604009
OWNER1: LIBRARY ASSOCIATES LLC
ACREAGE: 0.72
PLAT_BOOK_PAGE: L11- 0185
DEED_BOOK_PAGE: 0102-032
Jurisdiction: CITY OF CHARLESTON

EXHIBIT
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CHARLESTON COUNTY
SOUTH CAROLINA

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Author: Charleston County SC
Date: 2/7/2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

OLD NORTH STATE MASONRY, LLC,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

STATEMENT OF ACCOUNT

SC Contractor License No.: 109146

I hereby certify that on this 7th day of February, 2019, Joseph Anastasi personally appeared before me, who, being duly sworn, deposes and says:

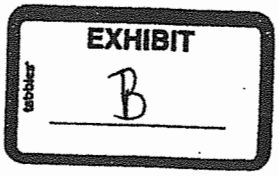
1. That he is the President of Old North State Masonry, LLC, a North Carolina corporation authorized to do business under the laws of the State of South Carolina and has been duly authorized by said business to make this Affidavit.

2. That there is justly due and owing by Balfour Beatty Construction, LLC, over and above any discount and without deduction or set-off, the sum of money set out in the foregoing pleading amounting to $1,400,731.94.

3. That the said indebtedness represents merchandise sold/money advanced/services performed by Old North State Masonry, LLC to or for Balfour Beatty Construction, LLC under a contract.

4. That Old North State Masonry, LLC, has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.

5. That Old North State Masonry, LLC, keeps regular books of account and that the keeping of said books of account is in the charge of or under the supervision of the affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that Balfour Beatty Construction, LLC is indebted to Old North State Masonry, LLC, in the manner and amount herein set forth.



Joseph Anastasi

SWORN BEFORE ME this 7th day of February, 2019.

My Commission Expires: 10/17/21.

JEANNIE PEREZ-MASIS NOTARY PUBLIC MECKLENBURG COUNTY, NC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

OLD NORTH STATE MASONRY, LLC,

Plaintiff/Petitioner,

v.

LIBRARY ASSOCIATES, LLC; METROPOLITAN LIFE INSURANCE COMPANY; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants/Respondents.

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

VERIFICATION

SC Contractor License No.: 109146

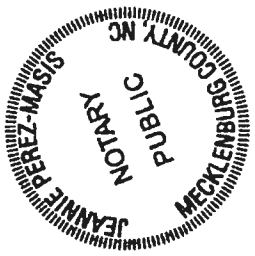
PERSONALLY APPEARED before me, Joseph Anastasi, who first being duly sworn, deposes and says that he is the President for Plaintiff/Petitioner, Old North State Masonry, LLC; that he has read the foregoing Notice and Certificate of Mechanic's Lien and Statement of Account; that the materials set forth herein are true of his own knowledge, except those matters and things therein alleged on information and belief, and as to those he believes them to be true.

Further, Old North State Masonry, LLC is a Contractor and holds License Number 109146 with the South Carolina Board of Labor, Licensing, and Regulation.

Joseph Anastasi, President
Old North State Masonry, LLC

Sworn to and subscribed before me this
the 7th day of February, 2019.

Notary Public, State of North Carolina
My Commission Expires: 10/17/21



RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

Filed By:

SHUMAKER LOOP & KENDRICK
PO BOX 22207

CHARLESTON SC 29413 Pickup

RECORDED

Date:	February 12, 2019
Time:	10:04:37 AM

Book	Page	DocType
0777	044	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCS LLC AL

RECIPIENT:
OLD NORTH STATE ETC

Original Book:

Original Page:

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Note:

# of Pages:	7
# of References:	
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Extra Reference Cost	$ -
Extra Pages	$ 2.00
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CLERK	KLH

0777	044	02/12/2019	7
Book	Page	Recorded Date	# Pgs

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Original Book	Original Page	Doc Type	Recorded Time

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE REGISTER OF DEEDS OFFICE

TOM ROCHESTER & ASSOCIATES, INC. d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS,
License not required

Plaintiff/Petitioner,

vs.

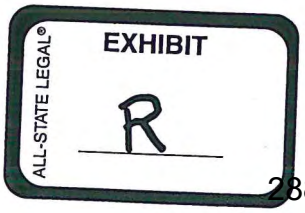
LIBRARY ASSOCIATES, LLC; BALFOUR BEATTY CONSTRUCTION, LLC; and METROPOLITAN LIFE INSURANCE COMPANY,

Defendants/Respondents.

NOTICE AND CERTIFICATE OF MECHANIC'S LIEN

TO: THE RESPONDENTS ABOVE-NAMED AND ALL OTHERS CONCERNED:

NOTICE IS HEREBY GIVEN that a mechanic's lien is being filed in the Register of Deeds Office for Charleston County, South Carolina on behalf of Petitioner, Tom Rochester & Associates, Inc. d/b/a Southeastern Architectural Systems ("SEAS") for labor, services, equipment and materials furnished by SEAS and actually used in the construction of improvements located at the following property: that certain real property described in Exhibit A hereto (the "Property") and generally known as the Hotel Bennett located at 404 King Street, Charleston, Charleston County, South Carolina, in which Library Associates, LLC ("Owner"), Balfour Beatty Construction, LLC ("Debtor") and Metropolitan Life Insurance Company ("Mortgage Holder"), may have and/or claim



an interest. Notice of this mechanic's lien is hereby given to Owner, Debtor and Mortgage Holder to the extent of their interest(s) in the subject real property. SEAS furnished said labor, services, equipment and materials in connection with the construction of improvements on the real property described in Exhibit A hereto, including, but not limited to, the furnishing of labor, materials, tools and equipment for installation of a garage door, motor and track assembly, a redwood Pergola, a rail screen extension, a transformer screening with gate, Camellia's Bar, and Level 9 back bar shelves, pursuant to a written contract with Debtor (with license no. 112078) upon information and belief, with the consent and authorization of the Owner. SEAS is not required to be licensed by the State of South Carolina.

SEAS has and claims a mechanic's lien on Owner's, Debtor's and Mortgage Holder's interest(s) including, but not limited to, any of Owner's fee or leasehold interests in the real property described in Exhibit A. Said property and improvements on which SEAS provided labor, services, equipment and materials and claims a lien is further generally known as the Hotel Bennett located at 404 King Street, Charleston, Charleston County, South Carolina. The first provision of labor, services, equipment and materials by SEAS for the improvement of the real property described in Exhibit A was on or about November 6, 2017. The last provision of labor, services, equipment and materials by SEAS for the improvement of the real property described in Exhibit A was March 13, 2019.

YOU WILL FURTHER TAKE NOTICE that a true and correct copy of this Notice and Certificate of Mechanic's Lien is herewith served upon you along with the Statement of Account and Verification of SEAS, which are attached hereto as Exhibit B and Exhibit C, respectively, and incorporated herein. This lien is claimed by SEAS pursuant to S.C. Code Ann. §29-5-10, *et seq.*, as a result of labor, services, equipment and material provided by SEAS within ninety (90) days of the date hereof, for the improvement of the real property described in Exhibit A, for which SEAS is

owed $63,137.49, no part of which has been paid by credit, discount or otherwise. Additionally, SEAS has a claim on said interests of Owner, Debtor and Mortgage Holder in the real property described in Exhibit A to secure payments of an additional sum to cover the costs and disbursements of any action to foreclose this mechanic's lien, including reasonable attorneys' fees, costs and interest, all pursuant to the provisions of S.C. Code Ann. §29-5-10, *et seq.*

DATED: April 25, 2019.

Witness #1

Witness #2

TOM ROCHESTER & ASSOCIATES, INC.
d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS

By: _____
Name: Mac Wright
Title: Vice President

STATE OF NC
COUNTY OF Mecklenburg

Sworn to and subscribed in my presence
this 18th day of April, 2019.

A-Lynn Hybarger, Notary Public
(Printed Name of Notary Public)

A. LYNN HYBARGER
Notary Public, North Carolina
Mecklenburg County
My Commission Expires
November 12, 2022

My Commission Expires: _____

(NOTARIAL SEAL)

Scott Miller, SC State Bar No. 101964
smiller@jahlaw.com
JOHNSTON, ALLISON & HORD, P.A.
1065 East Morehead Street
Charlotte, NC 28204
Telephone No.: (704) 332-1181
Facsimile No.: (704) 376-1628
Counsel for Petitioner

EXHIBIT A

All that certain piece, parcel or tract of land with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 KING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

DERIVATION: Being a portion of the same property conveyed to Library Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina, in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina, in Book 0102, Page 032; and also being a portionof the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in the RMC Office for Charleston County, South Carolina, on June 17, 2011, in Book 0192, Page 809.

TAX NO. 460-16-04-009

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE REGISTER OF DEEDS OFFICE

TOM ROCHESTER & ASSOCIATES, INC. d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS,
License not required

Plaintiff/Petitioner,

vs.

LIBRARY ASSOCIATES, LLC; BALFOUR BEATTY CONSTRUCTION, LLC; and METROPOLITAN LIFE INSURANCE COMPANY,

Defendants/Respondents.

STATEMENT OF ACCOUNT

PERSONALLY APPEARED before me, Lynn Hybarger, who being first duly sworn deposes and states:

1. That I am the Vice President of Tom Rochester & Associates, Inc. d/b/a Southeastern Architectural Systems ("SEAS"); and

2. That the sum of Sixty-Three Thousand One Hundred Thirty-Seven and 49/100 Dollars ($63,137.49) is the amount due and owed to SEAS for labor, services, materials and equipment supplied in connection with the construction of certain improvements located on the property described in Exhibit "A", to the Notice and Certificate of Mechanic's Lien.

3. Upon information and belief, the above listed Respondents may have interests in the real property described in Exhibit "A" to the Notice and Certificate of Mechanic's Lien.

FURTHER AFFIANT SAITH NAUGHT.

SIGNATURES APPEAR ON NEXT PAGE

TOM ROCHESTER & ASSOCIATES, INC.
d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS

By: _____
Name: Mac Winget
Title: Vice President

STATE OF NC
COUNTY OF Mecklenburg
Sworn to and subscribed in my presence this 18th day of April, 2019.

A Lynn Hybarger
A Lynn Hybarger, Notary Public
(Printed Name of Notary Public)

My Commission Expires: 11.12.22

A. LYNN HYBARGER
Notary Public, North Carolina
Mecklenburg County
My Commission Expires
November 12, 2022

(NOTARIAL SEAL)

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE REGISTER OF DEEDS OFFICE

TOM ROCHESTER & ASSOCIATES, INC. d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS,
License not required

Plaintiff/Petitioner,

vs.

LIBRARY ASSOCIATES, LLC; BALFOUR BEATTY CONSTRUCTION, LLC; and METROPOLITAN LIFE INSURANCE COMPANY,

Defendants/Respondents.

VERIFICATION

PERSONALLY APPEARED before me, Lynn Hybarger, who being first duly sworn affirms that he is the Vice President of Tom Rochester & Associates, Inc. d/b/a Southeastern Architectural Systems ("SEAS"), that he has read the foregoing Notice and Certificate of Mechanic's Lien; that the matters set forth therein are true and accurate and that the amounts alleged therein to be past due and owed to SEAS are true and accurate.

TOM ROCHESTER & ASSOCIATES, INC.
d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS

By: _____
Name: Mac Winget
Title: Vice President

STATE OF NC
COUNTY OF Mecklenburg
Sworn to and subscribed in my presence this 18th day of April, 2019.

A. LYNN HYBARGER
Notary Public, North Carolina
Mecklenburg County
My Commission Expires
November 12, 2022

A Lynn Hybarger, Notary Public
(Printed Name of Notary Public)

My Commission Expires: 11.12.22

(NOTARIAL SEAL)

982071 v.1 – 31176.9003

STATE OF SOUTH CAROLINA	)	IN THE REGISTER OF DEEDS OFFICE
	)	
COUNTY OF CHARLESTON	)	
	)	
Forton Company, LLC	)	
(LLR License: not required)	)	
	)	
Petitioner,	)	
	)	
vs.	)	**MECHANIC'S LIEN**
	)	
Balfour Beatty Construction, LLC,	)	
Library Associates, LLC, and	)	
Metropolitan Life Insurance Company,	)	
	)	
Respondents.	)	
	)	

PERSONALLY appeared before me the below signed attorney, who being duly sworn, deposes and says as follows:

That he is the attorney for, and acting on behalf of the Petitioner and Mechanic's Lien Claimant herein, and that the annexed statement is a true and just account of the amount due to the Petitioner with all just credits given for labor and materials furnished and actually used in the exterior pressure washing and window cleaning of buildings or structures situated on the after-described real estate, by virtue of its contract with Balfour Beatty Construction, LLC and with notice and consent of Library Associates, LLC, as owner, and Metropolitan Life Insurance Company, as Mortgagee of the subject parcel.

The value of the labor and materials furnished is the sum of Twenty-Three Thousand Four Hundred Eighty-five and 00/100 ($23,485.00) Dollars as is evidenced by the sworn statement of account attached hereto as Exhibit "A", and labor and materials were furnished to the after-described real estate less than ninety (90) days from date of the filing and service of this Mechanic's Lien.

Koontz Mlynarczyk LLC
1058 E. Montague Avenue
N. Charleston, SC 29405



That by virtue of the aforesaid labor and materials furnished to the after-described property, and by the service and filing of this Mechanic's Lien, Petitioner, has and claims a Mechanic's Lien for the payment of the indebtedness aforesaid and the cost of enforcing said lien upon the following described real estate:

SEE EXHIBIT "B" ATTACHED HERETO.

WHEREFORE, Petitioner claims a Mechanic's Lien on the sum of Twenty-Three Thousand Four Hundred Eighty-five and 00/100 ($23,485.00) Dollars, plus a reasonable attorney's fee, and for the costs and disbursements of this action.

KOONTZ MLYNARCZYK LLC

Wm. Mark Koontz
1058 East Montague Avenue
North Charleston SC 29405
843-225-4252
843-277-9120 (fax)
mark@kmlawsc.com
Attorney for Petitioner

SWORN to before me this 24th day of April, 2019.

Notary Public for South Carolina
My Commission Expires: 5/21/24

DONNA H. DENNIS NOTARY PUBLIC STATE OF SOUTH CAROLINA MY COMMISSION EXPIRES 05-21-2024

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

AFFIDAVIT OF ACCOUNT

I hereby certify that on this 24th day of April 2019, personally appeared before me, _____, who, being duly sworn deposes and says:

1. That (s)he is Owner/President for Forton & Company, LLC d/b/a Crystal Clean, a corporation organized and doing business under the laws of the State of South Carolina, and has been duly authorized by said Corporation to make this Affidavit.

2. That there is justly due and owing by Balfour Beatty Construction Defendant to Forton & Company, LLC d/b/a Crystal Clean, the Plaintiff, over and above any discount and without-deduction or set-off, the sum of money set out in the foregoing declaration amounting to $23,485.00 with interest thereon from 1/29/19.

3. That the said indebtedness represents merchandise sold/monies advanced/services performed by Forton & Company, LLC d/b/a Crystal Clean, to or for the Defendant.

4. That the Plaintiff has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.

5. That the Plaintiff keeps regular books of account and that the keeping of said books of account is in the charge of or under the supervision of the affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that the Defendant is indebted to the Plaintiff in the manner and amount herein set forth.

BY: _____

ITS: Owner/President

Sworn to before me this 24th
day of April, 201__.

Donna H. Dennis
Notary Public for South Carolina
My Commission Expires: 5/21/24

DONNA H. DENNIS NOTARY PUBLIC MY COMMISSION EXPIRES 05-21-2024 STATE OF SOUTH CAROLINA

EXHIBIT B

PROPERTY DESCRIPTION

FEE PARCEL

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 KING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the same property conveyed to Library Associates, LLC by deed of The County of Charleston, dated March 14,1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina, in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in the RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS No. 460-16-04-009

EASEMENT PARCEL

TOGETHER WITH the easement rights arising under that certain Easement and Encroachment Agreement by and between Library Associates, LLC and Washington Light infantry and Sumter Guards Board of Officers, Inc. dated as of December 16, 2014, recorded in the RMC Office of Charleston County on December 23, 2014, in Book 0448, at Page 211.

SUBLEASEHOLD PARCEL

TOGETHER WITH the subleasehold estate created in favor of Library Associates, LLC pursuant to that certain Sublease Agreement by and among City Council of Charleston, a/k/a the City of Charleston ("Landlord"), Library Associates, LLC (Subtenant "A") and Old Citadel Associates, LLC (Subtenant "B"), (collectively referred to as "Subtenants") dated December 21, 2001, and recorded December 31, 2001 at Book S-392, Page 832, in the RMC Office for Charleston County, as amended by that Recognition Agreement by and among Library Associates, LLC ,The Washington Light Infantry and Sumter Guards Board of Officers, Inc., the City Council of Charleston, and Metropolitan Life Insurance Company, dated March 19, 2015, recorded in the RMC Office of Charleston County, on March 19, 2015, in Book 0463, at Page 654, and by that Recognition Agreement by and among Library Associates, LLC , the City Council of Charleston, and Metropolitan Life Insurance Company, dated March 19, 2015, recorded in the RMC Office of Charleston County, on March 19, 2015, in Book 0463 at Page 655.

Return after recording to:

Andrew K. Epting, Jr., Esquire
46A State Street
Charleston, SC 29401

RECEIVED 5-2-19
PER CLERK JSW
ROD OFFICE
CHARLESTON COUNTY, SC

BOOK 0793 - Page 383

STATE OF SOUTH CAROLINA

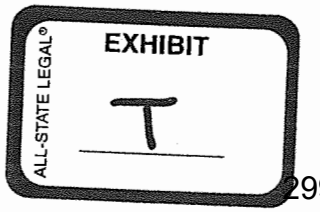
COUNTY OF CHARLESTON

IN THE REGISTER OF DEEDS

LOWCOUNTRY CASE & MILLWORK, INC., Plaintiff, v. LIBRARY ASSOCIATES, LLC and BALFOUR BEATTY CONSTRUCTION, LLC, Defendants.	**NOTICE AND CERTIFICATE OF MECHANIC'S LIEN** TMS# 460-16-04-009

NOTICE IS HEREBY GIVEN that the Plaintiff, Lowcountry Case & Millwork, Inc., claims a lien against the property as owned by Defendants, pursuant to its rights as a subcontractor which performed work authorized by the owner of the property under S.C. Code Ann. § 29-5-20, in the amount set forth below and established by the annexed statement of account. *See* Exhibit A hereto. Exhibit A is a true and just account of the amount due to the Plaintiff with all just credits given for labor and materials furnished and actually used in the erection, alteration, or repair of building or structures situated on the real estate described in Exhibit B, hereto by virtue of its agreements with Defendant and with the consent of the owners of said property.

The value of the labor and materials furnished or to be furnished is the sum of $3,043,364.90, of which $282,160.25 is owed, as is evidenced by the sworn statement of account attached hereto as Exhibit A. Both labor and materials were furnished for the purpose of improving



account are made in the ordinary course of business. Said entries show that the Defendant is indebted to the Plaintiff in the manner and amount herein set forth.

LOWCOUNTRY CASE & MILLWORK

BY: David Stanislat

ITS CEO

SWORN TO BEFORE ME ~~APRIL~~ MAY
THIS 1st DAY OF ~~APRIL~~, 2019

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 4.26.2028

EXHIBIT B

Legal Description

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, in the State of South Carolina, shown and designated as "Lot 1" containing 0.671 acres, more or less, as shown on a plat thereof entitled "PLAT SHOWING THE PROPERTY LINE ADJUSTMENT & SUBDIVISION OF TWO LOTS OWNED BY THE COUNTY OF CHARLESTON LOCATED IN TE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Paul C. Lawson Jr., S.C. Reg. Land Surveyor No. 14191, of Ashley Surveying, Inc., dated August 26, 1994, and recorded in the RMC Office for Charleston County, South Carolina in Plat book DA, at Page 333; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated and made a part hereof by this reference.

Being the same 50% undivided interest conveyed to Hofford-Library, LLC, by deed of Library Associates, LLC dated December 30, 2008 and recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027 at Page 418; Being a portion of the same property conveyed to Library Associates, LLC, a South Carolina limited liability company, by deed of the County of Charleston dated March 14, 1995 and recorded March 15, 1995 in book L-253 at Page 625 in the RMC Office for Charleston County, South Carolina.

TMS Number 460-16-04-009

PROPERTY ADDRESS: 404 King Street, Charleston, SC 29403

AS PART CONSIDERATION for the within conveyance, the Grantee, jointly and severally with the Grantor herein, does hereby agree to assume and pay that certain Promissory Note in favor of South Carolina Bank and Trust, N.A. dated October 17, 2007, and the Mortgage securing same dated October 17, 2007, recorded in the RMC Office for Charleston County in Book O-641, at Page 387, said Note and Mortgage having a present principal balance of approximately $1,200,000.00.

BP0792176

PGS: 5

STATE OF SOUTH CAROLINA	)	IN THE REGISTER OF DEEDS OFFICE
	)	
COUNTY OF CHARLESTON	)	
QUANTUM COATINGS, LLC	)	
	)	
Claimant,	)	**NOTICE AND CERTIFICATE OF MECHANIC'S LIEN**
	)	
vs.	)	**(Subcontractor – License Not Required)**
	)	
LIBRARY ASSOCIATES, LLC,	)	
	)	
Respondent.	)	

TO THE RESPONDENT ABOVE NAMED AND ALL OTHERS CONCERNED:

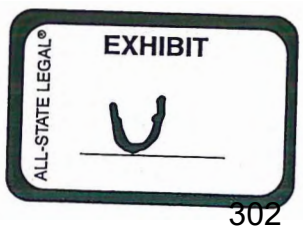
YOU WILL PLEASE TAKE NOTICE that the above-named Claimant, Quantum Coatings, LLC, by and through its undersigned counsel acting on its behalf, has affixed hereto a statement setting forth true and just account of the amount due to Claimant with all just credits given for materials and labor furnished and actually used in the erection, alteration, and/or repair of buildings or structures situated on the real property described herein,

That Claimant subcontracted with Balfour Beatty Construction, Inc., which supervised Claimant's furnishing of said labor and materials with the knowledge or consent of the owner of the subject real property, Library Associates, Inc.

That said labor and materials were furnished within ninety (90) days of the date hereof.

That, as a subcontractor to Balfour Beatty Construction, Inc., Claimant is not required to be licensed or registered pursuant to S.C. Code Ann. § 40-11-270(E).

That by virtue of the labor and materials furnished to the subject real property, and by service and filing of this Mechanic's Lien, Claimant has and claims a Mechanic's Lien for the payment of the indebtedness due and described and the cost of enforcing said lien upon the following described real estate:



THE SUBJECT REAL PROPERTY IS KNOWN AS 404 KING STREET IN CHARLESTON, SOUTH CAROLINA, IN THE COUNTY OF CHARLESTON. CONSISTING OF THOSE CERTAIN PARCELS OF PROPERTY WHICH IS MORE PARTICULARLY DESCRIBED IN **EXHIBIT "A"** ATTACHED HERETO.

TMS No. 460-16-04-009.

The value of the materials furnished is the sum of THREE HUNDRED EIGHTY-EIGHT THOUSAND, TWO HUNDRED SIXTY FOUR AND 15/100 DOLLARS ($388,264.15), as evidenced by the sworn Statement of Account attached hereto as **EXHIBIT "B"**.

WHEREFORE, Claimant claims a Mechanic's Lien on the sum of $388,264.15, plus reasonable attorney's fees and for the costs and disbursements of this action as provided by law.

RESPECTFULLY PREPARED AND SUBMITTED BY:

THURMOND KIRCHNER & TIMBES, P.A.

By: _____

MICHAEL A. TIMBES
15 Middle Atlantic Wharf
Charleston, SC 29401
(843) 937-8000 (office)
(843) 937-4200 (fax)
michael@tktlawyers.com
Attorneys for Claimant

SWORN to and subscribed before me
this 24 day of April, 2019.

Caroline Boyce
Notary Public for South Carolina
My Commission expires: 12/20/26

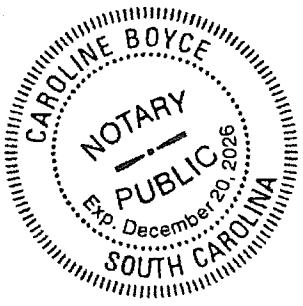


EXHIBIT "A"

ALL that certain piece, parcel or tract of land, with he buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing approximately 0.671 to 0.722 acres more or less, as shown on a plat thereof entitled "PLAT SHOWING THE PROPERTY LINE ADJUSTMENT & SUBDIVISION OF TWO LOTS OWNED BY THE COUNTY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Paul C. Lawson, Jr., S.C. Reg. Land Surveyor No. 14191, of Ashley Surveying, Inc., dated August 26, 1994, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book DA, at Page 333; said Lot 1 having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference; and/or shown and designated to "2,190 Square Feet 0.050 acres from Lot 1" as shown on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011 and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said 0.050 acres (2,190 square feet) having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING the same 50% undivided interest conveyed to Hofford-Library, LLC, by deed of Library Associates, LLC, dated December 30, 2008 and recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina, in Book 0027 at Page 418; and/or BEING a portion of the same property conveyed to Library Associates, LLC, a South Carolina limited liability company, by deed of The County of Charleston, dated March 14, 1995 and recorded March 15, 1995 in Book L-253, at Page 625 in the RMC Office for Charleston County, South Carolina; and/or BEING the same property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina, in Book 0102, Page 032; and/or BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston recorded March 15, 1997 in Book L-253, Page 629, in the RMC Office of Charleston County, South Carolina; and/or BEING a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2001, recorded in RMC Office for Charleston County on June 17, 2001, in Book 0192, at Page 809.

TMS No. 460-16-04-009

Property Address: 404 King Street, Charleston, South Carolina

EXHIBIT "B"

STATE OF SOUTH CAROLINA)
) VERIFIED STATEMENT OF ACCOUNT
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, Scott McCormack, who first being duly sworn, deposes and says as follows:

1. I am the President of Quantum Coatings, LLC, a limited liability company authorized to do business under the laws of the State of South Carolina, and I am duly authorized by said company to make this Affidavit.

2. There is justly due and owing to Quantum Coatings, LLC, above any discount and without deduction or set off, the sum of THREE HUNDRED EIGHTY-EIGHT THOUSAND, TWO HUNDRED SIXTY FOUR AND 15/100 DOLLARS ($388,264.15).

3. That said indebtedness represents labor and materials furnished by Quantum Coatings, LLC, as a subcontractor for Balfour Beatty Construction, Inc., in the course of improving the real estate described herein, known as the Hotel Bennett.

4. Quantum Coatings, LLC has not received, directly or indirectly, any part of the sums claimed herein, nor has it received any security or satisfaction for which credit has not already been given.

5. That Quantum Coatings, LLC keeps regular books of account. The entries in said books of account are made in the ordinary course of business and show that Quantum Coatings, LLC, is due the amount set forth herein for labor and materials furnished with the consent of the owner and all others having an interest in the real estate.

Quantum Coatings, LLC

By: _____
Scott McCormack

SWORN to and subscribed before me
this 24 day of April, 2019.

Caroline Boyce
My Commission expires: 12/20/26

CAROLINE BOYCE
NOTARY PUBLIC
SOUTH CAROLINA
Ex. December 20, 2026

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

THURMOND KIRCHNER & TIMBES
15 MIDDLE ATLANTIC WHARF
SUITE 101
CHARLESTON SC 29401

RECORDED

Date:	April 26, 2019
Time:	2:13:29 PM

Book	Page	DocType
0792	176	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCS LLC ETC

RECIPIENT:
QUANTUM COATINGS LLC

Original Book:

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# of Pages:	5
# of References:	

Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ -
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TOTAL	$ 10.00

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.:
COUNTY OF CHARLESTON	)	2019-CP-10-2868
STRONG TOWER CONSTRUCTION, LLC, d/b/a KOCH CORPORATION,	)	
PLAINTIFF,	)	
VS.	)	SUMMONS
BALFOUR BEATTY CONSTRUCTION, LLC, LIBRARY ASSOCIATES, LLC, and METROPOLITAN LIFE INSURANCE COMPANY,	)	
DEFENDANTS.	)	

FILED
2019 MAY 30 PM 4:07
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Smith | Closser | Wheeler, P.A., 7455 Cross County Road, Suite 1, Post Office Box 40578, Charleston, South Carolina, 29423-0578, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

SMITH | CLOSSER | WHEELER, P.A.

Steven L. Smith – SC Bar No. 5173
ssmith@scnlaw.com
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
Attorneys for the Plaintiff

May 28, 2019
Charleston, South Carolina
19-135

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.:
COUNTY OF CHARLESTON	)	2019-CP-10-2868
STRONG TOWER CONSTRUCTION, LLC, d/b/a KOCH CORPORATION,	)	
PLAINTIFF,	)	
VS.	)	COMPLAINT
	)	(NON-JURY)
BALFOUR BEATTY CONSTRUCTION, LLC, LIBRARY ASSOCIATES, LLC, and METROPOLITAN LIFE INSURANCE COMPANY,	)	(DEBT COLLECTION)
	)	(MECHANIC'S LIEN FORECLOSURE)
DEFENDANTS.	)	

FILED
2019 MAY 30 PM 4:07
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, complaining of the Defendants above named, alleges and shows unto this Honorable Court:

1. Plaintiff, Strong Tower Construction, LLC, is a limited liability company which is organized under and by virtue of the laws of the State of Kentucky, and is doing business as Koch Corporation in Charleston County, South Carolina.

2. That upon information and belief, Defendant, Balfour Beatty Construction, LLC ("Balfour"), is a limited liability company organized and existing pursuant to the laws of the State of Delaware and is doing business in Charleston County, South Carolina.

3. The upon information and belief, Defendant, Library Associates, LLC ("Library"), is the owner of the real estate which is the subject of this action by virtue of a deed recorded in the Charleston County R.O.D. Office.

4. Metropolitan Life Insurance Company is named as a Defendant herein by virtue of its mortgage on the subject property.

FOR A FIRST CAUSE OF ACTION
(Mechanic's Lien Foreclosure)

5. Defendant, Balfour, contracted with Plaintiff for labor and materials furnished and actually used in the erection, alteration, or repair of buildings or structures on the subject real estate.

6. In accordance with this contract, Plaintiff furnished the agreed upon materials and services, in which said materials and services were used in the erection, alteration, or repair of buildings and/or structures on the subject real estate and which said materials and services improved the subject real estate.

7. Plaintiff performed all conditions precedent to the contract it had with Defendant, Balfour.

8. That at all times during the performance by the Plaintiff, the subject property was owned by Defendant, Library.

9. Plaintiff gave Defendant, Library, owner of the real estate, notice of statement of account for Mechanic's Lien within ninety (90) days after Plaintiff supplied the materials and services which are the subject of this lawsuit as is provided by law.

10. On March 5, 2019, within ninety (90) days following the last date upon which Plaintiff supplied the materials and services which are the subject of this action, Plaintiff filed in the Office of the R.O.D. for Charleston County its Notice of Mechanic's Lien containing a just and true account of the amount due Plaintiff at Book 0781, Page 071, of the records, a copy of which is attached hereto as Exhibit "A".

11. Plaintiff claims a Mechanic's Lien on the subject premises, more particularly described within the said Notice of Mechanic's Lien attached hereto.

12. Plaintiff is entitled to an order of foreclosure of its Mechanic's Lien on the subject

real estate for the amount of its account and costs; requires that the property be sold; and that the proceeds of the sale, after deducting all lawful charges and expenses, be applied to the debt of Plaintiff, including a reasonable attorney's fees and costs incurred.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit/Quasi Contract)

13. That the Plaintiff realleges and re-avers the allegations of the preceding paragraphs as if fully restated herein.

14. Defendants, Library and Balfour, have had the use of these materials, have been enriched by the provision of the services and materials, and are unjustly retaining the benefit of these services and materials without paying Plaintiff the reasonable value of One Hundred Twenty-Four Thousand Eighty and 21/100 ($124,080.21) Dollars.

15. Defendants, Library and Balfour, are liable to Plaintiff for the reasonable value of materials, One Hundred Twenty-Four Thousand Eighty and 21/100 ($124,080.21) Dollars, plus prejudgment interest at 8.75% per annum from the date said materials and service were supplied.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

16. That the Plaintiff realleges and re-avers the allegations of the preceding paragraphs as if fully restated herein.

17. Defendant, Balfour's failure to pay the Plaintiff for the material and services provided constitute a breach of contract.

18. As a result of Defendant, Balfour, is liable to the Plaintiff for the reasonable value of material and services in the amount of One Hundred Twenty-Four Thousand Eighty and 21/100 ($124,080.21) Dollars, plus prejudgment interest at 8.75% per annum from the date said materials and services were supplied, for costs rendered herein, and for attorney's fees incurred as a result of the foreclosure of the Mechanic's Lien.

FOR A FOURTH CAUSE OF ACTION
(Constructive Trust)

19. Plaintiff realleges and reavers the allegations contained in the preceding paragraphs as if fully restated herein.

20. That the Plaintiff has been informed that the Defendant, Library, is retaining sums currently due and owing the Defendant, Balfour.

21. That these sums were generated partially through the use of Plaintiff's materials on the project.

22. That the Plaintiff is informed and believes that the Defendant, Library, is currently holding the sums in a constructive trust for the benefit of the Plaintiff who furnished goods and materials necessary to complete the project and generate these funds.

23. That the Plaintiff is informed and believes that the Defendant, Library, should be ordered to pay to Plaintiff enough of said funds to satisfy its indebtedness.

WHEREFORE, Plaintiff demands judgment as follows:

A. On its First Cause of Action, Plaintiff demands that Plaintiff's Mechanic's Lien be foreclosed, that due notice of said foreclosure was given to all proper parties, that the subject real estate be sold and that the proceeds used to satisfy the amounts due Plaintiff on its account and for the costs incurred in prosecuting this action including a reasonable attorney's fee. Plaintiff demands more over on its first cause of action that the named Defendants who claim an interest in the real estate be compelled to set forth that interest or forever be barred from asserting it.

B. On its Second Cause of Action, Plaintiff demands judgment against Defendants, Library Associates, LLC and Balfour Beatty Construction, LLC, in the amount of One Hundred Twenty-Four Thousand Eighty and 21/100 ($124,080.21) Dollars, plus prejudgment interest at 8.75% per annum from the date said materials and services were supplied until judgment rendered

herein, and for costs herein expended.

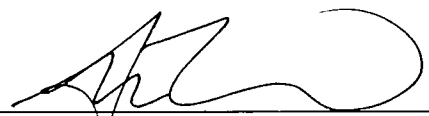
C. On its Third Cause of Action, Plaintiff prays for Judgment against the Defendant, Balfour Beatty Construction, LLC, in the amount of One Hundred Twenty-Four Thousand Eighty and 21/100 ($124,080.21) Dollars, plus prejudgment interest at 8.75% per annum from the date said materials and services were supplied until judgment rendered herein, and for costs herein expended.

D. On its Fourth Cause of Action, Plaintiff prays for Judgment against the Defendant, Library Associates, LLC, in the amount of One Hundred Twenty-Four Eighty and 21/100 ($124,080.21) Dollars.

E. For the costs and disbursements of this action, and

F. For such other relief as this court deems just and proper.

SMITH | CLOSSER | WHEELER, PA



Steven L. Smith – SC Bar No. 5173
ssmith@scnlaw.com
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
Attorneys for the Plaintiff

May 28, 2019
Charleston, South Carolina
19-135

EXHIBIT "A"


BP0781071

PGS: 5

Return to:
Allan R. Popper
Lienguard Inc.
1000 Jorie Blvd., Ste. 270
Oak Brook IL 60523

File No.: 111638-19-1

NOTICE OF MECHANIC'S LIEN
(S.C. Code Ann. §:29-5-90)

TO: **Library Associates, LLC** **OWNER**
17 Lockwood Drive, Suite 400
Charleston, SC 29401-1155

CLERK OF COURT OR REGISTER OF DEEDS OF **CHARLESTON** COUNTY

FROM: **Strong Tower Construction, LLC** **CLAIMANT**
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

PLEASE TAKE NOTICE that **Strong Tower Construction, LLC, d/b/a Koch Corporation,** has provided certain labor or materials to **Balfour Beatty Construction, LLC, 1930 Camden Road, Suite 280, Charlotte, NC 28210, Contractor**, for which claimant has not been paid in full.

Claimant has furnished the following materials: ***Glazing, related materials and/or labor.***

Said labor or materials were furnished in connection with the property located and described as:

Parcel #: 460-16-04-009, see Legal Description attached hereto, all in Charleston, County of Charleston, State of South Carolina

Commonly known as: **Hotel Bennett, 404 King Street, Charleston, SC 29403**

A just and true account of the amount due **Strong Tower Construction, LLC, d/b/a Koch Corporation**, with all just credits given, which is **$124,080.21** is attached.

The name of the owner(s), if known, is: **Library Associates, LLC, identified above**, Owner.

Claimant is not required to be licensed or registered as contemplated by S.C. Code Ann. 29-5-15.

DATED: **February 28, 2019**

Submitted, Signed and Prepared by:
Stacie M. Tennyson
Asst. Finance Manager
Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

SC

The foregoing is true to my knowledge
Strong Tower Construction, LLC
d/b/a Koch Corporation

BY: Stacie M Tennyson

Stacie M Tennyson

ASST FINANCE MANAGER

Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

STATE OF Kentucky)

COUNTY OF Jefferson)

This instrument was subscribed to and sworn before me on 2/28/19, by Stacie M Tennyson, for **Strong Tower Construction, LLC, d/b/a Koch Corporation**, on behalf of said claimant.

Whitney Rae Rosenbarger
Notary Public

VERIFIED STATEMENT OF ACCOUNT

Strong Tower Construction, LLC d/b/a Koch Corporation	Petitioner	)
versus		)
Library Associates, LLC	Respondent	)

Account Balance as of:	**January 17, 2019**	**$1,369,338.26**
Payments Received:		**$1,245,258.05**
Balance Due as of:	**February 28, 2019**	**$124,080.21**

STATE OF Kentucky)

COUNTY OF Jefferson)

I, HEREBY CERTIFY that the foregoing is a true and correct statement of account due to Petitioner in connection with this Mechanic's Lien.

Strong Tower Construction, LLC
d/b/a Koch Corporation

BY: Stacie M Tennyson

Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

Sworn to and subscribed before me this 28th day of February 2019

Whitney Rae Rosenbarger
Notary Public

File #111638-19-1

AFFIDAVIT OF SERVICE

On **February 28, 2019**, the Notice and Certificate of Mechanics Lien was served upon **Library Associates, LLC**, the owner(s) or the person(s) in possession of the real estate described therein, by delivering to them by certified mail, article **#9407 1108 9876 5029 9813 90** at the address of **17 Lockwood Drive, Suite 400, Charleston, SC 29401-1155.**

BY: _____

ALLAN R. POPPER, of Lienguard, Inc., Agent for
Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

Subscribed and Sworn to before me on **February 28, 2019**,
by ALLAN R. POPPER, of Lienguard, Inc., Agent for
Strong Tower Construction, LLC
d/b/a Koch Corporation

Florence Santarsieri

Florence Santarsieri, Notary Public

OFFICIAL SEAL
FLORENCE SANTARSIERI
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 9/6/20

File No.: 111638-19-1

CC: Great American Insurance Company
301 E. 4th Street
Cincinnati, OH 45202

Bond #20646

CC: Metropolitan Life Insurance Company
200 Park Avenue
New York, NY 10166

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

LIENGUARD INC
1000 JORIE BLVD
SUITE 270
OAK BROOK IL 60523

RECORDED

Date:	March 5, 2019
Time:	10:40:32 AM

Book	Page	DocType
0781	071	Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:
LIBRARY ASSOCIATES LLC

RECIPIENT:
STRONG TOWER CONST LLC AL

Original Book:

Original Page:

# of Pages: 5
# of Sats:
# of References:

Note:

Recording Fee	$	10.00
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Extra Pages	$	-
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TOTAL	$	10.00

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CLERK: SLW



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Smith | Closser | Wheeler, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Steven L. Smith
ssmith@scnlaw.com

Office – 843-760-0220
Fax – 843-552-2678
www.smithclosser.com

May 28, 2019

Charleston County Clerk of Court
Judicial Center
100 Broad St, Ste 106
Charleston, SC 29401

RE: Strong Tower Construction, LLC d/b/a Koch Corporation
v. Balfour Beatty Construction, LLC, et al.
SCW File No.: 19-135

Dear Clerk:

Enclosed please find an original and one copy of the Lis Pendens, Summons and Complaint in the above referenced matter. I appreciate you filing same and returning the filed copy to me in the envelope provided.

Also, enclosed is this firm's check in the amount of $150.00 as filing fee.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Steven L. Smith

SLS/kap
Enclosures

cc: Koch Corporation

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-1108

Balfour Beatty Construction, LLC.

Plaintiff,

vs.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.,

Defendants.

DEFENDANT WATSON ELECTRICAL CONSTRUCTION, CO., LLC'S ANSWER TO THIRD PARTY COMPLAINT, AFFIRMATIVE DEFENSES, CROSSCLAIM AGAINST PLAINTIFF, AND COUNTERCLAIM
(Jury Trial Demanded)

Library Associates, Inc.

Third-Party Plaintiff,

vs.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Lowcountry Case & Millwork, Inc., Quantum Coatings,. LLC, Balfour Beatty Construction Group, Inc.

Third-Party Defendants.

FILED
2019 JUN 27 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY
AB

COMES NOW Third-Party Defendant Watson Electrical Construction Co., LLC ("Watson") by and through undersigned counsel, and hereby submits the following Answer to the Third-Party Complaint of Library Associates, Inc. ("Library Associates"), Crossclaim against Plaintiff, and Counterclaim:

FOR A FIRST DEFENSE
(Answer)

1. Watson is not required to respond to Paragraphs 1 through 78 of Library Associates' Amended Answer, Crossclaims and Third-Party Complaint as those paragraphs constitute Library Associates' responses, affirmative defenses, Counterclaims and Crossclaims to Plaintiff's Complaint, and are not directed at Watson. To the extent Paragraphs 1 through 78 are directed at Watson, or allege errors, omissions or liability on behalf of Watson, Watson denies the allegations of Paragraphs 1 through 78.

BY WAY OF THIRD-PARTY COMPLAINT
(Declaratory Judgement pursuant to S.C. Code Ann. Section 15-53-10, *et. seq.*)

2. As to the allegations of Paragraph 79, Watson repeats its previously responses as if fully restated.

3. Paragraph 80 states legal conclusions to which no response is required from Watson. To the extent a response is required, Watson denies the allegations of Paragraph 80 to the extent related to Watson and demands strict proof thereof.

4. The allegations of Paragraphs 81 through 90 are not directed at Watson. To the extent that the allegations of Paragraphs 81 through 90 are directed at Watson, Watson denies the allegations of Paragraphs 81 through 90 and demands strict proof thereof.

5. As to the allegations of Paragraph 91, Watson admits that it is a limited liability company organized under the laws of a state other than South Carolina. Watson further admits that

it supplied labor, materials and equipment for the Project pursuant to a contract with Plaintiff. Watson further admits that **Exhibit J** is a true and accurate copy of a lien it filed related to the Project. Except as expressly admitted, the allegations of Paragraph 91 are denied.

6. The allegations of Paragraphs 92 through 103 are not directed at Watson. To the extent that the allegations of Paragraphs 92 through 103 are directed at Watson, Watson denies the allegations of Paragraphs 92 through 103 and demands strict proof thereof.

7. The allegations of Paragraph 104 are legal conclusions to which no response is required.

FOR A FIRST THIRD PARTY CAUSE OF ACTION AGAINST SUBCONTRACTOR/MATERIALMEN LIEN CLAIMANTS
(Declaratory Judgement)

8. As to the allegations of Paragraph 105, Watson repeats its previously responses as if fully restated.

9. As to the allegations of Paragraph 106, Watson admits that it supplied labor, and supplied material and equipment, for the Project pursuant to a contract with Plaintiff, and pursuant to Plaintiff's directives. Watson is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations asserted against other Subcontractor/Materialmen Lien Claimants, and therefore, denies the same and demands strict proof thereof. Except as expressly admitted, the allegations of Paragraph 106 are denied.

10. To the extent that Paragraphs 107 through 110 relate to Watson, the allegations of Paragraphs 107 through 110 are denied and Watson maintains that its Mechanic's Lien is valid and asserts it is entitled to relief pursuant thereto. Watson is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations asserted against other

Subcontractor/Materialmen Lien Claimants, and therefore, denies the same and demands strict proof thereof.

11. The allegations of Paragraph 111 and 112 are legal conclusions to which no response is required. To the extent a response is required and directed at Watson, Watson denies the allegations of Paragraphs 111 and 112.

12. The allegations of Paragraph 113 seek a legal conclusion to which no response is required. To the extent that a response is required, Watson denies the allegations of Paragraph 113.

FOR A SECOND THIRD PARTY CAUSE OF ACTION AGAINST BB CONSTRUCTION GROUP
(Declaratory Judgment)

13. As to the allegations of Paragraph 114, Watson repeats its previously responses as if fully restated.

14. The allegations of Paragraphs 115 through 119 are not directed at Watson. To the extent that the allegations of Paragraphs 115 through 119 are directed at Watson, Watson denies the allegations of Paragraphs 115 through 119 and demands strict proof thereof.

FOR A SECOND DEFENSE
(Acceptance)

15. The labor performed, and material and equipment provided, by Watson to the Project was accepted by Library, and said acceptance is a complete defense to any claims against Watson.

FOR A THIRD DEFENSE
(Compliance with Industry Standards)

16. Any and all work or services which Watson may have provided met all requirements of the parties' contract as well as construction industry customs, practices and standards.

FOR A FOURTH DEFENSE
(Failure to State a Claim)

17.. Library Associates' claim is barred by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because Library Associates' fails to state a claim pursuant to which relief can be granted.

FOR A FIFTH DEFENSE
(Prior Material Breach/Violation)

18. Library Associates' claim is barred by its own prior material breach of contract, and its violation of South Carolina law.

FOR A SIXTH DEFENSE
(Waiver, Estoppel & Laches)

19. Library Associates' claims are barred by the doctrines of Waiver, Estoppel and Laches.

FOR A SEVENTH DEFENSE
(Unclean Hands)

20. Library Associates' claims are barred by the doctrine of Unclean Hands.

FOR AN EIGHTH DEFENSE
(Set-Off)

21. To the extent that Library Associates is due funds from Watson, Watson asserts such amount should be reduced (set-off) by the amount due from Library Associates to Watson.

FOR AN NINTH DEFENSE
(Release/Waiver)

22. Library Associates has fully or partially waived the claims asserted.

FOR A TENTH DEFENSE
(Reservation of Defenses)

23. Watson states that the parties have not exchanged documents nor taken depositions. If during the course of this dispute, new information becomes available which allows Watson to assert additional defenses, Watson reserves the right to assert said defenses.

FOR AN ELEVENTH DEFENSE AND BY WAY OF SET OFF AND CROSSCLAIM
(Breach of Contract as to Balfour Beatty Construction, LLC)

NOW COMES answering Third-Party Defendant Watson Electrical Construction Co., LLC ("Watson") and hereby submits this Crossclaim pursuant to Rule 13 of the South Carolina Rules of Civil Procedure against Plaintiff Balfour Beatty Construction, LLC ("Balfour").

24. Watson is a limited liability company organized under the laws of a state other than South Carolina, with its principal place of business in North Carolina, and is authorized to conduct business in South Carolina.

25. Upon information and belief, Plaintiff Balfour is a limited liability company organized under the laws of a state other than South Carolina, which is authorized to, and does regularly, conduct business in South Carolina.

26. Upon information and belief, Library Associates, LLC is a limited liability company organized under the laws of the State of South Carolina and is authorized to conduct business in South Carolina.

27. Watson entered into a contract with Plaintiff ("Watson Subcontract") pursuant to which Watson supplied labor, material and equipment for the construction of the Hotel Bennett project ("Project").

28. A true and accurate copy of the Watson Subcontract is attached as **Exhibit A**.

29. Watson satisfactorily performed all work required by the Watson Subcontract.

30. During the course of the Project, Balfour directed Watson to perform work that was not within the scope of the Watson Subcontract.

31. At the direction of Balfour, Watson performed work that was beyond the scope of the Watson Subcontract ("Additional Work").

32. Watson requested payment for the Additional Work.

33. Balfour has not paid Watson for the Additional Work.

34. Upon information and belief, Balfour asserts that Library Associates is liable to pay for the cost of the Additional Work.

35. Upon information and belief, Library Associates has not paid Balfour for the Additional Work.

36. During the course of the Project, Watson's work was impacted, which damaged Watson.

37. Balfour's failure to pay Watson is a breach of contract.

38. As a direct and proximate cause of Balfour's breach(es) of contract, as well as Balfour's other acts and omissions, Watson has been damaged in an amount to be proven at trial, plus interest, costs and attorney's fees.

FOR AN TWELFTH DEFENSE AND BY WAY OF SET OFF AND COUNTERCLAIM/CROSSCLAIM
(Quantum Meruit and Unjust Enrichment)

39. All preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

40. In the alternative, Watson alleges that it is entitled to recover in *quantum meruit* from Balfour and Library (collectively "QM Defendants") the reasonable value of the labor,

equipment and/or materials furnished by Watson that were utilized to improve the Property, based upon the following:

a. QM Defendants were aware, or should have been aware, that Watson reasonably expected payment for providing labor, materials and equipment used to improve the Property;

b. QM Defendants knew that Watson provided labor, materials, and equipment for the improvement of the Property, and have accepted and received the labor, materials and/or equipment supplied by Watson and have benefited from the same, but have failed and refused to pay for such materials following demand by Watson;

c. It would be inequitable for the QM Defendants to accept, use, and enjoy the benefit of Watson's labor, materials and/or equipment without paying the reasonable value thereof;

f. As a result of QM Defendants' failure to make payment, after demand by Watson, QM Defendants have become unjustly enriched, at Watson's expense, in an amount equal to the reasonable fair market value of labor, materials, and equipment provided by Watson to improve the Property;

41. Watson is therefore entitled to recover in *quantum meruit* from the QM Defendants the fair market value of labor, materials, and equipment provided by Watson, plus interest and cost from date of default until paid.

FOR AN THIRTEENTH DEFENSE AND BY WAY OF SET OFF AND COUNTERCLAIM
(Lien Enforcement as to Library Associates, LLC)

NOW COMES answering Third-Party Defendant Watson Electrical Construction Co., LLC ("Watson") and hereby submits this Counterclaim pursuant to Rule 13 of the South Carolina

Rules of Civil Procedure against Defendant/Third-Party Plaintiff Library Associates, LLC ("Library Associates").

42. Watson incorporates by reference the preceding paragraphs as if fully restated.

43. On June 15, 2015, and at all times pertinent to this claim, Defendant Library Associates, LLC was the record owner of that certain parcel of real property located at 404 King Street, Charleston, Charleston County, South Carolina, and identified as PIN number 4601604009 of the Charleston County, South Carolina registry. (hereinafter the "Property").

44. Watson first furnished labor, equipment and/or materials for the improvement of the Property on June 15, 2015.

45. As of the time of the filing of this Complaint, the last date that Watson furnished labor, equipment and/or materials for the improvement of the Property, excluding warranty work, was February 8, 2019.

46. As a result of the money owed to Watson, which amount is at least $1,859,359.00, within ninety (90) days of the last date upon which Watson furnished labor, materials and/or equipment, Watson filed and served a Notice and Certificate of Mechanics Lien. The Mechanics Lien on Real Estate was accompanied by a Verified Statement of Account designated at book 0781, Page 875 with the Charleston County Register of Deeds registry on March 8, 2019 pursuant to S.C. Code Ann.§29-5-10.

47. A true and accurate copy of the Mechanics Lien and Verified statement of Account is attached hereto as **Exhibit "B"** and incorporated herein by reference.

48. Within six (6) months of the last day Watson furnished labor, materials and/or equipment to the Property for its improvement, and with authorization of Library Associates,

Watson commenced this action, therefore Watson has a lien on the Property pursuant to S.C. Code Ann. § 29-5-10, et seq. in the amount set forth herein.

49. The amount due to Watson for the labor, materials and/or equipment provided by Watson for improvement of the Property is at least $1,859,359.00 plus interest, attorney's fees, expenses and costs.

50. The amount owed has not been reduced by partial payment, discount, set off, or otherwise.

51. Watson has satisfied all conditions precedent and is entitled to enforce its lien rights to the full extent of its claims.

52. Watson is entitled to foreclose on the Property in satisfaction of a Judgment enforcing its claim of lien, recover interest as allowed by law from date of default until paid, and recover its reasonable attorneys' fees pursuant to § 29-5-10.

FOR AN FOURTEENTH DEFENSE AND BY WAY OF SET OFF AND COUNTERCLAIM
(Negligence – Library Associates)

53. Watson incorporates by reference the preceding paragraphs as if fully restated.

54. Library Associates owed a duty of care to Watson and others working on the Project to amongst other things:

a. not interfere with the progress of the work on the Project;

b. not interfere with the orderly flow of work on the Project;

c. not adversely interfere with the schedule of work on the Project;

d. not delay the Project; and

e. make Project design decisions within a reasonable time.

55. The Project design was repeatedly revised which damaged Watson.

56. Upon information and belief, during the course of the Project, Library Associates breached its duty of care to Watson by making repeated revisions to the Project which damaged Watson.

57. The slow process of making Project design decisions damaged Watson.

58. Upon information and belief, during the course of the Project, Library Associates breached its duty of care to Watson by repeatedly failing to make Project design decisions within a reasonable time which damaged Watson.

59. The progress of Watson's work was interfered with during the Project which damaged Watson.

60. The orderly flow of Watson's work was interfered with during the Project which damaged Watson.

61. Upon information and belief, Library Associates breached its duty of care to Watson by interfering with the progress of Watson's work, and the orderly flow of Watson's work, which damaged Watson.

62. The Project schedule was adversely impacted which damaged Watson.

63. Upon information and belief, during the course of the Project, Library Associates breached its duty of care to Watson by adversely impacting the schedule of Watson's work on the Project, which damaged Watson.

64. Watson's work on the Project was delayed, which damaged Watson.

65. Upon information and belief, Library Associates breached its duty of care to Watson by delaying Watson's work on the Project, which damaged Watson.

66. Upon information and belief, Library Associates knew that its actions as described above would adversely impact and damage Watson and other subcontractors working on the

Project.

67. Despite Library Associates knowledge that its actions would adversely impact and damage Watson, Library Associates took such actions, either willfully, recklessly or wantonly.

68. Library Associates breaches of its duties of care were negligent;

69. As a direct and proximate cause of Library Associates' negligence, willfulness, wantonness and recklessness, Watson has been damaged by, among other things, increases to its labor costs, and prolonged time working on the Project.

70. Watson is informed and does believe, that it is entitled to judgment against Library Associates in the amount to be proven at trial, actual and punitive damages, for the cost of this action, and for such other and further relief as the Court by deem just and proper.

PRAYER FOR RELIEF

WHEREFORE, Watson Electrical Construction Co., LLC respectfully prays the Court for the following relief:

1. That Third-Party Plaintiff Library Associates have and recover nothing from Watson;

2. That judgment be granted against Library Associate and in favor of Watson on its claims;

3. That judgment be granted against Library Associates and in favor of Watson on Watson's Counterclaim/Set-off asserted by Watson;

4. That judgement be granted against Balfour and in favor of Watson on Watson's claim(s) against Balfour;

5. That the Court grant judgement against Library Associates and in favor or Watson, and award Watson actual and punitive damages, plus interest, costs and reasonable attorney's fees.

6. That the declarations Library Associates seeks from the Court be denied;

7. For the reasonable attorney's fees and costs incurred in defending this action;

8. For a jury trial on all issues so triable; and

9. For such other and further relief as this Court deems just and proper.

Respectfully submitted this the 26th day of June, 2019.

SMITH TERRY JOHNSON & WINDLE



Don R. Terry, SC Bar 101395
150 Milestone Way, Suite C
Greenville, SC 29615
Voice: (864) 520-4847
Fax: (704) 626-6446
dterry@smithterrylaw.com
Attorneys for Watson Electrical Construction, Co., LLC

2019-CP-10-1108

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he/she served the foregoing **DEFENDANT WATSON ELECTRICAL CONSTRUCTION, CO., LLC'S ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES, CROSSCLAIMS AGAINST PLAINTIFF, AND COUNTERCLAIM** by depositing a copy in the United States mail, postage paid and addressed to the following:

W.H. Bundy, Jr.
PO Box 50427
Summerville, SC 29485
Attorney for Library Associates, LLC

Thomas C. Hildebrand, Jr., Esquire
Robert C. Bryd, Esquire
Taylor M. Morris, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
Attorneys for Balfour Beatty Construction, LLC

Gray B. Taylor, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd, Suite 200
Mt. Pleasant, SC 29464
Attorney for Metropolitan Life Insurance Company, A New Your Corporation

FILED
2019 JUN 27 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This the 26th day of June, 2019

Lynette Lemon

Balfour Beatty
Construction

1930 Camden Road
Charlotte, NC 28203

704-319-4000
704-319-4001 (Fax)

SUBCONTRACT

ELECTRICAL

DATE: March 20, 2015

TO: Watson Electrical Construction Co., LLC
3215 Fortune Drive Suite 109
Charleston, SC 29418

804-550-4881 (phone)
804-550-4889 (fax)

ATTN: Bill Brittelli

PROJECT NAME: Hotel at Marion Square
PROJECT ADDRESS: 404 King Street
Charleston, SC 29403

PROJECT #: 13026000
VENDOR #:
CONTRACT#: 003
COST TYPE: 42040

You are authorized to proceed with furnishing and installing all work specified on the attached Scope of Work and required by this Subcontract:

$3,963,792.00 (Three million nine hundred sixty-three thousand seven hundred ninety-two dollars)

Retainage: 10.0000 %

The Owner of the Project is: **Library Associates, LLC.**.

The "SUBCONTRACT Documents" include this Subcontract form, the Subcontract Terms and Conditions, and all other applicable Exhibits including;

- Exhibit A - Contract Documents
- Exhibit B - Scope of Work
- Exhibit C - Special Provisions
- Exhibit D - Safety Plan
- Exhibit E - Site Logistics Plan
- Exhibit F - Lien Releases
- Exhibit G - Pay Application
- Exhibit H - Project Schedule
- Exhibit I - Quality Control Plan
- Exhibit J - Insurance Certificate
- Exhibit K - Bond Forms
- Exhibit L - Provisions Applicable to Publicly Funded Projects
- Exhibit M - EEO Policy
- Exhibit N - Design Build/Design Assist Rider
- Exhibit O - State Law Rider

Exhibits may be omitted even if listed above. The Special Provisions will list the omitted exhibits, if any.

Balfour Beatty Construction

Watson Electrical Construction Co., LLC
Subcontractor

By: _____

Name: Carroll Lipscombe

Title: CHIEF FINANCIAL OFFICER

State Contractor License #: M106527

Federal ID#: 61-1440043

Date: 5-13-15

Balfour Beatty Construction, LLC
Contractor

By: _____

Name: Mike Baumbach

Title: Senior Vice President/BUL

State Contractor License #: 110668

Federal ID#: 20-1627180

Date: _____

EXHIBIT A

This Subcontract is not binding until accepted
This Subcontract covers the contract amount only
Additional work is to be billed separately

SUBCONTRACT TERMS AND CONDITIONS

Article 1: General

A. Subcontractor will fully perform and timely complete, as an independent contractor, all work (Work) in accordance with the Subcontract, including the documents identified on **Exhibit A** (Contract Documents), the Scope of Work described in **Exhibit B** and the Special Provisions described in **Exhibit C** for the Subcontract Price as shown on the Subcontract. The Subcontract Price includes all materials, equipment, bonds, labor, sales and use taxes, supervision, insurance, overhead and profit required to perform the Work. If there is any conflict between the Subcontract and a Contract Document, the more strict provision governs. Time is of the essence in performing all Subcontract obligations.

B. Prior to executing this Subcontract, Subcontractor has carefully determined to its satisfaction all requirements of this Subcontract and the extent and the costs of all aspects of the Work, and has:

i. ascertained the conditions and requirements of its Work, including: a) the location, accessibility and character of the site and adjacent areas; b) surface conditions and reasonably ascertainable subsurface conditions (including potential water, materials, utilities or obstacles); c) any errors, omissions or conflicts in the Contract Documents that could reasonably be discovered by a Subcontractor experienced in the Work in the area of the Project; d) existing facilities at or near the site; e) transportation, disposal, handling and storage of materials or equipment; f) labor availability; g) location and availability of utilities; h) needed equipment and facilities; i) uncertainties of weather; and j) all federal, state, and local legal requirements, codes and regulations (collectively, Legal Requirements) applicable to any aspect of the Work or to Subcontractor; and

ii. reviewed this Subcontract and all information made available by Contractor or others, satisfying itself with the correctness and accuracy of this Subcontract and the Subcontract Price in light of all information and required investigations.

C. Subcontractor acknowledges the critical importance to the Project and to all Project personnel of Contractor's "Zero Harm" safety initiative and Contractor's safety requirements. Subcontractor will comply with Contractor's safety requirements in **Exhibit D,** all Legal Requirements relating to safety in executing the Work and disposing or handling materials (including any hazardous materials), and all rules of Contractor and Owner regarding the performance of Work and the Project site, including compliance with the Site Logistics Plan attached as **Exhibit E**. Subcontractor at all times maintains primary control of and responsibility for safety for its Work, and will meet or exceed all safety requirements of this Subcontract. Subcontractor will at no time start, continue or resume any Work which Subcontractor or any representative of Contractor or Owner identifies as unsafe, until Subcontractor has taken corrective measures satisfactory to Contractor. Failure of Contractor or others to stop an unsafe practice will not relieve Subcontractor of its responsibilities. If Subcontractor or any person for whom Subcontractor is responsible fails to enforce the Contractor's safety requirements or any safety-related Legal Requirement, Contractor may, in addition to other remedies, bar such party from the site.

D. With respect to its Work and this Subcontract, and in addition to the other duties specified in this Subcontract, Subcontractor owes to Contractor the duties timely and fully to: (i) comply with all Legal Requirements; (ii) provide within 3 business days any requested written assurances of complete and timely performance, including assurances prompted by any actual or potential insolvency, bankruptcy or failure to continue as a going concern; (iii) be responsible for the acts or omissions of its laborers, and those of its subcontractors and suppliers at all tiers (collectively, Lower Tiers); (iv) ensure that all obligations of this Subcontract and the Contract Documents are included in all agreements involving Lower Tiers as respects their performance of any Work; (v) comply with this Subcontract and the Contract Documents, assuming towards Contractor all obligations that Contractor has assumed towards Owner in the Contract Documents, and being bound to Contractor in the same manner as Contractor is bound to Owner under the Contract Documents, with respect to the Work; (vi) enforce Balfour Beatty's Supplier Code of Conduct (http://balfourbeattyus.com/Partners/Sub-Contractors/Suppliers--Code-of-Conduct.aspx), or one just as stringent, and otherwise to insure that no laws are broken in respect of this Subcontract; (vii) promptly provide all financial and performance information required by Contractor as part of Contractor's program for qualifying subcontractors to work on a Project with Contractor; and (viii) allow no bankruptcy or receivership filing to delay or otherwise adversely impact the Work, and consent upon request to any request by Contractor to expedite hearings or other actions by the bankruptcy court to minimize impacts on the Work or the Project.

Article 2: Payments to Subcontractor

A. Unless a shorter time is provided by the Contract Documents or by law, Contractor will make progress payments to Subcontractor within ten (10) days after Contractor's receipt of payment from Owner for Subcontractor's Work (including changes in the Work paid by Owner), to the extent of Subcontractor's interest in that payment. To the extent permitted by law, payment from Owner of amounts due Subcontractor is a condition precedent to the obligation to pay Subcontractor. Unless the Contract Documents or applicable law specify a different amount, 10.0000 % retainage will be withheld, which will be reduced and/or paid to Subcontractor as it is reduced and/or paid to Contractor by Owner, so long as Subcontractor is not in default. Contractor may withhold funds from monthly progress payments to protect Contractor because of any actual or reasonably likely default by Subcontractor. Title to material and Work incorporated into the Project will transfer to Owner as specified in the Contract Documents or if not so specified upon payment to Subcontractor. Neither title transfer nor payment by Contractor or Owner is an acceptance of any Work or stored materials.

B. Subcontractor must deliver the following as conditions precedent to Contractor's duty to make any progress payment: (i) the documents identified in Article 3.B below; (ii) certified payrolls, if applicable to the Project, in the form and frequency required by the Contract Documents; (iii) monthly, or at intervals as specified in the Contract Documents, Subcontractor's executed Partial Waiver and Release Upon Progress Payment, in the form attached as part of **Exhibit F** and, upon request by Contractor, an executed Partial Waiver and Release Upon Progress Payment from each Lower Tier which may have lien or bond claim rights, in the form also attached as part of **Exhibit F;** (iv) other releases and documents required by the Contract Documents or reasonably required by Contractor; (v) all items listed in Contractor's Stored Material Checklist (payment for materials stored off site is subject to Owner approval); and (vi) at intervals specified in the Contract Documents and at least five (5) business days prior to Contractor's deadline for submitting its partial payment estimate, an acceptable partial payment estimate on the form at **Exhibit G.** After review and any appropriate adjustments, Contractor will include Subcontractor's partial payment estimate in its payment request to Owner.

C. Subcontractor should send all final payment requests within thirty (30) days of its completion of its Work. As conditions precedent to final payment, Subcontractor must: (i)complete all Work in accordance with the Contract Documents and to the reasonable satisfaction of Owner and Contractor; (ii) deliver all final lien and claim waiver forms from it and from Lower Tiers which might have lien or bond claim rights (in the form at **Exhibit F**), all required warranties and guaranties, all maintenance manuals, all attic stock, certified payrolls, insurance information and all other documents or materials required by the Contract Documents; and (iii) send all final payment requests no later than sixty (60) days after final completion of the Project. Subcontractor's failure to send a payment request within sixty (60) days after final completion of the Project waives any and all claims by the Subcontractor.

D. Contractor may withhold amounts due under this Subcontract or any other agreement between the parties to cover Contractor's reasonable estimate of any costs or liability Contractor or its surety has incurred or may incur for which Subcontractor may be responsible. The phrase "any other agreement between the parties" includes any agreement between Subcontractor and Contractor or any joint venture or other entity in which Contractor and/or Subcontractor have an ownership interest.

E. Contractor may issue joint checks to Subcontractor and any laborer, Lower Tier, pension or benefit fund, or labor union if, in Contractor's reasonable judgment, joint checks are necessary to ensure payment to those parties or if those parties have threatened to file or filed liens, suits or demands against Owner, the Project, Contractor or its sureties. Contractor may also pay such party directly in those circumstances. All joint checks or direct payments will be for the account of Subcontractor. No payment under this Article will create a contract with any third party nor any continuing duty to make payments to any party.

Article 3: Operations

A. Subcontractor will promptly provide all information and documents required by Contractor or the Contract Documents as needed to utilize BIM or similar modeling, or as otherwise as needed to eliminate potential conflicts between areas of work on the Project, including but not limited to conflicts arising from wall openings needed for delivery or construction, conflicting structural and/or MEP requirements, and potential interferences from lifts, cranes and scaffolds.

B. Subcontractor must deliver the following as conditions precedent to performing any Work on site: (i) a fully executed Subcontract; (ii) insurance certificates satisfying the requirements of Article 8 below; (iii) acceptable, fully executed Performance and Payment Bonds unless waived in this Subcontract; (iv) a schedule of values

reflecting the best estimate of the true value of each phase of the Work, in accordance with this Subcontract and the Contract Documents; and (v) a written injury and illness prevention program and its code of safe work.

C. Subcontractor will at all times be thoroughly familiar with all requirements regarding the Work, and promptly notify Contractor, in writing and before proceeding with affected Work, of any deficiencies, errors, discrepancies, unanticipated site conditions, anticipated conflicts or unusual difficulties not specifically addressed in this Subcontract. Subcontractor will coordinate its Work with that of Contractor and all other subcontractors. Contractor will upon reasonable request provide shop drawings by other subcontractors to Subcontractor. Subcontractor will attend all coordination meetings and project meetings. Subcontractor's superintendent or foreman will represent Subcontractor and will have full authority to make decisions and commitments regarding Subcontractor's Work. All communications and notices given to the superintendent or foreman will be binding. Subcontractor represents that its superintendent or foreman is an expert in the Work, is a competent person as defined by OSHA, and is knowledgeable of all Legal Requirements

D. Contractor is not responsible for damage to Subcontractor's Work or stored materials or equipment caused by others, but will cooperate with Subcontractor to secure payment for such damage from the responsible party.

E. Subcontractor will be responsible for, and will use the highest degree of care in regards to, erecting and using scaffolding and all loading/ unloading of materials, tools and equipment from and onto hoists, elevators and/or cranes. During regular working hours and without charge, Subcontractor may share available cranes, temporary elevators and material hoists with Contractor and others; however, equipment use is subject to Contractor's schedule and reasonable construction priorities and Subcontractor's execution of any required release and indemnity agreements. Costs for equipment use on an overtime basis will be paid by Subcontractor. If "leave-out" areas are required by Contractor in the building skin, Subcontractor may be required to return out of sequence at these locations, the costs of which are included in this Subcontract Price.

F. Subcontractor will employ only laborers who will work in harmony with those employed by Contractor or other subcontractors, or by Owner in its operations. Subcontracts may be awarded and labor employed by Contractor or its other subcontractors without regard to union status. Subcontractor will not allow labor disputes to delay or hinder its Work, that of any other subcontractor, or Owner's operations.

G. Subcontractor will maintain a lien-free and claim-free Project, and timely and fully pay and/or insure payment of: (i) wages and benefits due to laborers; (ii) taxes, contributions, fees, penalties, and the like in respect of the Work or the Subcontract; and (iii) all amounts due all Lower Tiers and their laborers. Contractor may require satisfactory evidence as to the status of any payments or payment obligations in connection with this Subcontract.

H. In performing its Work, and in addition to the other duties specified in this Subcontract, Subcontractor owes to Contractor the duties timely and fully to: (i) furnish and pay for all permits, licenses, equipment, labor, materials, supervision, required safety measures, employee parking and transportation, hoisting and scaffolding required for the proper and complete performance of the Work; (ii) perform all Work with no unapproved deviations or substitutions; (iii) provide quality control to ensure that Work is performed in strict accordance with the Contract Documents and as needed to ensure first class quality; (iv) correct/replace any Work identified as defective during construction; (v) comply with Contractor's written directives; (vi) submit proper notices, warranties, change order proposals, shop drawings, as-built drawings, submittals, parts lists, O&M manuals and other documents or materials required by the Contract Documents or by Contractor; (vii) correct defects in the Work which appear within the guaranty or warranty period established in the Contract Documents or by law (if no period is stipulated in the Contract Documents or by law, then the guarantee and/or warranty will be for one (1) year from date of completion and written acceptance of the Work by Owner); (viii) perform all required lay-out accurately and completely from control lines or benchmarks provided by Owner or Contractor; (ix) execute and deliver, and/or deliver from suppliers, any special guaranty or warranty required by the Contract Documents; (x) clean up daily from its operations as required by Owner or Contractor, and/or if requested contribute reasonably to a composite clean-up crew at no additional cost; (xi) prevent any damage to or trespass on adjoining lands or facilities; (xii) reasonably inspect work of other trades to insure that it has been performed properly to accommodate Subcontractor's Work, and advise Contractor in writing of any deficiencies that would prohibit or interfere with the proper performance of the Work; (xiii) pay all royalties and avoid any infringement of patents or copyrights; (xiv) provide daily reports, Safety Data Sheets (or similar sheets as required), job hazard analyses (or similar documents reflecting safe planning for safety risks in the Work), copies of all subcontracts and purchase orders and other reasonable documentation requested by Contractor; (xv) remove any employee for reasonable cause upon written request of Contractor; (xvi) protect its Work and stored materials from damage or destruction until final payment, and avoid damage to the work or materials of other trades; (xvii) provide punch lists and complete all punch list work identified by Contractor or Owner; (xviii) release no hazardous materials, and

properly document and dispose of any hazardous materials discovered or used so as not to violate any Legal Requirement; (xix) provide and pay for power, gas, water, trailers, storage, temporary protection, guardrails, overhead protection and other temporary facilities needed for the Work; and (xx) provide such other services, documentation and materials needed to meet the Owner's requirements for the Work.

Article 4: Schedule

A. Contractor has provided the Project Schedule prior to execution of the Subcontract – an initial draft is attached as **Exhibit H**. Subcontractor will fully comply with the Project Schedule. Subcontractor will, within fifteen (15) days after the date of the Subcontract or within such other time as may be reasonably specified by Contractor, submit its input with respect to the Project Schedule. Subcontractor's input will be consistent with the Project Schedule, and will list Subcontractor's sequence and duration of activities. Contractor may prepare a revised Project Schedule and if so will consider Subcontractor's input in developing that schedule. Subcontractor will proceed with its Work in accordance with the Project Schedule or as otherwise reasonably directed by Contractor, and perform the Work so as to avoid delays or inefficiencies to work of other subcontractors and Contractor so as to permit timely Project completion.

B. Contractor may change the sequential order and/or duration of any work activities in the Project Schedule, including those of this Subcontract, to account for unanticipated delays, occurrences and other factors which alter Contractor's original Project Schedule, and may provide subsequent Project schedules. Contractor may require Subcontractor to prosecute its Work in such sequence as the progress of other subcontractors and the current Project Schedule dictate, with payment for additional costs and/or grants of additional time only as specified in Articles 4.D through 4.G.

C. To the extent that any Work delays or inefficiencies are caused by Subcontractor or those for which it is responsible, then Subcontractor will: (i) not be entitled to any additional compensation nor any time extension; (ii) on its own account, or as directed by Contractor, increase shifts, personnel, operations, days of work, equipment and facilities, and work overtime as needed, to overcome any such events at no increase in price; and (iii) if requested, submit within three business days for Contractor's approval a recovery schedule demonstrating how it will meet the current Project Schedule.

D. To the extent that any Work delays or inefficiencies are caused solely by Contractor or its other subcontractors, then Subcontractor will upon request take reasonable steps at no cost to Contractor or other subcontractors to mitigate the event. If those steps are unsuccessful, Contractor may: (i) grant Subcontractor in writing an equitable time extension, to the extent that Contractor reasonably determines that the time extension does not materially and adversely impact the Project critical path or the work of other subcontractors; or (ii) direct Subcontractor to work overtime, or other steps to accelerate. Where Subcontractor has been granted a time extension due to delays caused by Contractor or other subcontractors, the time extension will be the sole remedy for the delay, and no damages will be payable. Contractor will be liable for overtime or acceleration costs under this Article 4.D only to the extent caused by the gross negligence of Contractor in scheduling the Work with the work of other subcontractors. In that case, Contractor will pay Subcontractor for reasonable and demonstrable overtime wages (plus taxes, benefits, bond and insurance costs on those overtime wages) and increased material and equipment costs. To the extent that Contractor orders acceleration or overtime due to the acts or omissions of another subcontractor, Contractor will present Subcontractor's claims to the responsible party and Subcontractor's costs are recoverable only to the extent that they are paid by other subcontractors.

E. To the extent that any Work delays or inefficiencies are caused by an event for which Contractor and/or subcontractors are not entitled to a time extension under the Contract Documents (except for delays described in Article 4.D, for which compensation is allowed only as set forth in that Article), or in situations where the Owner has failed to grant a time extension requested by Contractor or directed a compensable acceleration, Subcontractor will, at Contractor's direction, work outside of regular work hours or take other necessary measures to maintain the current Project Schedule, without additional cost or expense to Contractor unless those costs are paid by Owner to Contractor. If Owner orders acceleration, then Subcontractor will be paid those amounts only paid by Owner to Contractor on account of Subcontractor's acceleration. Other impact or inefficiency costs arising from events covered by this Article 4.E are recoverable by Subcontractor only to the extent paid by Owner.

F. To the extent that any Work delays or inefficiencies are caused by an event for which the Owner provides a time extension, Subcontractor will receive an equitable extension of time but will not be entitled to any increase in the Subcontract Price or to damages or additional compensation as a consequence of such delays or related inefficiencies unless Owner pays those costs. Contractor will promptly pay Subcontractor the amount paid by Owner for Subcontractor's delay or inefficiencies.

G. Contractor will use reasonable efforts in presenting Subcontractor's claims for additional costs to Owner in those cases where Owner has accelerated Subcontractor or where the Contract Documents provide for payment for Work delays or inefficiencies and Owner's payment of such claims is a condition precedent to Subcontractor's recovery on its claims.

H. Within three (3) business days after commencement of any event of delay, disruption, acceleration, or other impact, unless a shorter time is required by the Contract Documents, Subcontractor must notify Contractor in writing of the event, and promptly provide any requested additional information. In all cases, Subcontractor must provide written notice to Contractor in sufficient time and form so that Subcontractor's claim may be reviewed by Contractor and, if appropriate, timely presented to the Owner. Compliance with the notice requirements of this Subcontract and the Contract Documents is a condition precedent to any claim for additional time or compensation arising out of a delay.

I. The remedies provided by this Article 4 are Subcontractor's exclusive remedies for all delays, impacts, inefficiencies or accelerations of the Work.

Article 5: Default and Damages

A. If Subcontractor fails to fully or timely comply with any duty imposed by Legal Requirements or this Subcontract, including the Contract Documents, it is in default. Subcontractor will be liable to Contractor for all losses, costs (including attorneys' fees and court costs) damages, claims, suits, fines or penalties incurred by Contractor or its sureties to the extent caused by the default. Subcontractor will remain liable to Contractor for the same period of time, and to the same extent, as Contractor may be liable to Owner, other subcontractors or third parties for any claims against Contractor or its sureties by any such parties arising from a default.

B. If Subcontractor has failed to cure a default within three (3) business days following written notice of default to Subcontractor (or where cure is not possible in that time, has failed to provide an acceptable plan to do so and to commence and continue to cure), then Contractor may do any or all of the following or take any other action permitted by law, without diminishing Subcontractor's liability for damages or costs arising from the default: (i) terminate this Subcontract for default, in whole or in part; (ii) make demand on Subcontractor's surety to perform the Subcontract and/or to indemnify Contractor for costs arising from the default; (iii) allow Subcontractor to continue to perform in whole or in part, but collect all damages arising as a result of the default; (iv) enter on the premises and take possession of all materials and equipment for the purpose of continuing or correcting the Work; (v) supply additional materials or labor at Subcontractor's cost; (vi) employ other firms or persons at Subcontractor's cost to complete or correct all or any part of the Work; or (vii) accept the conditions arising from the default but collect from Subcontractor the difference in value between the condition as required by this Subcontract and the accepted condition. Notice of a default is not required, and if not provided then Contractor will be deemed to have allowed Subcontractor to continue to perform without waiving the default, and Contractor may collect all damages arising as a result of the default.

C. Contractor may deduct and withhold from payments otherwise due Subcontractor the costs Contractor has incurred or may reasonably incur as a result of a default. When the default has been cured, or when the Project has been completed by Contractor and accepted by Owner, if the unpaid balance earned under this Subcontract exceeds the expense incurred by Contractor or its sureties as a result of the default and in paying any damages or costs due to Owner or third parties because of Subcontractor's default, such excess will be paid by Contractor to Subcontractor. If those expenses and/or damages exceed the unpaid balance, then Subcontractor will pay the difference to Contractor upon demand.

D. No failure to enforce terms of this Subcontract, nor any course of conduct by Subcontractor or Contractor, will amount to a waiver of any requirement of this Subcontract nor prohibit Contractor from enforcing its rights.

E. Subcontractor must timely and fully comply with the terms of the Project Quality Control Plan attached as **Exhibit I**.

Article 6: Electronic Documents

A. Subcontractor will utilize Contractor's electronic document management system if it is made available to Subcontractor for the Project. This system can accept electronic submission of submittals, applications for payment, proposed change orders and other items. By submitting documents electronically, Subcontractor is

affirming that it has the appropriate license to use the documents, and it is not violating any copyright or other rights of owners of original documents.

B. Subcontractor will utilize an electronic plan room to reference drawings if one is provided for its use. Subcontractor is responsible for updating the electronic plans with electronic as-built drawings as is necessary and required by the Contract Documents.

C. If Building Information Modeling (BIM) is being used on the Project as referred in Article 3.A., Subcontractor is responsible to comply both timely and completely with all requirements for the successful implementation of BIM on the Project. This includes submitting all necessary information on a timely basis that is required to successfully build the BIM model that will be used during construction.

Article 7: Indemnity

A. To the full extent permitted by law, Subcontractor will indemnify, protect and hold harmless Contractor and its surety (and any other parties as required by Contract Documents) and each of their respective officers, directors, members, managers, agents or employees, (individually, the "Indemnified Party" and collectively the "Indemnified Parties") from any and all claims, losses, demands, judgments, suits, actions and proceedings, as well as all attorneys' fees and costs which may be asserted against any Indemnified Party, to the extent arising out of or occurring in connection with: (i) any default or failure to timely or fully perform as required by Subcontractor; and/or (ii) any injury, loss, damage or death to any person or persons (including but not limited to any Indemnified Party) or any destruction of or damage to property, but only to the extent caused by the negligence or intentional wrongful acts of Subcontractor, its Lower Tiers, and its and their employees, or any other persons for which Subcontractor is responsible.

B. To the full extent permitted by law, in addition to the express duties to indemnify, protect and hold harmless, there is a duty, separate from the duties in Article 7.A, to defend each Indemnified Party in connection with a claim, demand or suit described in Article 7.A(i) or 7.A(ii) (collectively, the "Claims"). The duty to defend includes all costs of litigation, attorneys' fees, expert and consultant fees, settlement costs and reasonable expenses in connection with the claim or litigation, regardless of whether the Claims are valid or groundless and regardless of whether the defense of an Indemnified Party is maintained by that party or assumed by Subcontractor, as long as the Claims asserted are causally connected to Subcontractor's alleged or actual default described in Article 7.A(i), or to an alleged or actual negligent act or omission or intentional wrongful act as described in Article 7.A(ii). An Indemnified Party at its option may defend any or all of the Claims (at Subcontractor's expense) or tender to Subcontractor the defense of any or all of the Claims. Upon tender to Subcontractor, Subcontractor will promptly assume the defense of the Claims. If an Indemnified Party tenders the defense of a Claim to Subcontractor and Subcontractor fails to assume the defense, an Indemnified Party facing liability for the Claim may defend, compromise and/or settle any such suit or action, and Subcontractor will be bound and obligated to reimburse each Indemnified Party for the amount expended in settlement, and/or the amount expended in paying any judgment, together with all reasonable attorneys' fees and costs of litigation, so long as the Indemnified Party demonstrates that the settlement or compromise was made in good faith and the Claim was one for which the duty of defense was owed. If a Claim under Article 7.A(i) is tendered and the defense is accepted, uninsured defense costs (if any) incurred by Subcontractor are subject to repayment by Contractor only to the extent that a final judgment in connection with the Claim determines that Contractor rather than Subcontractor is responsible for the Claim.

C. In addition to the foregoing obligations, where the Contract Documents require either Contractor or Subcontractor to provide an indemnity or defense of Owner or any other party in circumstances beyond those stated in Articles 7.A and/or 7.B, Subcontractor agrees that, in respect of its Work under this Subcontract, it will indemnify, defend and hold harmless: (i) all such parties to the full extent required of Subcontractor by the Contract Documents; and (ii) Contractor, to the full extent that Contractor is required by the Contract Documents to indemnify, defend or hold harmless any such party with respect to Subcontractor's Work.

D. The obligations of this Article are not limited by insurance limits in policies maintained by Subcontractor. Nothing in this Article will be interpreted to require Subcontractor to indemnify, defend or hold harmless any party to the extent such an obligation is prohibited by law. To the extent that applicable law would invalidate any part of the indemnity and defense obligations of this Article, then this Article will be interpreted and applied only to the extent legally permitted.

E. Neither termination for any reason, nor final payment by Contractor, nor acceptance of the Work, will waive any obligations of Subcontractor under this Article.

F. The cause of action on a claim for indemnity under this Subcontract or any bond provided by Subcontractor will accrue on the later of: (i) the date of a written demand for indemnity to Subcontractor or its surety; or (ii) the date when Contractor or its surety makes the last payment with respect to which indemnity is sought.

Article 8: Insurance and Bonds

A. Prior to starting Work, Subcontractor will provide a certificate that corresponds, at a minimum, to insurance evidenced on **Exhibit J** (Sample Insurance Certificate) and, if requested by Contractor, certified copies of all insurance policies. All policies will be written through a company authorized to transact that class of insurance in the state of the Project and will be with insurers acceptable to the Contractor with an A.M. Best rating of A- or better. Subcontractor will maintain all insurance for the periods required by the Contract Documents, and in no event less than one year after completion of the Work and for a period equal to any applicable statute of repose years in the case of products-completed operations coverage. Limits and terms shown are the minimum acceptable, and in no way limit available coverage under policies maintained by Subcontractor.

B. Certificates of insurance for the commercial general liability policies will name Contractor, and others as required by the Contract Documents, as additional insureds for both ongoing and completed operations, as evidenced on Form No. CG 20 10 11 85, CG 20 26 11 85 or equivalent forms (ISO Form B, to be supplied to Contractor together with insurance certificate). The Project/job description and/or description of operations on all certificates, endorsements and other insurance documentation will include the provision "All Work Performed for the Additional Insureds." Commercial general liability policies will:

   i. be written on an "occurrence" basis, with a provision that defense costs are paid in addition to and do not deplete policy limits, provide that the limits apply per project, and contain a severability of interest or separation of insureds provision; and

   ii. include coverage for broad form property damage coverage, on-going and products-completed operations, bodily injury or property damage, premises operations, blanket contractual liability (for this Subcontract), independent contractor's liability, mobile equipment, elevators, damage from explosion, collapse and underground hazards ("XCU"); and

   iii. Contain no exclusions for cross-liability or cross suits, soils or earth movement, or residential, condominium, multi-family or multi-unit dwellings.

C. Subcontractor's insurance will be primary and non-contributory to any insurance maintained by Contractor and/or Owner. Subcontractor will provide thirty (30) days written notice to the Contractor prior to expiration or cancellation of any insurance. Subcontractor is responsible for all deductibles in policies provided by Subcontractor. Renewal certificates and endorsements for commercial general liability will be provided to Contractor, at no expense to Contractor, prior to expiration of such insurance. Subcontractor will insure all material stored off site and all material in transit.

D. Subcontractor, for itself and on behalf of its insurers, waives claims as to, and releases Contractor, its surety, Owner and any other additional insureds as required by this Subcontract from, liability for loss or damage covered by Subcontractor's policies of insurance, or liabilities or losses that are required to be covered by insurance under this Subcontract. Subcontractor will obtain a waiver of any subrogation right that its insurers may hold or acquire against the Owner, Contractor and any additional insureds by virtue of payment of any such loss covered by such insurance. To the extent permitted by applicable law, Subcontractor waives all rights of its carrier to any statutory workers compensation liens. Subcontractor and its lower-tier subcontractors will submit worker's compensation, commercial general liability, and business auto liability accident reports to their insurance carriers immediately after any accident and will furnish to Contractor copies of such reports.

E. Subcontractor will require insurance coverage from Lower Tiers identical to that required of Subcontractor. Subcontractor will require Lower Tiers to name Contractor, and others as required by the Contract Documents, as additional insureds on the Lower Tiers' commercial general liability insurance policies and will provide Contractor with a waiver of subrogation from the Lower Tiers' worker's compensation carriers. Subcontractor will require its Lower Tiers to obtain Form No. CG 20 10 11 85, CG 20 26 11 85 , or equivalent forms (ISO Form B), for ongoing and completed operations from its commercial general liability carrier, which endorsements will be furnished to Contractor as a condition precedent to Subcontractor's right to be paid for any Work performed by the Lower Tier.

F. If Subcontractor or any Lower Tier fails to procure, maintain or pay for the insurance required by this Agreement, Contractor may, in its discretion and at Subcontractor's cost, establish other financial risk transfer mechanisms and/or secure the same or similar insurance coverage.

G. Subcontractor will immediately notify (or cause its insurers or insurance broker to notify) Contractor of any notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which names Owner, Contractor, its parent, subsidiary or affiliated companies or their officers, directors or employees as additional insureds or which may otherwise impact the ability of Subcontractor to fully perform its obligations.

H. The insurance requirements in this Article are independent from all other obligations of Subcontractor under this Agreement, the Contract Documents or at law, including, without limitation, all indemnification provisions. This Article will survive termination for any reason, and will apply regardless of the enforceability of any other provision in this Agreement.

I. Contractor or Owner will furnish and pay for builder's risk insurance, which will include fire, extended coverage, vandalism, named windstorm, and malicious mischief. Subcontractor's Work performed and materials stored on the jobsite for incorporation into the Work will be covered to the extent of such policy. Proceeds from the policy will be paid to Subcontractor to the extent paid by the insurance company for Subcontractor's loss. Builder's risk insurance does not include temporary buildings, Subcontractor's tools or equipment not incorporated in the Work. If there is a loss insured under the builder's risk policy, Subcontractor will be bound by any adjustment made between Contractor and/or Owner and the insurance company or companies, and Contractor's liability to Subcontractor for such loss will in all cases be limited to amounts actually paid on Subcontractor's claims. If the builder's risk insurance contains any deductible not paid by Owner, the deductible cost will be paid by Subcontractor to the extent that the loss is caused by Subcontractor. If an event not caused by Subcontractor causes loss to Subcontractor and others, any deductible costs will be equitably allocated among all parties suffering damage.

J. Unless expressly waived in the Special Provisions or in writing by an officer of Contractor, Subcontractor will pay for, furnish to Contractor at the time this Subcontract is delivered by Subcontractor, and maintain in full force and effect an acceptable 100% performance bond and a 100% payment bond on Contractor's standard bond forms (**Exhibit K**), written by a surety company acceptable to Contractor. The surety must have a Treasury limit of not less than the amount of the Subcontract Price or the sum of $500,000, whichever is greater, and which will have an AM Best rating of A- or better. The bond cost is included in the Subcontract price unless otherwise provided in the Special Provisions. Upon a default by Subcontractor and notice to the surety, the surety will either indemnify Contractor for losses and costs arising from the default, or timely and fully perform Subcontractor's obligations, or both, all in accordance with the terms of the bond. No change, alteration or modification to or deviations from this Subcontract or the Contract Documents will release in whole or in part any surety on any bond and Contractor will be under no obligation to notify the surety of any such change. Any increase in the Subcontract amount will automatically result in a corresponding increase in the penal amount of the bonds without notice to or consent from the surety, such notice and consent being waived by this Subcontract. Decreases in the Subcontract amount will not, however, reduce the penal amount of the bonds unless specifically provided in any Change Order decreasing the scope of Work.

K. Contractor may at its option elect to enroll Subcontractor in a Subguard default insurance program in lieu of Subcontractor's providing bonds. If Contractor so notifies Subcontractor in writing, then Subcontractor will provide a letter from its surety confirming that Subcontractor is eligible for and qualified to receive bonds for its Work on the Project and provide other required qualification information. No obligation to provide a bond is excused until Contractor provides a written notice of that waiver. The use of Subguard does not limit Subcontractor's liability.

L. If required bonds are not timely delivered, Subcontractor is in default. Contractor may either waive such requirement in writing signed by an officer of Contractor, or terminate this Subcontract in whole or in part and seek damages. The insolvency of the surety, the revocation of the surety's right to do business or license to issue bonds in the state of the Project, the removal of the surety from the list of federally approved sureties as indicated by the Federal Register, or the surety's failure to maintain an AM Best rating of A- or better, will each be deemed an act of default of Subcontractor.

Article 9: Changes

A. Unless a different standard is specified in the Contract Documents or on the Scope of Work or Special Provisions attached, Subcontractor has included in the Subcontract Price all amounts necessary timely to perform all Work

shown on and reasonably inferable from the Contract Documents, including all Work needed to obtain Owner's acceptance of the Project. Subcontractor agrees to provide all such Work without additional compensation or time except to the extent that Owner provides a time extension or additional compensation for the Work or unless Contractor specifically requests in writing a change proposal and/or authorizes additional Work in writing. Claims for additional costs or time extensions for errors, inconsistencies or omissions in the Contract Documents will not be recognized unless recognized and paid by Owner. The following apply to all changes or requests for changes:

i. Subcontractor will be bound by all interpretations of Owner or its authorized representative that, by the Contract Documents, are binding on Contractor.

ii. Contractor may at any time, unilaterally or by agreement with Subcontractor, without notice to Subcontractor's sureties, make changes in the Work covered by this Subcontract. Upon written direction by Contractor, Subcontractor will proceed with specified extra work or changes so as not to delay the Work or the current Project Schedule. Any unilateral directive or mutual agreement must be in writing. If a change is ordered in writing by Contractor independent of the Owner or the Contract Documents provided by the Owner, Subcontractor will be entitled to an equitable adjustment in the Subcontract price. If Subcontractor considers any action or inaction by Contractor other than a formal written change order to be a change, it will so notify Contractor in writing within three (3) business days of the action or inaction, and seek a confirmation in writing from Contractor before proceeding with alleged change.

iii. Subcontractor will submit requested or required change order proposals in a form reasonably acceptable to Contractor, within five (5) business days of the request or the event giving rise to the proposal, unless a shorter time period is specified in the Contract Documents. Requests or claims that involve the conduct of the Owner or the Contract Documents must always be submitted in writing in sufficient time to allow Contractor to comply with the applicable provisions of the Contract Documents. The quotation must be supported by a time impact analysis, a cost breakdown, a quantity survey, unit prices and unit labor hours, markup for overhead and profit, and any other information requested by Contractor. The amount to be paid to Subcontractor and/or its Lower Tiers for overhead and/or profit for additive changes will be as allowed by the Contract Documents. If a change in the Work consists of both additions and deletions, any overhead and profit will be computed on the excess of the additive costs over deductive costs. Subcontractor will pay any additional bond and insurance premium associated with any change, and keep its surety informed at all times of changes to the Subcontract.

iv. Contractor's liability for costs arising from changes ordered by the Owner, or for deficiencies in the Contract Documents provided by the Owner, is limited to the amounts Contractor recovers from the Owner for those events. Payment on account of pending changes made by the Owner will be made only to the extent that Contractor receives payment from the Owner for Subcontractor's changed Work. Unless the change order as executed by Contractor reserves specific rights, an executed change order is a full and final settlement of all claims for time and compensation arising from the changes and events referenced in the change order.

B. Work done on a time-and-material basis must be signed for daily by Contractor's authorized representative and invoiced weekly no later than the month in which the Work was done. No payment for time-and-material work will be made unless the Work has been authorized in writing by Contractor's representative, outlining the rates and terms of payment and the appropriate daily approval requirements. A signed ticket is not an acknowledgement that additional compensation is due or an acceptance of any Work.

Article 10: Contract Interpretation and Disputes

A. Any disputes between Subcontractor and Contractor not involving the conduct of the Owner or the Contract Documents will, at the election of Contractor, be settled by arbitration by the American Arbitration Association under its Construction Arbitration Rules , or by a specified arbitrator or different arbitration service if the parties so agree in writing. The arbitration may include other parties if appropriate. The award rendered by the arbitrator(s) is final and may be entered in and enforced through any court having jurisdiction. Arbitration will be in the county of the Project unless the parties agree otherwise in writing. The arbitrator must apply the laws of the state of the Project and this Subcontract in determining responsibility and liability, and explain in writing the factual and legal basis for the decision. The arbitrator will have the authority to award the prevailing party its share of the arbitration costs. Absent such an award, each party will pay its pro rata share of the arbitration costs. The prevailing party will be entitled to attorneys fees for the arbitration only to the extent that such fees are required by applicable law, or to the extent that the arbitrator finds that it is equitable and just to award some or

all such fees because either: (i) the claims or defenses of either party were asserted or maintained without a reasonable basis in fact or law; or (ii) the party seeking its fees had made a written offer of settlement which was rejected (or to which no response was provided) and: (a) if the requesting party is the claimant, then the requesting party recovered as much or more than its offer; or (b) if the requesting party is the defendant, then the requesting party prevailed in the arbitration at least to the extent that the claimant did not recover more than the amount of the written offer. The prevailing party in any litigation required to enforce or vacate an arbitration award will be entitled to recover its attorneys' fees and costs.

B. If disputes between Contractor and Subcontractor involve the conduct of the Owner or an interpretation or requirement of the Contract Documents, then Subcontractor must follow all claim, notice and disputes procedures and requirements of the Contract Documents, and Subcontractor recognizes that it may be joined into any court or arbitration proceedings required by the Contract Documents. Subcontractor is bound to Contractor to the same extent that Contractor is bound to the Owner by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made by the party, board or court authorized in the Contract Documents or by law, regardless of whether Subcontractor is a party to the proceedings. Subcontractor will, as a condition precedent to its right to prosecute any claim, comply with all notice, claim and dispute resolution provisions of the Contract Documents, including allowing a reasonable time for Contractor to analyze and forward to the Owner any required communications or documentation. Contractor will, at its option: (i) present to the Owner in Contractor's name or (ii) authorize Subcontractor to present to the Owner in Contractor's name, all of Subcontractor's claims, and answer the Owner's claims involving Subcontractor's Work, whenever Contractor is permitted to do so by the terms of the Contract Documents. If the dispute is prosecuted or defended by Contractor, Subcontractor at its expense agrees to furnish all documents, statements, witnesses, and other information required by Contractor and to pay or reimburse Contractor for Subcontractor's allocable share of reasonable costs incurred by Contractor in connection with the dispute, including attorneys' fees. Subcontractor will timely furnish Contractor with any claim certification required by the Contract Documents or by a Legal Requirement, in a form satisfactory to Contractor, and agrees to indemnify, defend, and hold Contractor harmless from any losses, claims, damages or expenses Contractor may incur as a result of Subcontractor's failure or inability to support any part of the claim as required by the certification or by a Legal Requirement. Contractor will not certify a claim when it cannot do so in good faith.

C. If Contractor or its surety notifies Subcontractor in good faith that any arbitration or lawsuit brought under Article 10.A involves a controversy within the scope of Article 10.B, then dispute process under Article 10.A must be stayed until the procedures under Article 10.B are completed.

D. If Contractor elects not to invoke the arbitration procedures set forth in Article 10.A, then all claims, disputes and other matters in controversy between Contractor and Subcontractor arising out of or relating to the Subcontract and covered by Article 10.A will be resolved through litigation in the state court in the County of the Project or in the federal court closest to the location of the Project. The prevailing party will be entitled to recover its reasonable attorneys' fees and court costs in connection with any such litigation. EACH PARTY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT, UNLESS THE MATTER ARISES UNDER ARTICLE 10.B AND THE CONTRACT DOCUMENTS ALLOW THE OWNER A RIGHT TO TRIAL BY JURY.

E. The warranty period specified in the Subcontract or in the Contract Documents is not the exclusive period during which Subcontractor is liable for defects in its Work; that liability will extend to the end of applicable statutes of limitation and/or repose.

F. Unless otherwise agreed in writing by the parties, Subcontractor will timely and fully perform the Work during any dispute and Contractor will make payments to Subcontractor to the extent required. Subcontractor will make relevant books and records available for inspection and copying if it asserts a claim for additional compensation or if Contractor reasonably contends that Subcontractor is in default under this Agreement.

G. This Subcontract is governed by the laws of the state of the Project, without regard to any contrary conflicts of laws rules of that state. Both parties waive all claims for their own special, indirect or consequential damages in connection with any dispute or claim related to this Subcontract or the Project. This waiver does not preclude liability for liquidated damages or consequential damages assessed by Owner or payable to third parties.

Article 11: Termination

A. Contractor may terminate this Subcontract for Contractor's convenience and without cause by written notice to Subcontractor. If there has been a termination for convenience of Contractor's contract with the Owner, then Subcontractor will be paid the amount if any paid by Owner to Contractor as termination costs for Subcontractor's Work. In case of termination just for Contractor's convenience, Subcontractor will be paid for Work executed through the date of termination and reasonable demobilization costs. No recovery will be allowed for overhead or profit on any Work not performed by the date of termination.

B. If Subcontractor is terminated for default in whole or in part due to its failure to cure or commence to cure a default as required by Article 5.C, that termination will not relieve Subcontractor of any liability for damages, claims or suits caused by any default or arising from the termination. If a court or arbitrator determines that Contractor erred in terminating Subcontractor for default, Subcontractor is limited to the damages it would have recovered had it been terminated for convenience.

C. Subcontractor is not entitled to unabsorbed overhead, anticipatory profits or any similar damages for any termination. Upon receipt of termination payments, the parties will have no further obligation to each other except for Subcontractor's obligations to perform corrective and/or warranty work relating to Work actually performed by Subcontractor, to indemnify, defend, and hold harmless Contractor as provided in this Agreement, and to maintain required insurances regarding its Work in place.

Article 12: Miscellaneous

A. If the Contract Documents identify certain public procurement clauses, regulations, or laws applicable to this Subcontract and the Project, then **Exhibit L** restates some or all of those clauses as required by the Contract Documents. Subcontractor confirms its obligation to comply with all applicable clauses in **Exhibit L,** the Contract Documents, and all Legal Requirements. Subcontractor will insure that all clauses and obligations of **Exhibit L** and/or the Contract Documents are included in all Lower Tier subcontracts and purchase orders as required by **Exhibit L** or the Contract Documents. On all projects that receive federal, state or local funding, Subcontractor will comply with Contractor's Equal Employment Opportunity Policy set forth on **Exhibit M** attached and in addition will comply with all such policies promulgated by any governmental authority.

B. To the extent that Subcontractor is obligated by this Subcontract or the Contract Documents to perform any design or design- assist services, Subcontractor will comply with all requirements of **Exhibit N.**

C. All notices, consents, requests or other communications will be in writing, unless otherwise expressly provided to the contrary and will be deemed to have been made or given on the date sent when e-mailed, hand-delivered, or transmitted as electronic facsimile to the other party, at the address noted in the Subcontract. If notice is sent by first class mail or by overnight or similar services, it will be deemed made three (3) business days after mailing or upon receipt, whichever is first. Either party may designate a different address by written notice given to the other.

D. **Exhibit O** includes any changes to this form required by the law of the state of the Project. If any provision of this Subcontract is determined to be illegal, invalid or unenforceable under present or future laws, the parties intend the remainder to be unaffected and enforceable. In place of each clause or provision that may be determined to be illegal, invalid or unenforceable, and to the full extent permitted by law, the court or arbitrator is authorized to add a legally permissible clause or provision as similar as possible to that found unenforceable.

E. This Subcontract has been reviewed, negotiated and accepted voluntarily and after due consideration, with advice from counsel as the parties deemed appropriate, and represents the entire agreement of the parties. This Subcontract may be amended only by change order signed by the parties. No part of this Subcontract may be assigned by Subcontractor without Contractor's written consent.

F. Except as required by law, Contractor's sureties have no greater or different obligation to pay Subcontractor than does Contractor, and further are entitled to enforce this Agreement if the sureties perform in place of Contractor. Contractor's surety is an express third party beneficiary of this Subcontract. Owner, Architect and Owner's lender are third party beneficiaries to the extent required by the Contract Documents. There are no other third party beneficiaries.

G. Execution of the Prime Contract by Owner and Contractor is a condition precedent to the effectiveness of this Subcontract.

H. The persons executing this Subcontract, and any change orders, claims, and lien or claim waivers or releases on behalf of Subcontractor, have actual authority to execute those documents.

EXHIBIT G – APPLICATION FOR PAYMENT

Pay Request #: _____
Work Performed Through _____

Subcontractor's Name: Watson Electrical Construction Co., LLC
Subcontractor's Address: 3215 Fortune Drive Suite 109, Charleston, SC 29418
Phone Number: _____
Fax Number: _____

Project Name: Hotel at Marion Square Project No.: 13026000 Date: _____
Owner: _____

Description of Work: Electrical

Original Contract Amount:	$3,963,792.00
Change Order Total:	
Through C/O#: _____	
Total Revised Contract	
Value of Work Performed to Date	
Value of Materials Stored On Site	
Value of Materials Stored Off Site	
Current Month (Stored Materials)	
Total	
Less 10.0000 % Retainage	
Amount Earned to Date	
Less Previous Billings/Payments	
Less Adjustments/Joint Checks	
Less Pending Back Charges	
Total Amount this Requisition	

Subcontract ☐ Purchase Order ☐
Other Contract Type _____

Unit Price ☐ Lump Sum ☐
Bonded ☐ Unbonded ☐

Subguard ☐ Alternate Plan ☐

Contract Increased 20%?	Y ☐	N ☐
If yes, bond rider received	Y ☐	N ☐
EEO Reports Current	Y ☐	N ☐
Certified Payrolls Current	Y ☐	N ☐
Insurance Status		
Insurance Expiration Date		
Release Attached	Y ☐	N ☐
Tier/Supplier Release if Required	Y ☐	N ☐
Reducing Retention	Y ☐	N ☐
If reducing retainage, reducing **From** ☐ To ☐		
Consent of Surety for retention reduction if bonded	Y ☐	N ☐
New materials stored off site If yes, attach stored materials checklist	Y ☐	N ☐
Final Payment If yes, see attached checklist	Y ☐	N ☐

Owner Billing Number _____
Owner Payment Rec'd Date: _____
Payment Terms: _____
Pay Select # _____

For Balfour Beatty Construction Use Only:

	CO #	Vendor #	Job #	Contract No.
			13026000	003

Date	Invoice #	Description

Gross Amount	Retainage Amt	Net Amount

Accrue Tax	Tax Code	Pay Item & Cost Code	
Yes No			

Halt Codes:

Approvals:

PM / Date PA / Date APA / Date

Exhibit C

300404 South TryonKing Street – Office TowerHotel at Marion Square
Charlotteston, SNC

SUBCONTRACT SPECIAL PROVISIONS

~~"Pursuant to N.C.G.S. §44A-11 et seq., the name and contact information of the Lien Agent for this project is as follows:~~

~~First American Title Insurance Company~~
~~19 W. Hargett Street, Suite 507~~
~~Raleigh, NC 27601~~

This information must be provided to all parties with which Subcontractor or Supplier contracts directly for labor, services or materials on the project. Further, the obligation to provide all lower tier subcontractors and suppliers with this Lien Agent information must be flowed by Subcontractor or Supplier to those with which it contracts."

~~The following exhibits are omitted:~~
~~Exhibit L Publically Funded Provisions~~
~~Exhibit N Design Build/ Design Assist Rider~~
~~Exhibit O State Law Rider~~

The following exhibits are omitted:
Exhibit L Publically Funded Provisions
Exhibit N Design Build/ Design Assist Rider
Exhibit O State Law Rider

The following exhibits are included:
~~Exhibit E Site logistics Plan~~
~~Exhibit H Project Schedule~~
~~Exhibit I Quality Control~~
~~Exhibit Q BIM Plan~~
~~Exhibit R CCIP Manual~~
~~Exhibit W Stored Materials~~
Exhibit X Surety letters
Exhibit Y Owner Contract~~Exhibit Y Owner Contract~~

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I. PROJECT PROVISIONS

These provisions shall apply to all Subcontractors on this particular project. The following Special Provisions modify, delete and/or add to the Subcontract Agreement. Where any paragraph or subparagraph in the Subcontract Agreement is supplemented by one of the following paragraphs, the provisions of such paragraph or subparagraph shall remain in effect and the special Provisions shall be considered as added thereto. When any paragraph or subparagraph in the Subcontract Agreement is amended, voided or superseded by any of the following paragraphs, the provisions of such article, paragraph or subparagraph not so amended, voided, or superseded shall remain in effect.

1. In addition to the Standard Form Agreement Subcontractor must comply with paragraphs A through F below:

   A. Begin submittal of shop drawings, product data, samples, certificates, test reports, etc. ***no later than 3 calendar days after notice of award of Subcontract***. (Issuance of subcontract shall not be cause for delay of Submittals.) Failure to submit correct or timely submittals does not relieve this subcontractor of material delivery obligations in accordance with the project schedule.

B. Complete submittal of shop drawings, certificates, test reports, etc. no later than 28 calendar days after Contract Execution.

C. Resubmit any items within a maximum of 7 calendar days after being returned for correction (or as required to maintain schedule). Failure to submit correct or timely submittals does not relieve this subcontractor of material delivery obligations in accordance with the project schedule.

D. The Trade Payment Breakdown shall include a line item for submittals and as-builts in an amount agreeable by the project team. This dollar amount will be released when all submittals are complete and approved with confirmed shipping dates. Subcontractor shall include with each payment application a material log. The material log must be fully executed and include all major materials and equipment used on the job with confirmed delivery dates noted for each material approved. Subcontractor must furnish from supplier with material log, written evidence of confirmed shipping dates of major materials and equipment.

E. All subcontractors shall submit to the Construction Manager's field office all Material safety Data Sheets (MSDS) for all hazardous substances as defined by Government authorities at the time of delivery. This shall be a job specific submittal, not a generic company-wide submittal.

2. **SCHEDULE OF VALUES:** In addition to any other provisions listed herein, Subcontractor hereby agrees to allocate a reasonable and fair share of cost as determined by Contractor in the schedule of values for requisitioning of the following items of work under this Agreement.

A. Material Submittals - to be requisitioned as a lump sum amount upon 100% completion.

~~B. LEED Submittals – to be requisitioned as a lump sum amount upon 100% completion.~~

(B. Clean up - total clean-up cost allocated to this Project to be requisitioned based upon actual performance of clean up. (see Item #43 requirements)

D C. Close -Out information - including as-builts, owner manuals, warranties, etc. to be requisitioned as a lump sum amount upon 100% completion of these submittals. (see Item #1E above)

E D. Punchlist - value shall be 2% of subcontract value to be requisitioned as a lump sum amount upon 100% completion.

3. **SCHEDULE**: Subcontractor is cognizant of the ~~aggressive~~ project schedule and has factored all required material expediting requirements, overtime and manpower loading to complete the work within Contractor's Project schedule.

4. **METHOD OF CALCULATING PAYMENT FOR EXTRA WORK:** The cost or credit to Contractor resulting from a change in the Work shall be determined in one or more of the following ways at Contractor's option, in addition to the Standard Form of Agreement.

A. Lump Sum - A change order cost or credit may be determined by mutual acceptance of a lump sum proposal properly itemized and supported by sufficient data to permit evaluation.

B. Unit Price - A change order cost or credit may be determined by the use of the unit prices stated in the Contract Documents or subsequently agreed upon.

C. Time and Materials - A change order cost or credit may be determined on a time and material basis, using agreed upon hourly labor, equipment rates, material costs and applicable markups as indicated in the Standard Form of Agreement.

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D. Other - A change order cost or credit may be determined by Contractor without any recourse by Subcontractor if mutual terms and acceptable pricing cannot be agreed to by using any of the methods described in Items A, B, or C above.

E. No change order work will be undertaken by Subcontractor without prior acknowledgment and approval of Contractor.

F. All allowable mark-ups breakdowns shall be per Owner Contract Agreement. This project shall allow al combined profit and overhead of 150% of the sum of the Subcontractor's direct costs for labor (including labor burden) and material (including sales tax). For example: Subcontractors maximum cost for a change = [(Subcontractors direct labor cost including labor burden) + (Subcontractor's direct material cost including sales tax) + (Sub-Subcontractor{s})] x (1.15).

G. Back Charges – In the event of back charges between the Contractor and the Subcontractor or the Subcontractor and another Subcontractor, the Contractor and the Subcontractor will be entitled only to the direct cost of the additional work or repairs in question. No percentage mark-ups for indirect costs such as overhead and profit will be allowed.

H. Pricing - No greater than (10) days of receipt of a change the Subcontractor is required to provide pricing for change in the work to the Contractor.

5. **WORKING HOURS, OVERTIME, WEEKEND WORK & NOISEY WORK:** Unless changed by Contractor and posted at the job site, standard working hours are from 76:300 a.m. to 76:0030 p.m. Monday through Friday. All subcontractors shall observe these hours unless otherwise directed. Additionally, it is understood that to meet certain schedule requirements of the project it may be necessary to perform some work tasks during off-hours, and that workdays in excess of eight (8) hours will be required as a normal course of performing the Work. Any additional costs incurred by the Subcontractor, in the performance of this shift work, are the responsibility of the Subcontractor~~.~~. Work hours must be adhered to; if hours are not met then deductive change order will be written for hours not worked each week (labor to be deducted at same rate as approved additive change orders). 40 hours per week **minimum** work hours by full crew for work involved that week. It is further understood that due to the urban working environment and proximity to the Embassy Suites Hotel~~residential properties~~ that ~~due to Charlotte Mecklenburg noise ordinances~~ working hours for active construction work (exclusive of meetings, general coordination and some deliveries (as determined by city and neighboring properties as acceptable) that work is to be limited to 7:00am to 97:00pm, Monday through Friday, with 7:00 am to 5:00 pm ~~the same~~ hours governing on Saturdaysweekends. No Sunday Work.

It is agreed that the Subcontractor will make up any normal workday (Monday through Friday) time lost by working Saturday~~, Sunday, Holidays,~~ and/or extra shifts as necessary to maintain the project schedule at no additional cost to Contractor.

6. **MOBILIZATIONS, CONCURRENT WORK, PHASED TURNOVER:** Subcontractor acknowledges that the Project will have a phased turnover in accordance with the Project Schedule and that multiple mobilizations will be required and are included as part of the Subcontract Agreement. Additionally, Subcontractor acknowledges that the Project has multiple building areas and concurrent work on each building area will be required in order to complete on schedule, and that all costs for doing so including utilizing separate crews, supervision, after hours deliveries, shop drawings, inspections, etc. are included.

Subcontractor shall mobilize within three (3) calendar days of Contractor's notification with complete work force, materials, supervision, labor and equipment available to maintain and complete scheduled activities

Subcontractor also acknowledges that subsequent bid packages and scopes of work will proceed and/or follow work under this agreement. Subcontractor is herein required to schedule and coordinate with such subsequent bid packages to ensure continuity of work.

7. **LIMITATIONS OF OPERATIONS:** Subcontractor hereby agrees to arrange his Work and his material as not to interfere with the operations of other Subcontractors engaged upon adjacent Work and to join his Work to that of others in a proper manner, and in accordance with the intent of the Plans and Specifications and to perform his Work in the proper sequence in relation to that of other Subcontractors, all as may be directed by Contractor.

8. **COORDINATION:** In addition to the Standard Form Agreement, Subcontractor shall coordinate his Work with all of the other Work which must be performed in the Project. To facilitate this coordination, there shall be coordination meetings, the attendance at which shall be mandatory for Subcontractor's coordination responsibility. Daily coordination meetings with Contractor's Superintendents shall be held every work day at Contractor's on-site office at 6:30am until such time as Contractor waives or reinstates this requirement.

   All Subcontractors shall have their respective Superintendents attend this meeting. All Subcontractors shall provide daily force reports by 8:00am for the previous day's work and Pre Task Plans (PTP's) by 8:00am for the current days work ~~by 8:00 a.m.~~ All daily force reports and PTP's shall be on Contractor's form.

9. **MEETINGS:** - Subcontractor understands that weekly (or a frequency as otherwise determined by the contractor) project meetings, coordination meetings, subcontractor meetings, superintendent meetings, schedule meetings and separate weekly safety meetings will be held on the job site. Subcontractor agrees to have the necessary and competent personnel attend all required meetings.

10. **PRE-INSTALLATION CONFERENCE:** Subcontractor shall attend a pre-installation conference conducted by Contractor which may be attended by Architect/Engineer, Owner's representative and Contractor's staff as deemed necessary by Contract Documents and scope of work. At this conference, Subcontractor's personnel, including Project Manager, Superintendent and any other key personnel (including those specifically requested to be in attendance by Contractor) will be introduced and the Scope of Work will be discussed along with other key issues such as workmanship, quality control, schedule, safety, etc.

11. **PROJECT SAFETY:** In addition to the Standard Form Agreement, Subcontractor acknowledges Contractor's commitment to providing a safe workplace and will cooperate and participate in establishing a Project Safety Plan. Said plan, at a minimum, will include the formation of a Project Safety Team which will meet regularly to review the status of overall Project Safety, discuss accidents and near-misses, promote training and safety awareness and develop mutual incentive programs that might be applicable. Furthermore, Subcontractor will provide written notice of who their on-site Safety Competent Person will be and forward any and all MSDS related to their Work to Contractor prior to start of any work.

   a. 100% glove use will be required in all cases other than in instances where manufacturer/OSHA recommendations/standards specifically prohibit the use of gloves due to added risk involved with their use.

   b. All Subcontractors are required to use platform type step ladders.

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12. **DOCUMENTS:** Subcontractor shall be responsible for securing complete sets of Construction Specifications and Drawings. Subcontractor shall procure and pay for all required plans and specifications which shall be on file and available at a local blueprint company designated by Contractor.

13. **UTILITIES VERIFICATION:** Subcontractor shall verify locations of all existing utilities within the Construction Areas prior to commencing the Work. Subcontractor shall abide by the "Underground Facility Damage and Safety Act" which requires anyone doing any type of excavating, tunneling or

demolition to call all agencies having jurisdiction. An excavator must call the local utility companies, and the Owner's Facilities and Maintenance Department not less than two or more than five business days before beginning any excavation. Any damage to existing utilities during construction will be repaired immediately as required to minimize disruption of the businesses and residences at the expense of Subcontractor that caused the damage.

14. **"NO CHANGE" AGREEMENT:** It is the intent of this Agreement and consistent with the prior negotiations of this Agreement for Subcontractor to perform the Work under this Agreement without extra Change Orders to the Contract unless specifically requested by Owner, Architect or Contractor. Subcontractor agrees and understands that the Contract Documents as defined in "Exhibit A" of this Agreement may be incomplete in detail or contain inconsistencies. Subcontractor herein further represents and agrees that its Scope of Work is complete and shall be performed to Contractor's and Owner's complete satisfaction without cause for claim of additional cost or change orders. It is further understood and agreed that Contractor has entered into a Guaranteed Maximum Price (GMP) contract with Owner to complete this project based on the Contract Documents identified and described in "Exhibit A". Accordingly, claims for additional cost for inconsistencies in the Contract Documents will not be recognized. Subcontractor shall bear all cost of such claims that may arise as they relate to this Scope of Work. The subcontract lump sum price includes all cost to complete the intended Scope of work as represented by the Contract Documents. Should Owner initiate additional work to the Scope of Work, or upgrades to the Work originally described, a change order will be negotiated for the same between Contractor and Subcontractor.

16. **FIREPROOFING AND INSULATION:** Subcontractor will be responsible for the patching of all fireproofing and insulation materials damaged by the execution of his Work. This shall include any patchwork around hangers and/or supports. Also, subcontractor shall provide all necessary protection materials to prevent the work of other trades from being made dirty due to the fireproofing patchwork for your specific trade.

17. **FUEL STORAGE:** On-site storage of fuel will not be permitted.

18. **GUARDRAILS / SAFETY DEVICES:** Subcontractor shall install, maintain and replace all required guardrails in accordance with OSHA Standards as a minimum for the purpose of safety at all openings and suspended work, created as a part of their scope of work. Subcontractor is responsible for fall protection of all employees

Subcontractor is also responsible for all temporary access to facilities, temporary fencing, overhead protection, signs and/or barricades as may be required to perform their Scope of Work, in addition to Contractor's furnished construction fencing.

Subcontractor agrees that if in the performance of their work it becomes necessary, convenient or advisable to remove, replace or interfere with any safety devices or controls installed by the Contractor or another Subcontractor, the Subcontractor will replace or restore such devices or controls at their own expense. In the event such safety devices or controls are not so replaced or restored, the Subcontractor agrees to reimburse the Contractor or Subcontractor for doing so.

19. **SCAFFOLDING:** Subcontractor shall provide all scaffolding (or other means of access) required for the performance of this Subcontract. All scaffolding shall be erected in complete accordance with the latest OSHA Standards, and Balfour Beatty Exhibit D as a minimum including all handrails, mid-rails, toe-boards, fully decked platforms, entrance and exit points, proper counterweights and anchor points, material landing and staging areas, material hoisting requirements, proper access ladders or stairs, etc.

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19.20. **EXCAVATION:** All excavations must be in compliance with OSHA standards as a minimum. Subcontractor shall adhere to Contractor's Safety Program for excavations which may be more stringent than OSHA requirements. Subcontractor shall complete and submit to Contractor a job hazard analysis prior to commencement of all excavations. All soils for open cut excavations shall be classified as Type C (1.5:1 slope), unless Subcontractor can provide signed and sealed Engineering to Contractor illustrating existing soil conditions are allowed to withstand reduce slope cuts. Contractor

Trench Safety Program is initiated in excavations exceeding 4'-0" in depth. Subcontractor shall name Competent Person prior to starting work.

20.21. **OSHA VIOLATIONS:** In addition to the Standard Form Agreement, In the event Subcontractor is cited for violations of the Occupational Safety and Health Act, he shall be responsible for all penalties assessed against him. In the event Contractor is penalized due to Subcontractor's actions or failures to comply with the Occupational Safety and Health Act, Subcontractor shall hold Contractor harmless. Any penalties assessed against Contractor for violations of Subcontractor shall be deducted from amounts due under this Agreement.

21.22. **DOCUMENT ORDER OF PRECEDENCE:** In addition to the Standard Form Agreement, In the event of any conflict or discrepancies in the terms of the Contract Documents, this Agreement, attached Exhibits, manual, code or laws , the document order of precedence shall be interpreted as the most stringent requirement within the above as solely determined by Contractor.

22.23. **FEES:** In reference to the Work in this Agreement, Subcontractor shall obtain and pay for all required Federal, State, City and County Permit Fees, Business License Fees, Right-of-Way Permits and Bonds, Encroachment Bonds, License Fees and Inspection Fees, including all Re-Inspection Fees, for their scope of work unless specifically excluded in Section II (Scope of Work) enclosed.

23.24. **WARRANTY PROVISIONS:** Warranty provisions as mentioned in the Standard Form of Agreement are enhanced as described below (the words Guarantee and/or Warranty are synonymous):

A. Warranty period for this project is 12 years.

B. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished under this Subcontract will be new, unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. For all Work not conforming to these requirements, including substitutions not properly approved by Architect or Contractor, Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

C. All warranties shall be in writing on Warrantor's stationery or official forms as designated by Contractor and signed by an authorized official of the Warrantor's Company. Contractor hereby agrees to provide written assignment to Owner of all warranties. Warranty term shall not commence until all of the following conditions have been satisfied.

(1) Certificate of Occupancy for the building areas, or its equivalent

(2) Satisfactory completion of item of Work or system by Subcontractor

(3) Formal acceptance of the Work by Owner, Architect and Contractor

(4) Subcontractor has provided all the specified warranty/guarantee documentation to Contractor.

(5) Subcontractor has provided specified training (including video taping) for the operation and maintenance of the system and/or equipment.

(6) Subcontractor has provided maintenance manuals for the operation and maintenance of the system and/or equipment.

B. Failure to respond to warranty Work during the term within forty-eight hours of written notice and/or diligently pursue corrective measures shall be considered a Subcontractor breach of warranty. Subcontractor and his Surety shall be liable for all expenses incurred from such failure to respond.

C If within any warranty period, repairs or changes are required in connection with the warranty Work, which in the opinion of Contractor and/or Owner is rendered necessary as a result of the

normal use of material, equipment, or workmanship which are defective, or not in accordance with the terms of the Contract Documents, Subcontractor and/or its Surety shall, promptly upon receipt of notice and at his own expense, proceed to:

(1) Place in satisfactory condition in every particular all such warranted Work, correct all defects therein.

(2) Make good all damages to the structure or site, or equipment or contents which, in the opinion of Contractor or Owner, is the result of the use of materials not in accordance with the terms of the Contract Documents.

(3) Make good any Work, materials, equipment, contents of structures or site disturbed in fulfilling any such warranty.

(4) In addition to the foregoing warranty, if any more-stringent terms exist in Owner Contract, then those terms shall apply.

24. PUBLIC CONVENIENCE AND SAFETY: Subcontractor shall, at all times, so conduct his Work as to ensure the least possible obstruction to traffic. The safety and convenience of the general public, operational service providers, residences and/or businesses located near the Project, and the protection of persons and property shall be provided by Subcontractor.

In addition, Subcontractor understands that the Work is to be constructed near businesses and residences and Subcontractor shall use its best efforts, in conformity with the applicable standards of care, to perform its Work hereunder in a manner which will not interfere with the ongoing business operations including, without limitation:

A. Controlling noise, dust, insects, vermin and pests,

B. Requiring appropriate attire and conduct for Subcontractor's workers and the workers of Subcontractor of every level. Complaints received regarding attire or conduct will be grounds, at Contractor's sole discretion, for demanding removal of the offending parties.

C. Maintaining Work hours and noise levels in accordance with the applicable City of Charleotteston Requirements, County and City Ordinances and Contractor's requests.

D. Communication and/or fraternization between Subcontractor's personnel and the general public are strictly prohibited.

E. Unapproved Utility shut-downs or damages.

25. STREET CLEANING: Special care must be taken to prohibit any accumulation of dirt, dust and debris which might be blown or tracked into public areas or contaminate interior air quality. Subcontractor shall provide prompt and continuous cleaning and maintenance of street and sidewalk areas which might pose potential damage to the public in the vicinity of the Work including, but not limited to, covered walkways, building access areas, public right of ways, etc. Furthermore, Subcontractor is responsible for cleaning all vehicles prior to exiting site. Washing streets with water containing sediment particles into storm water system is prohibited.

26. VEHICULAR AND PEDESTRIAN TRAFFIC: Subcontractor shall not block off any public or private street nor use any part thereof for storage of materials unless approved by all applicable governing agencies and Contractor. Where affected by the Work, vehicular and pedestrian traffic shall always be accommodated and maintained in accordance with any special local requirements or in the absence of any such requirements, in accordance with the instructions of Contractor. Proper signage, indicating re-directed traffic shall be placed in appropriate locations throughout the project duration.

27. **BARRICADES AND DANGER/WARNING SIGNS:** Subcontractor shall provide and maintain suitable danger and warning signals, lights, signs, signal devices, barricades, flagman and/or watchman and take all necessary precautions that the barricades are appropriately located so as to give proper and unmistakable warning of hazards, structures or equipment involved under the Contract and shall remove same upon completion of the Work.

28. **SIGNAGE:** No signs will be permitted to be displayed at the jobsite or on trailers without written approval by both Contractor and Owner.

29. **RADIOS:** No radios (music radios, disc man, headset radios, MP3 players and the like.) other than two-way communication type will be allowed on the jobsite. Subcontractor agrees to furnish all his project managers, superintendents, supervisors, foremen, and lead men with two-way Radios with multiple channels to be used to communicate with Contractor and other Subcontractors on site. This requirement shall also be included for all Subcontractor lower tier subcontractors. Radio use and frequencies will be coordinated with the Contractor.

30. **FIRES / FIRE EXTINGUISHERS:** No fires for hand warming, trash disposal, land clearing etc. will be permitted on-site. Subcontractors will provide temporary fire protection system(s) within the immediate area of their work and required by the local Fire Marshall, and the applicable local, state, federal, and insurance underwriter requirements. The Contractor will provide general fire extinguishers in accordance with OSHA requirements.

31. **JOBSITE STORAGE / DELIVERIES:** Subcontractor is aware of the existing Site Conditions, and limited space availability that this urban site provides. On-site storage of materials and equipment will not be allowed except as specifically approved by Contractor's Project Superintendent or Project Manager. Unless specifically approved in writing, Subcontractor shall not assume any space is available for on-site storage.

    All deliveries for Subcontractor shall be coordinated through Contractor no less than 24 hours in advance. If scheduled deliveries are not ready at the appointed time or if deliveries arrive without the ability to be unloaded, Contractor may refuse acceptance of materials and require deliveries to be rescheduled. It is understood that if hoisting of material is required for delivery (either via Crane or Buckhoist), or if street closure lane access is required that in order to maintain project schedule and maintain compliance with City Ordinances that these deliveries will need to be conducted after normal business hours as identified in Item 6 above.

    All materials and deliveries must be coordinated and scheduled with Contractor prior to coming on site. Contractor will not allow delivery of materials to site without Subcontractor being represented on-site. Contractor will not receive, sign-for, accept or be responsible for materials delivered to the site or site office. Subcontractor has included in his subcontract price all off-site and phased storage as may be required.

    Approval by Contractor of material storage locations shall only be construed by Subcontractor as temporary and for limited time duration. Contractor will not allow Subcontractor to procure "bulk deliveries" for Subcontractor convenience or for manufacturer purchase agreements. Each delivery of material shall only be approved for those materials of immediate or near future installations. Subcontractor has included in his subcontract price all off-site and phased storage as may be required. In addition to article 4.6 of the Standard Form Agreement, Contractor will not be responsible for relocation costs of stored materials on-site since utilization of on-site storage for convenience is at Subcontractor's risk.

    Subcontractor is also responsible for the removal, consolidation, relocation, securing, etc. of all materials and equipment not permanently secured to building structure to meet design strengths and in case of impending weather condition emergencies at no cost to Contractor including hurricanes, snow storms, etc.

32. **CONSTRUCTION PARKING:** Subcontractor shall advise all of their employees, and tiered trades that NO on-site parking is available. Requirements for supervisor and worker off-site parking, and the costs

associated with such shall be the responsibility of the subcontractor. Requirements for worker tools and delivery equipment shall be the responsibility of the subcontract and in accordance with item #32. Unsafe or unauthorized parking or temporary drop offs will result in vehicles being towed at Subcontractor's and/or vehicle owner's expense.

33. **SITE ACCESS:** Access to the site shall be gained only in areas and/or a route as determined by Contractor's Superintendent, and may be modified only to accommodate construction activities. Subcontractor is responsible for all ancillary removal and repairs costs for access points outside the Contractor provided access entrances, as well as any added traffic control or flagmen.

34. **ACCESS PANELS / ACCESS DOORS / COVERS:** Subcontractor shall furnish and install all access panels, access doors, and covers necessary to provide access to the Work of Subcontractor either concealed by Subcontractor's scope of work or by Scope of work of others including walls, soffits, floors, and ceilings. All proposed locations to be submitted for acceptance prior to installation. Subcontractor shall be responsible for coordinating and labeling the location and sizes of the required framed openings with respective trades during construction of walls, soffits, ceilings, and floors. Type of panels shall match architectural and mechanical specifications (as approved by Owner) and match fabrication material to its exposed environment.

35. **BLOCKING AND BACKING:** Subcontractor shall furnish and install blocking and backing as required for installation of this Work. If excluded in Scope of Work, Subcontractor will be responsible for coordinating the blocking and backing as required for its installation of the Work.

36. **TOUCH-UP PAINTING & CLEANING OF EQUIPMENT:** Subcontractor shall provide all equipment touch-up painting and cleaning of equipment as required for Subcontractor's Work. Owner expects equipment in as new condition at completion of project.

37. **PRECONSTRUCTION ACTIVITY:** Subcontractor shall resolve and include the costs of any and all preconstruction activities in the anticipation of this project including but not limited to manufacturer site visits, mock-ups, attendance to meetings, etc.

38. **STRUCTURAL SUPPORT FRAMING (MISCELLANEOUS):** Subcontractor shall furnish and install all miscellaneous structural support framing not indicated on the Contract Documents required at openings in floors, decks, and walls for this Work. The required supports for this Work includes, but is not limited to, anchor bolts, hangers, isolators, channels, angles, embeds, etc.

39. **FLOOR AND ROOF OPENINGS:** Subcontractor is responsible for initial covering, labeling and maintaining covers of all floor/roof penetrations related to this Scope of Work from time of placement in building structure through 100% completion of penetration concealment on permanent basis.

40. **WELDING MACHINES / FIRE WATCH:** Electrically powered welding machines shall not be allowed for use on this site except when explicit written approval is granted by Contractor where special circumstances of building construction require such machines. If electric welding machines are used, the necessary power ***source,*** service and power consumed shall be provided by Subcontractor. It will also be Subcontractor's responsibility to install all subpanels required for his convenience.

When welding, torching or other hot work operation occurs normal fire prevention precautions are not sufficient, Subcontractor shall provide additional personnel assigned to guard against fire while the actual work is being performed, and for a sufficient period of time (minimum 45 minutes) after completion of the work to ensure that on possibility of fire exists.

41. **TEMPORARY CONSTRUCTION FACILITIES AND UTILITIES:**

A. **Furnished By Subcontractor**:

Subcontractor field offices will NOT be permitted on site. All cost for offsite office space will be the responsibility of Subcontractor.

Except as expressly set forth elsewhere, Subcontractor shall, as part of the Scope of Work, supply, install, properly maintain, permit and remove all temporary construction facilities and utilities necessary for the complete performance of its Work. Such items shall include, but not necessarily be limited to those listed below. The type of facilities, move-in and move-out dates and locations on Jobsite shall be subject to and in accordance with the review and approval of Contractor's Project Superintendent.

(1) Maintenance of Subcontractor's laydown, storage and Work area and roads within such areas. Repair costs to existing landscaping, hardscape or roadways damaged by Subcontractor outside construction limits are also included.

(2) Rigging, Scaffolding and all equipment for erection.

(3) All Small Tools

(4) All standard expendable or consumable construction items and supplies

(5) Drinking water including containers, ice and cups. All to be cleaned, dated, and labeled daily.

(6) All Storage compounds, security measures, fencing, lighting, etc. as may be required by Subcontractor to protect tools, equipment and materials.

(7) First Aid Supplies, fire extinguishers, personal protective devices, etc.

(8) Builder's Risk Insurance Deductibles and additional Builder's Risk Insurance;

(9) Material and Equipment hoisting to elevated floor and roof areas.

(10) Access roads to work areas, crane pads, etc.

(11) Employee access to work areas including ladders, scaffolds, lifts, etc.

(12) Dewatering of natural underground water and rain water conditions

(13) All Fall Protection Devices including rails, cables, harnesses, etc. and associated engineering, if required.

(14) All required off-site storage for stored materials

(15) All off-site parking fees.

(16) Replacements costs for materials, tools, equipment, etc.

(17) All equipment and tools brought inside the building and on site must be in accordance with Contractor safety plan (Exhibit D) or OSHA standards whichever is more stringent.

~~(18) Include language for temp power over a duration of time. (Construction start (12/01/2014) to 3/31/2015)~~

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B. Furnished by Contractor:

Contractor shall supply or cause to be supplied the following temporary construction facilities and utilities to Subcontractor, without cost to Subcontractor, for or in connection with performance of the Work:

(1) Sanitary Facilities - Furnished by Contractor shall consist of portable chemical toilets located at various areas of the jobsite as designated by Contractor based on average weekly manpower requirements.

(2) Water for construction shall be furnished at points on jobsite as designated by Contractor's Project Superintendent. . Note: Subcontractor is responsible for all costs and/or fines received for water losses attributable to connections or line extensions installed by Subcontractor at Contractor's sole discretion of estimated water losses.

(3) Accessible space near the construction site for performance of the Work and daily temporary storage of material and equipment at time of that day's installation. (No protective storage facilities, security, or protective coverings of any kind will be furnished by Contractor.). Subcontractor shall assume worst case accessibility and reach to each building structure for hoisting of materials based on present site conditions at time of delivery or installation.

(4) Temporary Lighting in accordance with OSHA Standards will be provided by the Electrical Subcontractor. However it shall be the responsibility of Subcontractor to ensure that each craftsman on this project has adequate lighting in each room to do a "first class" job. Extension cords and light stands for lighting shall be the responsibility of Subcontractor.

(5) Temporary Power - 110 volts, single phased, 60 cycle power shall be provided by the Electrical Subcontractor and made available throughout the building for small tools only. Power will not be available for electric welding machines or heavy duty saws. Portable panels or multiple outlets will be located on each floor within 100' of any work area by Electrical Subcontractor. This Subcontractor shall provide all OSHA approved extension cords as required for the execution of this Subcontract Agreement. All power cords and tools shall be protected by ground fault circuit interrupters (GFCI). Where GFCI outlets are not available or when building permanent power systems become energized and temporary systems removed, in-line GFCI protection shall be supplied by each Subcontractor.

Any equipment requiring temporary 220 volt (or above) power will not be provided by Contractor. It will be Subcontractor's responsibility to coordinate, provide, and pay for 220 volt connection with on-site electrician as required.

(6) Centrally located dumpster for collection of debris, including hauling off site. Subcontractor shall haul debris from his work area and place it into the dumpster.

42. **DAILY CLEANUP & COMPOSITE CLEANUP:** In addition to the Standard Form Agreement, Daily cleanup of the construction area will be strictly enforced. Subcontractor shall perform cleanup and trash removal (on an ongoing daily basis, not at the end of the day) of all debris generated by Subcontractor to a central site container or truck as directed by Contractor. **Exception: Disposal and removal from the site of excess paint materials, residue from equipment cleanup operations, and other hazardous waste in accordance with governmental regulations shall be the responsibility of Subcontractor.**

In addition to the daily cleanup each Subcontractor shall include costs for Composite Clean Up in the following fashion; dedicate one (1) person for each ten (10) persons employed by the Subcontractor on site for a composite cleanup crew for clean-up for entire duration of while Subcontractor is on-site performing work or punchlist for forty (40) hours per week to perform general sweeping, wiping, mopping, vacuuming, and the like of general unidentifiable construction debris.. If Subcontractor has fewer than ten (10) employees on-site, then Subcontractor shall furnish one (1) person for two (2) eight (8) hour days on days of the week as designated by Contractor unless the cost of the composite clean was deducted from this subs total price. Documentation indicating the individuals working on the composite cleanup crew shall be provided to the Construction Manager weekly. Subcontractor shall provide the above composite clean-up employee(s) with a push broom, floor sweep, trash buggy, square shovel and other equipment and materials required to perform clean-up. Failure to provide the above outlined composite cleanup crew will result in a deductive change order (deducted at rates per approved additive change orders) at the end of each calendar month.

43. **OWNER / CONTRACTOR AGREEMENT:** Subcontractor understands and agrees that this Subcontract is contingent upon Owner/Contractor Agreement being fully executed, and that this Subcontract shall be null and void without restrictions or remedies to either party if said Contract is not executed. No work shall be performed by Subcontractor until Owner/Contractor Agreement is executed. Contractor shall notify Subcontractor when said Agreement is executed.

    Subcontractor further understands and agrees that the terms of the Agreement between the Owner and Contractor as regards but not limited to timely notification of delays and/or change requests and resolution of claims at substantial Completions also do apply to this Subcontract Agreement.

44. **MOCK-UPS / PROTOTYPES:** Subcontractor is cognizant of and has included in the Scope of Work multiple "Mock-ups" or "Prototypes" as may be required. Any and all refinishing of walls, floors, finishes, colors, etc. and removal and reinstallation of receptacles, fixtures, trim, furnishings, rails, grilles, etc. as required and associated with the "Mock-ups" or "Prototypes" is included in the Scope of Work.

45. **ENVIRONMENTAL PROTECTION:** Subcontractor is aware that the adjacent areas and properties are a very sensitive subject as it relates to Owner's development order. Subcontractor agrees not to deposit and/or store any liquids, solids, or gases on or near any area that is not designated as "Staging Area" by Contractor and Owner. Failure to comply with this provision shall result in severe consequential damages to Owner for which Subcontractor will be held responsible.

    Subcontractor further agrees not to dispose of heavily chlorinated water utilized for testing of pipes or detergent/chemical water used for cleaning and flushing pipes onto the site, or into the site storm drainage systems. All such testing water shall be neutralized prior to discharging.

46. **ENVIRONMENTAL CONTROLS:** Federal and State regulations require that construction projects obtain various permits so that storm water, dewatering, and other forms of potential pollution can be controlled and regulated. Subcontractor agrees to protect those controls that are put in place and to be responsible for the cost of correcting any damage he may cause to those controls.

47. **STATE SALES and USER TAXES BONDING REQUIREMENTS:** Subcontractor shall be responsible for paying for all sales, consumer, use,- and similar taxes arising out of the Work. These include, but are not necessarily limited to, all such taxes required on all materials, equipment, labor, accessories, and services which are part of the Work. Records must be maintained to record payment of required taxes.

48. **FIRE / TRAFFIC LANES:** All fire and traffic lanes must remain clear and accessible throughout the duration of the Contract. No material storage, laydown, or short term parking will be permitted in these areas, unless approved by Contractor. Contractor will supply lane closure areas in accordance with the site utilization plan. Subcontractor requiring additional lane closures, police escorts, road plates, storage, etc. beyond that provided will pay the cost of the same.

49. **LAYOUT:** Contractor will provide property line boundaries, a benchmark and one column line in each direction on each floor. In addition to the requirement of the Standard Form Agreement, Subcontractor shall provide all layout using Robotic Total Station Technology or equivalent, engineering and survey of existing conditions as required for its work, that is in excess of what Contractor is providing . It shall be the responsibility of the Subcontractor to maintain and preserve all stakes and other marks established by the Contractor and, if such stakes or marks are destroyed by the Subcontractor, they will be replaced at their expense.

50. **TOBACCO RESTRICTIONS:** The use of tobacco products will NOT be allowed within the confines of this project. Each subcontractor shall police its own employees to ensure compliance with this policy.

51. **BREAK AREAS:** Eating will be allowed only in areas so designated by the Contractor. Subcontractor or its employees are not authorized to sell or distribute food or beverages at the jobsite.

52. **CUTTING AND PATCHING:** Subcontractor shall be responsible for the cutting and patching of all penetrations and openings through existing walls and partitions, and all penetrations and openings through existing floors, ceilings, and roofs necessary for the installation of his Work. If the location for a penetration or opening is through an existing structural member, the Subcontractor shall notify Contractor's Superintendent, who, after consultation with the Architect, will instruct the Subcontractor how to proceed. Subcontractor shall be responsible for any cost associated with confirmation of existing conditions prior to proceeding with such work.

Patching of all existing walls, floors, ceilings, etc. is included for all items demolished under this agreement including substrate and finishes to match existing surrounding conditions.

53. **SUBCONTRACTOR SUPERINTENDENT:** In addition to the requirements of the Standard Form Agreement, Subcontractor represents that its superintendent is an expert in the Work, is a competent person as defined by OSHA, and is knowledgeable of all local safety regulations and local codes. The Subcontractor shall be represented at all job meetings by the superintendent and such other persons as Construction Manager from time to time wish to have present at job meetings. The superintendent shall be satisfactory to Construction Manager and shall not be changed except with the consent of Construction Manager, unless the superintendent proves to be unsatisfactory to Subcontractor or ceases to be in its employ. The superintendent shall represent Subcontractor and shall have full authority to make decisions and commitments regarding Subcontractor's Work; and all communications given to the superintendent shall be as binding as if given to Subcontractor.

54. **EMPLOYEE REMOVAL:** The Subcontractor shall immediately remove from the Project any employee, including the superintendent, who is not satisfactory to the Contractor's Project Manager, Owner, or Owner's authorized representative at no cost to Contractor and with no extension of time.

55. **INSPECTION OF EXISTING CONDITIONS:** Each subcontractor shall check the accuracy of the building structure and/or surface to receive its work and notify the Construction Manager of any deficiencies prior to beginning it work, and incorporate such into their shop drawings for accurate production and installations. Subcontractor shall not proceed with work until unsatisfactory conditions have been corrected and shall not apply work over other subcontractor's uncompleted work. Commencement of installation constitutes acceptance of structure and/or base surfaces and the cost of any corrective work due to faulty base surfaces shall be borne by the installer applying his materials thereon.

56. **SERVICE SHUTDOWNS:** All disruptions of services shall be limited to the maximum time specified by the Contractor and Owner. Proper and timely notifications must be made as required by the Owner. No shutdowns will be permitted. Each Subcontractor must submit a plan of how to maintain utilities to surrounding buildings including demolition requirements, temporary utility methods utilized, repairs, anticipated durations, etc. Subcontractor is responsible for all temporary utility requirements to maintain usage of utilities in the disturbed areas. This could require after hours or overtime work to maintain said utilities.

57. **PROPERTY DAMAGES**: Subcontractor is responsible for all damages to property and work of other trades including materials, tools, and equipment, excluding such property to be incorporated into the Work (as covered by builder's risk policy), subject to any deductibles contained in the builder's risk policy procured by Owner or Contractor.

Subcontractor is responsible for protection of all existing and new surfaces, materials, until accepted by Contractor/Owner and Architect.

58. **LIQUIDATED DAMAGES:** Subcontractor is responsible for payment of liquidated damages as set-forth in Owner/Contractor Supplementary General Conditions. Liquidated damages will apply to the Project Final Completion date. Contractor will begin deducting and withholding liquidated damages from

Subcontractor monthly pay application as delays occur to ensure monies are available at conclusion of phase or Project.

59. **CONCRETE PADS AND CURBS:** Concrete pads, curbs, clean-out and valve rings, concrete equipment grouting, etc. required for equipment but not specifically shown on the construction documents will be the responsibility of the Subcontractor installing the item.

60. **QUALITY CONTROL:** Subcontractor is aware that Contractor has an active and aggressive Quality Control Program. The highest level of Quality Control will be managed by Subcontractor's project managers and will not be delegated to on-site superintendents. In that regard the Contractor will provide a project specific quality control plan that will identify various levels of responsibility by the Subcontractor. The Subcontractor will participate and assist fully with the Contractor's Quality Control Program.

In addition to the requirements of the Standard Form Agreement, the correction of faulty work not in compliance with the Contract Documents shall be corrected within 48 hours of Contractor notification. Payment will be withheld in the amount of 2 times the cost estimated by Contractor to make the repairs on behalf of Subcontractor until such time work is corrected and accepted by Owner and Architect.

61. **VISITORS:** All visitors must check in at the Contractor's on-site office prior to entering the project site and sign-in. Subcontractor is required to escort all visitors and provide visitors with required personal protection safety devices.

62. **PHOTOGRAPHS:** No photographs may be taken of the project without prior approval of the Contractor and Owner. Subcontractor acknowledges that there is an active webcam on-site.

63. **UNIT PRICES AND ALLOWANCES**: Subcontractor has responsibility to quantify and obtain appropriate approvals for all allowance expenditures above prior to beginning work under this agreement. Contractor does not have the obligation, authorization, nor did the responsibility to make payment for work execute which has not been approved by Owner/Architect. Subcontractor has responsibility to quantify and obtain appropriate approvals for all unit price expenditures above prior to beginning work under this agreement. Contractor does not have the obligation, authorization, nor the responsibility to make payment for work executed which has not been approved by Owner/Architect

64. **OPERATORS**: Subcontractor shall provide list of all competent and certified operators and welders 10 days prior to beginning work. Subcontractor shall also provide all equipment certifications upon equipment arriving to site, but prior to placing in-use.

65. **WEATHER**: Weather delays are only as approved by the Owner which is in excess of the normal anticipated conditions established by Owner-Contractor Agreement. Subcontractor shall herein anticipate such delays and schedule work as time is of the essence. Subcontractor shall included all necessary means and methods to dewater, aerate and/or hydrate work areas including access to in order to avoid delays in Project schedule at no additional cost to Contractor.

Subcontractor is also responsible for the protection of all materials from thermal (temperature) changes for work schedule to be installed in accordance with current schedule. Delays in material installations which can be protected will not be accepted as a cause for a schedule delay.

66. **BUILDING INFORMATION MODELING (BIM) / DIGITAL DOCUMENTATION**

- Building Information Modeling will be a function of this project for coordination and will require a 3D modeling effort by all tradess unless otherwise indicated. ~~Major t~~Trades will include ~~Civil (Underground Utilities & Sitework), Structural, Exterior and Interior wall system, Conveying~~ systems, Mechanical, HVAC, Electrical systems, Plumbing and: Fire Protection, Drywall/Framing/Ceilings for coordination with MEP trades only, ~~Audio Visual, Telecommunications, and Security~~.

- All awarded subcontractors listed above will be required to attend a BIM "kick-off" meeting led by Balfour Beatty where items such as level of model detail, file sharing, and coordination schedule dates are determined. The results of that kick-off meeting will be captured in a BIM "Implementation Plan" which, once agreed upon, will be the team's guide for the coordination efforts.

- Each trade shall allow for one meeting per week led by Balfour Beatty for duration of project upon notice of award.

- An initial 3D coordination model and associated coordination drawings must be complete and submitted to Balfour Beatty within the 1st 60 days of the Project. Any additional costs associated with delays because the coordination was not completed within the allotted time shall be the responsibility of the Subcontractor. No additional coordination cost will be accepted by the Contractor.

- All required shop drawings will be submitted to Balfour Beatty and engineer of record by trades in an approved format.

- All subcontractors requiring embeds in concrete and/or precast will be required to provide layout drawings to the concrete and/or pre-cast subcontractor. Concrete and Pre-cast subcontractor are required to create 3-dimensional drawings to indicate any and all embeds for approval by other trades and to be utilized during installation.

- Each participant, by submitting its proposal, represents that:

  A. They understand that his/her scope is required to be modeled in Revit or approved alternate.

  B. Has, at a minimum, participated in at least 3 projects in which the subcontractor has created 3D models for the coordination effort.

  C. Has, at a minimum, 2 persons on staff who are capable of performing the required 3D modeling responsibilities for this project

  D. If required, this subcontractor shall submit model examples from previous experience (model files, graphic images, screen shots, etc...) for evaluation of capabilities to model the required detail.

- Subcontractors agree to provide and utilize Robotic Total Station Technology or equivalent for layout of materials and systems. This is required for all major trades include ~~Civil (Underground Utilities & Sitework), Structural, Exterior and Interior wall systems, Conveying systems,~~ Mechanical, HVAC, Electrical systems, Plumbing &; Fire Protection, ~~Audio Visual, Telecommunications, and Security~~.

- If Subcontractor cannot meet requirements outlined above, they may hire services of a third-party vendor and must inform Balfour Beatty Construction to such arrangement. Subcontractor will be required to assign a representative as a point of contact and be required to manage the third party vendor to ensure compliance with the BIM implementation plan.

- All Contract Documents will be provided and used in digital format for the project. All subcontractors will have access to digital plans and all Project managers, Superintendents and Foreman are required to have Ipads (or an alternate form of digital document reader) during construction. The Punchlist, Quality Control Checklist, Safety Checklist and final 3D coordination model will be accessed through Autodesk BIM 360 Field on the Ipad (or alternate form of digital document reader).

67. **AS-BUILT DRAWINGS (RECORD DRAWINGS) :** During the progress of the work, all Subcontractors shall update their model and drawings with the exact locations, as installed, of all systems associated with their trade.

Upon completion of the Work, this data shall be recorded to scale into CAD and PDF drawings by a competent draftsman. Subcontractor shall provide preliminary as-built drawings for architect/engineer approval and a final as-built set in accordance with the project specifications. Subcontractor shall provide preliminary as-built drawings for Architect/Engineer approval and a final as-built set in accordance with the project specifications. Each Subcontractors as built drawings will be reviewed on a weekly basis by the Contractor.

68. **ACCESS:** Subcontractor shall be responsible for providing safe access for testing agency and Engineer of Record to the work being fabricated, stored, or installed so that required inspection and testing may be accomplished. It is understood and agreed that any work under this scope found to be in non-compliance shall be corrected and re-tested at no cost to Construction Manager and/or Owner.

69. **HOISTING:** In accordance to our Site Utilization plan and Project Schedule Contractor will supply Tower Crane(s) and Personnel/Material Hoist(s) with operator to the Subcontractor for their use (up to 760 hours/week), subject to change at Contractors sole discretion. The Tower Crane(s) and Personnel/Material Hoist(s) will be erected and removed at Contractors discretion. The schedule and priorities for hoisting will be established solely by the Contractor in accordance with the schedule. Provision of the Tower Crane(s) and Personnel/material Hoist(s) does not relieve the Subcontractor from the requirement referenced in the General Conditions of this Subcontract. The Subcontractor is advised that the hoists will not remain operational throughout the duration of the project. While the hoist is available for use, Subcontractors requiring additional hoisting time, or means of hoisting beyond that provided by the Contractor for will pay the cost of hoisting and/or the operator including all premium time charges.

All other hoisting and means to get equipment, manpower or materials into place including but not limited to all scaffolding, man lifts, forklifts, outriggers, etc. are to be provided by Subcontractor. Do NOT assume "By Others" or shared use.

Subcontractor will be required to have 3rd party inspections prior to starting work with any/all Cranes and equipment Subcontractor to provide 3rd party inspection report to Contractor immediately upon completion of inspection. Included are any fees associated with these inspections.

All Subcontractors utilizing lifting equipment will require Certified Riggers. All paperwork must be submitted to Contractor no later than 10 days prior to hoisting/lifting activities.

Equipment will not be allowed to be lifted and suspended by equipment overnight. Subcontractors will be required to secure equipment by other means.

70. **FLAGMEN**: All subcontractors receiving deliveries will require flagmen as traffic control at the construction entrance.

71. **ENGINEERING:** All engineering required as a part of this Scope of Work must be performed by Engineer licensed in the State of ~~North~~South Carolina.

72. ~~**SUSTAINABILITY REQUIREMENTS / LEED:** Subcontractor shall make all necessary efforts to execute a sustainable project. Subcontractor understands that Project is planned to obtain LEED GOLD certification and will assist in all efforts required to achieve this certification. At a minimum, the Subcontractor will report monthly (to be submitted with monthly Applications for Payment) in writing, on progress toward achieving this requirement, and provide all additional documentation as required by LEED and the Contract Documents.~~

73. ~~**CCIP:** The Owner has elected to have the Contractor furnish a Contractor Controlled Insurance Program (CCIP). Specifics as it relates to this program are included within Exhibit R – CCIP Manual.~~

742. **WORK STOPPAGES:** Labor strike or unrest is not an excusable force majeure event under this Subcontract and any related delays the responsibility of the Subcontractor and will be subject to liquidated damages.

~~75. RIGHT-TO-AUDIT: Owner has reserved the right to audit Subcontractors records – Subcontractor shall maintain records. Subcontractor shall maintain records sufficient for Owner to verify all costs for a period of (3) years after final payment. Subcontractor shall specifically acknowledge that it has or will incorporate " Right to Audit" clause in each of its subcontracts and purchase orders.~~

763. **PUNCH WORK:** Subcontractor shall complete punch work as required by, and to the complete satisfaction of the Contractor, Architect, Engineer and Owner. Subcontractor shall provide Contractor with a list of punch items to be completed for this scope of work prior to starting punch work

774. **TESTING:** Subcontractor shall provide all testing, documentation and certifications as required by the Contract Documents other than those performed by the Owner's testing agent. Identification and coordination of all testing procedures required by this Subcontract, whether performed by the Owners' testing agent or the Subcontractor, are the responsibility of the Subcontractor. In the event the Subcontractor's material and/or installation fails, any re-testing costs and lost time will be the responsibility of the Subcontractor.

785. **SECURITY:** Subcontractors understand that no security services will be provided and that neither Contractor nor the Owner is responsible for property loss or damage to materials not yet accepted by the Owner.

76. **OWNER AGREEMENT:** The following paragraphs are flowdowns from the agreement between the Owner and the Contractor.

A) Subcontractor acknowledges the agreement between the contractor and the Owner provides that for any delay attributable to the Contractor or any entity for which it is responsible, there is potential recovery of Liquidated Damages as detailed below. Subcontractor further acknowledges and agrees that should Contractor be assessed liquidated damages and any part or all of the delay is attributable to Subcontractor's performance of the work, then Subcontractor will be responsible for its proportionate share of the liquidated damages amount.

B. Hotel LD Amount $9,000 per day

END OF SPECIAL PROVISIONS

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Exhibit B

The Hotel at Marion Square: Subcontract Scope of Work

ELECTRICAL
SCOPE OF WORK

1. **DEFINITION, CORRELATION AND INTENT:**

Subcontractor agrees to make the project complete in every respect insofar as this Subcontract is concerned in strict accordance with **Bid Package No. 16A - ELECTRICAL**, the Contract Documents listed on Exhibit "A" and shop drawings and submittals as approved by the Architect and/or Owner. The Subcontractor shall not perform any portion of the work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data, Manufacturer's Instructions or Samples for such portion of the work. The Subcontract includes but is not limited to providing of all submittals, shop drawings (and associated engineering), trade coordination, layout, hoisting, supervision, tools, equipment, scaffolding, supplies, incidentals, plant, labor, materials, services, cutting, cleaning, and any other work or systems required to perform the work as described below:

2. **SPECIFICATION REFERENCE:**

The organization of the specifications into divisions, sections and articles, and the arrangement of the drawings shall not control the Contractor in dividing the work among the Subcontractors or in establishing the extent of the Work to be performed by any Subcontractor.

Reference is made to the following Divisions of Work and Specification Sections which relate to the Scope of Work, but is in no way intended to limit or alter the intent of the Contract Documents:

SECTION/DIVISION NO.	TITLE and DESCRIPTION
DIVISION 0	**BIDDING/CONTRACT REQUIREMENTS,** complete;
DIVISION 1	**GENERAL REQUIREMENTS,** complete;
DIVISION 2	**SITE WORK**, pertinent portions thereof applicable to the work of this Subcontract;
DIVISION 3	**CONCRETE,** pertinent portions thereof applicable to the work of the Subcontract (such as housekeeping pads and transformer pads, etc.)
DIVISION 6	**WOOD AND PLASTICS**
SECTION 06 100	ROUGH CARPENTRY, pertinent portions thereof applicable to the work of this Subcontract;
DIVISION 7	**THERMAL AND MOISTURE PROTECTION**
SECTION 07 700	ROOF SPECIALTIES AND ACCESSORIES, as applicable to the work of this Subcontract;
SECTION 07 841	THROUGH-PENETRATION FIRESTOP SYSTEMS, pertinent portions thereof applicable to the work of this Subcontract;
SECTION 07 900	JOINT SEALANTS, pertinent portions thereof applicable to the work of this

Subcontract;

DIVISION 8	**DOORS, WINDOWS AND GLASS**
SECTION 08 300	ELEVATOR DOOR SMOKE CONTAINMENT SYSTEM, pertinent portions thereof applicable to the work of this Subcontract;
SECTION 08 305	ACCESS DOORS, pertinent portions thereof applicable to the work of this Subcontract;
SECTION 08 310	ACCORDION FOLDING FIRE DOORS, pertinent portions thereof applicable to the work of this Subcontract;
SECTION 08 334	OVERHEAD SECTIONAL GRILLE, pertinent portions thereof applicable to the work of this Subcontract;
SECTION 08 710	FINISH HARDWARE, pertinent portions thereof applicable to the work of this Subcontract;
SECTION 08 741	ELECTRICAL LOCKING SYSTEMS, pertinent portions thereof applicable to the work of this Subcontract;
DIVISION 9	**FINISHES**
SECTION 09 900	PAINTING, pertinent portions thereof applicable to the work of this Subcontract;
DIVISION 10	**SPECIALTIES**
SECTION 10 001	MISCELLANEOUS SPECIALTIES, pertinent portions thereof applicable to the work of this (i.e. electrical connections such as electrical projection screens, etc.) Subcontract;
DIVISION 11	**EQUIPMENT,** all sections pertinent portions thereof applicable to the work of this Subcontract;
DIVISION 12	**FURNISHINGS**
SECTION 12 242	ROLLER WINDOW SHADES as applicable to the work of this Subcontract;
DIVISION 13	**SPECIAL CONSTRUCTION**
SECTION 13 151	STAINLESS STEEL SWIMMING POOL
SECTION 13 155	POOL LIFT
DIVISION 14	**CONVEYING SYSTEMS,** all sections; pertinent portions thereof applicable to the work of this Subcontract;
DIVISION 15	**MECHANICAL,** all sections; pertinent portions thereof applicable to the work of this Subcontract
DIVISION 16	**ELECTRICAL,** complete;

3. INCLUSIONS:

It is understood and agreed this **Electrical Work** includes all inclusions as described in the following subparagraphs regardless of whether or not they are in the above specifications or any other specification section or shown on the plans:

3.A. Design Intent

1. **It is the intent of the Scope of Work to convey to this Subcontractor the total responsibility for the ELECTRICAL Work required for the The Hotel at Marion Square Project. This Subcontractor understands that Construction Documents may not be 100 percent complete and will develop as the project progresses. However, the Subcontractor shall perform all work required or reasonably inferred under the best practices in the Construction Industry for a complete and fully functional and operational system(s) for the purpose intended.**
2. This project will require the Subcontractor to work as a team member with the Contractor and other members of the project team through the completion of construction to assure that all work required by this Scope will be performed in such a manner that it is complete, fully functional, and in accordance with the contract documents within the contract price.
3. References to the term "Contractor" in the Drawings and Specifications shall be interpreted to mean work by this Subcontractor as they relate to this scope of work.

3.B. Electrical Scope of Work Specific Inclusions

The Subcontractor shall furnish and install the work of this Subcontract in accordance with the Contract Documents, including, but not limited to the following:

General Requirements

1. Subcontractor will make every effort to fabricate as much of this scope of work off-site as possible, that will limit the required hours and manpower on-site
2. Subcontractor shall furnish for installation by others access doors and panels as necessary or specified for work within this package. Access Doors shall be in accordance with specifications for this bid package or the access panel specifications whichever is more stringent.
3. Subcontractor shall coordinate, provide all sleeves, blockouts, coring and supports necessary for the work within this package. It is intended that all penetrations throughout the structure(s) will be sleeved or formed-in-place whenever possible. With respect to cast in place concrete work, Subcontractor will furnish sleeves which can be attached to the inside of these forms without requiring a penetration of the plywood or steel formwork. Subcontractor to include waterproof collars between piping and sleeve bodies as applicable, Subcontractor shall further provide all grouting, waterproofing or other work as required to ensure that the penetration is watertight. Subcontractor to ensure that all openings provide for proper spacing between penetrations and annular space around opening to accommodate listed UL fire stopping assemblies which are by Firestop Subcontractor.

4. Subcontractor shall furnish all embeds needed for this scope of work to the Concrete Subcontractor for installation.
5. Subcontractor will provide their own cutting (including metal decking and concrete), coring, and patching of new or existing openings as it pertains to their work. Subcontractors will furnish and install all miscellaneous steel required at their openings. Subcontractor shall be responsible for any cutting or core drilling (and associated patching) required if sleeves are not used. If core drilling is required, Subcontractor shall obtain approval of the process, and Subcontractor will x-ray or provide for GPR scanning to located rebar or other reinforcing to avoid cutting.
6. All raceways and sleeves shall be coordinated with adjacent walls to ensure that all penetrations enter and exit walls at 90 degree angles.
7. Subcontractor shall provide for all anchor bolts, hangers, straps, unistrut, rods and other miscellaneous metal items as required for the support of Electrical work. Install all anchor points and supports prior to fireproofing when possible and patch otherwise at the expense of this package.
8. Blocking/backing required by this scope of work will be the responsibility of this Subcontractor.
9. Subcontractor shall provide all pads, curbs, and other concrete work necessary for the installation of the work within this package. The Power Company's transformer pad shall be included, as required by the power company's transformer pad requirements. Primary raceway and feeders to the transformer pad shall also be included by this subcontractor. Transformer location to be per the civil drawings or as required by SCE&G.
10. Subcontractor shall provide authorized factory start up and owner training, of all equipment and systems, this will include all labor, fuel, appliances, etc., required or necessary for final testing of all systems and equipment associated with the work of this Subcontract. Subcontractor specifically includes all fuel for testing of all emergency generators.
11. Subcontractor shall provide for all labels, color coding, stencils, nameplates, required for identification and warning of Electrical Work and Equipment (both temporary and permanent) installed by this Subcontract as required by the contract documents or governing codes.
12. Subcontractor shall provide factory-applied prime and factory-applied finish painting of equipment, motors, and other apparatus as specified. Subcontractor shall be responsible for all factory prime painting of hangers, rods (galvanized), and other metal device supporting electrical work as well as touch-up of abraded surfaces.
13. Excavation, backfill, compaction and spoils removal necessary for the work within this package.
14. Final cleaning of all Equipment, integral with this work is the responsibility of this package.
15. Subcontractor shall provide for testing and system certifications as required.
16. Hoisting, rigging, street closures, and all coordination of loads in excess of 15,000lbs., will be the responsibility of this Subcontractor.

Electrical Systems

1. Subcontractor is responsible for the complete Electrical System in the Hotel and Parking Garage.
2. Interior lighting and lighting controls systems as shown on the Contract Documents. Including all supports, brackets, hangers (including additional hangar wires for light fixtures mounted in acoustical tile ceilings) and standards for mounting light fixtures as required.

3. Subcontractor shall provide electrical to all areas and items/fixtures shown on the Contract Documents, including Fire / Smoke dampers. Duct mounted smoke detectors to be provided to Division 15 to install, wired by this subcontractor.

4. All raceways, conduits and boxes, including but not limited to, EMT (Electrical Metal Tubing) and fittings, intermediate metal conduit and fittings, electrical metallic tubing, metal clad tubing and fittings, flexible metal conduit and fittings, wall and ceiling outlet boxes, pull and junction boxes, non-metallic conduit and fittings and all terminators and accessories.

5. All cable, wire and connectors required for power distribution and circuitry, lighting circuitry, appliance and equipment circuitry and motor-branch circuitry.

6. Provide all medium voltage and high voltage switchgear (277/480v and 120/208v).

7. Provide all transformers and panels.

8. **Mechanical Coordination**

   a. Motor, motor starters, and circuit disconnects where not integral with mechanical, fire sprinkler and plumbing equipment, as indicated on Contract Documents.

   b. Install all variable frequency drives specified for mechanical equipment.

   c. Coordination of actual versus specified or scheduled power requirements for all equipment to which final connections are made under this contract. If an item of owner furnished or contractor furnished equipment is specified to require electrical connections, this electrical connection shall be included, whether or not shown on the electrical drawings.

   d. This Subcontractor shall also be responsible for coordinating all power, gas and water requirements which may be required for all equipment furnished herewith with the other MEP trades.

   e. Subcontractor understands the relationship which exists between mechanical, plumbing, fire protection, and electrical activities and the installation of the metal studs and drywall. This Subcontractor also understands that there will be areas where metals and drywall shall be installed prior to this Subcontractor's work in order to achieve proper installation (i.e. shafts, rated walls, corridors, etc.).

9. **Elevator Coordination**

   a. Power to, and hookup of, Division 14 items including all conduit, wiring (power only) and devices necessary to bring permanent power to conveying systems.

   b. Coordinate location and connections of the elevator controllers and disconnects with elevator subcontractor. Subcontractor has included all building electrical work to comply with applicable codes as they relate to Elevators, i.e. elevator pits to contain GFI receptacle outlets, pit lights to maintain code required foot candles, switches for lights and sump pumps (power to), and shunt trip breakers.

   c. Subcontractor shall also furnish and install conduit and pull string from Elevator shaft as required for the Elevator Life Safety Panel and all other communication points relative to the elevator system.

10. **Site Electrical Work**

    a. All site electrical work including underground conduit and wiring.

    b. Ductbank system.

    c. Subcontractor shall make all tie-ins or connections to feeder service and at entrances into the building structure where indicated.

    d. Subcontractor shall provide all grounding to system.

11. All components required for bus duct system.

12. All grounding required of electrical systems and equipment.

13. Power rough-in, wiring and final connection of all owner-furnished equipment and equipment furnished by others, as indicated on the Contract Documents.
14. Furnish and install all lightning protection system, complete; and surge protection system, for work installed by this scope of work.
15. Encasement and other concrete work necessary for the installation of the work within this package unless specifically detailed on the architectural or structural documents.
16. Support as required for electrical panels, and other equipment furnished by this package, including unistrut, independent supports, etc.
17. Generator, transfer switch, and distribution, thereof complete.
18. All light bulbs used are to be in coordination with Contract Documents..
19. Provide power for Owner Furnished signage in locations shown on the plans.
20. Connection of all heat-trace systems provided by others, and as shown on the Contract Documents.
21. UL rated Back Boxes, Floor boxes, and conduit including those that show data (combined), are by this Subcontractor.
22. Normal and emergency power distribution system.
23. Standard and special receptacles as shown on the drawings with normal and emergency and branch circuiting.
24. All rough-in and final hook-up of all items requiring electrical service that are specified in any other section of the specifications and/or shown on the electrical drawings
25. All electrical connections to power operators and accessories for work included in other specification sections including 120/208v power to electrified door hardware.

Temporary Electrical Provisions

1. Provide and maintain and remove throughout duration of the job (or until permanent power is available) Temporary power, wiring, lighting and distribution in accordance with current OSHA requirements. Temporary power (with GFI) including (4) standard 120 and 220 volt as necessary outlets shall be located within 100' radius of all work activities on all level with not less than 16 outlets per floor. Location of this temporary power distribution shall be coordinate with Balfour Beatty prior to installation. Temporary power to be provided to the bottom of the excavation.

2. Temporary lighting per OSHA standards to include but is not limited to: lighting of tower crane jibs and masts at street level, buckhoist platform, temporary and permanent stair towers, at core jumping forms and along perimeter fence. Conforming with OSHA regulations lighting systems for the building corridors and the lighting systems for the stairwells shall be installed on separate circuits and independently switched at panel boards. Light stringers and power distribution shall be supported in a manner to meet OSHA standards and to permit physical installation of permanent ceiling systems, hollow metal, partitions, and any other permanent work in all work areas.
3. Provide temporary lighting under King Street covered pedestrian walkway. Lighting to be tamper resistant and inspected for operation at the end of each shift.
4. All lamping and re-lamping of burned out light fixtures, including any re-lamping of temporary fixtures AND permanent fixtures used for temporary lighting.
5. Subcontractor shall remove temporary electrical systems in accordance with the Project Schedule.
6. Subcontractor understands and agrees that the permanent electrical system and equipment furnished will be used to temporarily operate the building systems during the

construction process. The shall provide all labor required to operate the electrical portion of the permanent system as noted above and extended warranties as required for use of electrical items during construction so that they continue from the date of acceptance to the full periods of time required.

7. Provide a cost to furnish and install a 1500Kva temporary service to a spot designated by BBC. Provide all power service the items below. Include removal as directed by Balfour Beatty.
   a. Buckhoist: One Unit at 400 Amp, 480 Volt, 3 Phase Power
   b. Tower Crane: One Unit 400 Amp, 480 Volt, 3 Phase Power. Provide three (3) 1,500 Watt mercury vapor 480 Volt along the jib and two (2) additional lights on the mast.
   c. Dewatering system: multiple pumps 60 Amp 240 Volt, 3 Phase Power
   d. Fire Proofing: One Service 20 Amp 120V; Two Services 50 Amp, 240 Volt, 3 Phase Power
   e. Dedicated circuit per floor (or every other floor) 220V, 50 Amp service for steel subs welder.
   f. Temporary Service for Elevators
   g. Power for Contractor's trailers and saw service.

3.C. Related Requirements

The following related requirements apply to the work of this Subcontract whether provided by the Subcontractor, Tier Subcontractors or Others:

1. Subcontractor agrees to make every reasonable effort to complete the permanent building electrical systems at the earliest possible date so that the permanent system can be used for temporary electrical purposes, prior to final completion of the buildings. Subcontractor shall also provide the necessary operation/manpower required by the electrical trade to use the permanent system on a temporary basis or provide adequate temporary power requirements for the following:
   a. Permanent electrical systems and final hookups necessary to operate the permanent building heating and ventilating system for the purpose of temporary heating, ventilation, and conditioned air as required and approved by the Construction Manager.
2. It is understood that the Contractor will obtain approval from Owner prior to allowing Subcontractor to operate the temporary electrical system. Electrical Subcontractor shall maintain equipment during this temporary basis. Upon final acceptance of the systems by the Owner, this Subcontractor shall extend all related warranties so they continue from the date of final acceptance to full period of time stated in the Contract Documents.
3. Subcontractor Team:
   a. Subcontractor agrees that the following team members or roles will be committed to this subcontract for the duration of the scope of work:
      i. Project Executive – Billy Brittelli
      ii. Senior Project Manager – David Pearson
      iii. Superintendent-Everette Lewis, Jr.
      iv. Superintendent- Christopher Cumbee
      v. Foreman | Floors 3-9 – tbd
      vi. Foreman | Common/Core – tbd
      vii. Safety Manager – tbd, as required
      viii. BIM Manager –Tony Santore
      ix. Project Manager – David Farmer

x. Assistant Project Manager - Jason Eacho
xi. QA/QC – tbd
xii. Prefabrication Manager-Bob Pharr
xiii. Prefabrication Supervisor-Julian Rubio

(all field supervisors and superintendents to be OSHA 30 trained)

3.D. Coordination with Other Trades and Authorities

This Subcontractor is responsible for coordinating with the other trades and authorities to ensure the proper installation of the work and to ensure work is not delayed.

1. Subcontractor shall cooperate fully with all building inspection officials with the review and inspection of the work of this Subcontract. Subcontractor shall promptly remedy all rejected or disapproved work by building inspection officials.
2. Subcontractor shall aid the Commissioning Authority and Test & Balance Agency in the execution of the Commissioning Plan.
3. It is understood that the rough-in, sleeving and raceways and pull strings for Telephone (and Data) raceway system, Telecommunications Room Requirements, Horizontal and Backbone Cabling, Security, MATV, AV and IT/MATV/Security including all boxes, back boxes and special back boxes are included within this scope of work. Although the Owner will be providing these systems and other OF systems, this subcontractor shall still be responsible for these systems to:
   a. Review of all shop drawings and submittals.
   b. Coordination of schedule and work sequencing.
   c. Provide manpower necessary to assist in startup of system, as it relates to the all 277/480v and 120/208v power.
4. Fire rated tele/data room plywood backboards.
5. Subcontractor shall provide all permits, plan checks, licenses, business license fee, inspections and associated fees (if necessary) to complete the work of this Subcontract, building permit is by General Contractor.
6. Subcontractor shall cooperate fully with all testing laboratory and inspection personnel with the review and inspection of the work of this Subcontract. Subcontractor shall promptly address remedies required for non-conforming work.
7. Subcontractor shall participate fully with the General Contractors BIM Plan and in conjunction with other Subcontractors, in the development of MEP coordination drawings, and a comprehensive BIM Model.
8. This Subcontractor understands and agrees the permanent Electrical Systems and equipment furnished herein will be used to temporarily operate the building systems during the construction process. The Subcontractor shall extend all related warranties so that they continue from the date of acceptance to the full periods of time required by the Contract Documents.
9. Subcontractor shall cooperate fully with General Contractor and other key trades to ensure obtaining the Certificate of Occupancies in an expeditious manner.

3.E. Field Engineering

This Subcontractor shall be responsible for all layout and engineering, including horizontal and vertical control which is required to complete this Scope of Work. Subcontractor is further responsible for coordination, layout, and location as applicable of all equipment, piping, conduit sleeves and block outs. The General Contractor will provide:

1. Two control Lines on each level.
2. Bench marks for elevation control on each level.

3.F. **Special Schedule Requirements**

1. NOT USED

4. **EXCLUSIONS:**

The Following Items are specifically excluded from the work of this Subcontract.

1. Utility Transformers (by Utility Company)

5. **UNIT PRICES:**

Balfour Beatty Construction reserves the right to modify the work in accordance with the following Unit Prices at the costs as noted. Unit Prices are good throughout the duration of the project and include all burdens, overhead markups, and profit.

1. N/A

6. **ALTERNATES OR OPTIONS:**

Balfour Beatty Construction reserves the right to modify the work in accordance with the following alternates or options at the costs as noted. Alternates or Options are good throughout the duration of the project and include all burdens, overhead markups, and profit.

1.	Tele/Com/Data Cabling	$132,573
2.	MATV Cabling	$49,530
3.	VE Lighting Fixture Package w/Lutron	<$397,935>
4.	Security Access Control cabling	$13,550

7. **ALLOWANCES:**

Balfour Beatty Construction has included the following allowances within this subcontract for the exclusive use of the General Contractor. They are not intended to allow for or be included for any base bid scope of work required by the Contract Documents, or as indicated in this Contract for this subcontract scope of work. These allowances shall not be used without prior written direction and approval by the Contractor. Allowances are good throughout the duration of the project, and any unused portions of these allowances shall be deducted from the subcontract value and returned 100% to the Contractor.

Subcontractor's Initials: _____

N/A

8. **RECAP OF CONTRACT AMOUNT:**

The Total Subcontract Amount is arrived at and recorded as follows:

Base Bid	$ 3,999,850
Less P&P Bonds	<$27,058>
Delete bed pilasters wall sconces (RI & Installation)	<$14,000>
Power to dewatering/well point system	$5,000
TOTAL SUBCONTRACT AMOUNT	**$ 3,963,792**

9. **CLARIFICATIONS:**

The following clarifications apply to this Subcontract:

1. Tower Crane to be furnished by Contractor for Subcontractor's use, as available and scheduled by the Contractor. Certified rigging and riggers shall be used and included by the subcontractor for any lifts or picks required by the subcontractor.
2. All submittals and shop drawings to be submitted no later than 30 days from execution of this subcontract.
3. Coordination study and Arc Flash studies are included.
4. All site exterior light fixtures that are existing are to be removed, stored and reinstalled by this subcontractor. New site lighting is also included as shown.
5. All site lighting, landscape lighting and landscape bollard lighting and power is included. Power to irrigation controller is included.
6. Building mounted light fixtures (lanterns, where shown to be gas lanterns) are included as electrical fixtures. (Special City of Charleston approved to match the gas fixture)
7. Electronic Card Readers
8. Bar Code System for material tracking
9. Back-lighting of resin panels in at millwork units
10. Lutron lighting system controls
11. Off-site mock up is included with all devices and fixtures, 1K and 1-Q plus hallway. Also included is an on-site exterior mockup.
12. Additional warranties as may be required in the Contract Documents.
13. Receiving, handling, inventory, assembly and installation of all owner furnished contractor installed light fixtures (to include but not be limited to all 'DC', 'DW', 'ID', 'J2', 'J4', 'J5' and 'J7' fixtures). Work with the manufacturer as required for coordination of the installation of lobby and ballroom level fixtures, as well as any other OFCI fixtures.
14. Providing all of the light fixtures on the ID drawings that are shown as CFCI
15. Power connections to fireplace equipment for electronic starters.
16. Lightning protection and grounding loop, certified master UL labeled.
17. Colored conduit if requested by Contractor, for certain systems such as fire alarm (red) and security (tbd).
18. E-generator tank to be left full of fuel after all testing for turnover to the Owner. Generator to include marine grade paint with exterior enclosure.
19. ATS's are included.
20. Seismic design for this subcontractor's scope and bracing as required.
21. Emergency circuit connection as required for high rise elevators.

Subcontractor's Initials: _____

22. Light pole bases.
23. Prefabrication to be used extensively by this subcontractor, including but not limited to electrical rooms, guest rooms and repeatable stacked rooms.
24. Included as Contract Documents, are the revised drawings issued to Subcontractor during award meeting from WLA, which included 11x17 sheets of LC-801, 802,162,161, E101,102,103,104,105,106,107,108,109 and DV102 with highlighted and clouded mark-ups.

END OF SCOPE OF WORK

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/13/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Rutherfoord, A Marsh & McLennan Agency LLC Company 6230 Fairview Rd. Suite 230 Charlotte NC 28210	CONTACT NAME: certificates@rutherfoord.com PHONE (A/C, No, Ext): 704-365-6213 FAX (A/C, No): 704-365-6214 E-MAIL ADDRESS: certificates@rutherfoord.com
INSURED WATSOELE Watson Electrical Construction Co. LLC 1500 Charleston Street Wilson NC 27893	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Travelers Indemnity Company — 25658 INSURER B : Travelers Prop & Casualty Co of Ame — 25674 INSURER C : Phoenix Insurance Company — 25623 INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** 1490552319 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	Y	Y	VTC2KCO2394A847IND15	2/27/2015	2/27/2016	EACH OCCURRENCE	$1,000,000
	[X] COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$1,000,000
	[ ] CLAIMS-MADE [X] OCCUR						MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$1,000,000
							GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$2,000,000
	[ ] POLICY [X] PRO-JECT [ ] LOC							$
B	AUTOMOBILE LIABILITY	Y	Y	VTC2JCAP2394A859TIL15	2/27/2015	2/27/2016	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	[X] ANY AUTO						BODILY INJURY (Per person)	$included
	[ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$included
	[X] HIRED AUTOS [X] NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
	[X] $50,000 Ded.							$
B	[X] UMBRELLA LIAB [X] OCCUR	Y	Y	VTSMJCUP5876N326TIL15	2/27/2015	2/27/2016	EACH OCCURRENCE	$5,000,000
	[ ] EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$5,000,000
	[ ] DED [X] RETENTION $ 10,000							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N		Y	VTC2NUB2394A83515	2/27/2015	2/27/2016	[X] WC STATU-TORY LIMITS [ ] OTH-ER	NC, SC, VA
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] N/A (Mandatory in NH)						E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Subject to the terms and conditions of the additional insured endorsements, the certificate holder is included as Additional Insured with respect to General Liability, Automobile Liability & Umbrella liability..

Waiver of Subrogation applies in favor of Certificate Holder for General Liability, Automobile Liability, Worker's Compensation & Umbrella Liability subject to the terms of the forms.

See Attached...

CERTIFICATE HOLDER

Balfour Beatty Construction
1930 Camden Road
Charlotte NC 28203

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Carl A. Hart

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AGENCY CUSTOMER ID: WATSOELE

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Rutherfoord, A Marsh & McLennan	Watson Electrical Construction Co. LLC 1500 Charleston Street Wilson NC 27893
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

The General Liability insurance afforded to the Additional Insured as described in this Certificate of Insurance for work performed by the Named Insured is primary and noncontributory to any similar coverage maintained by the Additional Insured, only to the extent required by contract and based on the terms of the form.

XCU Coverage is not excluded on the General Liability policy.

Umbrella Coverage is Follow Form.

Forms are available upon request.

General Liability Additional Insured: CG D6 04 (08/13)
General Liability Blanket Waiver of Subrogation: CGD316 (11/11)

Automobile Liability Blanket Additional Insured: CAT441 (02/15)
Automobile Liability Blanket Waiver of Subrogation: CAT353 (02/15)

Worker's Compensation Blanket Waiver of Subrogation: WC000313

Re: All Jobs for Balfour Beatty Construction, LLC, Joint Ventures and related affiliates
As to the Workers Compensation and Employers Liability policy evidenced herein, Subrogation is Waived in favor of the certificate holder, owners and others as required by contract. As to the General and Excess Liability policies, the Certificate Holder, Owner and others required by contract are Additional Insured.
Additional Insured status on the General Liability policy shall apply for both ongoing & completed operations as evidenced in the attached endorsement. Such insurance shall be Primary and Non-Contributory to any other insurance that may be available to the Additional Insured. Umbrella follows form. If applicable, policies do not contain a residential exclusion 30 DAYS NOTICE OF CANCELLATION IS ENDORSED TO ALL POLICIES.

ACORD 101 (2008/01)

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POLICY NUMBER: VTC2JCAP2394A859TIL15

COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BROAD FORM NAMED INSURED
B. BLANKET ADDITIONAL INSURED
C. EMPLOYEE HIRED AUTO
D. EMPLOYEES AS INSURED
E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS
F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS
G. WAIVER OF DEDUCTIBLE – GLASS
H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT
I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT
J. PERSONAL PROPERTY
K. AIRBAGS
L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS
M. BLANKET WAIVER OF SUBROGATION
N. UNINTENTIONAL ERRORS OR OMISSIONS

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c.** in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

   An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.6., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

   b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

      (1) Any covered "auto" you lease, hire, rent or borrow; and

      (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

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permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

   (2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

   (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph **(5)** in Paragraph **B.7., Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C.**, Limits Of Insurance, of SECTION II – COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C.**, Limits Of Insurance, of SECTION II – COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

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You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

(d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. **WAIVER OF DEDUCTIBLE – GLASS**

The following is added to Paragraph **D., Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. **HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT**

The following replaces the last sentence of Paragraph **A.4.b., Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is $65 per day, to a maximum of $750 for any one "accident".

I. **PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**

The following replaces the first sentence in Paragraph **A.4.a., Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. **PERSONAL PROPERTY**

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to $400 for "loss" to wearing apparel and other personal property which is:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. **AIRBAGS**

The following is added to Paragraph **B.3., Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. **NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

(a) You (if you are an individual);

(b) A partner (if you are a partnership);

(c) A member (if you are a limited liability company);

(d) An executive officer, director or insurance manager (if you are a corporation or other organization); or

(e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. **BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

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such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – AUTOMATIC STATUS IF REQUIRED BY WRITTEN CONTRACT (CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED**:

   Any person or organization that:

   a. You agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part; and

   b. Has not been added as an additional insured for the same project by attachment of an endorsement under this Coverage Part which includes such person or organization in the endorsement's schedule;

   is an insured, but:

   a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and

   b. Only as described in Paragraph (1), (2) or (3) below, whichever applies:

      (1) If the "written contract requiring insurance" specifically requires you to provide additional insured coverage to that person or organization by the use of:

         (a) The Additional Insured – Owners, Lessees or Contractors – (Form B) endorsement CG 20 10 11 85; or

         (b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

      the person or organization is an additional insured only if the injury or damage arises out of "your work" to which the "written contract requiring insurance" applies;

      (2) If the "written contract requiring insurance" specifically requires you to provide additional insured coverage to that person or organization by the use of:

         (a) The Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization endorsement CG 20 10 07 04 or CG 20 10 04 13, the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 07 04 or CG 20 37 04 13, or both of such endorsements with either of those edition dates; or

         (b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37, without an edition date of such endorsement specified;

      the person or organization is an additional insured only if the injury or damage is caused, in whole or in part, by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies; or

      (3) If neither Paragraph (1) nor (2) above applies:

         (a) The person or organization is an additional insured only if, and to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies; and

         (b) The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

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2. The insurance provided to the additional insured by this endorsement is limited as follows:
   a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured will be limited to such minimum required limits of liability. For the purposes of determining whether this limitation applies, the minimum limits of liability required by the "written contract requiring insurance" will be considered to include the minimum limits of liability of any Umbrella or Excess liability coverage required for the additional insured by that "written contract requiring insurance". This endorsement will not increase the limits of insurance described in Section III – Limits Of Insurance.
   b. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
      (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
      (2) Supervisory, inspection, architectural or engineering activities.
   c. The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured during the policy period.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured under which that person or organization qualifies as a named insured, and we will not share with that other insurance. But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.
4. As a condition of coverage provided to the additional insured by this endorsement:
   a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
      (1) How, when and where the "occurrence" or offense took place;
      (2) The names and addresses of any injured persons and witnesses; and
      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
   b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
      (1) Immediately record the specifics of the claim or "suit" and the date received; and
      (2) Notify us as soon as practicable.

      The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
   c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
   d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to other insurance available to the additional insured which covers that person or organization as a named insured as described in Paragraph 3. above.
5. The following is added to the DEFINITIONS Section:

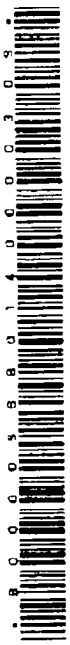
   "Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or or-

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ganization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed, during the policy period and:

a. After the signing and execution of the contract or agreement by you; and

b. While that part of the contract or agreement is in effect.



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POLICY NUMBER VTC2KCO2394A847IND15

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. Aircraft Chartered With Pilot
B. Damage To Premises Rented To You
C. Increased Supplementary Payments
D. Incidental Medical Malpractice
E. Who Is An Insured – Newly Acquired Or Formed Organizations
F. Who Is An Insured – Broadened Named Insured – Unnamed Subsidiaries
G. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises
H. Blanket Additional Insured – Lessors Of Leased Equipment
I. Blanket Additional Insured – States Or Political Subdivisions – Permits
J. Knowledge And Notice Of Occurrence Or Offense
K. Unintentional Omission
L. Blanket Waiver Of Subrogation
M. Amended Bodily Injury Definition
N. Contractual Liability – Railroads

PROVISIONS

A. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion **g., Aircraft, Auto Or Watercraft**, in Paragraph **2.** of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

(a) Chartered with a pilot to any insured;

(b) Not owned by any insured; and

(c) Not being used to carry any person or property for a charge.

B. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion **j., Damage To Property**, in Paragraph **2.** of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.

2. The following replaces the last paragraph of Paragraph **2., Exclusions**, of **SECTION I – COVERAGES – COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions **c.** and **g.** through **n.** do not apply to "premises damage". Exclusion **f.(1)(a)** does not apply to "premises damage" caused by:

a. Fire;

b. Explosion;

c. Lightning;

d. Smoke resulting from such fire, explosion, or lightning; or

e. Water;

unless Exclusion **f.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title.

A separate limit of insurance applies to "premises damage" as described in Paragraph **6.** of **SECTION III – LIMITS OF INSURANCE**.

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3. The following replaces Paragraph **6.** of **SECTION III – LIMITS OF INSURANCE**:

   Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will apply to all "property damage" proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these causes.

   The Damage To Premises Rented To You Limit will be:

   a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or

   b. $300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph **a.** of the definition of "insured contract" in the **DEFINITIONS** Section:

   a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

   "Premises damage" means "property damage" to:

   a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or

   b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph **4.b.(1)(b)** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   (b) That is insurance for "premises damage"; or

7. Paragraph **4.b.(1)(c)** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

C. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph **1.b.** of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGE**:

   b. Up to $2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph **1.d.** of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

   d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

D. INCIDENTAL MEDICAL MALPRACTICE

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

   "Occurrence" also means an act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

   Paragraph **(1)(d)** above does not apply to "bodily injury" arising out of providing or failing to provide:

   (i) "Incidental medical services" by any of your "employees" who is a nurse practitioner, registered nurse, licensed practical nurse, nurse assistant, emergency medical technician or paramedic; or

   (ii) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

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3. The following is added to Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE**:

   For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

   Sale Of Pharmaceuticals

   "Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

   "Incidental medical services" means:

   a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or

   b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

   "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

6. The following is added to Paragraph **4.b., Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   The insurance is excess over any valid and collectible other insurance available to the insured, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" or "volunteer workers" for "bodily injury" that arises out of providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any person to the extent not subject to Paragraph **2.a.(1)** of Section II – Who Is An Insured.

E. **WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph **4.** of **SECTION II – WHO IS AN INSURED**:

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

   a. Coverage under this provision is afforded only:

      (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

      (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

   b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

   c. Coverage **B** does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

F. **WHO IS AN INSURED – BROADENED NAMED INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if you maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such subsidiary.

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G. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and

b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.

b. The insurance provided to such premises owner, manager or lessor does not apply to:

(1) Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, lessor or manager.

c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

H. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor and that you have agreed in a written contract or agreement to include as an insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and

b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

a. The limits of insurance provided to such equipment lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.

b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

I. BLANKET ADDITIONAL INSURED – STATES OR POLITICAL SUBDIVISIONS – PERMITS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any state or political subdivision that has issued a permit in connection with operations performed by you or on your behalf and that you are required

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by any ordinance, law or building code to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of such operations.

The insurance provided to such state or political subdivision does not apply to:

a. Any "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or

b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. **KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph **2., Duties In The Event of Occurrence, Offense, Claim or Suit, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

e. The following provisions apply to Paragraph **a.** above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph **1.** or **2.** of Section II – Who Is An Insured:

(1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture or limited liability company) or any "employee" authorized by you to give notice of an "occurrence" or offense.

(2) If you are a partnership, joint venture or limited liability company, and none of your partners, joint venture members or managers are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

(a) Any individual who is:

(i) A partner or member of any partnership or joint venture;

(ii) A manager of any limited liability company; or

(iii) An executive officer or director of any other organization;

that is your partner, joint venture member or manager; or

(b) Any "employee" authorized by such partnership, joint venture, limited liability company or other organization to give notice of an "occurrence" or offense.

(3) Notice to us of such "occurrence" or of an offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs **e. (1)** or **(2)** above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this Coverage Part includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph **e.** does not affect that requirement.

K. **UNINTENTIONAL OMISSION**

The following is added to Paragraph **6., Representations, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

L. **BLANKET WAIVER OF SUBROGATION**

The following is added to Paragraph **8., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

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If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

a. "Bodily injury" or "property damage" that occurs; or

b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of that contract or agreement.

M. **AMENDED BODILY INJURY DEFINITION**

The following replaces the definition of "bodily injury" in the **DEFINITIONS** Section:

3. "Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

N. **CONTRACTUAL LIABILITY – RAILROADS**

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:

   c. Any easement or license agreement;

2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

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TRAVELERS

ONE TOWER SQUARE
HARTFORD, CT 06183

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 13 (00)-01

POLICY NUMBER: (VTC2NUB-2394A83-5-15)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS WAIVER

DATE OF ISSUE: 02-27-15 ST ASSIGN:

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Watson Electrical Construction Co. LLC

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:
☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☑ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ C
Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.
☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any) _____
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)
P. O. Box 3105

Requester's name and address (optional)

6 City, state, and ZIP code
Wilson, N. C. 27895

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number
			-			-				

or

Employer identification number
6	1	-	1	4	4	0	0	4	3

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶ Rebecca S. Hill Date ▶ 5-13-14

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

NANCY TAYLOR
11525 N. COMMUNITY HOUSE RD
SUITE 425
CHARLOTTE, NC 28277

RECORDED

Date: March 8, 2019
Time: 11:34:45 AM

Book	Page	DocType
0781	875	Mech/Lien

Michael Miller, Register
Charleston County, SC

# of Pages: 5
# of Sats:
# of References:

MAKER:
LIBRARY ASSOCS LLC AL

Note:

RECIPIENT:
WATSON ELECTRICAL ETC

Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00

Original Book:
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DRAWER Drawer 5
CLERK JSW

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03/08/2019 Recorded Date
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EXHIBIT B
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WATSON ELECTRICAL CONSTRUCTION CO. LLC., Claimant, vs. LIBRARY ASSOCIATES, LLC and METROPOLITAN LIFE INSURANCE COMPANY, and BALFOUR BEATTY CONSTRUCTION, LLC, General Contractor.	**NOTICE AND CERTIFICATE OF MECHANICS LIEN**

NOTICE IS HEREBY GIVEN pursuant to S.C. Code Ann. §29-5-10, et. seq. that the Claimant **WATSON ELECTRICAL CONSTRUCTION CO. LLC.** ("**Watson**") claims and holds a lien upon real property hereinafter described, together with all improvements thereon, for the sum of **One Million Eight Hundred Fifty-Nine Thousand Three Hundred Fifty-Nine and 00/100 dollars** ($1,859,359.00) plus interest, reasonable attorney's fees for the collection of said sum, and for the cost of this action.

This lien is intended to attach and to affect the ownership interest of Owner and Contractor in those portions of the premises described as ("property"):

PROPERTY DESCRIPTION: That certain real property located at 404 King Street, Charleston, Charleston County, South Carolina, and identified as PIN number 4601604009 of the Charleston County, South Carolina registry.

Said sum is due and owing to the Claimant for labor and materials furnished in making improvements to the real property hereinafter described by virtue of an agreement with and consent of the persons or entities exercising possessory rights over the subject real property. The said labor and materials were actually used in improving said property within ninety (90) days prior to the date hereof.

That by virtue thereof, by the service and the filing of this Notice and Certificate, and pursuant to the provisions of the statutes, the Claimant has and claims a lien to secure the payment of the debt due and the costs, interest and attorney's fees involved in enforcing said lien upon real property located in Charleston County, South Carolina and being more particularly described as the property described above.

A verified statement of account and the amount due thereon for labor and materials actually provided is attached hereto as **Exhibit "A".**

The subcontractor is required to be licensed or registered as contemplated by S.C. Code. Ann. § 29-5-15. The S.C. License or Registration number for Watson is M106527.

THIS THE 7th day of March, 2019

Don R. Terry, Esq., SC Bar # 101395
SMITH TERRY & JOHNSON
11525 N. Community House Rd., Suite 425
Charlotte, NC 28277

FILE NUMBER_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
WATSON ELECTRICAL CONSTRUCTION CO. LLC.,)
)
Claimant,)
)
vs.) **VERIFIED**
)
LIBRARY ASSOCIATES, LLC and METROPOLITAN LIFE INSURANCE COMPANY,) **STATEMENT OF ACCOUNT**
)
and)
)
BALFOUR BEATTY CONSTRUCTION, LLC)
)
General Contractor)

Personally, appeared before me, Carroll M. Lipscombe, Jr. who being duly sworn, deposes and states that I am the Chief Financial Officer of Watson Electrical Construction Co. LLC ("Watson"), and I am authorized to give this Affidavit. I am familiar with the accounts owed for services performed by Watson for the Owner's benefit on the property described in the Lien Claim. The amount owed to Watson in total is **One Million Eight Hundred Fifty-Nine Thousand Three Hundred Fifty-Nine and 00/100 dollars** ($1,859,359.00) and is derived from the outstanding pay applications, change requests, and or claims.

Carroll M. Lipscombe, Jr.- CFO
Watson Electrical Construction Co. LLC

Sworn to by:
Laura Edwards Marshburn
(Notary Public)
This 7th day of March 2019

My Commission expires on: 02 - 01 - 2023

Laura Edwards Marshburn
NOTARY PUBLIC
Nash County, NORTH CAROLINA
My Commission Expires February 1, 2023

EXHIBIT
tabbies
A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he served a copy of the foregoing **NOTICE AND CERTIFICATE OF MECHANICS LIEN** upon the parties listed below by depositing a copy thereof in the United States mail in Charlotte, North Carolina, postage pre-paid, certified, return receipt requested and addressed as follows:

Library Associates, LLC
c/o Michael R. Bennett
17 Lockwood Blvd, Suite 400
Charleston, SC 29401

Balfour Beatty Construction, LLC
c/o Corporation Service Co.
1703 Laurel Street
Columbia, SC 29201

This the 7th day of March, 2019.

By: _____
Lynette Lemor

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Strong Tower Construction, LLC Plaintiff, vs. Balfour Beatty Construction, LLC, Library Associates, LLC, and Metropolitan Life Insurance Company Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2019-CP-10-02868 ANSWER OF DEFENDANT BALFOUR BEATTY CONSTRUCTION, LLC

FILED
2019 JUL 29 PM 12:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY JR

The Defendant Balfour Beatty Construction, LLC ("Balfour"), through its below-signed attorneys, answers the Complaint of the Plaintiff above-named and alleges and says:

1. Balfour is without information sufficient to form a belief as to the allegations of Paragraph 1 and therefore denies the same and demands strict proof thereof.

2. Balfour admits the allegations of Paragraph 2.

3. Balfour admits, upon information and belief, the allegations of Paragraph 3.

4. The allegations of Paragraph 4 do not require a response from Balfour. To the extent a response is required, Balfour denies the allegations of Paragraph 4.

AS TO THE FIRST CAUSE OF ACTION
(Mechanic's Lien Foreclosure)

5. Answering the allegations of Paragraph 5, Balfour craves reference to the written contract, as amended, for its exact terms and contents and denies any allegations inconsistent therewith.

6. Balfour is without information sufficient to form a belief as to the allegations of Paragraphs 6 and 7 and therefore denies the same and demands strict proof thereof.

7. Balfour admits, upon information and belief, the allegations of Paragraph 8.

8. Balfour is without information sufficient to form a belief as to the allegations of Paragraphs 9 through 11 and therefore denies the same and demands strict proof thereof.

9. Balfour denies the allegations of Paragraph 12.

AS TO THE SECOND CAUSE OF ACTION
(Quantum Meruit/Quasi Contract)

10. Answering the allegations of Paragraph 13, Balfour realleges its responses to the preceding paragraphs as if repeated herein verbatim.

11. Balfour denies the allegations of Paragraphs 14 and 15.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Contract)

12. Answering the allegations of Paragraph 16, Balfour realleges its responses to the preceding paragraphs as if repeated herein verbatim.

13. Balfour denies the allegations of Paragraphs 17 and 18.

AS TO THE FOURTH CAUSE OF ACTION
(Constructive Trust)

14. Answering the allegations of Paragraph 19, Balfour realleges its responses to the preceding paragraphs as if repeated herein verbatim.

15. Balfour is without information sufficient to form a belief as to the allegations of Paragraphs 20 through 23 and therefore denies the same and demands strict proof thereof.

GENERAL DENIAL

16. Balfour denies each and every allegation of the Plaintiff's Complaint not specifically admitted above.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

17. Strong Tower lacks standing to make the claims asserted against Balfour in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

18. That all claims asserted against Balfour are barred by the applicable statute of limitations and/or the applicable statute of repose.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

19. Strong Tower's claims, if any, are the result of acts and omissions of other entities over whom Balfour has no control, barring Strong Tower's claims against Balfour.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

20. That all claims are barred by the doctrine of Laches, Waiver, Abandonment and Estoppel.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

21. That all claims asserted by Strong Tower are barred by the doctrine of unclean hands.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

22. Strong Tower's claims are barred by payment and/or release.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

23. Strong Tower's claims are barred by the doctrine of accord and satisfaction.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

24. Strong Tower has waived and/or is estopped from asserting the claims set forth in its Complaint.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

25. If Strong Tower sustained injuries and damages in the manner alleged in the Complaint, which injuries and damages are specifically denied by Balfour, then the alleged injuries and damages were sustained not as the result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Balfour nor of anyone for whose conduct Balfour is in anyway responsible, but through the fault, neglect, breach of warranty (express or implied) and want of due care on the part of Strong Tower, all of which will be shown at the trial of this case, and for which Strong Tower can have no recovery against Balfour or, in the alternative, for which Strong Tower's recovery should be appropriately reduced.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. Strong Tower materially breached its subcontract with Balfour by failing to complete its work in a timely, good, and workmanlike manner and in accordance with the subcontract. Therefore, Strong Tower is barred from recovery against Balfour.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. Strong Tower's claims against Balfour are barred due and owing to the doctrine of prior breach, including prior breach of the subcontract.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. Strong Tower's claims are barred for failure to provide proper and required notice of any alleged claim, breach and/or damage.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. Some or all of Strong Tower's claims are barred by the Parole Evidence Doctrine.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. Some or all of Strong Tower's claims are barred by the Statute of Frauds.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

31. To the extent Strong Tower proves the existence of a contract, the existence of an express contract bars any and all claims arising in quasi-contract.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. Strong Tower's claims are barred due and owing to the prior breach of express or implied warranties.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

33. Strong Tower's claims fail to state facts sufficient to constitute causes of action against Balfour.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

34. Strong Tower has failed to comply with all applicable terms and conditions, including condition(s) precedent to filing suit, as set forth in the contract documents. Specifically, Strong Tower has failed to comply with the notice, claim, mode of trial and dispute resolution provisions of the contract documents.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

35. Strong Tower's claims and damages are barred, limited and/or reduced by the damage provisions in the contract including, but not limited to, the liquidated damages provisions and waiver of consequential damages.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

36. Strong Tower has failed to minimize or mitigate its alleged damages and is therefore barred from recovery.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

37. Strong Tower's claims are barred or should be reduced by the doctrines of offset and set-off.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

38. Balfour hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

39. Balfour reserves its right to amend its Answer to the Complaint of Strong Tower to assert any additional defenses which are revealed during discovery of this action.

Wherefore, having fully answered the Plaintiff's Complaint, Balfour Beatty Construction, LLC prays that it be dismissed with costs.

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By: _____

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Robert C. Byrd
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bobbybyrd@parkerpoe.com

Taylor M. Morris
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taylormorris@parkerpoe.com

Attorneys for Defendant Balfour Beatty Construction, LLC

July 23, 2019

2019-CP-10-2868

Certificate of Service

This is to certify that a copy of the Answer of Defendant Balfour Beatty Construction, LLC has been served upon the following counsel of record via electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 23rd day of July, 2019.

Steve L. Smith, Esq.
Smith Closser Wheeler, PA
PO Box 40578
Charleston, SC 29423
ssmith@scnlaw.com

Attorney for Plaintiff Strong Tower Construction, LLC d/b/a Koch Corporation

G. Hamlin O'Kelley, III, Esq.
Ian N. Bowers, Esq.
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com

Attorney for Metropolitan Life Insurance Company

W. H. Bundy, Jr., Esq.
M. Brent McDonald, Esq.
Bundy McDonald, LLC
PO Box 50427
Summerville, SC 29485
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorney for Library Associates, LLC

2019 JUL 29 PM 12:

CLERK OF COURT

BY

Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401-2240

Parker Poe

Thomas C. Hildebrand, Jr.
Partner
Telephone: 843.727.2653
Direct Fax: 843.727.2680
tomhildebrand@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

July 24, 2019

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

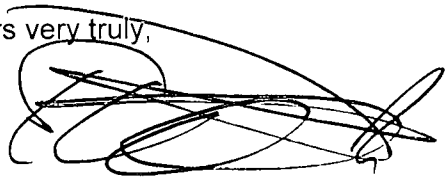
Re: Strong Tower Construction, LLC v. Balfour Beatty Construction, LLC, et al.
Case No.: 2019-CP-10-02868

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Balfour Beatty Construction, LLC's Answer to Strong Tower Construction, LLC's Complaint in the above-referenced matter. I would appreciate it very much if you would file the pleading with the Court and then return a clocked copy to me in the enclosed self-addressed, stamped envelope.

With best regards,

Yours very truly,



Thomas C. Hildebrand, Jr.

TCHJr/iah
Enclosures

cc: All counsel of record (via US Mail and email)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Balfour Beatty Construction, LLC, Plaintiff, vs. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants. Library Associates, LLC Third-Party Plaintiff, vs. Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc. Third-Party Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: LIS PENDENS

FILED
2019 OCT -3 PM 2:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Notice is hereby given that an action has been or within 20 days will be commenced by the Plaintiff above-named against the Defendant above-named for the foreclosure of the following Amended Mechanic's Lien which encumbers the property described herein:

Amended Mechanic's Lien of Balfour Beatty Construction, LLC ("Balfour") in the amount of Twelve Million Sixty-Six Thousand One Hundred Forty-Seven and 9/100 ($12,066,147.09) and filed in the RMC Office for Charleston County, South Carolina. The property covered and affected by the Mechanic's Lien and this Lis Pendens is more fully described as follows:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009

This Lis Pendens is an amendment to an earlier Lis Pendens filed by Balfour in the amount of Eight Million Four Hundred Nine Thousand Six Hundred Fifty-Eight and 54/100 ($8,409,658.54) dated March 5, 2019. In the event that Balfour's Amended Mechanic's Lien referenced herein is deemed to be inappropriate or invalid for whatever

reason, Balfour will stand on its original Lis Pendens dated March 5, 2019. The Lis Pendens amounts (the original and this amended Lis Pendens) are not intended to be cumulative and the maximum Lis Pendens amount claimed by Balfour against the subject property is Twelve Million Sixty-Six Thousand One Hundred Forty-Seven and 9/100 ($12,066,147.09).

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By: _____

Thomas C. Hildebrand, Jr.
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843.727.6315 (direct dial)
taylormorris@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

October 2, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Balfour Beatty Construction, LLC,

Plaintiff,

vs.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,

Defendants.

Library Associates, LLC

Third-Party Plaintiff,

vs.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-10-01108

AMENDED SUMMONS

FILED
2019 OCT -3 PM 2:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS LIBRARY ASSOCIATES, LLC; AND METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the below-signed at their office located at 200 Meeting Street, Suite 301, Charleston, South Carolina 29401, within fifteen (15) days after the service

hereof, exclusive of the day of such service. If you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By: _____

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taylormorris@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

October 2, 2019

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Balfour Beatty Construction, LLC, Plaintiff, vs. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2019-CP-10-01108 AMENDED COMPLAINT (Non Jury) (Referral to Master-in-Equity Requested)

FILED
2019 OCT 8 PM 2:47
CHARLESTON COUNTY
REGISTER OF COURT

The Plaintiff Balfour Beatty Construction, LLC ("Balfour" or "Plaintiff") by way of Amended Complaint against Library Associates, LLC ("Library Associates") and Metropolitan Life Insurance Company, a New York Corporation ("Met Life") (collectively "Defendants") through its below signed attorneys, alleges and says:

JURISDICTION AND VENUE

1. Balfour is a limited liability corporation organized under the laws of the State of Delaware with its principal place of business in Dallas, Texas. It transacts business in the State of South Carolina and the County of Charleston.

2. Library Associates is a limited liability corporation organized and existing under the laws of the State of South Carolina and transacts business in Charleston County.

3. Met Life is a corporation organized under the laws of the State of New York and transacts business in South Carolina.

4. Venue and Jurisdiction are appropriate in this court as the project that is the subject of this litigation is in Charleston County and most of the acts related to this action took place in Charleston County.

5. The contract for the construction of the project (described in more detail below) provides that this dispute is to be decided as a non-jury matter before the Charleston County Master-in-Equity.

BACKGROUND FACTS

6. Balfour is a general contractor that constructs various projects, including large commercial projects, in states throughout the United States. Balfour is a licensed South Carolina unlimited general contractor, license number 110668.

7. Library Associates owns the property and improvements thereon which are the subject of this action. Library Associates is sometimes referred to herein as "Owner".

8. Library Associates is principally owned and controlled by Charleston developer Michael Bennett.

9. Met Life provided construction financing to Library Associates for the Project and has a security interest in the property that is the subject of this action.

10. By contract dated September 22, 2014, Balfour contracted with Library Associates to construct a luxury hotel to be built on the site of the old Charleston library, which is adjacent to Marion Square in downtown Charleston. The contract between Balfour and Library Associates is incorporated herein by reference and is referred to herein as the "Contract".

11. The "Project" identified in the Contract is the "Hotel at Marion Square, 404 King Street, Charleston, South Carolina", but the Owner subsequently changed the name and the project is now called the Hotel Bennett (the "Hotel" or the "Project").

12. Owner contracted with Winford Lindsay Architect as the architect for the

Project (the "Architect") and Architect is identified and designated as such in the Contract.

13. The Architect was obligated to provide the necessary and required design documents, including the drawings and specifications (the "Design Documents") for the Project and also, during construction, to provide certain contract administration not otherwise performed by the Owner through its owner's representative.

14. Architect is specifically designated in the Contract as an express "Owner's representative" and as such had ongoing obligations as an owner's representative during construction. (Contract General Conditions ¶ 4.2.1)

15. The Contract provided that the Owner was to designate in writing "a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization" (Contract General Conditions ¶ 2.1.1) and that representative was required to render decisions promptly and furnish information expeditiously to avoid unreasonable delay to Balfour. (Contract ¶ 3.2). The Owner did so designate Jim Clements and Matrix Program Management Services, LLC as the Owner's Designated Representative (hereinafter "Owner's Representative").

ERRORS, OMISSIONS, WRONGFUL ACTS AND BREACHES BY OWNER

16. Shortly after Balfour's work commenced, unordinary, unanticipated and unforeseen problems and issues developed that damaged Balfour (as detailed below) and that were caused by the errors, omissions, wrongful acts and breaches of Library Associates and the consultants, agents, and representatives of Library Associates, to specifically include, but not limited to, the Architect and the Owner's Representative. The errors, omissions, wrongful acts and breaches of Owner, and for which Owner is

responsible and liable, are referenced hereinafter as the "Breaches" and include, but are not limited to, the following:

(a) Failure to provide information or services required of the Owner in a reasonably prompt and timely manner and in accordance with the Contract.

(b) Failure to provide an Owner's Representative who was in fact appropriately authorized, permitted and able to make prompt and timely decisions, bind the Owner and who could furnish information expeditiously so as to avoid delays and impacts to the Project and Balfour. The Owner's Representative regularly and repeatedly failed to make prompt and timely decisions and failed to promptly and timely forward information.

(c) Failure to timely and promptly pay amounts due and owing to Balfour, to specifically include undisputed and reasonably undisputed amounts owed.

(d) Making major changes while the Project was underway resulting in major changes to the layout of the building and systems in the building without adequate compensation to Balfour. Two examples include: (1) decisions by the Owner well after construction had commenced to upscale the hotel to a higher luxury rating leading to changes in room layouts which drove major system changes and, (2) the Owner's failure to select a hotel operator until late in the Project which then led to many changes, including changes in the levels of finishes in guest rooms and public spaces to adjust to the operator's branding requirements. Additionally, there were continual design and materials changes during construction that were seemingly made or proposed simply to address the Owner's constantly changing and shifting visions of the Project. Many changes were mandated by the Owner, and persons for whom the

Owner is responsible, that resulted in significant cascading effects on other work that resulted in higher costs and delays. All of these design changes, and more, caused delays and damages for which Balfour has not been compensated.

(e) The Owner and its agents and representatives actively interfered with and disrupted Balfour and the Project. Examples include instances where Owner communicated possible changes to the building and thereafter failed to promptly make decisions as to such proposed changes, sometimes abandoning the proposed changes after months of indecision - leading to, among other things, delays, disruptions, impacts, accelerations, and interference to and with Balfour.

(f) Failure to procure appropriate Builders' Risk insurance in accordance with the requirements of the Contract and failure and refusal to compensate Balfour for losses incurred which were or should have been covered by appropriate and required Builders' Risk insurance.

(g) Failure to provide contract documents, to include drawings and specifications, ("Contract Documents") that were reasonably free from errors and omissions and which included all items necessary for the proper execution and completion of the work by Balfour.

(h) Failure to provide Contract Documents that were properly coordinated. The degree to which the design was uncoordinated together with the level of work, time, cost and effort that fell on and was demanded by Owner to Balfour to coordinate the design and keep construction progress was unforeseeable.

(i) Failure of the Owner to either authorize or direct its design consultants, to specifically include but not limited to the Architect, to provide adequate,

timely and sufficient services, including building information modeling ("BIM"), for the preconstruction and construction phases of the Project so as to timely and proactively identify and address (with approximate lead time) deficiencies in the design and the uncoordinated nature of the design. The Architect's BIM capabilities were unreasonably, improperly and fundamentally inadequate which led the Architect to fail to keep pace with the coordination process and to provide information in workable formats or work with information in relevant, required and appropriate industry standard formats. An example of a significant impact from these deficiencies includes, but is not limited to the fact that the progress of construction caught up to the design coordination at the fifth floor which shut down and interrupted the construction of the concrete structure. Also, Balfour was prevented from executing a typical buyout, submittal and shop drawing process for the fit up of the building, which compressed that work and caused inefficiencies.

(j) Failure to timely furnish information and services required by Balfour to efficiently construct the Project.

(k) Failure to promptly or timely provide decisions and approvals.

(l) Repeated failures to refrain from directly communicating with Balfour's employees and subcontractors rather than communicating with Balfour's authorized representative, all with the purpose and/or result of undermining Balfour's leadership on the Project and making performance of the work more difficult and costly.

(m) Delays, disruptions, impacts, accelerations and damage caused to the Project by the Owner's separate contractors resulting in Balfour incurring additional costs and delays, including costs to repair resulting damage.

(n) Failure of the design to conform with applicable laws, ordinances, codes, rules and regulations as well as reasonable, prudent, relevant and applicable standards and standards of care.

(o) Failure to reasonably interpret and administer allowances set forth in the Contract, including the refusal to execute change orders for costs exceeding allowance amounts and refusal to act reasonably and promptly in selecting materials and equipment covered by allowances.

(p) Abandonment and waiver (express and/or implied) by the Owner of much, if not all, of the claims, administrative changes and change order provisions which were drafted by the Owner and set forth in the Contract.

(q) Requiring Balfour to provide work that went beyond what was depicted in the drawings or provided in the specifications – or reasonably inferable from those documents – all without the provision of additional compensation and extensions of time.

(r) The Owner's abandonment and waiver (express and/or implied) of many or all Contract provisions by selectively enforcing provisions only when the Owner believed the circumstances were favorable to it.

(s) Failure on the part of the Architect and Owner's design consultants to reasonably and impartially interpret and administer the Contract.

(t) Failure to extend the contract completion dates and compensate Balfour for delay costs and damages.

17. As a result of the Breaches described herein Balfour has suffered actual and direct damages to include, but not limited to, extended overhead, loss of profit,

interest, costs and attorneys' fees. These damages relate to and arise from the Breaches enumerated above and the resulting impacts, interference, disruptions, coordination failures, accelerations (actual and constructive) and changes.

FIRST CAUSE OF ACTION
Foreclosure of Mechanic's Lien

18. Balfour realleges the Paragraphs above as if repeated herein verbatim.

19. Balfour, pursuant to its Contract with Library Associates, furnished labor, materials and services used in the construction of the Project.

20. Balfour has performed all conditions precedent to the Contract with Library Associates.

21. At all times during the performance by Balfour the Property was owned by Library Associates.

22. Met Life claims an interest in the Property and is named herein pursuant to that interest which relates to the provision of construction financing for the Project.

23. Balfour gave and served Library Associates and Met Life with its notice of statement of account and its Amended Mechanic's Lien within 90 days after which Balfour supplied labor, materials and services for the Project as provided for by law.

24. On July 23, 2019, Balfour, within 90 days of the last date upon which it supplied the labor, materials and services to the Property, filed in the Office of the Register of Deeds for Charleston County its notice of statement of account for its Amended Mechanic's Lien, which was a just and true account of the amount due Plaintiff, at Book 0810, Page 324, of the records, a copy of which is attached hereto as Exhibit "A".

25. Balfour claims a Mechanic's Lien on the Property as more particularly

described in Exhibit A within the Amended Mechanic's Lien.

26. Balfour is entitled to an order of foreclosure of its Amended Mechanic's Lien on the subject real estate for the amount of its account and costs and requiring that the property be sold and that the proceeds of the sale after deducting all lawful charges and expenses be applied to the debt of Balfour including reasonable attorney's fees and costs incurred.

SECOND CAUSE OF ACTION
(Breach of Contract)

27. Balfour realleges the Paragraphs above as if repeated herein verbatim.

28. Owner has breached the Contract with Balfour in the particulars that include the Breaches detailed herein, all to Balfour's damage as detailed herein.

THIRD CAUSE OF ACTION
(Quantum Meriut/Quasi Contract)

29. Balfour realleges the Paragraphs above as if repeated herein verbatim.

30. Balfour conferred benefits in the form of work and materials as described herein and as will be proven. The benefits were not conferred gratuitously but were conferred with an expectation of compensation and reimbursement.

31. Owner knew or should have known that Balfour expected compensation and reimbursement for the benefits provided and the costs and damages incurred, and Owner chose to accept the benefits with such knowledge. As a result, Owner has been unjustly enriched in an amount to be proven at trial and as otherwise discussed herein. Despite its unjust enrichment, Owner has refused to compensate Balfour for the damages incurred.

FOURTH CAUSE OF ACTION
(South Carolina Code §27-1-15)

32. Balfour realleges the Paragraphs above as if repeated herein verbatim.

33. On January 29, 2019 Balfour sent a letter to Owner by certified mail demanding payment for the balance then due for the labor and materials provided by Balfour to the Owner and the Project. See attached Exhibit "C". Pursuant to South Carolina Code §27-1-15, Owner had a duty to make a reasonable and fair investigation of the merits of Balfour's claim and to pay the claim, or whatever portion of it was determined to be valid, within 45 days of the date of the certified letter. Owner has failed and refused to make a reasonable and fair investigation of Balfour's claim and has failed and refused to pay any portion of the same.

34. Pursuant to South Carolina Code §27-1-15, and for the reasons stated herein, Owner is liable for and Balfour is entitled to the amount of Balfour's claim plus attorneys' fees and interest from the date Balfour sent the certified letter to Owner.

FIFTH CAUSE OF ACTION
(Abandonment, Waiver and/or Estoppel)

35. Balfour realleges the Paragraphs above as if repeated herein verbatim.

36. Shortly after construction began, problems and issues began that were caused by and/or the responsibility of the Owner, as more fully detailed herein. Balfour provided ongoing general and specific notice, both oral and in writing, to the Owner of the Breaches and damages it was incurring and would incur as a result of the Breaches and the delays, changes , impacts, non-payments, accelerations and damages resulting therefrom. With full actual and/or constructive knowledge of Balfour's claims, issues and damages (current and potential) the Owner directed, induced and demanded Balfour to proceed and continue to provide all work and materials to complete the

Project.

37. The Owner, by directing, inducing and demanding Balfour to proceed with the work despite notice of Balfour's claims, and by accepting the ongoing benefits and work provided by Balfour without demanding additional claims documentation or demanding that Balfour stop work, waived, abandoned and is estopped from enforcing or attempting to enforce any contractual claims provisions in defense of Balfour's claims. Owner, by not demanding additional claims documentation or demanding that Balfour stop work in response to Balfour's notice to Owner of the Breaches, intended to induce and cause Balfour to rely, and did induce and cause Balfour to reasonably rely on Owner's silence and non-enforcement, all to Balfour's damage as stated herein.

SIXTH CAUSE OF ACTION
(Cardinal Change)

38. Balfour realleges the Paragraphs above as if repeated herein verbatim.

39. The Breaches of the Owner, in part or in whole, effected a change and changes to the Contract that were so profound and of such great magnitude that they required Balfour to perform duties and a scope of work materially different from what was originally bargained for and fundamentally altered Balfour's original undertaking and amounted to a practical repudiation of the original contract by Owner, and thereby constituted cardinal changes allowing Balfour recovery of all damages incurred even if not otherwise redressable under the Contract, and thereby rendering Owner liable and in breach and liable for all damages claimed herein.

SEVENTH CAUSE OF ACTION
(Indemnity)

40. Balfour realleges the Paragraphs above as if repeated herein verbatim.

41. As a result of Owner's Breaches, various subcontractors, materialmen and/or suppliers of Balfour have filed claims and/or mechanic's liens for damages they have suffered because of the Breaches and refusals by Owner to pay Balfour sums due. As a result, Balfour has and will incur damages related to those claims and liens and is entitled to recovery from Owner of all damages arising out of and/or related to those claims and liens by virtue of contractual, express, implied and/or equitable indemnity, and entitling Balfour to recover from Owner any sums paid to settle such claims and/or any judgments rendered against Balfour relating to such claims and to include Balfour's damages, costs and attorneys' fees relating to and arising out of any such claims.

SEVENTH CAUSE OF ACTION
(Damages and Request for Relief)

42. Balfour realleges the Paragraphs above as if repeated herein verbatim.

43. As a result of the errors, omissions, nonpayments, wrongful acts and Breaches of Owner as described above, Balfour is entitled to:

(a) Foreclosure of the Amended Mechanic's Lien and sale of the Project and Property and providing that the proceeds be paid to Balfour after deducting all lawful charges and expenses, and providing Balfour payment of the debt and to include attorneys' fees and costs.

(b) All damages arising out of and related to the causes of action noted above, to include damages related to extended time, delays, changes, impacts, disruptions, accelerations, abandonment, cardinal change, failure to coordinate, unproductivity, owners' interference, failure to procure and disburse insurance, changes and improper design.

(c) Statutory interest, costs and attorneys' fees pursuant to South Carolina Code §27-1-15 and 10, et. seq.

(d) Any and all unpaid contractual and extra-contractual damages and sums due and/or proven.

(e) Interest.

(f) Costs and attorneys' fees.

(g) Lost profits and extended overhead.

(h) Indemnity damages related to any claims of subcontractors, materialmen and/or suppliers.

(i) Damages pursuant to the Contract to include interests, costs and attorneys' fees.

(j) Together with all other damages, remedies and relief to which Balfour is entitled in law or equity.

WHEREFORE, Plaintiff demands foreclosure of its Amended Mechanic's Lien and the proceeds of the sale applied to the debt owed Balfour, and judgment against Owner for the damages and relief herein and for such other and further relief, to include any and all appropriate equitable and further relief as the Court may deem just and appropriate.

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By: _____
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

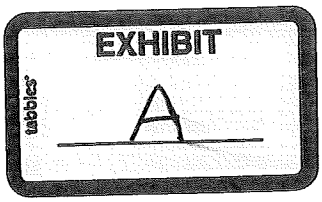
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Attorneys for Plaintiff Balfour Beatty Construction, LLC

October 1, 2019



STATE OF SOUTH CAROLINA	)	IN THE REGISTER OF DEEDS
	)	
COUNTY OF CHARLESTON	)	
	)	
Balfour Beatty Construction, LLC,	)	**NOTICE AND CERTIFICATE OF AMENDED MECHANIC'S LIEN**
Petitioner,	)	
v.	)	
	)	0810 - 324
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation;	)	7/23/19 SDA
Respondents.	)	

Petitioner's South Carolina General Contractor's License Number: 110668

TO THE ABOVE-NAMED RESPONDENTS:

NOTICE IS HEREBY GIVEN that Petitioner claims an Amended Mechanic's Lien pursuant to S.C. Code Ann. § 29-5-10 and 20 *et. seq.* (1976, as amended) for labor, equipment and/or materials furnished and actually used in the erection, alteration or improvements to the real estate more fully described in **Exhibit A,** attached hereto and incorporated herein by reference.. The undersigned Petitioner has furnished, within ninety (90) days of the date hereof, labor, services and materials in improving said real estate by virtue of an agreement with and/or the consent of the owners of said real estate. Petitioner craves reference to **Exhibit B** attached hereto and incorporated herein by reference, which is a just and true Statement of Account of the monies due to the Petitioner for such labor, services or materials provided at the request of or with the consent of the owners of said real estate or with their authorization.

The value of the labor and materials furnished, with all just credits given, totals Twelve Million Sixty-Six Thousand One Hundred Forty-Seven and 9/100 ($12,066,147.09), as is evidenced by the Verified Statement of Account.

That by virtue thereof, by the serving and filing of this Notice and Certificate of Amended Mechanic's Lien, and pursuant to the provisions of the Code of Laws of South Carolina in such cases as have been made and provided, Petitioner has and claims a lien interest to secure the payment of the debt so due and the cost of enforcing said lien upon the property, buildings and/or structures hereinabove mentioned and upon the real property described in **Exhibit A**.

This Notice and Certificate of Amended Mechanic's Lien is an amendment to the Notice and Certificate of Mechanic's Lien filed on January 25, 2019 in the Office of the Register of Deeds for Charleston County, South Carolina in Book 0774 at Page 273 on behalf of the above-named Petitioner for labor, equipment and/or materials furnished and actually used in the erection, alteration or improvements to the real estate more fully described in **Exhibit A**.

WHEREFORE, Petitioner claims an Amended Mechanics Lien of Twelve Million Sixty-Six Thousand One Hundred Forty-Seven and 9/100 ($12,066,147.09), plus interest, attorney's fees, all other damages incurred and the costs and disbursements of this action.

PARKER POE ADAMS & BERNSTEIN, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

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Attorneys for Balfour Beatty Construction, LLC

July 23, 2019
Charleston, South Carolina

EXHIBIT "A"

Property Address: 404 King Street, Charleston, SC 29403

Owner of Property: Library Associates, LLC

Description of Property subject to lien:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009

EXHIBIT "B"

STATEMENT OF ACCOUNT

Claimant/ Mechanic Lienor:	Balfour Beatty Construction, LLC
Owner:	Library Associates, LLC
Nature of labor, materials and/or Equipment supplied:	Labor, materials and supplies to construct a hotel
Property Subject:	See Exhibit "A" to Notice and Certificate of Mechanic's Lien
Total Amount Due:	$12,066,147.09 plus interest thereon and attorney's fees

****

I hereby certify that the amount due to Balfour Beatty Construction, LLC, for the labor, materials and supplies necessary to construct a hotel on Owner's property, after all just credits and debits as of this date is Twelve Million Sixty-Six Thousand One Hundred Forty-Seven and 9/100 ($12,066,147.09), plus interest accruing thereon and attorney's fees and costs/expenses.

Balfour Beatty Construction, LLC

By: _____
David Simonton

Its: Vice President, Operations

SWORN TO BEFORE ME
this 23 day of July, 2019

_____(L.S.)
Lauren Heuss (Printed Name)
Notary Public for South Carolina
My Commission expires 12/13/2027 (SEAL)

LAUREN HEUSS
My Commission Expires
NOTARY PUBLIC
December 13, 2027
STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC Plaintiff, v. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation. Defendants.	)	**SUMMONS**
Library Associates, Inc., Third-Party Plaintiff, v. Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MCC, LLC, Gulf Stream Construction Company, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc. Third-Party Defendants.	)	

FILED
2019 OCT 17 AM 9:41
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE THIRD-PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Counterclaims and Third-Party Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Third-Party Complaint upon the subscriber, Bundy McDonald, LLC 1516 Old Trolley Rd, 2nd Floor, Summerville, South Carolina 29485, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

Bundy McDonald, LLC
W.H. Bundy, Jr. Esquire
M. Brent McDonald, Esquire
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com
Attorneys For Defendant/Third-Party
Plaintiff Library Associates, LLC.

October 17, 2019
Summerville, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC Plaintiff, v. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation. Defendants.	)	**ANSWER AND COUNTERCLAIMS OF LIBRARY ASSOCIATES, LLC TO AMENDED COMPLAINT OF BALFOUR BEATTY CONSTRUCTION, LLC AND THIRD PARTY COMPLAINT**
Library Associates, LLC, Third-Party Plaintiff, v. Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Guy M. Beaty, Inc., Bernard MCC, LLC, Gulf Stream Construction Company, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, and Balfour Beatty Construction Group, Inc. Third-Party Defendants.	)	

FILED
2019 OCT 17 AM 9:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW Library Associates, LLC (hereinafter referred to as "Answering Defendant") and hereby submits this Answer to Plaintiff's Amended Complaint and Counterclaims and Third Party Complaint. Answering Defendant responds and alleges as follows:

1. That each and every allegation of the amended complaint not hereinafter expressly admitted is denied and strict proof is demanded thereof.
2. Answering Defendant is without sufficient information to either admit or deny the allegations of Paragraph 1. To the extent any response is required of the Answering Defendant, the allegations are denied as alleged.
3. Paragraph 2 is admitted.
4. Paragraph 3 is admitted.
5. Paragraph 4 is admitted only to the extent that Venue and Jurisdiction are appropriate before the Charleston County Master-in-Equity (Non-Jury) pursuant to the Contract Documents (Section 9.2 of the A133) which are the subject of this action.
6. Paragraph 5 is admitted.
7. With regard to Paragraph 6, Answering Defendant admits that Plaintiff represented that it constructs large commercial projects throughout the United States. Further, Answering Defendant admits that Plaintiff holds an unlimited general contractor's license in South Carolina that requires that the work performed under its license is supervised by a General Qualifying Party identified as Russell Brockelbank, Aton Stoneking, or John Rankin. To the extent there are any other allegations in Paragraph 6, they are denied.
8. Paragraph 7 is admitted.
9. Paragraph 8 is denied as alleged.

10. Paragraph 9 is admitted.

11. With regard to Paragraph 10, the Answering Defendant admits only that it contracted with Plaintiff to construct a luxury hotel in Charleston, South Carolina. Answering Defendant craves reference to the Contract Documents and denies all allegations inconsistent therewith.

12. Paragraph 11 is admitted.

13. Paragraph 12 is admitted.

14. With regard to Paragraph 13, Answering Defendant admits only that the Architect contracted to provide design documents and certain contract administration in accordance with his contract with Answering Defendant and industry standards. Answering Defendant craves reference to its contract with the Architect and denies all allegations inconsistent therewith. The remainder of the allegations in Paragraph 13 are denied as alleged.

15. Paragraph 14 is denied as alleged. Answering Defendant craves reference to the Contract Documents and its contract with the Architect for the actual language of the Architect's contractual obligations.

16. Paragraph 15 is admitted only to the extent that Jim Clements of Matrix Program Management Services, LLC was identified in the Contract Documents as Owner's Designated Representative. The remainder of Paragraph 15 is denied as alleged. Answering Defendant craves reference to the Contract Documents for the actual language related to the Owner's Designated Representative.

17. Paragraph 16 and all its subparts [(a)-(t)] are denied as alleged.

18. Paragraph 17 is denied as alleged.

19. With regard to Paragraph 18, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

20. Paragraph 19 is denied as alleged.

21. Paragraph 20 is denied as alleged. By way of further response, Plaintiff has failed to perform obligations and conditions precedent as outlined in the Answering Defendant's counterclaims.

22. With regard to Paragraph 21, Answering Defendant only admits that it owned the Property during the construction of the Project. The remainder of the allegations in Paragraph 21 are denied as alleged.

23. With regard to Paragraph 22, Answering Defendant only admits that Met Life claims an interest in the property pursuant to a construction loan. The remainder of the allegations in Paragraph 22 are denied as alleged.

24. Paragraph 23 is denied as alleged.

25. Paragraph 24 is denied as alleged.

26. Paragraph 25 is denied as alleged.

27. Paragraph 26 is denied as alleged.

28. With regard to Paragraph 27, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

29. Paragraph 28 is denied as alleged.

30. With regard to Paragraph 29, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

31. Paragraph 30 is denied as alleged.

32. Paragraph 31 is denied as alleged.

33. With regard to Paragraph 32, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

34. Paragraph 33 is denied as alleged.

35. Paragraph 34 is denied as alleged.

36. With regard to Paragraph 35, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

37. Paragraph 36 is denied as alleged.

38. Paragraph 37 is denied as alleged.

39. With regard to Paragraph 38, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

40. Paragraph 39 is denied as alleged.

41. With regard to Paragraph 40, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

42. Paragraph 41 is denied as alleged.

43. With regard to Paragraph 42, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

44. Paragraph 43 and all its subparts [(a)-(j)] are denied as alleged.

45. To the extent any response is required from Answering Defendant to the allegations made or relief requested in the WHEREFORE clause, all allegations made therein and relief requested therein are denied as alleged.

FOR A FIRST AFFIRMATIVE DEFENSE

46. Plaintiff's claims against Answering Defendant are barred due and owing to the doctrine of prior breach of the Contract Documents.

FOR A SECOND AFFIRMATIVE DEFENSE

47. Plaintiff's claims are barred by the applicable statutes of limitations.

FOR A THIRD AFFIRMATIVE DEFENSE

48. Plaintiff's claims are barred due and owing to the doctrines of laches, waiver, abandonment and estoppel.

FOR A FOURTH AFFIRMATIVE DEFENSE

49. The Plaintiff's claims are barred or limited by the contributing, concurring, intervening, superseding or insulating fault or breach of persons or entities other than the Answering Defendant, including but not limited to Plaintiff, other Defendants, and unnamed parties.

FOR A FIFTH AFFIRMATIVE DEFENSE

50. Plaintiff's claims are barred for failing to plead facts sufficient to establish a valid cause of action as to Answering Defendant.

FOR A SIXTH AFFIRMATIVE DEFENSE

51. Some or all of Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SEVENTH AFFIRMATIVE DEFENSE

52. Some or all of the Plaintiffs' claims are barred by Payment and Release.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

53. Plaintiff has failed to comply with conditions precedent to the Contract Documents as more fully stated herein.

FOR A NINTH AFFIRMATIVE DEFENSE

54. Plaintiff's claim should be barred or reduced due and owing to the doctrine of offset.

FOR A TENTH AFFIRMATIVE DEFENSE

55. Plaintiff's claim should be barred for the failure to comply with all of the provisions in S.C. Code Ann. Sections 29-5-10, *et seq.*

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

56. Plaintiff's claim should be barred or reduced due and owing to the Plaintiff's failure to complete or perform the work as required under the Contract Documents.

FOR A TWELFTH AFFIRMATIVE DEFENSE

57. Plaintiff's claims are barred for failure to provide proper notice of any alleged claim or breach.

FOR A THIRTEENTH AFFIMATIVE DEFENSE

58. Some or all of the Plaintiff's claims are barred by the Parole Evidence Doctrine.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

59. Plaintiff's claimed are barred due and owing to the prior breach of express or implied warranties.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE

60. Plaintiff is not entitled to an award of attorneys' fees.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

61. Plaintiff has claimed monetary amounts in its Mechanic's Lien that, upon information and belief, are not recoverable pursuant to S.C. Code Ann. Section 29-5-10 *et seq.*

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

62. Upon information and belief, some of Plaintiff's claims are barred due and owing to Plaintiff's failure to fully comply with the South Carolina licensing provisions and regulations to perform construction management or general contracting services.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

63. The Plaintiff's Complaint is alleged in conclusory terms. Therefore, Answering Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, Answering Defendant reserves the right to plead additional affirmative defenses, if and to the extent such affirmative defenses are applicable in this action.

FOR A NINTEENTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Breach of Contract as to Balfour Beatty Construction, LLC)

NOW COMES Answering Defendant and hereby submits this Counterclaim pursuant to Rule 13 of the South Carolina Rules of Civil Procedure against Plaintiff Balfour Beatty Construction, LLC (hereinafter referred to as "Plaintiff").

64. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

65. Answering Defendant is organized under the laws of the State of South Carolina and is authorized to do business in the State of South Carolina, County of Charleston.

66. Answering Defendant entered into a contract with Plaintiff for the construction of the Hotel Bennett Project (the "Project") that is the subject of this action.

67. Plaintiff has breached the contract with Answering Defendant by acts or omissions of Plaintiff, Plaintiff's employees, Plaintiff's subcontractors and their agents and employees, and other persons and entities performing portions of the work for, or on behalf of, the Plaintiff or any of its subcontractors. The acts and omissions include, but are not limited to, the following particulars:

a. Failure to achieve substantial completion or final completion of the Project within the Contract Time in a willful or wanton or reckless manner;

b. Breach of the relationship of trust and confidence with the Answering Defendant;

c. Failure to properly cooperate with the Answering Defendant;

d. Failure to exercise its skill and judgment in furthering the interests of the Answering Defendant;

e. Failure to furnish efficient construction administration and management services and supervision;

f. Failure to furnish at all times an adequate supply of workers and materials;

g. Failure to perform the work on the Project in an expeditious and economical manner consistent with the Answering Defendant's interest.

h. Failure to properly perform preconstruction phase services;

i. Failure to properly schedule and phase the work and coordinate subcontractors;

j. Failure to bond off or otherwise discharge subcontractor, sub subcontractor, and supplier mechanic's liens;

k. Failure to complete and perform work in accordance with the Contract Documents;

l. Improperly refusing to perform work required by the Contract Documents which required Answering Defendant to incur the time and costs of carrying out the work;

m. Failure to supervise and direct the work using the Plaintiff's best skill and attention;

n. Failure to inspect portions of the work already performed to determine that such portions are in proper condition to receive subsequent work;

o. Failure to provide management staff and additional supervisory personnel to ensure that the work was completed by the contractual date of substantial completion.

p. Failure to provide and pay for labor, materials, equipment and other facilities and services necessary for the proper execution and completion of the work;

q. Failure to continue to perform work on the Project in accordance with the Architect's Initial Decision rendering;

r. Failure to perform work in a good and workmanlike manner;

s. Failure to employ at all times a competent superintendent(s);

t. Improperly changing the superintendent without Answering Defendant's consent;

u. Failure to proceed with adequate forces to achieve substantial completion within the contract time;

v. Refusing to proceed with adequate forces to achieve substantial completion in a willful, wanton and reckless manner and attempting to limit the Answering Defendant's damages for delay pursuant to a liquidated damages cap.

w. Refusing to provide financial documentation to the Answering Defendant that was required to be produced under the terms of the Contract Documents (specifically Section 6.11.1 of the A133)(Request to Plaintiff is attached hereto as Exhibit A)(Refusal by Balfour is attached hereto as Exhibit B);

68. As a direct and proximate cause of the breach(es) of contract by the Plaintiff as well as other acts and omissions, Answering Defendant has been actually, directly, indirectly, consequentially, incidentally, and specially damaged all in an amount to be shown at trial.

FOR A TWENTIETH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Breach of Contract Accompanied by a Fraudulent Act as to Balfour Beatty Construction, LLC)

69. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

70. Answering Defendant entered into a valid and enforceable contract with the Plaintiff.

71. Plaintiff has breached the contract with Answering Defendant.

72. Plaintiff had fraudulent intent relating to the breaching of the contract and not merely related to its making.

73. Plaintiff did so cause to accompany the breach with a fraudulent act or acts which include, but are not limited to, the following: (1) entering into a Joint Prosecution, Defense and Tolling Agreement with some of its subcontractors on the project which

is the subject of this action that is, upon information and belief, in material and express conflict with the duties and obligations owed by the Plaintiff to Answering Defendant in the Contract Documents and attempting to conceal the terms of said Joint Prosecution, Defense and Tolling Agreement from Answering Defendant; (2) numerous circumstances that surrounded the breach that constitute bad faith related to the breach; (3) making misrepresentations in reckless disregard for the truth; (3) engaging in unfair dealing; (4) unlawfully appropriating Answering Defendant's property by filing or causing to be filed excessive and duplicative mechanic's liens; (5) refusing and stating false or misleading reasons for refusing to produce supporting financial documentation required by the Contact Documents for a cost of the work plus a fee with a guaranteed max contract in an attempt to obfuscate the costs and types of costs claimed by the Plaintiff; (6) Plaintiff refused to proceed with adequate forces to achieve substantial completion in a willful, wanton, reckless and fraudulent manner for the purpose of causing the Answering Defendant great financial burden and damages in an attempt to gain an improper and unlawful advantage and secure payment terms that Plaintiff was not entitled to under the Contract Documents; and (7) such other circumstances that will be shown at trial.

74. As a direct and proximate cause of the breach(es) of contract accompanied by a fraudulent act(s) by the Plaintiff as well as other acts and omissions, Answering Defendant has been actually, directly, indirectly, consequentially, incidentally, and specially damaged all in an amount to be shown at trial. In addition, due and owing to the fraudulent act that accompanied the breach, Answering Defendant is entitled to punitive damages.

FOR A TWENTY FIRST DEFENSE AND BY WAY OF A COUNTERCLAIM
(Indemnification as to Balfour Beatty Construction, LLC)

75. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

76. Plaintiff's subcontractors, materialmen, and suppliers as well as those claiming through them have filed and continue to file mechanic's liens and other claims related to the Project. As more fully stated below, some or all of the filed liens contain amounts that are not subject to a mechanic's lien as a matter of law.

77. Plaintiff has refused to bond off or otherwise discharge such liens as required by the Contract Documents.

78. Answering Defendant is entitled to be contractually, equitably, or impliedly indemnified for any damages sustained, including costs and attorneys' fees, as a direct and proximate result of the Plaintiff's subcontractors, materialmen and suppliers filing or foreclosing on such liens.

FOR A TWENTY SECOND DEFENSE AND BY WAY OF A COUNTERCLAIM
(Declaratory Judgment as to Balfour Beatty Construction, LLC)

79. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

80. Answering Defendant brings this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10 *et seq.*, seeking a declaration of rights between the Plaintiff and Answering Defendant.

81. There exists a justiciable controversy between Plaintiff and Answering Defendant.

82. The Contract Documents state, in pertinent part, as follows: "If any Subcontractor, sub-subcontractor, laborer, or supplier of materials files a lien or notice of claim for unpaid labor or materials against the Owner's property, the Contractor agrees to immediately bond such lien in accordance with applicable law or to otherwise cause such lien to be discharged, at the Contractor's sole expense, so long as the Owner is not in default of the payment of any uncontested amount and such non-payment is the cause for the non-payment to the Sub-contractor. The Contractor shall not be relieved of its obligation to bond off liens even if Contractor disputes the obligation to pay the lienor."

83. Plaintiff has refused to bond off or otherwise discharge Subcontractor, sub-subcontractor, and material supplier liens.

84. Plaintiff has caused to be filed as a cloud on the title of the property of the Answering Defendant excessive or duplicative mechanic's liens for claimed damage amounts that are not subject to the mechanic's lien statute or are not properly claimed by Plaintiff pursuant to the mechanic's lien statute.

85. Plaintiff has caused to be filed as a cloud on the title of the property of the Answering Defendant duplicative mechanic's liens that contain amounts for which it new or should have known were claimed in the mechanic's liens of its subcontractors.

86. Answering Defendant hereby seeks a declaration from this Court as follows:

    a. Declare that the Plaintiff shall immediately bond off or otherwise cause the Subcontractor, sub-subcontractor, and material supplier liens to be discharged at Plaintiff's sole expense;

    b. Declare, pursuant to S.C. Code Ann. Section 15-53-120, that should the Plaintiff fail to immediately bond off or otherwise discharge all the

Subcontractor, sub-subcontractor, and material supplier liens, Plaintiff's claimed lien shall be reduced or discharged in an amount equal to any remaining Subcontractor, sub-subcontractor, and material supplier liens.

c. Declare as a matter of law that a contractor and subcontractor cannot file or maintain mechanic's liens that contain duplicative amounts.

d. Declare as a matter of law which portions of the Plaintiff's amended mechanic's lien is for amounts that are not subject to a claim for a mechanic's lien.

BY WAY OF A THIRD PARTY COMPLAINT
(Declaratory Judgment pursuant to S.C. Code Ann. Section 15-53-10, *et seq.*)

87. Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

88. Answering Defendant, by way of a Third Party Complaint, seeks a Declaratory Judgment from this Court against Third Party Defendants Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Lowcountry Case & Millwork, Inc., and Quantum Coatings, LLC (hereinafter sometimes collectively referred to as "Subcontractor/Materialmen Lien Claimants").

89. Answering Defendant seeks a Declaratory Judgment from this Court against Third Party Defendant Balfour Beatty Construction Group, Inc.

90. Upon information and belief, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., ("Lithko") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Lithko alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Lithko has caused to be filed two mechanic's liens. Moreover, Lithko has filed a foreclosure action on the alleged mechanic's liens in Civil Action No. 2018-CP-10-936.

91. Upon information and belief, Guy M. Beaty, Inc. ("Guy M. Beaty") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, Guy M. Beaty alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Guy M. Beaty has caused to be filed a mechanic's lien. Moreover, Guy M. Beaty has filed a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-400.

92. Upon information and belief, Bernhard MCC, LLC ("Bernhard") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, Bernhard alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Bernhard has caused to be filed a mechanic's lien.

93. Upon information and belief, Gulfstream Construction Company, Inc. ("Gulfstream") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, Gulfstream alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Gulfstream has caused to be filed a mechanic's lien. Moreover, Gulfstream has filed

a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-2275.

94. Upon information and belief, Palmetto Automatic Sprinkler Company, Inc. ("Palmetto Sprinkler") is a corporation organized under the laws of the State of South Carolina. At all times relevant, Palmetto Sprinkler alleges that it performed work or supplied materials at the Project which is the subject of this action pursuant to a contract with Plaintiff. Palmetto Sprinkler has caused to be filed a mechanic's lien.

95. Upon information and belief, Cook and Boardman, LLC ("Cook and Boardman") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Cook and Boardman alleges that it supplied materials to Plaintiff for the Project which is the subject of this action pursuant to a contract with Plaintiff. Cook and Boardman has caused to be filed a mechanic's lien.

96. Upon information and belief, Strong Tower Construction, LLC d/b/a Koch Corporation ("Koch") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Koch alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Koch has caused to be filed a mechanic's lien.

97. Upon information and belief, Watson Electrical Construction Co., LLC ("Watson") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Watson alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Watson has caused to be filed a mechanic's lien.

98. Upon information and belief, Trimark Foodcraft, LLC ("Trimark") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Trimark alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Trimark has caused to be filed a mechanic's lien.

99. Upon information and belief, Pleasant Places, Inc. ("Pleasant Places") is a corporation organized under the laws of the State of South Carolina. At all times relevant, Pleasant Places alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Pleasant Places has caused to be filed a mechanic's lien. Moreover, Pleasant Places has filed a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-2399.

100. Upon information and belief, David Allen Company, Inc. ("David Allen") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, David Allen alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. David Allen has caused to be filed a mechanic's lien.

101. Upon information and belief, Premier Exteriors, LLC ("Premier Exteriors") is a limited liability company organized under the laws of the State of South Carolina. At all times relevant, Premier Exteriors alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Premier Exteriors has caused to be filed a mechanic's lien.

102. Upon information and belief, Warco Construction, Inc. ("Warco") is a corporation organized under the laws of a state other than South Carolina. At all times relevant,

Warco alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Warco has caused to be filed a mechanic's lien.

103. Upon information and belief, Old North State Masonry, LLC ("Old North") is a limited liability company organized under the laws of a state other than South Carolina. At all times relevant, Old North alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Old North has caused to be filed a mechanic's lien.

104. Upon information and belief, Tom Rochester & Associates, Inc. d/b/a Southeastern Architectural Systems ("SEAS") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, SEAS alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. SEAS has caused to be filed a mechanic's lien.

105. Upon information and belief, Lowcountry Case & Millwork, Inc. ("Lowcountry") is a corporation organized under the laws of the State of South Carolina. At all times relevant, Lowcountry alleges that it supplied labor or materials for the Project which is the subject of this action pursuant to a contract with Plaintiff. Lowcountry has caused to be filed a mechanic's lien. Moreover, Lowcountry has filed a foreclosure action on the alleged mechanic's lien in Civil Action No. 2019-CP-10-2249.

106. Upon information and belief, Quantum Coatings, LLC ("Quantum") is a limited liability company organized under the laws of the State of South Carolina. At all times relevant, Quantum alleges that it supplied labor or materials for the Project which is

the subject of this action pursuant to a contract with Plaintiff. Quantum has caused to be filed a mechanic's lien.

107. Upon information and belief, Balfour Beatty Construction Group, Inc. (hereinafter "BB Construction Group") is a corporation organized under the laws of a state other than South Carolina. At all times relevant, BB Construction Group agreed to act as a guarantor of the contract for construction for the Project.

108. This Court has jurisdiction over the subject matter and the parties hereto and venue is proper in this forum.

FOR A FIRST THIRD PARTY CAUSE OF ACTION AGAINST SUBCONTRACTOR/MATERIALMEN LIEN CLAIMANTS
(Declaratory Judgment)

109. Answering Defendant and Third Party Plaintiff repeats and realleges the allegations of this entire pleading as if fully stated herein verbatim.

110. Subcontractor/Materialmen Lien Claimants allege that they performed work or supplied materials for the Project by contract with the Plaintiff or some other person than the Owner.

111. The aggregate amount of the liens filed by the Subcontractor/Materialmen Lien Claimants exceed the amount due from the Answering Defendant/Third Party Plaintiff to the Plaintiff due and owing to the fact that Answering Defendant/Third Party Plaintiff does not owe Plaintiff any further sums on the contract amount.

112. Some or all of the liens filed by the Subcontractor/Materialmen Lien Claimants contain accounted or claimed items or amounts that do not, as a matter of law, give rise to a mechanic's lien pursuant to S.C. Code Ann. Section 29-5-20.

113. Answering Defendant/Third Party Plaintiff, by and through its undersigned counsel, requested in writing that Subcontractor/Materialmen Lien Claimants provide to the Answering Defendant/Third Party Plaintiff documentation to explain and support the amount of their respective liens and statements of account. Most of the Subcontractor/Materialmen Lien Claimants failed to provide any supporting documentation.

114. Some or all of the liens filed by the Subcontractor/Materialmen Lien Claimants contain accounted or claimed items or amounts that the Subcontractor/Materialmen Lien Claimant willfully and knowingly knew were more than is his due under S.C. Code Ann. Section 29-5-20.

115. Answering Defendant/Third Party Plaintiff brings this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10 *et seq.*, seeking a declaration of rights between Answering Defendant/Third Party Plaintiff and Subcontractor/Materialmen Lien Claimants.

116. There exists a justiciable controversy between Answering Defendant/Third Party Plaintiff and Subcontractor/Materialmen Lien Claimants.

117. Answering Defendant/Third Party Plaintiff seek declarations from this Court as follows:

a. Declare that the aggregate amount of the Subcontractor/Materialmen Lien Claimants be reduced to the amount owed by Answering Defendant/Third Party Plaintiff to Plaintiff on the contract amount, if any, as Answering Defendant/Third Party Plaintiff alleges that it owes nothing to Plaintiff;

b. Declare which portions of the Subcontractor/Materialmen Lien Claimants' statement of accounts contain amounts that are not subject to a claim for a mechanic's lien under S.C. Code Section 29-5-20 and reduce the Subcontractor/Materialmen Lien Claimants' liens by such amount;

c. Pursuant to S.C. Code Ann. Sections 29-5-100, declare which portions of the Subcontractor/Materialmen Lien Claimants' liens contain accounted or claimed items or amounts that the Subcontractor/Materialmen Lien Claimant willfully and knowingly knew were more than is his due under S.C. Code Ann. Section 29-5-20;

d. Declare that a Subcontractor/Materialmen Lien Claimant who willfully and knowingly claimed amounts that were more than his due under S.C. Code Ann. Section 29-5-20 to have his lien discharged.

FOR A SECOND THIRD PARTY CAUSE OF ACTION AGAINST BB CONSTRUCTION GROUP
(Declaratory Judgment)

118. Answering Defendant and Third Party Plaintiff repeats and realleges the allegations of this entire pleading as if fully stated herein verbatim.

119. Upon information and belief, Plaintiff is wholly owned (100%) by BB Construction Group.

120. BB Construction Group did so agree and contract to act as a guarantor of the contract for construction of the Project.

121. Answering Defendant/Third Party Plaintiff brings this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10

et seq., seeking a declaration of rights between Answering Defendant/Third Party Plaintiff and BB Construction Group.

122. There exists a justiciable controversy between Answering Defendant/Third Party Plaintiff and BB Construction Group.

123. Answering Defendant/Third Party Plaintiff seek declarations from this Court as follows:

a. Declare that BB Construction Group is the guarantor of the contract for construction for the Project and that any damages, attorneys' fees, costs or other relief awarded against Plaintiff arising out of the construction contract shall be recoverable, jointly and severally, from Plaintiff and BB Construction Group.

WHEREFORE, having answered the Amended Complaint of Plaintiff and asserted Counterclaims and the Third Party Complaint, Answering Defendant would pray as follows:

1. That the Complaint of the Plaintiff herein against Answering Defendant be dismissed in its entirety with prejudice and that the Plaintiff's mechanic's lien be dissolved and released from the Property;
2. That the Answering Defendant be awarded costs, expenses and attorneys' fees;
3. That the Court enter judgment for Answering Defendant on its claims for breach of contract by and for the terms stated herein, including actual, direct, indirect, consequential, incidental, and special damages to be shown at trial;
4. That the Court enter judgment for Answering Defendant on its claims for breach of contract accompanied by a fraudulent act by and for the terms stated herein, including actual, direct, indirect, consequential, incidental, and special damages to be shown at trial;

5. That the Court enter judgment for punitive damages;

6. That the Court enter a judgment for indemnity damages, including costs and attorneys' fees, related to subcontractor claims or mechanic's liens.

7. That the Answering Defendant be awarded prejudgment interest.

8. That the Court issue the following declarations:

   a. Declare that the Plaintiff shall immediately bond off or otherwise cause the Subcontractor, sub-subcontractor, and material supplier liens to be discharged at Plaintiff's sole expense;

   b. Declare, pursuant to S.C. Code Ann. Section 15-53-120, that should the Plaintiff fail to immediately bond off or otherwise discharge all the Subcontractor, sub-subcontractor, and material supplier liens, Plaintiff's claimed lien shall be reduced or discharged in an amount equal to any remaining Subcontractor, sub-subcontractor, and material supplier liens.

   c. Declare as a matter of law that a contractor and subcontractor cannot file or maintain mechanic's liens that contain duplicative amounts.

   d. Declare as a matter of law which portions of the Plaintiff's amended mechanic's lien is for amounts that are not subject to a claim for a mechanic's lien.

   e. Declare that the aggregate amount of the Subcontractor/Materialmen Lien Claimants be reduced to the amount owed by Answering Defendant/Third Party Plaintiff to Plaintiff on the contract amount, if any, as Answering Defendant/Third Party Plaintiff alleges that it owes nothing to Plaintiff;

   f. Declare which portions of the Subcontractor/Materialmen Lien Claimants' statement of accounts contain amounts that are not subject to a claim for a

mechanic's lien under S.C. Code Section 29-5-20 and reduce the Subcontractor/Materialmen Lien Claimants' liens by such amount;

g. Pursuant to S.C. Code Ann. Sections 29-5-100, declare which portions of the Subcontractor/Materialmen Lien Claimants' liens contain accounted or claimed items or amounts that the Subcontractor/Materialmen Lien Claimant willfully and knowingly knew were more than is his due under S.C. Code Ann. Section 29-5-20;

h. Declare that a Subcontractor/Materialmen Lien Claimant who willfully and knowingly claimed amounts that were more than his due under S.C. Code Ann. Section 29-5-20 to have his lien discharged.

i. Declare that BB Construction Group is the guarantor of the contract for construction for the Project and that any damages, attorneys' fees, costs or other relief awarded against Plaintiff arising out of the construction contract shall be recoverable, jointly and severally, from Plaintiff and BB Construction Group.

9. Together with all other damages or relief, whether legal or equitable, that the Court may deem just and proper.

BUNDY MCDONALD, LLC

W. H. Bundy, Jr., Esq. (SC Bar #1012)
M. Brent McDonald, Esq. (SC Bar #78057)
1516 Old Trolley Road, 2nd Floor
P.O. Box 50427
Summerville, SC 29485
Phone: 888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com
Attorneys for Library Associates, LLC

October 17, 2019

EXHIBIT
A
ALL-STATE LEGAL

Cotton & Company

Answers Questioned

Document Request to Balfour

Cotton & Company LLP
635 Slaters Lane
4th Floor
Alexandria, VA 22314

P: 703.836.6701
F: 703.836.0941
www.cottoncpa.com

April 22, 2019

Balfour Beatty Construction, LLC
306 Meeting Street, Suite 300
Charleston, SC 29401

Attn: David Simonton

Re: Hotel at Marion Square Project, Notice of Project Cost Review

Cotton & Company herby notifies you as the Contractor for the Hotel at Marion Square Project (Hotel Bennett) that Library Associates, LLC (Owner) has retained our services to verify the amounts set forth in the payment applications submitted by you. The Owner is exercising its rights to review the cost accounting records and other project documentation under Contract Articles 7 (Payments for Construction Phase Services) and 6.11 (Accounting Records).

In order to perform the review, we have identified an initial list of project records that we would need to start the review. Please provide the following documents:

1. Job Cost Report, or other document that includes transaction-level detail for claimed project costs (in electronic spreadsheet format). Include any details necessary to reconcile this cost record to claimed costs identified on the Payment Applications.
2. Labor distribution report containing employee names and positions for all labor categories incurred on the Marion Square Project. The report should contain dates, hours and costs incurred for tasks performed (in electronic spreadsheet format).
3. Accounts Payable report to showing project cost payment made to date.
4. Computer printout of cost records that support each Payment Application (described in Contract Article 7.1.4)

Additionally, we will need to test project costs to supporting documentation. In order to perform those tests, we will need either access to the supporting documentation or copies of the following:

5. Invoices supporting all non-labor Third Party Vendor costs incurred by Contractor and included in the payment applications submitted to Owner
6. Timesheets for all labor incurred by Contractor and included in the payment applications submitted to Owner.
7. Documentation to support actual labor rates paid, including base wages and all fringe benefits (to support billed labor rates)
8. Available documentation to support any claimed internal costs (equipment, general conditions, etc).
9. Documentation to support costs incurred by Subcontractors:
    a) All Subcontract agreements, including all related amendments or modifications

Cotton & Company

Answers Questioned

Cotton & Company LLP
635 Slaters Lane
4th Floor
Alexandria, VA 22314

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b) Invoices supporting all non-labor costs invoiced to the Contractor by the subcontractor, and included in payment applications to the Owner
c) Timesheets for all labor incurred and invoiced to the Contractor by the subcontractor, and included in the payment applications to the Owner
d) Documentation to support subcontractor labor rates, including base wages and all fringe benefits (to support billed labor rates)
e) Available documentation to support any claimed internal costs (equipment, general conditions, etc).

Please reply via email (Shadley@cottoncpa.com) with any questions you have, or alternatively please provide your preferred method for transferring these documents.

Cotton & Company LLP

Sam Hadley, CPA/CFF, CFE, CGFM, CCA, CCP
Partner

CC: Brent McDonald, Bundy McDonald, LLC

ALL-STATE LEGAL
EXHIBIT
13

: Reply from Balfour to Document Request

Balfour Beatty

April 30, 2019

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Sam Hadley, CPA/CFF, CFE, CGFM, CCA, CCP
Partner
Cotton & Company
635 Slaters Lane
4th Floor
Alexandria, VA 22314

Re: Hotel at Marion Square Project, Notice of Project Cost Review Response

Dear Mr. Hadley:

I am in receipt of your letter of April 22, 2019. For efficiency, this response will incorporate the same definitional terms used in your letter. Your request for documentation is inappropriate for numerous reasons to include, but not limited to, those enumerated below.

First, the Owner is in breach for failure to pay Balfour Beatty Construction and as such is not entitled to any benefits of the contract except as it might be able to prove in the litigation that has now been initiated.

Second, the mechanism for the owner to obtain documentation as alluded to in the preceding response is through the litigation that is now pending.

Third, the owner has waived its right to receive the requested information for numerous reasons.

Finally, the request is untimely as Substantial Completion was received on February 15, 2019, beyond the 60-day timeframe provided for production of the documents under the contract. See Section 7.1.11.

Sincerely,

BALFOUR BEATTY CONSTRUCTION, LLC

By: _____
David Simonton, V.P.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
v.	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.	)	
Defendants.	)	
Library Associates, Inc.,	)	
Third-Party Plaintiff,	)	
v.	)	
Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MCC, LLC, Gulf Stream Construction Company, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.	)	
Third-Party Defendants.	)	

FILED
2019 OCT 17 AM 9:41
JULIE J. ARMSTRONG
CLERK OF COURT

I, Kathy Jo Wentland, paralegal with Bundy McDonald, LLC, hereby certify that true and correct copy of Defendant/Third-Party Plaintiff Library Associates, LLC's Answer And Counterclaims To Amended Complaint Of Balfour Beatty Construction, Llc And Third Party Complaint will be served on all parties this 17th day of October 2019, as follows:

VIA EMAIL & US MAIL
Thomas C. Hildebrand, Jr., Esquire
Robert C. Bryd, Esquire
Taylor M. Morris, Esquire
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ATTORNEYS FOR BALFOUR BEATTY CONSTRUCTION, LLC and BALFOUR BEATTY CONSTRUCTION GROUP, INC.

VIA EMAIL & US MAIL
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ATTORNEY FOR METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION

VIA EMAIL & US MAIL
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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Balfour Beatty Construction, LLC,

Plaintiff,

vs. CASE NO. 2019-CP-10-1108

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,

Defendants.

Library Associates, Inc.,

Defendant/Third-Party Plaintiff,

vs.

Lithko Contracting, LLC; Guy M. Beaty, Inc.; Bernard MMC, LLC; Gulf Stream Construction Company, Inc; Precision Walls, Inc.; Palmetto Automatic Sprinkler Company, Inc.; et al,

Third-Party Defendants.

Hearing (via WebEx) before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 3:06 p.m. on January 6, 2021 at 100 Broad Street, Courtroom 2A, Charleston, South Carolina.

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P R O C E E D I N G S

THE COURT: I'm going to move into our 3:00 hearing, and that's the Balfour Beatty case, and this one is -- I'm a little -- I need to get clear. It's listed -- I've got it listed under two case numbers, but the Strong Tower Corporation versus Balfour Beatty is 2019-CP-10-2868. Right? That was consolidated into the major case, the Library Associates case; is that right?

Mr. Wheeler, let me talk to you first.

MR. Wheeler: Yes, Your Honor.

THE COURT: It's your motion I'm about to entertain. I just wanted to make sure because you had the two case numbers. I had, I think -- 1108 is the Balfour Beatty Case, and 2868 is captioned Strong Tower, but they've all been consolidated because we've got lots of parties in this thing.

Not only do we have lots of parties, but we have lots of people on the list here. I don't know if I need to go into a whole lot of it. Does anybody have anything to be heard other than Mr. Wheeler on the motion and Mr. Hildebrand, I did receive your response.

Anybody else need to be heard on this one?

(No verbal response.)

THE COURT: I see a bunch of heads shaking "no".

All right. Mr. Wheeler, let me hear from you then.

MR. WHEELER: All right. Thank you, Your Honor. Sam Wheeler on behalf of Strong Tower, LLC.

THE COURT: Can you hear?

COURT REPORTER: Not really, no.

THE COURT: Stop right there. My court reporter is working on something. Hold on one second.

All right, Mr. Wheeler, you may proceed.

MR. WHEELER: All right. Thank you, Your Honor. Sam Wheeler on behalf of Strong Tower Corporation. It's my Motion for Summary Judgment against the prime contractor on the Hotel Bennett job, Balfour Beatty.

I'm not going to go into too much background, but for a little bit of background, my client's role was installing ground level store windows and doors.

Obviously we had a contract with Balfour Beatty, which was about a $1.25 million subcontract, so in the grand scheme of this construction project, a pretty small player.

About two years ago, in March of 2019, my client filed a Mechanic's Lien of just north of $124,000, and a suit followed shortly thereafter. That was the 2868 case I believe you referred to at the beginning of it. That was consolidated with Balfour Beatty's case, the 1108, around the same time.

Balfour Beatty has a lien of -- I think it's north of about $12 million. So again, I've got a $124,000 lien, and there's a $12 million out there.

I think these cases, obviously, have been in front of you numerous times on some pretty contentious issues. The problem with this case, and there's kind of an overarching fundamental issue with -- as I view it my client and a lot of the subcontractors -- This case has turned pretty ugly, pretty contentious, and a lot of the subcontractors by and large have some pretty undisputed claims and are basically stuck in the middle of it.

So we're kind of getting priced out of this litigation. Even if we pick and choose some depositions we can attend, we're still going to be stuck going to a trial that could last weeks, probably more like a month.

So I'm arguing kind of a judicial efficiency

argument here at the beginning. And I realize we're here on a Motion for Summary Judgment, but I think my motion is probably going to pave the way for others to come forward. I think what you're going to see, if you're able to kind of gather what I'm laying out here with what I think is undisputed -- I think we're going to start to thin the herd, and it's going to clear the trunk out a little more for you and the other primary parties.

So that's the judicial efficiency component. We're really stuck in a mess, and a lot of subcontractors are pretty innocent. Like I said, a lot of us have some undisputed claims, but let me get into the motion itself. I know you want to hear -- we're here to talk about whether there's issues of fact or genuine issues of material fact.

I've kind of got four basic facts that I don't think anyone in the room can dispute at all. I think they're the four facts that lead to a conclusion that I'm entitled to summary judgment.

The first is: Obviously I've got a contract with Balfour Beatty. They're undisputed. So if there's undisputed funds that are owed under that contract, they need to be paid on a breach of contract theory.

The second undisputed thing -- I filed a lien for just north of $124,000 and attached to that lien is an affidavit of account explaining from my client's perspective or swearing from my client's perspective that it is owed that money. So that is an affidavit that needs to be refuted with some form of evidence today.

The third is -- their cases are consolidated, but in neither of these cases is there a single cause of action or affirmative cause of action against my client.

If Tom wants to talk about delays or defective construction, no one's made those claims against my client. Library Associates hasn't. Neither has Balfour Beatty. We're just stuck with our own lien and by virtue of our lien, we're stuck in a huge lien case that Balfour Beatty brought.

But there's really no affirmative claims against my client, at least cross claims or otherwise that are related to delays or defective construction.

So in the last undisputed fact that I think is probably the most enforceable in the whole thing is Balfour Beatty has filed its own affidavit. When it files its lien, it filed its own affidavit swearing and attesting that it is owed $12 million.

That is the statutory requirement that they file swearing to the amount that they're owed. Of that $12 million, Balfour Beatty has acknowledged and admitted that $104,000 of their $12 million -- $104,000 is my lien or the amount that I am claiming.

So in other words, they are admitting that $104,000 of my lien is owed. Otherwise they better not have put it in their affidavit account. I think Tom cannot stand here today and dispute the lien or the validity of this affidavit of account because if he does his lien is incorrect and his sworn statement is just false, and that's going to put him in trouble.

So he cannot dispute that $104,000 of my lien is included in his lien. When he files that lien, they file an affidavit saying they are owed that money with all credits due. So that money is owed.

So what I did do then is -- if that money is owed under the contract, and they're liening for that money, why then am I not getting paid for that amount of money that you claim is owed and undisputed.

So I sent a couple of very simple interrogatories to Tom's client and Tom and I said, Look. If you don't -- how much of my lien is included in yours? And if there's any of it, why

hasn't it just been paid? And I've attached the interrogatories in my motion. Essentially the response I got was twofold.

First of all, there's a $22,000 back charge associated with fixing leaks to my client's work. Okay. I get it. If you can attach a series of emails to his response saying, Look at all the issues we got with Strong Tower's work? And I say, No. No. No. In my motion -- I'll give you credit for that back charge. I don't think it's valid, but I'm going to give you credit for it because I want to boil my claim down to an amount of money that's undisputed, so I'll give you credit for that $22,000, and what we end up with is an $83,000 balance that no one can tell me is not owed.

So I sent them -- Well, why isn't that money paid? And this is kind of where their logical argument falls off the rails because they start claiming then that -- well, Library Associates may be able to prove at trial that the delays were caused by my client, and we may be able to turn around and assert those delays against you, Strong Tower.

So in the event that Library Associates is able to prove something at trial, we may be able to come after you for those damages. Well, that

essentially is them speculating about what Library Associates may or may not do at trial and what may or may not be proven at trial.

So you can't base a response to a Motion for Summary Judgment on speculation about what case somebody else may bring. It's just not appropriate. You've got to come to the motion with a response, with evidence showing that there is a genuine issue of fact, and they're coming with that. They're coming with speculation saying, Okay. There's a back charge. I gave him credit for the back charge.

Now they're saying, Well, Library Associates may be able to prove delays with respect to construction. This isn't something I'm making up to essentially make my motion better. It's right there in their response.

First of all he says, Balfour claims that the delays and damages were caused by the owner of Library Associates. Balfour has taken the position that they caused no delays for defective construction. It's all on the owners. So they have an issue with my worth, yet they will not pay undisputed amounts.

They go on to say, However, to the extent that Library Associates establishes the delays for damages

should be assessed against Strong Tower, that Balfour would be entitled to seek all such damages. They're using "to the extent" language -- to the extent something is proven at trial. I have never been able to survive a Motion for Summary Judgment using the language "to the extent". That is pure speculation about what Library Associates may or may not do at trial.

Okay. So what is Library -- let's take that argument to its extension. What is Library Associates going to do? Well, we've deposed all of the Library Associates representatives, and none have had any issue with my client's work. They've all testified that my work is fine, and it didn't cause any delays.

One of the representatives called us a "pleasure to do work with". So I don't know what I'm left with except a contractor who's using my lien to bolster his own lien, yet he won't pay me under the contract. We're trying to clear up the case here for trial, and the more parties you have in this thing, the worse it's going to be.

So I'm just asking you to break this logic, this circular nonsense that Balfour would be putting forward. It's judicial estoppel at its best. They

want to use my lien to its benefit and then turn around and point the finger at me and say, You're not entitled to payment because you might have done something wrong. Did I do something wrong, or did I not do something wrong? You can't have it both ways. At some point you've got to make a decision about how this case is going forward.

So I think the reality is if a judgment under this breach of contract action, or my client's breach of contract action is granted, it's only going to clear the docket a bit for Balfour. If my claim is undisputed by anyone, including Library Associates, then that's just one less issue that's at issue at trial. That's one less party at the trial.

You may have other subs come forward and say, Hey, I've got undisputed claims, too. So the fact is, I give them every possible credit that I can give them, and I've reduced it down to that number that's in my motion which is just south of $83,000. It's undisputed. I've given them credit for their back charge, and Library Associates doesn't have anything to say about that.

So what I'm asking for is a judgment on that amount, and I'm asking for prejudgment interest and I'm asking for postjudgment interest because it's

statutory, and I'm asking for attorneys' fees under our contract. Thank you, Your Honor.

THE COURT: So Mr. Wheeler, just so I'm clear, you're looking for more than just a partial summary judgment on liability. You're looking for summary judgment as to both liability and damages; is that right?

MR. WHEELER: I think the number that I quote in my motion is $82,600 or something like that. That is a number that -- I took every single one of their responses and took the amount of their lien (technical interference) certain amount of my lien and their lien. When they do that they sign a sworn statement saying that it's covered.

I took that base number, and I gave them credit for their entire back charge of $23,000 and I boiled it down to that $83,000 figure. I said, Okay. Well here's the number that -- at this stage you're not contesting, and why isn't this amount paid? I mean, it's -- there's multiple statutes that say, Uncontested amount of money to be repaid to the subcontractor.

I'm just asking why. If Tom can tell me why they're not paying it, or Bill or Frank can tell me why they're not paying it, I would be happy to hear

it, but nobody seems to have any issues beyond the amount of back charges I've given them credit for.

THE COURT: All right.

Mr. Hildebrand, I'll let you respond.

MR. HILDEBRAND: Thank you, Your Honor.

Mr. Wheeler's correct. Balfour has a suit against the owner, and we maintain that the delays and the nonpayment issues relate to the owner. As I pointed out in my complaint, the simple fact is that the owner has filed a counterclaim that says, Look. We think the project was delayed because of Balfour and there are problems with the work that we have had to repair and that we will have to repair because of the work that Balfour's subcontractors did.

What we have to realize, of course, is that Balfour is a general contractor. We don't self-perform anything. Everything is done through our subcontractors. So when I've talked to Sam I've said, Look, Sam. I hope you get paid every penny that you want, and Balfour is confident of our case that we'll get paid, but we have this counterclaim that the owner has interposed.

And it's not just a speculative counterclaim that something might have been done improperly by Sam's client. The simple fact is that there is a

good bit of correspondence, as I attached to our response, that the work supplied by Sam's client did have problems. Unfortunately that's just the fact.

Balfour doesn't think that that was on the critical path and delayed the project, but Balfour -- but the owners' experts may well say that the work supplied by Sam's client did actually delay the project, and we are -- Library Associates may say that we are still seeking damages because of problems with the work of Sam's client.

What I have done is directed the Court to the contract that Sam's client signed which says, and I put it in my brief, If there are delays that are found to be the responsibility of the subcontractor, then the general contractor, Balfour is entitled to set off those funds. The same with warranty provisions if there are defects in Koch's work that it owes warranty obligations to, the owner, and to Balfour. So what we have here is a lot of correspondence about a lot of leakage through the doors that Sam's client provided, and in fact, one of the exhibits that I attach, the first exhibit, it's a letter that was sent to Balfour almost a year after this litigation was commenced, specifically talking about the doors that Sam's client installed. It's a

letter of November 14, 2019, from Kim Brown saying that she relates it to water intrusion that is causing damage to interior finishes including but not limited to wood floors.

They've referenced that Koch came out to investigate it. So that's an indication that there's been ongoing problems. There's also an indication in a report from Cotton and Company which is the last exhibit attached to our memorandum where they referenced that the owner is seeking repair costs for doors related to Koch's work.

And there's a good bit of correspondence, which I set forth in my memorandum and presented to the Court about ongoing problems and potential delays to the closeout of the project because of Koch's work.

So the simple fact is: Is there a possibility of reasonable possibility that the owner will say, one, we've had damages and repair costs that we have incurred because of the leaking doors from Koch? That's that original possibility, and we've introduced evidence to show that that is a reasonable possibility.

Is there a possibility that the owners' experts -- we have not yet been deposed. We just got

their reports recently. Mark Covey is the primary one. He is scheduled to be deposed on February 2. He will say that because of the leaking doors and issues with Koch's work that it caused or contributed to delays.

So basically that's it, Your Honor. We are certainly entitled to alternative pleading. We don't think that -- I certainly again -- I certainly hope that Koch gets paid in full, but the Court can't ignore the fact that there is evidence that the owner claimed and they claim damages for repairs and delays because of Koch's work. Thank you.

THE COURT: All right, Mr. Hildebrand.

Any in response to that, Mr. Wheeler?

MR. WHEELER: Yes, Your Honor, a couple of things.

The correspondence that have been attached to the Respondents' motion make up the $22,000 we're giving them credit for. If Tom cannot tell me what else there is to give him credit for, why am I not being paid $83,000 that is undisputed?

He's saying, I hope you get paid. I'm using your lien to bolster your own lien. I hope you get paid. Why am I not getting paid by the person I have a contract with when I've given you credit for

everything that you claim is a back charge? It doesn't make any sense. He's not telling me anything. He's not telling you anything. It's actually -- he's saying, Library Associates may bring some sort of claim against Koch that implicates my client, Strong Tower.

There are no claims against my client. Balfour Beatty does not have any claims against my client. Library Associates does not have any claims against my client for going -- for defective construction. So what claims are we talking about? And what setoffs are we talking about? I've given him a reduction and credit. It's his role to tell me why. So I'm at a loss for why this amount is being disputed at all because it doesn't seem that he's saying anything to actually survive a Motion for Summary Judgment other than pointing the finger at Library Associates which has been done this entire case.

So I'm just trying to get a very small contractor paid on a very large job. Thank you.

MR. HILDEBRAND: Your Honor, if I may respond very quickly?

THE COURT: Sure.

MR. HILDEBRAND: Simply put, we have filed an

affirmative defense to Mr. Wheeler's claim for payment. It's in Paragraph 37 of our answer, that their claims are barred or should be reduced by the adoptions of offset and setoff under the contract.

As far as the facts are concerned, he's asking, what evidence is there that there are continuing problems. One, I reference the Court to the letter filed well after this litigation where the owner is saying that there are continuing problems and damages arising from the work of Koch.

We provided that to the Court. That's the evidence. We've also provided the expert report for Cotton and Company where they say the owner is seeking repair costs because of the delays by Koch or performed by Koch.

Then we got the report from their expert where he says that there have been delays to the project. We have not yet deposed him, so whether he will say that there are specific delays because of the stores, I don't know. But that's something that we need to be able to ask him about. So I'll leave it at that. Thank you, Your Honor.

THE COURT: All right.

Well, Mr. Wheeler, let me just tell you: I think -- this issue was brought up to me early on in

this case. I seem to recall Mr. Rannik was trying to get his contractor in and out of the picture, but it's a big picture, and it's a moving picture.

And so based on the allegations, and as I see it, I'm going to -- because of that I'm going to deny the claim. I just don't know what that damage figure is going to be, and I understand your argument, giving them credit for all that they've asked for would be there, but I just don't see that here.

So what I'm also interested in doing is trying to move this case along. I know that there has been some -- basically I'm going to deny the motion. I'm just going to do a Form 4 to that extent.

I know that -- I asked my law clerk as we were here just to get the scheduling order up, and so I heard some discussion -- while I've got some of you here, Plaintiffs' expert, Library Associates' expert is supposed to be deposed on the 2nd of February. Discovery is supposed to be completed by mid-February. Are we still on track with that schedule?

Mr. Hildebrand, let me turn to you on that one.

MR. HILDEBRAND: I think so, Your Honor.

THE COURT: Okay.

MR. HILDEBRAND: I have requested -- I believe you have been kind enough to set a status conference for February 1.

THE COURT: Right.

MR. HILDEBRAND: And I'm supposed to ask that the case be set for trial. I figure we will be all set, which we should be finished with discovery within the timeframe allotted.

THE COURT: I've got you-all scheduled for, it looks like, Monday, February 1st at 10:00 a.m. is what it looks like.

MR. BUNDY: Yes, sir. This is Bill. Do you mind if I weigh in?

THE COURT: Go ahead, Mr. Bundy.

MR. BUNDY: The case isn't going to be ready for trial by the middle of March. Okay? We're still doing discovery. We're still getting piecemeal discovery documents given to us. We just received, two weeks ago, the daily reports from Balfour Beatty Construction on the construction project that we've been trying to get. We've asked for it in discovery for over a year, and we never got the daily reports and didn't even know they existed.

We assumed those daily reports didn't exist because they weren't provided. I took a solid week

of depositions, video, two weeks ago, three weeks ago. I took two a day for five days. I took every superintendant's deposition. I took as many depositions as I could.

It was during those depositions we determined they were daily reports, so we wrote Mr. Hildebrand, and of course he sent them to us within about a week. It was very nice, but it would have been nice to have them a year ago because my experts haven't looked at any of them.

In addition to that, Judge, this case is going to take -- I've actually tried a case this complicated and this big to the end of the job. Okay? I tried the Trident Tech case. I don't know if you're familiar with the annex over here where they now have the ball park. I tried that case for 43 days. Okay?

This case is more complicated than that case. Thank goodness. I was in arbitration and it went fairly quickly. Thank goodness this is a nonjury trial because we can probably get a day's worth -- what would it take? Three days in front of a jury, and you can do it in one day generally in front of a Master-in-Equity or a nonjury.

My guess is, the way it's currently set up --

and I have no way of knowing how Balfour Beatty's counsel is going to present their case and I really don't care. I'll deal with it when it comes up.

But the way it looks right now, some of the cross-examination is going to take maybe three or four days because I'm going through every single change order. I'm going through every single request for change because this is a contract case. They have to approve every single change order.

They just can't go in there and say, We want $22 million. Your turn. So it's going to take about 30 days to put my case up. My guess is this case is going to take somewhere between 30 and 45 days to try.

Now, I don't know if you've got 45 days in a row. We are probably going to have to come back and do maybe what I would call mini trials. I've got some ideas I would like to float with you at the February hearing because in a construction case you can actually try it realistically. You pick an issue, try it to a result. You give us an interim decision and the we can go left or right.

The way we are right now is -- I don't quite understand because -- the contractor is going to go in and say all the damages and all the delay was our

fault. Okay? Well, I'm simply going to show -- and that's their burden, not ours. So I'm going to show, they were a cause of delay. Balfour Beatty was involved.

I'm not going into each of their subcontractors because they're responsible for their subcontractors, not me. I don't care why the door leaks, and I don't care why it was late. All I know is it leaks and you didn't get a time extension, and it somebody's fault, but it wasn't my fault. Okay?

So then, under their theory, what are you supposed to do as the Judge? When you say, Okay. You're not entitled to a time extension. Okay? You're entitled to liquidated damages or whatever. How then are they going to drill down into their subcontractors and decide which subcontractor's responsible for which particular play in which -- and he's charged. They're going to try to put all that on you, I guess. Or there's going to be another trial after the trial that we're going to have. So the logistics, judicial economy, a reasonable way to try this case -- we need to have some serious, heartfelt discussions about the most effective way to try this case, and I don't believe it's put up their first witness and have at it.

Literally, I have a duty to my client. I'm going to go through every single change order. I'm going to go through single dime. I'm going through it all because I don't see any other way based upon the way this case is presented so far.

I mean, their expert says -- it's his expert testimony that we don't even need -- we're not even entitled to a CPM or a critical path delay. Well, I don't know what all that means, but I don't care. It is what it is.

This is going to be a very -- I don't know how to say it. It's going to be the Chinese fire drill if we don't sort of get a handle on the procedures of who's going first and all that. So that's my two cents worth.

THE COURT: Well, I'm conscious of that, and one of my concerns, frankly -- Mr. Wheeler's raised it by bringing this motion, but I would ask that you-all put some thought into that, maybe have some discussion about how best to address this trial because it's like the question, you know, how do you eat an elephant, you know? It's one bite at a time, and this has sort of gotten into that.

We've got lots of subs who have been brought into the case as well, although ultimately originally

it was Balfour Beatty and Library Associates. So we're going to have to get to that, but I have not put any thought into the process, but I would like to explore that with you-all when we get together on the 1st of February and see if we can't start looking at it either from a particular set of issues, whether they be doors or windows or just what we've got on the issue of how best to proceed here.

MR. BUNDY: This notion of this duplication of liens, there are approximately somewhere between $5 and $7 million of liens that have been filed by both the general contractor and the subcontractors for the exact same worth. There's no way that you are going to award $12 million when everybody agrees it's only six. Okay?

And right now, my client is suffering. His property is being slandered and has been for over a year to the tune of $7 million. We've got to get our arms around that. I can't even get the general contractor to agree that -- you know, yeah. So and so's subcontractor claim for $2 million, that he filed a separate lien for is also with our claim. You ought to require them to do that. Make them do it. You're the only one that can do it because they won't do it for me.

THE COURT: All right. Well, that's something we'll need to look at.

MR. HILDEBRAND: Your Honor?

THE COURT: Go ahead, Mr. Hildebrand.

MR. HILDEBRAND: Yes. We've already got -- Mr. Bundy has argued that point, and it was rejected by Judge Price. The South Carolina law -- if Mr. Bundy wants to change the law, I think the legislators are the ones that have to change it because the general contractor is provided by statute the right to file the mechanic's lien and the subcontractors are provided that same right.

To the extent that there's duplication, there can't be duplicate recoveries. We understand that, but we do have that right, and everything has been done according to the law.

As far as the trial is concerned, there are some complexities, but when you boil it down, it's not very complicated. Simply put, the owner did not pay us the last $5 million that they agreed by contract and signed change orders to pay us when it got right down to the last minute.

Then the project was delayed by almost a year and a half because of changes and monumental design fuss and indecisions by the owner. We're entitled to

those damages as well. And then there are also change orders that were submitted that the owner's representative said he never even -- over $3 million of change orders that we submitted during the project that he never even looked at. He said he was going to look at them at the end but then never did.

So the basic case is not all that complicated. Mr. Bundy can go into every change order if he wants to, but from our perspective we supplied the work, the hotel's there. It's finished. It looks great. Everybody's happy with it, and we just want -- it's very simple, Your Honor. We simply want to get the money that we expended to provide the hotel that's there.

That's not a really complicated case, and I plan to make it fairly simplified so that -- because it is. That's basically what it stands for. What Mr. Bundy might want to do -- he can certainly present his defense show he wants to. We can go through all those.

As far as the document production is, Your Honor, we've been, I think, very above board and tried to bend over backwards by voluntarily producing. You'll remember very early in the case all of our documents. We got a recent email from