

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Linda Acker,)
)
 Plaintiff,)
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 v.)
)
 Westgate Myrtle Beach, LLC,)
)
 Defendant.)
)
 _____)
)
 Westgate Myrtle Beach, LLC,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 Home Depot U.S.A., Inc.)
)
 Third-Party Defendant.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 Civil Action No.: 2024-CP-26-04023

THIRD-PARTY SUMMONS
 (Jury Trial Demanded)



TO: THIRD-PARTY DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Third-Party Complaint herein, which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Third-Party Complaint, at Collins & Lacy, P.C., 1330 Lady Street, 6th Floor, Columbia, SC 29201, within thirty (30) days after service hereof, exclusive of the day of such service.

If you fail to answer the Third-Party Complaint or otherwise appear and defend within the time aforesaid, the Third-Party Plaintiff in this action will apply to the Court for relief demanded therein and judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/Andrew T. Smith
CHRISTIAN STEGMAIER
SC Bar No.: 68648
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ATTORNEYS FOR THIRD-PARTY
PLAINTIFF/DEFENDANT WESTGATE
MYRTLE BEACH, LLC

THIRD-PARTY SUMMONS

Jury Trial Demanded

April 9, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
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 COUNTY OF HORRY)
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 Home Depot U.S.A., Inc.)
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 Third-Party Defendant.)
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IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 Civil Action No.: 2024CP2604023
 DEFENDANT WESTGATE MYRTLE
 BEACH, LLC'S AMENDED ANSWER TO
 PLAINTIFF LINDA ACKER'S
 COMPLAINT AND THIRD-PARTY
 COMPLAINT AGAINST HOME DEPOT
 U.S.A., INC.

(Jury Trial Demanded)

RECEIVED
Apr 10 2026
 SC Court of Appeals

To: JOSEPH S. SANDEFUR, ESQUIRE, COUNSEL TO PLAINTIFF, AND TERESA WYNN ROSEBOROUGH, ESQUIRE, COUNSEL TO THIRD-PARTY DEFENDANT:

Defendant Westgate Myrtle Beach, LLC, (hereinafter, "Westgate" or "Defendant"), reserving the right to file a motion pursuant to Rule 12 of the South Carolina Rules of Civil Procedure or any other dispositive motion permitted under the South Carolina Rules of Civil Procedure, hereby submits their Amended Answer to the Complaint of Plaintiff Linda Acker (hereinafter, "Plaintiff") and Third-Party Complaint Against Home Depot U.S.A., Inc., by denying each and every allegation of Plaintiff's Complaint not herein admitted, by demanding strict proof thereof, and further responding as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

- 1. Each and every allegation not herein admitted is hereby denied and strict proof demanded

- thereof.
2. Defendant respectfully requests a trial by jury on all counts so triable.
 3. Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Plaintiff's Complaint, and therefore, denies the same and demands strict proof thereof.
 4. Paragraph 2 of the Plaintiff's Complaint contains conclusions of law, and therefore no response is required of Defendant. To the extent that a response is required, Defendant admits only that it owns and operates the subject property and does business in South Carolina. Defendant denies the remaining allegations stated therein and demands strict proof thereof.
 5. Defendant admits the allegations contained in Paragraph 3 of the Plaintiff's Complaint only to the extent that Plaintiff's Complaint contains allegations regarding Defendant's resort which is located in Horry County, South Carolina; however, to the extent that any allegation contained within Paragraph 3 seeks to impart any liability or otherwise wrongdoing on Defendant, these allegations are denied, and strict proof is demanded thereof.
 6. Paragraph 4 of the Plaintiff's Complaint contains conclusions of law, and therefore no response is required of Defendant. To the extent that a response is required, Defendant admits the allegations contained therein; however, to the extent that any allegation contained within Paragraph 4 seeks to impart any liability or otherwise wrongdoing on Defendant, these allegations are denied, and strict proof is demanded thereof.
 7. Paragraph 5 of the Plaintiff's Complaint contains conclusions of law, and therefore no response is required of Defendant. To the extent that a response is required, Defendant

admits that Plaintiff was present at the Defendant's resort in Horry County, South Carolina, on September 19, 2022. Defendant makes no admission as to the status of Plaintiff, and to the extent that any allegation contained within Paragraph 5 seeks to impart any liability or otherwise wrongdoing on Defendant, these allegations are denied, and strict proof is demanded thereof.

8. Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraphs 6 and 7 of the Plaintiff's Complaint, and therefore, denies the same and demands strict proof thereof.
9. Paragraphs 8 through 10 of the Plaintiff's Complaint contain conclusions of law, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations contained therein and demands strict proof thereof.
10. Defendant reiterates each and every paragraph above as is fully set forth herein verbatim.
11. Paragraphs 12 through 19, including all subparts, contains conclusions of law, and therefore no response is required of Defendant. To the extent that a response is required, Defendant denies the allegations contained therein and demands strict proof thereof. Furthermore, Defendant denies that Plaintiff is entitled to any recovery against the Defendant whatsoever and demands strict proof thereof.
12. In answering Plaintiff's WHEREFORE Paragraph, including all subparts, Defendant denies that Plaintiff is entitled to any recovery against the Defendant whatsoever and demands strict proof thereof.

FOR A SECOND DEFENSE

13. The Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

14. Any injuries or damages sustained by Plaintiff were due to and caused and occasioned by Plaintiff's own action or conduct, or negligence, gross negligence, recklessness, willfulness and wantonness which was the direct and proximate cause of Plaintiff's alleged injuries or damages, if any, and without which the same would not have occurred. Therefore, due to Plaintiff's sole negligence, gross negligence, recklessness, willfulness and wantonness, Plaintiff's claims are barred.

FOR A FOURTH DEFENSE

15. Even if Defendant was negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiff's injuries, if any, which is expressly denied, Defendant avers that Plaintiff's negligent, grossly negligent, reckless, willful, and wanton conduct contributed more than fifty percent (50%) to the cause of the accident, and therefore, Plaintiff's claims are barred.

FOR A FIFTH DEFENSE

16. Even if Defendant was negligent in any respect, which is expressly denied, and even if such conduct on the part of Defendant operated as a greater than fifty percent (50%) cause of Plaintiff's injuries, if any, which is also denied, Defendant is entitled to a determination as to the percentage which Plaintiff's negligent, grossly negligent, reckless, willful, and wanton conduct contributed to Plaintiff's incident and resulting injuries, if any, and to a reduction of any amount awarded to Plaintiff by an amount equal to the percentage of Plaintiff's own negligence.

FOR A SIXTH DEFENSE

17. Any injuries sustained by Plaintiff may be due to and caused by the sole negligence of third persons over whom Defendant had no control and, therefore, Defendant should not be liable to Plaintiff in any sum whatsoever.

FOR A SEVENTH DEFENSE

18. Any injuries sustained by Plaintiff may be due to and caused by the intervening and superseding acts of negligence, carelessness, recklessness, and gross negligence on the part of third persons as a proximate cause of injuries as alleged, if any, and therefore, Defendant should not be liable to Plaintiff in any sum whatsoever.

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims may be barred by the doctrine of open and obvious condition.

FOR A NINTH DEFENSE

20. Plaintiff's recovery should be barred because Plaintiff cannot show that Defendant either (1) created a defective condition; or (2) had knowledge of the defective condition and failed to remedy it.

FOR A TENTH DEFENSE

21. Assuming, arguendo, the existence of a defective condition, the injuries or losses as Plaintiff allegedly sustained, if any, were caused by Plaintiff's assumption of a known risk or expected condition; accordingly, Defendant pleads Plaintiff's assumption of a known risk or expected condition as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

22. Under South Carolina law, in premises liability matters, a patron is under a duty to see objects or conditions in plain view that are at a location where they are customarily expected to be. In the instant case, Plaintiff failed to observe this duty; accordingly, Plaintiff's claims are barred pursuant to the "plain view" doctrine.

FOR A TWELFTH DEFENSE

23. A patron is charged with exercising ordinary care for personal safety and using ordinary care to avoid the effect of the owner/occupier's negligence after that negligence becomes apparent to the patron or in the exercise of ordinary care the invitee should have learned of it. In the exercise of ordinary care, the patron must use all senses to discover and avoid hurtful things. Assuming, arguendo, a negligent condition existed in the instant case – which is strictly denied – Plaintiff nevertheless failed to exercise ordinary care to discover and avoid hurtful things in the instant case. Plaintiff's failure to exercise this ordinary care bars her from recovery in the instant case.

FOR A THIRTEENTH DEFENSE

24. Plaintiff's claims may be barred by the doctrines of waiver, estoppel, and/or laches.

FOR A FOURTEENTH DEFENSE

25. Plaintiff's claims may be barred or otherwise reduced due to Plaintiff's failure to mitigate damages as required by law.

FOR A FIFTEENTH DEFENSE

26. Any recovery by Plaintiff must be reduced or offset by amounts Plaintiff has received or will receive from others for the same injuries claimed in this lawsuit.

FOR A SIXTEENTH DEFENSE

27. To the extent applicable in the instant case, Defendant asserts that some or all of the claims against Defendant may be barred by applicable statutes of limitation or repose.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff's claims may be barred by the doctrine of unavoidable accident.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff either knew or should have known of any alleged deficiencies in the subject property and accepted the same with such knowledge. As a result, Plaintiff's recovery should be barred.

FOR A NINETEENTH DEFENSE

30. Punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.

FOR A TWENTIETH DEFENSE

31. Pursuant to Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore, any request for punitive damages "to be determined by the jury" violates the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. The United States Constitution's Due Process Clause "forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly [do not] represent," Phillip Morris USA v. Williams, 549 U.S. 346, 353 (2007), and, therefore, to the extent that Plaintiff seeks an award of punitive damages for potential or speculative harm to non-parties to the present action, such prayer for relief is unconstitutional and must be struck from the pleadings and is otherwise inadmissible at trial.

FOR A TWENTY-SECOND DEFENSE

33. Notwithstanding Defendant's prior defenses incorporating Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001) and State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408 (2003), and the cases upon which they are based, in the event the trial court permits the jury to return a punitive damages award in the instant case, such damages are to be limited to an amount that is no greater than the jury's award of actual damages, as explicated within Exxon Shipping Company v. Baker, 554 U.S. 471 (2008).

FOR A TWENTY-THIRD DEFENSE

34. Defendant pleads any and all applicable rights and protections afforded to it under the South Carolina Fairness and Civil Justice Act of 2011, codified at S.C. Code § 15-32-510 to 15-32-540, as a defense to Plaintiff's claims and/or requests for an award of punitive damages, including, but not limited to, any and all limitations and/or reductions to punitive damages (which are expressly denied).

FOR A TWENTY-FOURTH DEFENSE

35. Defendant relies upon any and all defenses or benefit codified in S.C. Code Ann. § 15-38-15 et seq., of the South Carolina Codes including the right to have a jury apportion fault among any named Defendant or any other party whether or not named.

FOR A TWENTY-FIFTH DEFENSE

36. Defendant reserves its right to assert claims for contribution and indemnity against any named party or party not named in this action.

FOR A TWENTY-SIXTH DEFENSE

37. Plaintiff's claims are barred by failure to join a necessary party.

FOR A TWENTY-SEVENTH DEFENSE

38. Defendant specifically reserves any additional and/or affirmative defenses as may be available to them or revealed to them during the course of the investigation and/or discovery in this case.

**FOR A TWENTY-EIGHTH DEFENSE AND BY WAY OF THIRD-PARTY
COMPLAINT AGAINST HOME DEPOT U.S.A., INC.**

39. Defendant and Third-Party Plaintiff Westgate Myrtle Beach, LLC (hereinafter, "Westgate"), is a limited liability company organized and existing under the laws of the State of Florida that conducts business in Horry County, South Carolina.
40. Defendant Westgate Myrtle Beach, LLC, is a subsidiary and/or affiliate of Westgate Resorts, LTD.
41. Westgate Resorts, LTD, is a subsidiary of Central Florida Investments, Inc. (hereinafter, "CFI").
42. Upon information and belief, Third-Party Defendant Home Depot U.S.A., Inc. (hereinafter, "Home Depot"), is a corporation organized and existing under the laws of the State of

Delaware with its principal place of business in Georgia, that conducts business in Horry County, South Carolina.

43. Prior to November 05, 2019, Interline Brands, Inc. d/b/a SupplyWorks (hereinafter, "SupplyWorks") was a vendor of CFI and, as of January 14, 2016, their relationship was governed by a written agreement, hereinafter referred to as the Standard Terms and Conditions.
44. The Standard Terms and Conditions stated that, "References to CFI herein shall be deemed to mean CFI, Westgate Resorts, Ltd., or any of their related and affiliated entities as set forth in the applicable agreement or purchase order."
45. As part of their obligations pursuant to the Standard Terms and Conditions, SupplyWorks, referred to therein as "Vendor", agreed to maintain comprehensive general liability insurance pursuant to the following terms:

If, in the performance of this contract, Vendor's employees, with or without equipment, are required to enter premises owned or controlled by CFI – Westgate Resorts, or the owner, Vendor shall maintain Workmen's Compensation, Comprehensive Public Liability, and Property Damage including Automobile Public Liability and property damage coverage's in amounts, form, and with carriers satisfactory to CFI – Westgate Resorts Ltd. Vendor including any vendor lower tier subcontractors performing work on-site at any CFI – Westgate Resorts property shall maintain comprehensive general liability insurance, workers' compensation insurance, and Automobile Insurance in a form and amount acceptable to CFI at the time that the purchase order is executed prior to performance of work in the amounts specified below:

- A. Comprehensive General Liability – The Vendor shall provide coverage for all operations and services including, but not limited to contractual, products, and completed operations and personal injury. The limits must be \$ 1,000,000 minimum combined single limit (CSL) or its equivalent.
46. Marsh USA, Inc. issued a certificate of liability insurance on February 11, 2019, including The Home Depot U.S.A., Inc., Home Depot U.S.A., Inc., and Supplyworks as insured parties, listing CFI/Westgate Resorts as the certificate holder, providing that the effective

dates of the policies were from 03/01/2019 to 03/01/2022, and including the following additional remarks:

CENTRAL FLORIDA INVESTMENTS, INC., ITS PARENTS, THEIR SUBSIDIARY, RELATED, AND AFFILIATED COMPANIES, AND THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES OF SAID COMPANIES ARE INCLUDED AS ADDITIONAL INSURED IF REQUIRED BY WRITTEN CONTRACT ON THE ABOVE GENERAL LIABILITY AND AUTOMOBILE LIABILITY POLICIES, BUT ONLY WITH RESPECT TO LIABILITY ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED.

47. As part of their obligations pursuant to the Standard Terms and Conditions, SupplyWorks, referred to therein as “Seller”, agreed to “comply with all applicable state and federal statutes, government rules, regulations, and orders, as well as any applicable county and city ordinance.”
48. As part of their obligations pursuant to the Standard Terms and Conditions, SupplyWorks, referred to therein as “Supplier”, agreed to “indemnify and hold harmless CFI and any of its affiliates, or subsidiaries, directors, officers, employees, timeshare owners, guest or visitors for any criminal act whether intentional or not by their workers on CFI property.”
49. As part of their obligations pursuant to the Standard Terms and Conditions, SupplyWorks, referred to therein as “Seller”, expressly warranted “that all goods delivered pursuant to the purchase order shall be merchantable and fit for the particular purpose for which they were ordered. Any and all of the Seller’s promotional literature, sales literature, advertising and product brochures are expressly incorporated into this warranty.”
50. Prior to November 05, 2019, Interline Brands, Inc. d/b/a SupplyWorks merged into Home Depot U.S.A., Inc. After merging, SupplyWorks operated as The Home Depot Pro or the Home Depot Pro Institutional.

51. Home Depot Pro Institutional currently operates as HD Supply, a subsidiary of Third-Party Defendant Home Depot U.S.A., Inc.
52. On November 05, 2019, Westgate Resorts placed a Work Order with Home Depot for “Cabinet refacing or replacement”.
53. On November 06, 2019, Westgate Resorts, LTD entered into a Contract for Services with Home Depot whereby Home Depot agreed to replace the cabinet doors, drawers, and hardware for fifty-four (54) units at the Westgate Myrtle Beach Oceanfront Resort (hereinafter, the “Resort”), in exchange for valuable consideration.
54. In entering into the Contract for Services, Westgate Resorts, LTD, and Home Depot intended to directly benefit Westgate.
55. Westgate Resorts, LTD, and Home Depot intended for the Contract for Services to be enforceable by Westgate.
56. As part of their obligations pursuant to the aforementioned Contract for Services, Home Depot agreed to provide a general liability certificate of insurance that included Central Florida Investments, Inc., as well as their subsidiary, related, and affiliated companies, as additional insured.
57. Marsh USA, Inc. issued a certificate of liability insurance on April 20, 2022, including HD Supply, Inc., a subsidiary or affiliated company of Home Depot, as an insured party, listing CFI/Westgate Resorts as the certificate holder, providing that the effective dates of the policies were from 03/01/2022 to 03/01/2025, and including the following additional remarks:

CENTRAL FLORIDA INVESTMENTS, INC., ITS PARENTS, THEIR SUBSIDIARY, RELATED, AND AFFILIATED COMPANIES, AND THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED IF REQUIRED BY WRITTEN CONTRACT ON THE

ABOVE GENERAL LIABILITY POLICY, BUT ONLY WITH RESPECT TO LIABILITY ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED.

58. Westgate is a subsidiary, related, and/or affiliated company of Central Florida Investments, Inc.
59. Upon information and belief, Plaintiff was a guest of unit 1303A when she was allegedly injured.
60. Home Depot agreed to replace the cabinet doors, drawers, and hardware in unit 1303A.
61. Plaintiff alleges that, while washing dishes at the kitchen sink of the unit on September 19, 2022, she was injured when “a vertical wood panel of the sink’s cabinet, located about waste [sic] high, fell on Plaintiff’s leg and landed on her foot causing injuries.” (Plaintiff’s Complaint, ¶¶ 6, 7).
62. Home Depot was contractually obligated to replace the vertical wood panel of the sink’s cabinet that Plaintiff complains of.
63. Home Depot contracted with Precision Services and/or Brushy Creek Custom Doors to provide the vertical wood panel of the sink’s cabinet that Plaintiff complains of.
64. Home Depot subcontracted the replacement of the cabinet doors, drawers, and hardware for fifty-four (54) units at the Resort.
65. Home Depot owed Westgate a duty to use reasonable care in selecting the subcontractor that performed the replacement of the cabinet doors, drawers, and hardware for fifty-four (54) units at the Resort.
66. Home Depot owed Westgate a duty to ensure that the subcontractor that performed the replacement of the cabinet doors, drawers, and hardware for fifty-four (54) units at the Resort was competent and careful.

67. The nature of the work that Home Depot subcontracted involved a significant risk of harm unless done skillfully and carefully.
68. Home Depot failed to provide clear instructions to their subcontractor as to the replacement of the cabinet doors, drawers, and hardware for fifty-four (54) units at the Resort.
69. To the extent that Plaintiff is successful in proving her claims, which Westgate expressly denies, the proximate cause of Plaintiff's alleged injuries and resulting lawsuit will be Home Depot's failure to use reasonable care in selecting a competent and careful subcontractor.
70. In failing to use reasonable care in selecting a competent and careful subcontractor, Home Depot injuriously affected the interests of Westgate.
71. The vertical wood panel of the sink's cabinet that Plaintiff complains of had a sticker affixed to it that contains the dates March 04, 2020, and March 05, 2020.
72. The vertical wood panel of the sink's cabinet that Plaintiff complains of had a sticker affixed to it that states "WESTGATE-FLOOR #3A".
73. Home Depot was obligated to conform to applicable industry standards and building codes while replacing, or subcontracting the replacement of, the vertical wood panel of the sink's cabinet that Plaintiff complains of.
74. Home Depot represented to Westgate, expressly or implicitly, that it installed the vertical wood panel of the sink's cabinet that Plaintiff complains of in conformance with industry standards and applicable building codes.
75. Home Depot had a duty to supervise any independent contractor(s) it contracted with to satisfy its obligations under the Contract for Services.

76. On November 02, 2023, Plaintiff's counsel issued a demand to counsel for Westgate, seeking compensation for the resolution of Plaintiff's claims.
77. On December 14, 2023, Westgate tendered the defense and indemnification of Plaintiff's claim to Home Depot U.S.A., Inc., in accordance with the Contract for Services, and informing Home Depot of Plaintiff's demand.
78. After receiving no response to their initial tender letter, on March 21, 2024, Westgate once again tendered the defense and indemnification of Plaintiff's claim to Home Depot U.S.A., Inc., in accordance with the Contract for Services.
79. On March 28, 2024, Benjamin Bence, a Senior Resolution Manager with Gallagher Bassett Services, sent counsel for Westgate a letter that acknowledged, but did not accept or decline, Westgate's tender of Plaintiff's claim. The letter stated that, "Gallagher Bassett Service, Inc. is the third party administrator that handles claims on behalf of HD Supply."
80. On June 11, 2024, Plaintiff filed their Summons and Complaint, alleging that Westgate was negligent in failing to exercise due care in the maintenance of the condition at issue, among other allegations.
81. On June 12, 2024, Plaintiff filed an Offer of Judgment in the amount of twenty-five thousand dollars (\$25,000.00).
82. On June 27, 2024, Westgate tendered the defense and indemnification of Plaintiff's claim to Home Depot U.S.A., Inc., for a third time. This tender was issued to Benjamin Bence and informed him that Plaintiff had filed a lawsuit and an offer of judgment in the amount of \$25,000.00.
83. All three tender letters issued by Westgate informed Home Depot of the fact that the board at issue was not fastened with hardware and, instead, was merely fastened by glue.

84. To date, Home Depot has not accepted or denied Westgate's tender.
85. Home Depot is contractually required to accept Westgate's tender of its defense and indemnification of Plaintiff's claims.
86. Principles of equity require Home Depot to accept Westgate's tender of the defense and indemnification of Plaintiff's claims.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

87. Westgate repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth verbatim herein.
88. Westgate and Home Depot, or their predecessor in interest, parent, subsidiary, or affiliate, entered into the Contract for Services on November 06, 2019.
89. Home Depot received valuable consideration in exchange for agreeing to replace the cabinet doors, drawers, and hardware for fifty-four (54) units at the Resort.
90. Home Depot breached the terms of the Contract for Services in the following ways:
 - a. Failing to indemnify and hold harmless Westgate from Plaintiff's claims;
 - b. Failing to replace the cabinet doors, drawers, and hardware in a timely and professional manner using competent personnel having expertise suitable to their assignments;
 - c. Failing to replace the hardware of the board at issue;
 - d. Failing to monitor subcontractor performance;
 - e. Failing to provide goods that were merchantable and fit for the particular purpose for which they were ordered;
 - f. Failing to provide commercial general liability insurance coverage in conformance with the Terms and Conditions;

- g. Failing to provide the agreed upon services in compliance with all comply with all applicable state and federal statutes, government rules, regulations, and orders, as well as any applicable county and city ordinance and other legal requirements;
 - h. Failing to secure and maintain insurance in satisfaction of the terms of the Contract for Services;
 - i. Failing to perform in accordance with industry standards established by those engaged in a similar business;
 - j. Failing to require and/or provide a competent and well-trained on-site supervisor for performance of the obligations imposed by the Contract for Services;
 - k. In such other particulars as the evidence may show.
91. As a result of the aforementioned breaches, Westgate has incurred damages including, but not limited to, reputational damages as well as the costs, expenses, and fees of defending against Plaintiff's claims.
92. As a result of the aforementioned breaches, Westgate could have a verdict rendered against it for a judgment of an amount to be decided by a jury.

FOR A SECOND CAUSE OF ACTION
(Negligence)

93. Westgate repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth verbatim herein.
94. Home Depot owed duties to Westgate as more fully described by the terms of the Contract for Services.
95. Home Depot owed duties to Westgate to act in a reasonable manner while performing the work that is the subject of the Contract for Services.

96. Home Depot owed Westgate a duty to use reasonable care in selecting the subcontractor that performed the replacement of the cabinet doors, drawers, and hardware for fifty-four (54) units at the Resort.
97. Home Depot owed Westgate a duty to ensure that the subcontractor that performed the replacement of the cabinet doors, drawers, and hardware for fifty-four (54) units at the Resort was competent and careful.
98. Home Depot owed duties to Westgate to act in accordance with applicable industry standards and customs.
99. Home Depot breached their duties and acted negligently, willfully, wantonly, and grossly negligent in one or more of the following particulars:
 - a. In failing to use reasonable care in selecting the subcontractor that performed the work that was the subject of the Contract for Services;
 - b. In failing to use reasonable care in selecting a competent and careful subcontractor such that the interests of Westgate would not be injuriously affected;
 - c. In failing to discover their subcontractor's deficient performance;
 - d. In failing to provide clear instructions to their subcontractor as to the replacement of the cabinet doors, drawers, and hardware for fifty-four (54) units at the Resort;
 - e. In failing to implement proper procedural safeguards for the inspection of the work that was performed;
 - f. In failing to adequately hire, train, and/or supervise the performance of their employees and/or subcontractor;
 - g. In misrepresenting the quality of the work that was performed;

- h. In failing to ensure that their employees and/or subcontractors satisfactorily performed the obligations imposed by the Contract for Services;
 - i. In failing to notify the appropriate party or parties of their inability or failure to provide the services agreed to in the Contract for Services; and
 - j. In such other particulars as the evidence may show.
100. To the extent that Plaintiff is successful in proving her claims, which Westgate expressly denies, the proximate cause of Plaintiff's alleged injuries and resulting lawsuit will be Home Depot's negligent acts, including, but not limited to, their failure to use reasonable care in selecting a competent and careful subcontractor.
101. As a direct and proximate result of the acts and/or omissions of Home Depot, Westgate has suffered and is entitled to recover actual, consequential, and punitive damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Contractual Indemnity)

102. Westgate repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth verbatim herein.
103. Pursuant to Section 2.1 of the Contract for Services, Home Depot agreed to indemnify Westgate for claims brought by third parties against Westgate to the extent that the claims arise out of or relate to personal injury, death or property damage for any negligent, intentional, or tortious act or omission of the Home Depot in performing its obligations under the Contract for Services.
104. Plaintiff has brought a claim against Westgate that arises out of and relates to alleged personal injuries that, if proven, were caused solely by the negligent acts of Home Depot.

105. While Westgate denies any liability, negligence, or other wrongdoing, Plaintiff alleges in the underlying action that the alleged negligence of Westgate proximately caused the injuries Plaintiff alleges to have suffered.
106. Westgate has tendered the defense and indemnification of Plaintiff's claim to Home Depot on three occasions.
107. Home Depot has unreasonably delayed in informing Westgate as to whether Westgate's tender will be accepted or denied and continues to do so.
108. By the plain text of the Contract for Services, Westgate is entitled to indemnity from Home Depot in the underlying suit brought by Plaintiff.
109. Westgate would show and allege that any injuries and/or damages sustained by the Plaintiff as alleged in Plaintiff's Complaint, which are denied, are in whole or in part due to, caused, and occasioned by the negligence, carelessness, recklessness, heedlessness, willfulness, and wantonness of Home Depot, their employees and subcontractors, or some other party/parties or non-party/parties over whom Westgate had no supervision or control.
110. Accordingly, pursuant to the Contract for Services, Westgate has the right to tender this claim to Home Depot, and Home Depot is required to indemnify Westgate and hold it harmless against Plaintiff's claims, including but not limited to attorney's fees, costs and expenses incurred in the defense of Plaintiff's action, any sum Westgate is adjudged to owe Plaintiff, and/or any sum Westgate pays Plaintiff in resolution of his claims

FOR A FOURTH CAUSE OF ACTION
(Equitable Indemnity)

111. Westgate repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth verbatim herein.

112. A special relationship exists such that Westgate is entitled to equitable indemnity by Home Depot.
113. Plaintiff filed suit against Westgate asserting that Westgate was negligent in failing to inspect their premises, among other allegations. To the extent that Plaintiff proves such allegations, which Westgate strictly denies, then such outcome will be the result of the sole errors or omissions of Home Depot, their breach of duties of care by and through their employees, and/or their equitable obligations.
114. Home Depot, not Westgate, is the negligent parties as it relates to the allegations of Plaintiff's Complaint.
115. If Westgate is found liable to Plaintiff for damages as alleged in Plaintiff's Complaint, Westgate alleges it is without fault and is entitled to judgment against Home Depot for full and complete equitable indemnity against any such liability, plus costs, expenses, and attorney's fees in defending this action.

FOR A FIFTH CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

116. Westgate repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth verbatim herein.
117. Home Depot is aware of the existence of the Contract for Services between itself and Westgate.
118. Home Depot is aware of Westgate's assertion of its rights under the Contract for Services, as well as the plain language of the Contract for Services.
119. Despite the aforementioned, Home Depot has failed to indemnify and hold harmless Westgate in the underlying lawsuit brought by Plaintiff.

120. Home Depot owes Westgate duties of good faith and fair dealing in fulfilling its obligations under the Contract for Services, including but not limited to, indemnifying and holding harmless Westgate.
121. Home Depot has breached its duties of good faith and fair dealing by, without evidence and despite the plain language of the Contract for Services, failing to indemnify and hold harmless Westgate.
122. Home Depot has breached its duties of good faith and fair dealing by, without evidence and despite the plain language of the Contract for Services, failing to render a decision on Westgate's three separate tender letters.

FOR A SIXTH CAUSE OF ACTION
(Contribution)

123. Westgate repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth verbatim herein.
124. While denying the existence of any duty owed by it to Plaintiff, and while denying any liability to the Plaintiff in this action for the damages alleged in the Amended Complaint, should liability be adjudged against Westgate, Westgate hereby demands contribution from Home Depot pursuant to the South Carolina Contribution Among Tortfeasors Act as codified under §§ 15-38-10 et seq.

WHEREFORE, Defendant Westgate demands actual, consequential, and punitive damages against Third-Party Defendant Home Depot U.S.A., Inc., and demands a trial by jury on counts so triable. Furthermore, having fully answered Plaintiff's Complaint, Defendant Westgate Myrtle Beach, LLC, respectfully requests that:

1. Plaintiff takes nothing by this action;

2. A judgment of dismissal be entered in favor of Defendant;
3. Defendant be awarded the cost of the suit incurred; and
4. Defendant be awarded such other and further relief as the Court deems proper.

Respectfully submitted,
COLLINS & LACY, P.C.

By: s/Andrew T. Smith
CHRISTIAN STEGMAIER
SC Bar No.: 68648
cstegmaier@collinsandlacy.com
ANDREW T. SMITH
SC Bar No.: 103810
asmith@collinsandlacy.com
JUSTIN C. LAWLOR
SC Bar No.: 106649
jlawlor@collinsandlacy.com
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

ATTORNEYS FOR DEFENDANT
WESTGATE MYRTLE BEACH, LLC

**DEFENDANT WESTGATE MYRTLE
BEACH, LLC'S AMENDED ANSWER
TO PLAINTIFF LINDA ACKER'S
COMPLAINT AND THIRD-PARTY
COMPLAINT AGAINST HOME
DEPOT U.S.A., INC.**

Jury Trial Demanded

April 9, 2025
Columbia, South Carolina

Linda Acker
PLAINTIFF(S)

Westgate Myrtle Beach 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
 Affirmed; Reversed; Remanded;
 Other

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

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

This matter came before the court on Defendant Westgate Myrtle Beach LLC's Third Party Complaint against Third Party Defendant Home Depot USA Inc. The Court finds in favor of Westgate Myrtle Beach LLC against Home Depot USA Inc. in the amount of \$144,650.97 for damages. Attorney Smith to submit a formal order.

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 02/13/2026 .

Home Depot USA Inc
Home Depot U.S.A., Inc. (3rd Party)

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.



Horry Common Pleas

Case Caption: Linda Acker VS Westgate Myrtle Beach LLC , defendant, et al

Case Number: 2024CP2604023

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ David P. Caraker, Jr.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Linda Acker,)
)
 Plaintiff,)
)
 v.)
)
 Westgate Myrtle Beach, LLC,)
)
 Defendant.)
)
 _____)
 Westgate Myrtle Beach, LLC,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 Home Depot U.S.A., Inc.)
)
 Third-Party Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 Civil Action No.: 2024CP2604023

**ORDER GRANTING THIRD-PARTY
 PLAINTIFF WESTGATE MYRTLE
 BEACH, LLC’S MOTION FOR DEFAULT
 JUDGMENT**

RECEIVED
Apr 10 2026
 SC Court of Appeals

THIS MATTER COMES before the Court on Defendant and Third-Party Plaintiff Westgate Myrtle Beach, LLC’s (hereinafter, “Third-Party Plaintiff”) Motion for Default Judgment against the Third-Party Defendant, Home Depot U.S.A., Inc. (hereinafter, “Third-Party Defendant”), pursuant to Rule 55 of South Carolina Rules of Civil Procedure.

It appearing that a Third-Party Complaint was filed and a Third-Party Summons was issued in this action, and said Third-Party Summons, together with a copy of said Third-Party Complaint, was properly served on the Third-Party Defendant;

And it further appearing to the Court that no Answer, Motion to Dismiss, or pleading has been filed by the Third-Party Defendant, and that no extension of time to file pleadings has been granted, and that the time for pleading or otherwise defending expired;

And it further appearing to the Court that the Third-Party Defendant is in default and has been entered according to the Rules of Civil Procedure. An Order for Default was entered by this Court on June 25, 2025. Upon the request of the Third-Party Plaintiff, Judgment is hereby entered against the Third-Party Defendant in pursuance of the prayer of said Third-Party Complaint.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Third-Party Plaintiff have and recover of the said Third-Party Defendant the sum of \$144,650.97 in actual damages, plus, post-judgment interest at the highest rate allowable by law.

IT IS SO ORDERED.

The Honorable David P. Caraker, Jr.
Fifteenth Judicial Circuit

Dated:



Horry Common Pleas

Case Caption: Linda Acker VS Westgate Myrtle Beach LLC , defendant, et al

Case Number: 2024CP2604023

Type: Order/Damages

IT IS SO ORDERED

s/ David P. Caraker, Jr.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Linda Acker,)
)
 Plaintiff,)
)
 vs.)
)
 Westgate Myrtle Beach, LLC,)
)
 Defendant.)
)
 _____)
)
 Westgate Myrtle Beach, LLC,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 Home Depot U.S.A., Inc.)
)
 Third-Party Defendant)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

C. A. No. 2024-CP-26-04023

AFFIDAVIT OF ADAM C. BACH

RECEIVED
Apr 10 2026
SC Court of Appeals

PERSONALLY APPEARED before me, Adam C. Bach, who being duly sworn, deposes and says as follows:

1. I am over the age of eighteen and have personal knowledge of the facts stated in this affidavit.
2. I am counsel for Home Depot U.S.A., Inc. in the above-referenced case.
3. I was not notified of this case until after the February 9, 2026 damages hearing.
4. I attempted to call counsel for Westgate and, upon receiving no response, sent a letter seeking a breakdown of damages amounts sought by and awarded to Westgate.

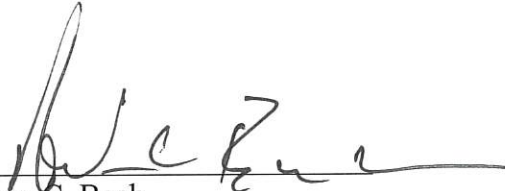
5. On February 20, 2026, counsel for Westgate provided the following breakdown of damages awarded:

Description	Amount
Legal Fees, Expenses, and Costs	\$28,915.26
Settlement with Plaintiff Linda Acker	\$13,500.00
Contract amount for negligently performed construction and negligently installed materials	\$102,235.71
Total	\$144,650.97

6. In the same correspondence, counsel for Westgate noted that Plaintiff Acker settled for \$13,500.00 on or about March 27, 2025.


7. Also with the February 20, 2026 correspondence, counsel for Westgate provided the attached Contract for Services, which Westgate executed on November 18, 2019, and which is the subject of Westgate's Third-Party Complaint against Home Depot. A true and accurate copy of the Contract for Services is attached hereto as **Exhibit A**.

FURTHER AFFIANT SAYETH NAUGHT.


Adam C. Bach

Sworn to and subscribed before me this

17th day of March, 2026


Notary Public of the State of South Carolina

My Commission Expires: 2/21/2030

EXHIBIT A



Correct Contract
562613

November 6, 2019

OWNER CONTRACT# 557051

Contract for Services

This Agreement is between:

Contractor:
Home Depot U.S.A., Inc
110 Innovation Dr
Summerville, SC 29483

and

Owner:
Westgate Resorts LTD
5601 Windhover Dr
Orlando, FL 32819

Project: Westgate Myrtle Beach – Replacement of Cabinet Doors, Drawers and Hardware for (27) B Units and (27) A Units after Mock Up.

Project Manager / Contact person: Dane McHugh & Walt Koren

A. Description of Work: Contractor to provide labor and equipment for project as per outlined in Exhibit D: Proposal

- Phase II – Additional (27) A Units and (27) B Units

B. Contract Sum: One Hundred Two Thousand Two Hundred Thirty-Five and 71/100 Dollars (**\$102,235.71**)

Payment Due Upon Execution of Stage 2 - \$30,000.00
Payment Due at Substantial Completion - \$72,235.71

C. Payment: Payments shall be made in accordance to Exhibit A attached hereto.

*** Contractor will process invoices in Fusion Supplier Portal by **FRIDAY at 4PM Eastern Standard Time** to make the following week check run; otherwise they will be processed for the following week after that.

*** Please do not upload invoice until job is complete with walk-thru or a Progress payment is agreed on per the contract.

D. Time for Performance:

Start Date: December 2, 2019
Completion Date: January 10, 2020

E. Terms and Conditions:

1. Labor and Materials: See Exhibit D
2. Delay: Contractor must request approval for schedule delays. The request must be in writing and within 24 hours of discovering the cause of the delay. Owner will not unreasonably withhold approval for delays beyond the Contractor's control. Owner's untimely payment is not just cause for delay.
3. Clean up: Upon completion of the work, contractor will remove debris and surplus material from Owner's property and leave it in a neat broom-cleaned condition.
4. Notices: All notices required or permitted under this Agreement shall be given by fax to (407) 264.2049 and or by mail to the address stated in Exhibit A.
5. Prohibition of Assignment: Contractor may not assign this contract or receivables without written consent from the Owner.
6. Insurance Requirements: Contractor will comply with the Owner's Insurance Requirements attached hereto as Exhibit B.

Contractor will be responsible for providing Owner an updated Certificate of Insurance each year and prior to each expiration date until the work is completed.

- F. Contract Documents: The following documents constitute the entire agreement between Owner and Contractor: Contract for Construction Services; Exhibit A, Owner Payment Instructions; Exhibit B, Owner's Insurance Requirements; and Exhibit C, Terms and Conditions; Exhibit D, Proposal. The terms and conditions of each of the foregoing Exhibits are hereby incorporated herein by reference and Contractor hereby expressly agrees to be bound thereby. Contractor acknowledges that it has reviewed and inspected the Contract Documents.

CONTRACTOR

OWNER

Contractor's License No. G110120

Contractor's Tax ID No. 58-1853319

Juan Bueno

By: VP Outside Sales + Strategy
(Name and Title of Contractor's Agent)

By: Mark Waltrip, Chief Operating Officer
(Name and Title of Owner Agent)

Signature: *[Handwritten Signature]*

Signature: *[Handwritten Signature]*

Dated: 11/18/19

Dated: _____

EXHIBIT A

PAYMENT TERMS – CONTRACT SERVICES

Within thirty (30) days from the date of receipt of invoice unless other terms of agreement are made and or made part of a contract. Owner shall pay the sums invoiced by Contractor or shall notify Contractor of any objection thereto:

Documents Required For Payments:

Attach copies of invoices and receipts to support invoice amounts.

****INVOICES TO BE PROCESSED IN ORACLE FUSION BY CONTRACTOR ONLY NO MAILED OR EMAILED INVOICE WILL BE ACCEPTED****

*** Contractor will process invoices in Fusion Supplier Portal by **FRIDAY AT 4PM Eastern Standard Time** to make the following week check run pending Payment Terms and approval to release payment; otherwise they may be processed for the following week after that pending Payment Terms and approval to release.

EXHIBIT B

OWNERS INSURANCE REQUIREMENTS – CONTRACT SERVICES

In reference to your contract with Central Florida Investments, Inc. and Westgate Resorts, Ltd., please be advised that we require a certificate of insurance which should include the following:

1. "Central Florida Investments, Inc., its parent, their subsidiary, related, and affiliated companies, and their officers, directors, agents, and employees of said companies," as additional insured.
2. The certificate shall show the subject policy has been endorsed to provide thirty (30) days cancellation notice to CFI – Westgate Resorts Ltd. The Policy expiration date shall appear on the Certificate of Insurance. Notification of the policy expiration date and "Will endeavor" and "failure to mail such notice shall impose no obligation or liability upon the company" statements shall not relieve the Contractor's contractual obligation to provide and maintain valid General Liability, Worker's Compensation, and Automobile Insurance in the amounts specified above.
3. General Liability limits must be the required \$2,000,000.00 minimum.
4. Workers' Compensation Insurance.
5. Automobile Insurance.
6. Policy expiration date.
7. Please add an attachment stating which coverage's the excess liability policy applies to.
8. Performance Bond if required by Owner shall be in the amount of the Contract.
9. Payment Bond if required by Owner shall be in the amount of the Contract.

Please verify that your Certificate of Insurance is current and up to date in your Fusion Supplier Portal. Please make sure it is attached as well.



WESTGATE RESORTS

EXHIBIT C

TERMS AND CONDITIONS – CONTRACT SERVICES

1. DEFINITIONS

Where the context of the agreement permits, the following words shall have the following meanings indicated:

"Contract" means the Agreement.

"Owner" means Westgate Resorts, Ltd., or its parent, subsidiaries, affiliates, principle, agents or assigns thereof that it may designate from time to time.

"Contractor" means the person, partnership, company, or corporation providing the Items to Owner.

"Subcontractor, Sub-vendor, Sub-supplier" means that person, partnership, company, or corporation engaged by Contractor to provide all or part of the Items involved in this Agreement, but to whom this Agreement is not specifically written.

2. PAYMENT TERMS.

Owner and Contractor hereby expressly acknowledge and agree payment for the services/work furnished hereunder shall be made in accordance with the terms set forth on Exhibit A attached hereto and incorporated herein by this reference.

3. CANCELLATION

Either party may terminate this Order: (i) for material default, or (ii) immediately in the event the other party is adjudged bankrupt, seeks the protection of any bankruptcy court, becomes insolvent, makes an assignment for the benefit of creditors, or if a receiver is appointed over the party's business or assets. If Customer declines a reasonable Change Order request, the Home Depot may immediately terminate this Order. This Order may be terminated by either party without cause with thirty (30) days prior written notice. In case of such termination for convenience, the Home Depot will be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

4. GOVERNING LAWS

Contractor shall observe and comply with all applicable laws, ordinances, codes, and regulations, including those provisions of the Occupational Safety and Health Act and its regulations, and shall indemnify Owner from and against all liability, including civil fines and penalties, for any violation of such laws, ordinances, codes, and regulations by Contractor. The terms and conditions of this Agreement shall be governed, construed, and enforced in accordance with the laws of and the under the jurisdiction of the State of South Carolina. Exclusive venue for any mediation or arbitration arising out of this Agreement or the services or Work provided hereunder shall be in location agreed upon by both parties.

*** 24. ENTIRETY OF AGREEMENT**

Except with respect to any unexpired secrecy agreement between the parties, this Agreement and its attached exhibits contain the entire agreement between the parties.

25. ATTACHMENTS

Any exhibits, specifications, drawings, or other documents attached to or referred to in this Agreement or in its attachments are by this reference hereby expressly incorporated into and made a part of this Agreement.

26.

WAIVER OF JURY TRIAL. EACH PARTY HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE WORK OR THIS AGREEMENT.

* Sections 5-23 Intentionally Omitted.

EXHIBIT D
WORK ORDER ("ORDER")

HOME DEPOT U.S.A., INC. ("Home Depot") d/b/a THE HOME DEPOT PRO ("PRO")

CUSTOMER INFORMATION		PROVIDER INFORMATION					
Customer Name:	Westgate Resorts	Contact Name:	HOME DEPOT USA, INC.				
Contact Name:	Wall Koren	Contact Phone:	Drew Olmstead				
Contact Phone:	(843) 448-4481	Contact Email:	1-770-433-8211				
Contact Email:	walkoren@wgresorts.com	Address:	Drew_Olmstead@homedepot.com				
Billing Address:			2455 Paces Ferry Rd, C-11				
			Atlanta, GA 30339				
Project Name:	BID-0039440	<table border="1"> <thead> <tr> <th>Order #</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>BID-0039440</td> <td>November 5, 2019</td> </tr> </tbody> </table>		Order #	Date	BID-0039440	November 5, 2019
Order #	Date						
BID-0039440	November 5, 2019						
Project No.:	Cabinet refacinq or replacement						
Jobste Name:							
Jobalte Address:	415 S Ocean Blvd, Myrtle Beach, SC 29677						

Note: Quote is valid for up to 30 days from the above date.

Salesperson Name: Kirsten Nellis Registration No. (if applicable): _____

- This Order incorporates by reference the Supply and Services Purchase Order Terms and Conditions, Services and Supply Purchase Agreement, or Customer Service Agreement, as applicable, that are attached hereto.
- PRICE.** Customer will pay the following price, subject to adjustments: \$ 102,235.71. The Price is subject to adjustment based on the costs associated with obtaining required permit(s), if any.
- SCOPE OF WORK.** Home Depot will perform the following scope of work ("Work"):

ITEM #	SCOPE OF WORK	UOM	QTY	PRICE/UOM	TOTAL PRICE
1	Labor and Material to replace various size cabinet doors, drawers, and hardware per customer provided specifications for (27) B Units and (27) A Units. If occupancy restrictions result in lost time, change orders will apply. Customer to approve finish color and final hardware selection.	Each	1.0	\$100,285.71	\$100,285.71
2	Dumpster will be provided by customer	Each	0.0		\$0.00
3	Misc. protection	Each	1.0	\$1,950.00	\$1,950.00
4	Quoted from existing cabinets which are "shaker style" also hardware in included	Each	0.0		\$0.00
5	<p>Phase 2.</p> <p>Start date of additional 27 unit As and 27 unit Bs to be December 2 with an estimated completion date to January 6.</p> <p>Scheduling and installation contingent on unforeseen issues due to units being occupied and mutually acceptable schedule not being followed.</p> <p>Change order will be submitted for additional time created by any access issues unless the changes are identified in two (2) days in advance and crews are not mobilized</p> <p>THD requesting \$30,000 down payment after mock up completion and phase 2 being mobilized</p> <p>Remaining balance due upon satisfactory completion</p> <p>Busted trip will result in a \$750 CO when a mutually accepted schedule results in non-work and the proper advance notification has not been accomplished.</p>	Each	0.0		\$0.00
TOTAL:					\$102,235.71

SUPPLY AND SERVICES PURCHASE ORDER TERMS AND CONDITIONS

1. Change Orders

Home Depot may, without invalidating this Order, perform changes in the Work, which are within the general scope of the Work. Home Depot will notify Customer of the change to the Work and the Order will be amended or modified to account for the performance of the change to the Work. At a time mutually convenient to the Parties, the scope, price and time extension for the change to the Work will be set forth in a Change Order. A Change Order is a written order prepared by Home Depot memorializing the parties' agreement on the change, and any adjustment in the Price or Contract Time. Any adjustment in the Price or Contract Time by Change Order will be established by mutual agreement on a lump sum with sufficient information to substantiate the amount.

2. Indemnification and Insurance

2.1. To the fullest extent permitted by law, each party agrees to indemnify, defend, and hold the other, including its officers, directors and employees, harmless from any and all direct losses or damages (including, without limitation, reasonable attorneys' fees, costs, and expenses) to the extent resulting from or related to any third party claim arising out of or relating to personal injury, death or property damage for any negligent, intentional or tortious act or omission of the indemnifying party in performing its obligations under this Order.

2.2. The indemnifying party will have control of the defense of an indemnity claim and will reasonably keep the indemnified party informed of all material information pertaining to the claim. The indemnified party agrees to reasonably cooperate with such defense, and the indemnifying party will not settle any such claim on behalf of the indemnified party without the prior written consent of the indemnified party.

2.3. Customer will provide property or other all-risk insurance in an amount equal to the replacement value of all Work.

3. Warranty and Limitation of Liability

3.1. To the fullest extent permitted by law, Home Depot warrants the workmanship of the services performed as part of the Work for one (1) year from the completion date. Provided Customer notifies Home Depot during the warranty period, Home Depot will arrange for repair at no charge to Customer for any defects due to faulty workmanship of Home Depot. Home Depot's warranty does not cover damage caused by Acts of God, installation or repairs made by persons other than Home Depot, abuse, misuse, neglect, or normal wear and tear. FURTHER, THE FOREGOING LIMITED WARRANTY IS IN LIEU OF AND HOME DEPOT DISCLAIMS ANY OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE WILL APPLY. IF THERE IS AN UNPAID BALANCE, THE HOME DEPOT MAY VOID THE WORKMANSHIP WARRANTY AT ITS DISCRETION. Merchandise and materials are specifically and exclusively covered by the terms of Section 3.2 below.

3.2. Home Depot does not provide a warranty for the products, and only the warranty given by the manufacturer, if any, will apply. Home Depot will not object to Customer seeking recourse against a product manufacturer under any manufacturer warranty terms that may apply. The parties agree that seeking recourse exclusively from manufacturers in connection with any product failures will be Customer's exclusive recourse in the event of a product failure or defect. THE FOREGOING LIMITED WARRANTY IS IN LIEU OF AND HOME DEPOT DISCLAIMS ANY OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WILL APPLY.

3.3. HOME DEPOT WILL NOT BE LIABLE TO CUSTOMER FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOST OPPORTUNITIES, LOST PROFITS FROM THIS ORDER OR ANY OTHER TRANSACTION, OR LOST SAVINGS, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR RESULT FROM A BREACH OF THIS ORDER. IN NO EVENT WILL HOME DEPOT'S LIABILITY RESULTING FROM, OR IN ANY WAY RELATING TO, THIS ORDER, WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED ONE HUNDRED THOUSAND DOLLARS, EXCEPT TO THE EXTENT SUCH LIABILITIES OR DAMAGES ARE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF HOME DEPOT. HOME DEPOT'S LIABILITY UNDER THIS ORDER WILL TERMINATE ONE (1) YEAR FROM WHEN A CLAIM WAS OR SHOULD REASONABLY HAVE BEEN DISCOVERED.

4. Unforeseen/Differing Conditions.

4.1 The Home Depot will either not start, or will immediately discontinue, the Work upon discovery of unforeseen physical or hazardous conditions at the Project. Any changes to the Work, including but not limited to changes necessitated by undisclosed, unidentified or unforeseen conditions or legal encumbrances on Customer's premises, building/zoning code violations, or hidden/unforeseen physical/hazardous conditions, including, but not limited to, the presence of underground or overhead utility lines, rocks, roots, buried debris, mold, asbestos, lead paint, or any conditions differing from what Customer represented, are subject to a Change Order, and any additional products or services included in such Change Order must be paid for in full before Work continues. The Home Depot will not attempt to remediate any such undisclosed, unidentified or unforeseen conditions and may immediately ask for a Change Order or discontinue the Work without further obligation to Customer. If Customer declines a Change Order request, The Home Depot may suspend or terminate this Order. These Change Order requirements do not preclude the recovery of compensation for work performed based on legal or equitable remedies designed to prevent unjust enrichment.

5. Termination

5.1 Either party may terminate this Order: (i) for material default, or (ii) immediately in the event the other party is adjudged bankrupt, seeks the protection of any bankruptcy court, becomes insolvent, makes an assignment for the benefit of creditors, or if a receiver is appointed over the party's business or assets. If Customer declines a reasonable Change Order request, the Home Depot may immediately terminate this Order. This Order may be terminated by either party without cause with thirty (30) days prior written notice. In case of such termination for convenience, the Home Depot will be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

6. Dispute Resolution

6.1. The law of the State of South Carolina will govern and control this Order and any claims arising out of or relating to this Order.

6.2. In the event of any dispute relating to or arising out of this Order, the parties will attempt to resolve the dispute through mediation by the American Arbitration Association ("AAA"). Mediation will be held in a location mutually agreeable to both parties and each party will bear its own costs and expenses and an equal share of the fees and expenses of the mediation.

6.3. If mediation is unsuccessful, disputes will be decided by binding arbitration in accordance with the Commercial Arbitration Rules of the AAA. Any such arbitration will be held in a mutually agreeable location and each party will bear its own expenses and an equal share of the expenses of the arbitrator. The award rendered by the arbitrator(s) will be final, and judgment may be entered upon it in any court of competent jurisdiction.

7. Miscellaneous

7.1. Home Depot is an independent contractor. Home Depot's employees, or other agents, will not be deemed an "employee," "agent," "servant," or "joint employee" of the Customer. As such, Home Depot's subcontractors or suppliers will not be within the protection or coverage of Home Depot's workers' compensation insurance or any other insurance policy.

7.2. Each party represents that it will comply, at its expense, with the Fair Labor Standards Act, all applicable workers' compensation, benefits, employment and immigration laws and all other laws applicable to it, its principals, employees, agents, and subcontractors.

7.3. This Order cannot be assigned by Customer without the expressed written consent of Home Depot. No provision of this Order will be deemed waived unless such waiver is in writing and signed by the waiving party.

7.4. The invalidity or unenforceability of any provision of this Order will not impair the validity or enforceability of any other provision.

7.5. Neither party will have the right to use, in any manner, the name, logos, trademarks, trade names, service marks, or other marks of the other without prior written consent from the other party.

7.6. This Order constitutes a contractual relationship between Customer and Home Depot. There are no third party beneficiaries of this Order.

7.7. The Home Depot will have the right to set-off amounts owed to it under this Order and under separate agreements between the Home Depot and Customer.

7.8. Unless otherwise expressly provided for herein, Home Depot will obtain and pay for any required permits, fees, licenses and inspections necessary to carry out and complete the Work that are customarily secured by the contractor. The cost for obtaining such permits, fees, licenses and inspections will be charged to Customer and may result in an adjustment to the Price. Customer will provide all information and assistance reasonably necessary for The Home Depot to obtain the permits required to complete the Work.

8. License or Registration Numbers Held on Behalf of Home Depot

LICENSE OR REGISTRATION NUMBERS(S) HELD BY OR ON BEHALF OF HOME DEPOT. Services provided by Home Depot and its authorized independent installation professionals. License numbers held by or on behalf of HOME DEPOT, U.S.A., INC.:

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