THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2024-000788
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 Library Associates, LLC is the Respondent.

AMENDED RECORD ON APPEAL - VOLUME 1 OF 20

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-10-01108

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.

ORDER GRANTING BALFOUR BEATTY CONSTRUCTION LLC'S MOTION TO AMEND COMPLAINT

FILED
2019 OCT -2 PM 2:45
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before this Court on Plaintiff, Balfour Beatty Construction, LLC's (hereinafter "Balfour") Motion to Amend Complaint and for Expedited Hearing. Balfour's

Motion was filed on September 23, 2019. At the October 1, 2019 hearing on this matter, Thomas Hildebrand appeared on behalf of Balfour. After considering the record and hearing arguments presented by counsel, the Court hereby GRANTS Balfour's Motion to Amend Complaint as to the Amended Complaint signed October 1, 2019.

IT IS HEREBY ORDERED that Balfour's Motion to Amend Complaint is **GRANTED**.

AND IT IS SO ORDERED.

The Honorable Bentley Price
Presiding Judge

October 2nd, 2019

ELECTRONICALLY FILED - 2019 Nov 18 8:58 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

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*.

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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s/Ian W. Freeman

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ATTORNEY FOR GULF STREAM CONSTRUCTION COMPANY, INC.

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ELECTRONICALLY FILED - 2019 Nov 18 8:58 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

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

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:

s/M. Brent McDonald

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

s/Taylor M. Morris

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

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

Electronically signed on 2019-11-14 16:16:44 page 4 of 4

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 March 16, 2020 pursuant to Library Associates, LLC's Motion for an Affirmative Injunction filed November 13, 2019. The motion is GRANTED and Balfour Beatty Construction, LLC must comply with the audit requirements found at Section 6.11.1 and 7.1.11 of the AIA A133-2009 Contract with Library Associates on or before April 1, 2020.

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 03/16/2020 .

Case Party Info Protected for Old North State Masonry LLC,Lithko Contracting LLC
Case Party Info Protected for Watson Electrical Construction Co LLC
Lithko Contracting Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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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	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC	)	
Plaintiff,	)	
Vs.	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.	)	**ORDER**
Defendants.	)	
Library Associates, LLC,	)	
Third-Party Plaintiff,	)	
vs.	)	
Lithko Contracting, LLC, 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, Balfour Beatty Construction Group, Inc.	)	
Third-Party Defendants.	)	

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PROCEDURAL AND CASE HISTORY

Defendant/Third Party Plaintiff Library Associates, LLC (hereinafter "Owner") filed its Motion for an Affirmative Injunction as to Plaintiff Balfour Beatty Construction, LLC (hereinafter "Construction Manager") on November 13, 2019 to require that Construction Manager comply with the contractual audit requirements of their AIA contract.

This case arises out of the construction of the luxury Hotel Bennett in Charleston, South Carolina ("Project"). Owner entered into the contract, on September 22, 2014, with Construction Manager. The original Guaranteed Maximum Price for construction of the project was $59,344,747.00. The Plaintiff filed suit in July 2019 and claimed to be owed almost $22.5 Million.

The Owner contends the Construction Manager was over 531 days late in delivering the Project to the Owner and for which Owner has sustained millions of dollars in damages as a result of the late completion of the Project. The Owner further contends it was required to perform work to correct deficient work by the Contractor in the amount of $1,788,723.73.

The type of contract used in this matter is known as a "Cost of the Work Plus a Fee with a Guaranteed Maximum Price." Allowable costs for reimbursement to the Construction Manager are defined in the contract and those costs plus the Construction Manager's fee are subject to a cap. In support of its Injunction motion, Owner contended that, fundamental to the entire "Cost Plus a Fee with a Maximum Price" contract delivery method, is the substantiation of costs by the Construction Manager. The relevant terms of the contract state:

Section 6.11.1 of the Contract 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 related 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.

Section 7.1.11 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."

Pursuant to these contract terms, on April 22, 2019, Owner's auditor, Cotton and Company, requested cost accounting records ("Audit Letter") in an attempt to begin auditing Construction Manager's claimed costs. The Audit Letter was sent subsequent to the Construction Manager's letter to the Owner's Representative claiming to have accrued additional costs in the amount of $22,452,282.51 - 40% above the original Guaranteed Price.

The Construction Manager refused to produce the documents on April 30, 2019 ("Refusal Letter") and cited four reasons for the refusal:

(1) Owner is in breach of contract for failure to pay and as such is not "entitled to any benefits under the contract"; (2) Owner must obtain the documents through "litigation"; (3) Owner has "waived" the right to the documentation; and (4) Owner can only request the documents within 60 days of substantial completion and Owner was beyond that time.

After a hearing held before this court on March 16, 2020, this court entered its Form 4 order granting Owner's motion for the Affirmative Injunction on March 17. The order further stated that Construction Manager "must comply with the audit requirements found at Section 6.11.1 and 7.1.11 of the … contract … on or before April 1, 2020."

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CURRENT DISPUTE

Owner filed its Motion to Enforce the Court Order on April 3, 2020 contending, again, that this is not a legal discovery matter but instead a matter properly determined by the terms of the parties' contract. Owner filed its Memo in support of its motion on April 21, 2020 and Construction Manager filed its Response to the Motion to Enforce the Order on May 29, 2020. In addition, counsel for both parties submitted letters in support of their positions (May 11 for owner and May 14 & 15 for Construction Manager) which reiterate their respective positions which the court states herein as:

Owner contends an audit of the Construction Manager's records are required to determine what additional costs have been properly incurred in order to calculate the amount is owed to Plaintiff/Third Party Defendant Construction Manager which, in turn, contends it has complied with this requirement by providing access to the relevant records through discovery production in this case. Owner's counsel has repeatedly maintained that, what he seeks is not discovery, but an essential term of the contract.

The Court is in agreement with Owner's contention. While the court is willing to acknowledge that the Manager has made the requested documents available to Owner's counsel, that is not what they seek. What they seek is a provision contained within the contract.

Parties are free to make their own contracts and, provided the contract is not violative of the law or public policy, the court is not at liberty to alter the terms of the contract. "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." Whitlock v. Stewart Title Guar. Co., 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (quoting McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574

(2009)). Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. Schulmeyer v. State Farm, 353 S.C. 491, 579 S.E.2d 132. (2003).

As Owner's counsel states succinctly in his letter of May 11:

"This is a contractual audit. The contractual audit is not simply a review of documents or discovery responses. It necessarily includes direct communication between the auditors and the Construction Managers accountants as on-site personnel. This is done simultaneously with a detailed review by the auditors of original records in native format to analyze all levels of expenditures incurred or charged to the project by the Construction Manager."

After citing to the transcript from the March 16 hearing, Mr. Bundy continues:

"As I stated at the hearing, I do not believe that this case can move forward until the Construction Manager complies with contractual audit requirements. Indeed, if the Construction Manager is unable to comply with the … requirements, as ordered by the court, it is imperative that Library associates know that now."

So, while Construction Manager contends it has now made the documents requested in the letter of April 24, 2019 available (despite the response of April 30, 2019), this is not what Owner now seeks. Owner seeks an audit of the documents by its auditors with the construction managers accountants on-site in order to answer any inquires that may arise. This court has previously ordered this relief and reiterates that point herein.

While this audit may not resolve the dispute between these parties, it might. In any event, it is a remedy that the parties contemplated and agreed to in their formation of this $50M contract. It is clearly not violative of the law and the parties will have to live by the terms of the contract which they entered into. See McGill, *supra*.

In order to maximize the effort and time necessary to devote to this audit, the court orders that the documents, currently produced by Plaintiff in their present electronic format, shall be presented to Defendant/Owner which shall have 30 days to review the documents as presented. Upon review of these documents, the Construction Manager is ordered to make the original

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documents requested, including those previously provided electronically, seasonably available for the Owner's auditors to review the documents in a location reasonably made available for their review. In addition, Manager's accountants shall be made readily available to answer any questions which may arise during the audit and to make copies of any documents so requested by the auditors.

IT IS THEREFORE ORDERED that Library Associates' Motion to Enforce the Court Order is hereby GRANTED!

IT IS FURTHER ORDERED:

Owner shall take possession of the documents heretofore electronically provided by Plaintiff for review for a period up to 30 days.

During this period of time, the parties shall set up a time and place for Owner's auditors to come and review the original documents requested in order to conduct their audit which shall occur within 60 days of the Owner's requested time to review the documents.

At the time of the audit, Plaintiff shall make available its accountant(s) who have reviewed the documents under review by Owner's auditors, for inquiry as to the basis for the costs incurred, and to copy any documents requested.

IT IS SO ORDERED!

SIGNATURE PAGE TO FOLLOW

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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

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.: 2019-CP-10-1108
COUNTY OF CHARLESTON	)	
Balfour Beatty Construction, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Library Associates, LLC and Metropolitan Life Insurance Company,	)	
	)	
Defendants.	)	
	)	ORDER GRANTING STRONG TOWER CONSTRUCTION, LLC D/B/A KOCH CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT
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.	)	
	)	

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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

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.

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.

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.

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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

CASE NO. 2019-CP-10-01108

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; 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

ORDER GRANTING THIRD-PARTY DEFENDANT WARCO CONSTRUCTION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER was heard on August 31, 2021 by the Honorable Mikell R. Scarborough, Master in Equity, upon Warco Construction Inc.'s ("Warco") Motion for Summary Judgment (the "Motion") on its breach of contract crossclaim against Balfour Beatty Construction Group, Inc. ("Balfour").

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After review of the matters of record, including, without limitation, the Motion, the pleadings, sworn deposition testimony and affidavits, as well as exhibits referenced therein, and the materials filed by Warco and Balfour in support of and in opposition to the Motion, and having the benefit of receiving briefing and hearing oral argument by counsel on the Motion, the Court determines and holds as follows:

I. Facts and Relevant Procedural History.

This matter concerns the construction of the Hotel Bennett, which is located at 404 King Street in downtown Charleston (the "Project") and owned by Library Associates, LLC ("Owner"). In or around September 2014, Balfour contracted with Owner to construct the Project as general contractor. On or about August 28, 2015, Warco entered into a subcontract agreement with Balfour to perform the Specialties Package for the Project in exchange for payment of $585,000.00. The Subcontract's scope of work for the Specialties Package included, but was not limited to, the furnishing of labor, materials, tools and equipment for the 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.

In addition to the base Subcontract scope of work, five (5) change orders were executed, paid (or credited), and/or approved (collectively, the "Subcontract Work"). The total contract amount, inclusive of executed change orders, for the Subcontract Work aggregates to $635,890.00. Warco performed the Subcontract Work in a good and workmanlike manner consistent with the Subcontract and in a timely fashion. Warco only received payments from Balfour totaling $478,621.93 despite satisfying all conditions precedent to payment for the Subcontract Work.

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On March 5, 2019, Balfour commenced the action captioned *Balfour Beatty Construction, LLC v. Library Associates, LLC, et al*. (Charleston Co. Case No. 2019-CP-10-1108). On May 15, 2019, Warco was named as a third-party defendant by Owner. In response, and after a number of amendments by Owner of its Third Party Complaint, Warco crossclaimed against Balfour for breach of contract and counterclaimed against Owner for foreclosure of mechanic's lien on November 4, 2020. On August 20, 2021, Warco moved for summary judgment against Balfour on its breach of contract crossclam.

II. **There Exists no Genuine Issues of Material Fact as to at Least $157,268.04 Being Due and Owing By Balfour to Warco Under the Subcontract, Entitling Warco to Partial Summary Judgment on That Amount Under Its Breach of Contract Crossclaim.**

Warco has presented this Court with evidence that $157,268.04 is due and owing to it from Balfour, and Balfour has not presented any evidence creating genuine issues of fact as to that amount being due and owing to Warco. Balfour did not argue that Warco's calculation of this figure was flawed or not based on work performed by Warco. Instead, Balfour argued that genuine issues of fact exist because at trial the Owner's representatives and experts might allege damages for delays or for defective construction that should be passed through Balfour to Warco, thus reducing Warco's damages. According to Balfour, this Court cannot arrive at an undisputed amount due and owing to Warco because of the theoretical possibility that testimony at trial might implicate Warco's work, even though no such evidence was obtained during discovery. This Court disagrees.

Balfour 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 Balfour "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 an attempt to establish a genuine issue of material fact, Balfour relied on the Owner's denial of a request to admit, which Balfour argued was aimed at eliminating any ability by the Owner to claim damages associated with Warco's work. Because the Owner was unwilling to admit the request, Balfour claimed that the Owner left open the possibility of proving damages at trial associated with Warco's work. However, all of the Owner's representatives and experts have been deposed, and none took issue with Warco's work. Any doubts about the Owner's position were laid to rest when, at oral arguments, 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.

In light of the foregoing, Balfour has failed to present evidence that creates a genuine issue of material fact as to a partial summary judgment award of $157,268.04, and Warco is entitled to partial summary judgment as a matter of law against Balfour in the amount of $157,268.04 on its breach of contract crossclaim.

III. <u>Warco is Entitled to Pre-Judgment and Post-Judgment Interest</u>.

Balfour is entitled to prejudgment interest at the statutory rate of 8.75% per year on the partial summary judgment award of $157,268.04. 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). Here, the sum is certain or capable of being reduced to certainty based on a simple mathematical calculation, and it was in fact reduced to certainty. Balfour and Warco

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entered into a Subcontract, inclusive of executed change orders, in the amount of $635,890.00 for the performance of the Subcontract Work. Despite the Subcontract Work being performed by Warco, and all conditions precedent to payment being met, Warco was only paid $478,621.93 by Balfour. Accordingly, the $157,268.04 sought by Warco was fixed by conditions existing at the time the claim arose.

In this matter, the earlier of the consolidated actions was filed by Balfour on March 5, 2019, with Warco being named as a third-party defendant on May 15, 2019. This Court, therefore, awards prejudgment interest at the rate of 8.75% on $157,268.04 from May 15, 2019 to the date that this Court verbally awarded Warco partial summary judgment on August 31, 2021, totaling $31,630.30 (839 days at $37.70 per diem).[1]

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, Warco will be entitled to post-judgment interest on $157,268.04 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.

IV. <u>Warco is Entitled to an Award of its Attorneys' Fees and Costs</u>.

"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). "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.*

[1]For the purposes of summary judgment, it cannot be disputed that the date of Warco's involvement in this lawsuit sets the latest possible date on which claims arose and payment was demandable. As prejudgment interest could arguably run from an earlier date, the date of Balfour's default, this amount is lower than it could have been.

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Here, Article 10.D. of the Subcontract's Terms and Conditions provides in relevant part:

> If the 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 Subcontracts 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*. (emphasis added).

At no point did BBC seek to compel arbitration or attempt to stay these actions based on Articles 10.A. through 10.C. This Court, therefore, finds that the Subcontract contains a provision authorizing the award of attorneys' fees in situations such as this when the parties elected to proceed with prosecuting their claims in litigation.

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*, 310 S.C. at 494, 427 S.E.2d at 660.

As to the first and second factors, the Court finds that this is a large and complex case involving competing claims between the owner, contractor, and numerous subcontractors, including allegations of unapproved scope changes, delays in completion, manpower issues, defective construction, and liquidated damages relating to a construction project spanning five years. This case involved the filing of dozens of motions across a wide range of issues and concerning almost all facets of the rules of procedure. This case generated a staggering number of letters and emails between counsel and emails between counsel and the Court on a broad range of topics. Discovery was extensive, including dozens of depositions, the exchange of hundreds of thousands, if not millions, of documents, and the service of hundreds of distinct sets of written discovery, notices, responses, amendments, supplements, and other documents by counsel for the

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parties. A considerable effort has been expended by counsel just to keep tabs on the status of the parties, the various cases which were consolidated, and the claims alleged therein. The trial is currently expected to run four weeks, which is an indication of the complexity of this matter.

In his affidavit, Warco's counsel states that the attorneys and paralegal staffing this case expended 264.4 hours in this matter (i) counseling Warco related to issues concerning the breach of contract claim against Balfour; (ii) preparing and reviewing all necessary pleadings, discovery documents, and court papers in this action; (iii) appearing at motion hearings and conferences; and (iv) taking all other action necessary to obtain a judgment. Based on this Court's understanding of the nature and complexity of this case, the Court agrees that the time and labor expended by Warco's counsel was reasonable.

As to the third factor, Johnston, Allison & Hord, P.A. has been representing construction clients in the Carolinas for over 70 years. Its construction practice was recently recognized as "Band One" in Construction Law by Chambers and Partners. The attorneys who have represented Warco in this matter are seasoned construction litigators with distinguished academic credentials and good reputations for professionalism and preparedness that was reflected in their representation of Warco in this matter.

With respect to the fourth factor, Johnston, Allison & Hord, P.A. is not representing Warco pursuant to a contingency fee arrangement. There is no indication that Warco will be unable to pay its lawyers if an award of attorney's fees is not made against Balfour.

As to the fifth factor, during the course of this matter, the hourly rate of Warco's primary attorneys ranged from $310-$325 for Scott Miller and was $290 for David Brennan. This Court routinely hears requests for fees and is very familiar with the rates charged by lawyers in the Charleston area and South Carolina more broadly. The fees charged by Johnston, Allison & Hord,

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P.A. in this action are consistent with those charged by lawyers of similar ability and experience in the South Carolina legal market.

Lastly, with respect to the sixth factor, Warco's counsel obtained an award of partial summary judgment in the amount of $157,268.04, which is a recovery of 66.3% of the amount Warco pled as damages ($237,128.21) in its breach of contract crossclaim against Balfour. Obtaining partial summary judgment and, depending on what Warco elects to do with respect to the remainder of its claim, potentially avoiding a month-long trial is a beneficial result.

Based on this Court's knowledge of the scope and complexity of this matter and the affidavit of David Brennan, counsel for Warco, this Court finds that, guided by the six factors set forth in *Blumberg* and the evidence before me regarding the same, Warco is entitled to an award of reasonable attorney's fees in the amount of $72,946.00 and costs in the amount of $759.28 for a total of $73,705.28.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. Based on the absence of genuine issues of material fact with respect to at least $157,268.04 due and owing to Warco from Balfour, Warco is entitled to judgment as a matter of law on that amount against Balfour on Warco's breach of contract crossclaim;
2. Based on the Subcontract's attorneys' fees provision, this Court awards Warco its reasonable attorneys' fees in the amount of $72,946.00 and costs in the amount of $759.28 for a total of $73,705.28;
3. This Court awards prejudgment interest to Warco at the rate of 8.75% on $157,268.04 from May 15, 2019 to the date that this Court verbally awarded Warco partial summary judgment on August 31, 2021, totaling $31,630.30 (839 days at $37.70 per diem); and

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4. This Court awards post-judgment interest to Warco on $157,268.04 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.

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
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

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.

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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.

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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	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.: 2019-CP-10-01108
COUNTY OF CHARLESTON	)	
	)	
Balfour Beatty Construction, LLC,	)	
Plaintiff,	)	
vs.	)	
Library Associates, LLC; and	)	
Metropolitan Life Insurance Company,	)	
a New York	)	
Corporation,	)	
Defendants.	)	ORDER REGARDING
	)	MULTIPLE MOTIONS
	)	
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,	)	
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, Lowcountry Case & Millwork, Inc.,	)	
Quantum Coatings, LLC, Balfour Beatty	)	
Construction Group, Inc.	)	
Third-Party Defendants.	)	

After consideration, the Court GRANTS Library Associates, LLC's Motion for Directed Verdict, filed October 4, 2021, only as to Ground 15 on Balfour Beatty's cause of action for breach of implied covenant of good faith and fair dealing. The remainder of Defendant's Motion for Directed Verdict is DENIED.

After considering the Plaintiff's Brief regarding the Supplementary Conditions of the Contract, the Court concludes that the Supplementary Conditions are not considered to be a part of the contract between Plaintiff and Defendant.

On the Plaintiff's Motion in Limine, filed October 12, 2021, the parties consented to the use of Patrick O'Connor's deposition at trial on October 25, 2021; however, no opinion expressed therein on legal conclusions for the Court to decide will be considered.

IT IS ORDERED!

Charleston, SC

_____, 2021

_____

The Honorable Mikell R. Scarborough
Master in Equity for Charleston County

ELECTRONICALLY FILED - 2021 Oct 26 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2021 Oct 26 9:38 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

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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. 2019 **CP-**10-1108

Balfour Beatty Construction, LLC
PLAINTIFF(S)

Library Associates, LLC et al.
DEFENDANT(S)

Submitted by: Master in Equity	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **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

☐ **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 : Judgment entered in favor of Premier Exteriors, LLC against Balfour Beatty Constrction, LLC in the amount of $201,974.36

INFORMATION FOR THE PUBLIC 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)
Premier Exteriors, LLC	Balfour Beatty Construction, LLC	$201,974.36
		$
		$

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

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

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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.

	3062	12/21/2021
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 THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

ELECTRONICALLY FILED - 2021 Dec 22 12:31 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: Order/Judgment and Form 4

So Ordered

s/Mikell R. Scarborough 3062

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ELECTRONICALLY FILED - 2021 Dec 22 1:00 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

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.	)	**PROPOSED ORDER GRANTING PREMIER EXTERIORS, LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST BALFOUR BEATTY CONSTRUCTION, LLC** **(FINAL JUDGMENT AS TO PREMIER EXTERIORS, LLC PURSUANT TO SCRCP 54(b))**
Library Associates, LLC, 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, Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc. Third-Party Defendants.	)	

Before this Court is Premier Exteriors, LLC ("Premier")'s Motion for Summary Judgment Against Balfour Beatty Construction, LLC ("BBC"). A hearing on this matter was held on August

31, 2021. Present at this hearing were Robert C. Hughes, III, attorney for Premier; Thomas C. Hildebrand, Jr. and Robert C. Byrd, attorneys for BBC; and Walter H. Bundy, Jr. and M. Brent McDonald, attorneys for Library Associates, LLC ("Library"). Having now heard the oral arguments of counsel and having read and reviewed the briefs, the submissions of counsel, the pleadings and the evidence of record, this Court hereby **GRANTS** Premier's Motion for Summary Judgment in the principal amount of $104,703.51 plus prejudgment interest, attorney's fees and costs for the reasons set forth below.

BACKGROUND AND PROCEDURAL HISTORY

This case arises out of the construction of the Hotel Bennett, a luxury hotel in downtown Charleston owned by Library. [Premier's Notice of Motion for Summary Judgment and Supporting Memorandum, p. 2]. Library contracted with BBC to serve as the general contractor for the project. *Id*. In turn, Premier subcontracted with BBC to install the exterior stucco cladding on the hotel. *Id*. After construction of the hotel was substantially complete, BBC, Premier and various other subcontractors filed mechanic's liens. *See id*. at 2-3. Multiple lawsuits subsequently ensued among the parties. *Id*. at 3.

On July 15, 2019, Premier filed a Complaint seeking to foreclose its mechanic's lien and alleging, *inter alia*, that BBC breached its contract with Premier by failing to pay the principal balance due for its work in the amount of $104,703.51. [*See* Premier's Complaint dated July 15, 2019]. Premier's Complaint included an alternative count against BBC and Library under quantum meruit/unjust enrichment theory. Id. That case was originally assigned Civil Action No. 2019-CP-10-3727, but it was later consolidated into the above-styled action along with multiple other cases. Id. Premier ultimately elected to dismiss its claims against Library with prejudice (including its mechanic's lien claim) and proceed solely against BBC. [*See* Order of Dismissal

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With Prejudice as to Claims Between Premier and Library]. In an effort to fully extract itself from this litigation through summary judgment, Premier moved to dismiss its remaining causes of action against BBC. [*See* Premier's Motion to Dismiss Certain of Its Claims dated September 14, 2021].

A. <u>Premier's Motion for Summary Judgment</u>

On August 20, 2021, Premier moved for summary judgment against BBC on its breach of contract and quantum meruit/unjust enrichment claims. [*See generally* Premier's Notice of Motion for Summary Judgment and Supporting Memorandum]. Premier seeks judgment against BBC in the principal amount of $104,703.51, plus prejudgment interest, attorney's fees and costs. *Id.* In support of its motion, Premier submitted the Affidavit of William J. Bremer, IV dated August 20, 2021. *Id.* at Exhibit 1. Attached as exhibits to that affidavit are a copy of Premier's subcontract with BBC; photographs of Premier's completed stucco on the hotel; and certain of Premier's time and material invoices signed by BBC representatives. [*See generally* Aff. of Bremer, Exhibits A, B and C respectively]. Premier also submitted an excerpt of deposition testimony from Jim Clements and a portion of BBC's construction contract with Library which contains a provision designating Mr. Clements as "Owner's Representative" on the project. [*See generally* Premier's Notice of Motion for Summary Judgment and Supporting Memorandum, Exhibits 2 and 3].

1. <u>Affidavit of William J. Bremer, IV</u>

In his affidavit, Mr. Bremer averred that at all relevant times, he served as Premier's General Superintendent for the Hotel Bennett project. [Aff. of Bremer, ¶ 5]. In such capacity, he has personal knowledge of: (a) Premier's subcontract with BBC; (b) Premier's performance of its work pursuant to its subcontract with BBC; (c) the cost of Premier's work on the project; (d) the outstanding balance due from BBC to Premier for its work; and (e) Premier's efforts to collect the balance owed to it. *Id.* Mr. Bremer further averred, in pertinent part, as follows:

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- Premier satisfactorily and timely completed all of its work on the project in accordance with the terms of its subcontract with BBC;
- At no time did Premier ever receive any notice of default from BBC on the project;
- Premier's work was accepted by BBC;
- As of January 17, 2019, the principal balance of $104,703.51 was due from BBC to Premier under the parties' subcontract;
- All conditions precedent to Premier's receipt of payment of the $104,703.51 balance owed under the subcontract have occurred or were waived or excused;
- Premier repeatedly requested payment of the $104,703.51 balance from BBC, but no payment was received;
- The only explanation that BBC provided to Premier for its nonpayment of the $104,703.51 balance is Library's withholding of payment from BBC;
- Neither BBC nor Library have ever complained to Premier about the quality of Premier's completed work;
- At no time has any claim been made under Premier's labor warranty or the stucco manufacturer's product warranty for the project;
- Premier is unaware of any claim by either BBC or Library that Premier's work on the project is defective;
- Premier is unaware of any claim by either BBC or Library that Premier caused or contributed to any delays on the project;
- Notwithstanding the foregoing, the $104,703.51 subcontract balance remains outstanding.

Id. at ¶¶ 6-7, 9; 11, 14, 15-16, 26, 27-31.

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2. Deposition Testimony of Jim Clements

Jim Clements, who served as Library's "Owner's Representative" pursuant to its contract with BBC, testified that Premier "did a great job." [Depo. of Clements at p. 205; *see also* excerpt of Contract between Library and BBC attached as Exhibit 3 to Aff. of Bremer]. Further, Clements confirmed that there were no workmanship deficiencies, manpower concerns or delays on the project that were attributable to Premier. [Depo. of Clements; pp. 205-207]. Moreover, he testified that he is unaware of any reason that Premier should not be paid in full for its work on the project. *Id*. at 207.

B. BBC's Response in Opposition to Premier's Motion

On August 27, 2021, BBC filed a Brief in Opposition to Premier's Motion. [*See generally* BBC's Opposition Brief]. BBC did not submit any affidavits or deposition testimony to counter the Affidavit of Mr. Bremer or the deposition testimony of Mr. Clements. *Id*. Instead, BBC submitted a report from Library's scheduling expert, Mark Boe, along with Library's Responses to Requests for Admission which include a denial of a request pertaining to Premier's work. *Id*. at Exhibits A and B. BBC contends that those two items constitute evidence that Library intends to argue that Premier caused or contributed to delays or deficiencies for which Library is seeking to recover damages against BBC. *Id*. at pp. 4-6. As such, BBC claims it is entitled to withhold payment from Premier pursuant to the default provision in the parties' subcontract, which provides for the right of setoff in the event of Premier's default. *Id*. However, in its brief, BBC concedes that it does not actually believe that Premier caused any delays or deficiencies on the project. [*Id*. at p. 8].

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1. Expert Report of Mark Boe Dated December 15, 2020

In his report, Boe generally opines that there were "significant delays throughout the project caused by subcontractors' failure to provide the level of manpower need to complete on time, and significant quality deficiencies that led to rework by critical trades." [Boe Report, p. 4, attached as Exhibit A to BBC's Opposition Brief]. Boe's report specifically addresses the problematic work of certain subcontractors, but Premier is not one of them. *See generally id*. In its brief, BBC concedes that Boe's report does not actually mention Premier but argues that his report nevertheless "suggests there were also other delays caused by [BBC's] subcontractors other than the instances specifically listed in his report." [BBC's Opposition Brief, p. 5].

2. Library's Denial of Request for Admission

BBC served requests for admission to Library concerning the work of the various subcontractors. [*See generally* Library's Responses to BBC's Requests for Admission, attached as Exhibit B to BBC's Opposition Brief]. With respect to Premier, Library was asked to admit that

> it 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 Premier caused or contributed in any many to the Claims and Damages as defined above.

Library denied this request on July 20, 2021. *Id*. Identical requests for admission relating to the other subcontractors were likewise denied by Library in their entirety. *Id*.

C. Premier's Reply Brief

On August 30, 2021, Premier filed a Reply Brief along with an excerpt of a transcript from Mark Boe's May 3, 2021 deposition. [*See generally* Premier's Reply]. In its brief, Premier argues that BBC failed to establish a question of fact as to whether Premier defaulted under the subcontract, thereby triggering a right of setoff. *Id*. In that regard, Premier contends that BBC's reliance on Boe's expert report as potential evidence of a Premier default is misplaced, because

Boe subsequently testified that he has no opinions that are critical of Premier's work. [*Id.*, see also Depo. of Boe, pp. 159-160, attached as Exhibit 2 to Premier's Reply]. Premier further argues that Library's denial of the request to admit is insufficient to create a question of fact as to a default by Premier because it does nothing more than suggest that Library may possibly assert some unknown claim concerning Premier's work in the future. *Id*.

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 inferences therefrom must be viewed in the light most favorable to the non-moving party. S*ummer 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).

ANALYSIS

Mr. Bremer's Affidavit, including its attachments, and Mr. Clements' deposition testimony evidence Premier's entitlement to payment from BBC under the subcontract in the principal amount of $104,703.51. Significantly, BBC has offered no evidence to counter Mr. Bremer's Affidavit or Mr. Clements' testimony. Rather than contesting facts germane to Premier's claims,

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BBC argues that the default provision in the parties' subcontract gives it a right of "setoff" in the event of Premier's default. However, BBC fails to establish a question of fact as to whether Premier actually defaulted under the subcontract, thereby triggering BBC's right of setoff.

To that end, it is noted that the only submissions that BBC included with its brief were Boe's expert report and Library's Responses to Requests for Admission. As to the first item, BBC's speculative claim that Boe's report suggests he might someday offer opinions critical of Premier's work is countered by his subsequent sworn testimony on the matter. In fact, Boe testified that he holds no negative opinions concerning Premier's work whatsoever. As such, Boe's report is insufficient to create a genuine issue of fact as to a default on the part of Premier.

BBC's reliance on Library's responses to requests for admission is also misplaced. To begin with, Rule 56 of the South Carolina Rules of Civil Procedure contemplates only use of "admissions on file" for summary judgment purposes, not denials. The Court is unaware of any authority for the proposition that one party's denial of a request for admission can be used as "evidence" against another unrelated party to defeat that party's motion for summary judgment. Even assuming that such denial is admissible for such purpose, Library's denial upon which BBC relies is insufficient to achieve that objective. At best, the denial simply suggests that Library could potentially assert some unknown claim concerning Premier's work in the future. It does nothing to evidence or substantiate actual defects or delays that would support an existing claim involving Premier's work.

Here, BBC has only established a potential right of setoff. BBC has failed to establish a question of fact as to whether its right of setoff has been triggered by virtue of a Premier default. Under South Carolina law, "the mere existence of [a] potential right of setoff does not create a genuine issue of material fact." *Wachovia Bank, N.A. v. Winona Grain Co., Inc.*, 2004 WL

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6334915 (S.C. Ct. App. Sep. 20, 2004)(unpublished *per curiam* opinion). Accordingly, Premier is entitled to judgment as a matter of law against BBC in the principal amount of $104,703.51 plus prejudgment interest at the legal rate accrued since January 17, 2019, the date the obligation became due.

Moreover, Article 10.D of the subcontract entitles Premier as the prevailing party to recover its attorney's fees and court costs incurred with regard to this litigation. [See Subcontract, attached as Exhibit "A" to Affidavit of Bremer]. Specifically, the pertinent language states as follows:

> [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 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. The Court has reviewed the Affidavit of Robert C. Hughes, III, Esq. setting forth Premier's fees and court costs in pursuing this recovery. [*See generally* Affidavit of Hughes dated September 16, 2021]. Having presided over multiple hearings from the outset of this matter, this Court is familiar with the contentiousness of the case, the complexity of the underlying project, and the time and energy that the parties and counsel have been and are investing in completing discovery and preparing for trial. This Court has also had an opportunity to review the affidavits of record filed by other attorneys seeking awards of attorney's fees and costs in connection with summary judgment. Considering: (1) the nature, extent and difficulty of the case; (2) the time necessarily devoted to the case by counsel; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; (6) the customary legal fees for similar services and the evidence before me regarding the same, the Court finds that the fees and

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court costs incurred by Premier as averred by Mr. Hughes are reasonable and thus awards Premier $73,050.00 in attorneys' fees and $200.00 in court costs. *See, e.g., Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

FINDINGS OF FACT

The Court finds, based on the factual record before it, that there is no genuine dispute as to the following material facts:

(1) Premier timely and satisfactorily performed its work on the project in compliance with its subcontract with BBC;

(2) As of January 17, 2019, BBC owed Premier the principal balance of $104,703.51 pursuant to the subcontract;

(3) All conditions precedent to BBC's payment of the $104,703.51 subcontract balance have occurred or were waived or excused;

(4) BBC has failed to pay the $104,703.51 due to Premier under the subcontract.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

(1) BBC breached its subcontract with Premier;

(2) Premier is entitled to an award of damages against BBC in the principal amount due under the subcontract of $104,703.51;

(3) Because the Court concludes that the principal balance of $104,703.51 is due from BBC to Premier under the parties' subcontract, the issue of quantum meruit/unjust interest is moot;

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(4) Premier is entitled to prejudgment interest at the legal rate of 8.75% on the principal balance of $104,703.51 accrued from January 17, 2019 through August 31, 2021, the date this Court orally granted summary judgment, totaling $24,020.85;

(5) Premier is the prevailing party in this action; thus the subcontract entitles Premier to an award of reasonable attorney's fees in the amount of $73,050.00 and court costs in the amount of $200.00.

(6) BBC is entitled to post judgment interest accruing from the date of this judgment.

AWARD OF JUDGMENT

The Court hereby enters judgment in favor of Premier against BBC in the principal amount of **$104,703.51** plus prejudgment interest in the amount of **$24,020.85**, attorney's fees in the amount of **$73,050.00** and court costs in the amount of **$200.00**. Post judgment shall accrue on the judgment amount of **$201,974.36** at the rate of 7.25%, compounded annually, until the entire judgment is paid by BBC in full. *See Parker v. Shecut*, 359 S.C. 143, 597 S.E.2d 793 (2004)(award of attorney's fees is considered part of a monetary judgment and draws post-judgment interest).

DETERMINATION OF NO JUST REASON FOR DELAY OF FINAL JUDGMENT UNDER SCRCP 54(b)

Because this Order resolves all of Premier's remaining claims against any party in the above-styled action and Civil Action No. 2019-CP-10-3727, and there are no claims currently pending against Premier in either case, the Court finds that there is no just reason for delay in entering this Order as a final judgment as to Premier in both actions pursuant to Rule 54(b) of the South Carolina Rules of Civil Procedure. Accordingly, the Clerk is hereby directed to enter this Order as a final judgment with respect to Premier in the above-styled action and Civil Action No. 2019-CP-10-3727, and the cases are hereby ended as to Premier.

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IT IS SO ORDERED!

_____, 2021
Charleston, South Carolina

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

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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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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO.: 2019- CP-10-01108

BALFOUR BEATTY CONSTRUCTION, LLC
PLAINTIFF(S)

LIBRARY ASSOCIATES, LLC
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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 :

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)
LIBRARY ASSOCIATES, LLC	BALFOUR BEATTY CONSTRUCTION, LLC	$3,320,329.00
		$
		$

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.

3062

Circuit Court Judge | **Judge Code** | **Date**

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For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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ELECTRONICALLY FILED - 2023 Oct 06 2:14 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: Order/Judgment and 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 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.	)	**ORDER**
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.

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.

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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.

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.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.

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(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

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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-

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

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

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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

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$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

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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 12 12:29 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 AWARDING ATTORNEYS' FEES & COSTS**

This matter came before the Court on Library Associates, LLC's Petition for Attorneys' Fees and Costs, filed November 6, 2023. In its Petition, Library provided William H. Bundy Jr.'s affidavit to support its claim for attorneys' fees and costs in the amount of $2,026,278.55. Library also provided the affidavit of Marvin D. Infinger, Esquire to support the reasonableness of its claim to attorneys' fees. A hearing was held on April 2, 2024 at which time Mr. Infinger testified.

REASONABLENESS OF FEES AND COSTS

Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991) set forth the six-factor test to determine the award of attorneys' fees based upon: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Applying these factors to this case, I find:

1. This has been a very complex construction case which required protracted litigation. This matter involved multiple subcontractor claims and mechanics liens. This case was filed in 2019 and subsequently involved a five-week trial in the Fall of 2021.
2. Library's counsel devoted thousands of hours in its efforts to resolve this case.
3. Library's counsel of record, William H. Bundy, Jr. and Brent McDonald, maintain an excellent professional reputation in the South Carolina Bar.
4. The contingency of compensation factor is not relevant as Library's counsel was paid an hourly rate not conditioned upon the outcome of the case.
5. The outcome obtained by Library's counsel was a beneficial result for their client. The Order of October 6, 2023 awarded a judgment of $3,320,329.00 in favor of Library Associates, LLC against Balfour Beatty Construction, LLC under the breach of contract and breach of contract accompanied by a fraudulent act causes of action. Significant to this court's determination of attorney fees, Library successfully defended against a Mechanic's Lien cause of action sought by Plaintiff Balfour Beatty Construction, LLC.
6. Mr. Bundy and Mr. McDonald's hourly rates of $400 and $350 are below the customary hourly rate charged for litigation of this nature and complexity and by attorneys of similar professional standing. As testified by Marvin D. Infinger, (who this court finds both highly credible and imminently qualified), a customary hourly rate for an attorney of Mr. Bundy's caliber is $600 and $450 for Mr. McDonald – a 50% increase above the billed hourly rate.

Based upon these findings, the court concludes Library Associates, as the prevailing party in the defense of the mechanic's lien case, is entitled to an award of attorney's fees. SC Code §15-27-10 (a).

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REDUCTION OF FEES AND LODESTAR ENHANCEMENT

After the hearing, and despite its objection to Mr. Infinger's affidavit as untimely, Balfour Beatty submitted the Affidavit of Franklin Worrell, a certified financial forensic accountant and CPA. Mr. Worrell reviewed the invoices submitted by Library's counsel and placed the invoices into 5 Groups which he concluded led to a 74.5% overstatement in the amount of time expended in defending the mechanics lien claim. This court disagrees with his assessment.

In *Maybank v. BB&T Corporation,* 416 S.C. 541, 787 S.E.2d 498 (2016), the Supreme Court approved a twenty percent fee reduction after a showing of unrelated or unreasonable costs. This Court adopts the Supreme Court's ruling in *Maybank* and reduces Library Associates' award of attorneys' fees by thirty percent (30%). The court concludes a 30% reduction in fees is warranted based upon the fact multiple claims were presented and tried in this matter; however, the clear majority of time expended by the parties during the 5 week trial of this case was spent trying the Plaintiff's mechanics lien foreclosure action on which Defendant's prevailed.

Also in *Maybank*, the Supreme Court upheld a lodestar fee enhancement of fifty percent. While the facts in this case differ from *Maybank*, "a lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." *Layman v. State*, 376 S.C. 434, 457, 658 S.E.2d 320, 332 (2008).

Upon review of the memorandum, affidavit and testimony of Marvin Infinger, this Court finds there exists good cause, considering the complex litigation and successful outcome achieved by Library's counsel, to award a lodestar fee enhancement of fifty percent to the rate of the attorneys' fees incurred. Accordingly, Mr. Bundy's hourly rate is hereby set at $600 per hour and Mr. McDonald's at $450 per hour.

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ASSESSMENT OF ATTORNEY'S FEES AND COSTS

Library Associates' Petition for Attorneys' Fees was submitted on November 6, 2023 in the amount of $2,026,278.55. Substantial other costs were included in its petition which ultimately sought over $50 Million Dollars in damages.

After application of the thirty percent fee reduction to Library's requested amount of $2,026,278, the court finds the sum of $1,418,395 as the amount of attorney's fees. This sum is then subject to the lodestar fee enhancement of Fifty Percent, which this Court finds results in an award of $2,127,592 in attorney's fees.

In addition, the court grants Library Associates' Petition for an award of Costs in the amount of $655,197 which is the amount of costs submitted by Sam Hadley as Library's financial expert witness. Ms. Hadley's testimony was crucial to understanding the amounts of time and figures placed into the record and finds this cost to be reasonable and properly awarded in this action. See *Maybank*, supra. The remaining costs, the majority of which include loan costs both past and projected, are denied as consequential damages not allowed under the parties' contract.

Upon review of the memoranda, affidavits, and invoices submitted by Library Associates' counsel and in application of the *Glasscock* factors, and in consideration of the arguments, memoranda and affidavits submitted, this Court determines that an award of $2,782,789 in attorneys' fees and costs is both reasonable and equitable to award Library Associates.

IT IS THEREFORE ORDERED that this Court hereby awards the sum of $2,782,789.00 in attorneys' fees and costs to Library Associates and hereby issues its Form 4 Order in that amount as judgment on the attorney's fees and costs.[1]

[1] Following the preparation of this order, the Court received a Supplemental Affidavit of Additional costs and fees from Kim Brown on behalf of Library Associates. The affidavit seeks an additional $191,369.90 for costs incurred since submission of the attorney's fees and affidavit of November 6, 2023. The majority of these fees and costs were

IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity, Charleston County

spent preparing for and attending the post-trial motions hearing held on April 2, 2024. The Court will not award these additional fees and costs at this time but reserves a decision on their award at a later time.

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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/Attorney Fees

So Ordered

s/Mikell R. Scarborough 3062

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ELECTRONICALLY FILED - 2024 Apr 12 2:20 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 **PUNITIVE DAMAGES ORDER**

This matter came before the Court on April 2, 2024 for a hearing to determine punitive damages. This Court's Order entered October 6, 2023 found Plaintiff Balfour Beatty Construction, LLC (hereinafter "Balfour Beatty") liable to Defendant Library Associates on its counterclaims for breach of contract and breach of contract accompanied by a fraudulent act. The Order found Balfour Beatty liable for $3,320,329.00 in actual damages on each theory. I then bifurcated the hearing for punitive damages, citing S.C. Code Section 15-35-510 et seq., to determine the amount of punitive damages and provide the parties procedural due process in order to prepare for the hearing. This process was discussed further at the Rule 59(e) hearing held on March 13, 2024.

Prior to the hearing, Balfour Beatty filed a Motion in Limine, arguing that the Court should not have a hearing as no further evidence should be admitted following the conclusion of the trial in December 2021. At the hearing, the Court cited the recent case of *Portrait Homes v. Penn Mutual* wherein the Court of Appeals affirmed the actions of the "learned trial court,"

Judge Roger M. Young, in holding a subsequent hearing to determine punitive damages post-trial. *Portrait Homes- South Carolina v. Pennsylvania National Mutual Ins.* Co., Op. No. 6038 filed Dec. 13, 2023 (SC App 2023). Accordingly, Plaintiff's Motion in Limine was DENIED.[1]

At the hearing, Library Associates presented five exhibits and the testimony of Library's principal, Michael Bennett. Objection was made to the exhibits on the basis that the documents referenced a separate subsidiary entity, Balfour Beatty Communities, LLC (hereinafter "BBC") of the parent company Balfour Beatty Companies, PLC (the British parent company), than Balfour Beatty Construction, LLC, the unsuccessful Plaintiff in this action. Other than filing and arguing for the Motion in Limine, objection to the exhibits offered, and limited cross-examination of Mr. Bennett, Balfour Beatty presented no evidence at the punitive damages hearing.

Due to the similar nature of the facts presented in the exhibits and the proximity in time to the events of this case (both concluded in December 2021), the Court allowed into evidence the Exhibits numbered 1, 3, 4 & 5. The Court allowed the proffer of Exhibit 2, a 2005 finding against Balfour Beatty Construction (not this LLC) for fraud involving claims brought on behalf of Amtrak. The Court has not taken Exhibit 2 into consideration in its decision but finds the actions of the Balfour Beatty entity from the 2021 criminal guilty plea of major fraud against the United States military (18 USC 1031(a)1) to be both highly relevant and factually similar.

Those similarities are:

1. a. The events between the parties in this case took place from 2014 when the parties entered into their contract until 2019 when Balfour Beatty filed suit against Library Associates.

   b. The events alleged in the federal information and plea agreement between BBC and the United States of America occurred between 2013 and 2019.

[1] See also Rule 42(b), SCRCP.

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2. a. The trial of this case took place over five weeks in the fall of 2021 and concluded on December 3, 2021.

   b. The guilty plea, civil restitution, and court ordered penalty entered into between BBC and the United States of America occurred on December 21, 2021.

3. a. In this case, Library complained repeatedly to Balfour Beatty that the job was taking too long and was not being managed properly. Exhibit 5 was a letter introduced through Mr. Bennett wherein he wrote to the CEO of Balfour Beatty asking him to investigate the management of this job in order to finalize and complete the project which was many months behind schedule. No satisfactory response was given to Mr. Bennett from the CEO. Instead, he was advised by email to speak to the regional Supervisor and emphasized that the job was progressing according to plan.

   b. The factual recitation for the guilty plea states that BBC failed and refused to timely and adequately respond to complaints it received when the military housing authorities requested information and proof of compliance with their housing services contract.

4. a. In this case, upon receipt of complaints from Library Associates and commensurate with the filing of the Lis Pendens just prior to the commencement of this action, Balfour Beatty cut off access to the Egnyte computer software system site where all documents pertaining to the construction of the Hotel Bennett were kept for all parties involved to review. This was a major source of litigation during the discovery phase of this trial as the Egnyte site was never re-opened for use by the owner Library Associates.

   b. In the federal action, Balfour Beatty used its property management software system, known as Yardi, to keep its data. The federal government was able to determine that the data in the Yardi software system was manipulated in order to benefit Balfour Beatty and

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was used to the detriment of the United States of America. This included the submission of false and fraudulent material data which allowed Balfour Beatty to satisfy its performance objectives to receive quarterly bonus payments from the federal government.

5. a. As cited in item 3 above, Mr. Bennett's attempts to notify executives at Balfour Beatty of problems with the construction project were left unanswered. In addition, Mr. Bennett testified one of the reasons he entered into the contract with Balfour Beatty was that he felt comfortable with one of the Balfour Beatty executives he initially met with in Charlotte, Mike Bombach; however, by the time construction commenced on the Hotel Bennett, Mr. Bombach was no long employed with Balfour Beatty.

   b. A finding in the factual attachment to the plea agreement was that Balfour Beatty lacked adequate controls at the corporate regional and executive levels. In addition, the factual attachment stated the former Chief Operating Official of Balfour Beatty pressured his regional leaders for the collection of performance incentive fees.

6. a. While this Court found the actual damages incurred by Library Associates in this case amount to $3,320,329.00, Mr. Bennett testified that damages are closer to $50 million, as he has been unable to refinance the hotel because of the Lis Pendens which remains a lien upon the property. Rather than taking out the construction loan with permanent financing when interest rates were in the 3-4% range, today the rates are closer to 10% and will result in much greater carrying costs to the Hotel as an on-going concern.

   b. In the federal housing case, the loss determined to the government was $18.7 million dollars. The criminal penalty adjudged was $33.6 million dollars and restitution was set at $31.8 million dollars - a total of almost $65 million dollars. Separately, BBC settled a False Claims Act (qui tam) action and was allowed to credit the civil liability of $35 million

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dollars against the amounts owed under the criminal plea. Unlike in this action, as part of the federal court's probationary sentence, BBC was also ordered to undergo oversight and review by an independent compliance monitor for a period of three years to ensure no further violations of the government housing contracts occurred. This compliance period is still running at this time.

Paragraphs enumerated 1-6 above are this Court's findings on the similarities between these cases. While the federal case arises from a guilty plea to 18 USC 1031(a)1, our state jurisprudence has long allowed for the recovery of punitive damages when a breach of contract is accompanied by both a fraudulent intent and fraudulent conduct. *Welborn v Dixon*, 70 S.C. 108 (1904). See also *Floyd v. Country Squire Mobile Homes*, 287 S.C. 51 (S.C. Ct. App. 1985). In addition, the burden of proof to award punitive damages requires "clear and convincing evidence." *Armstrong v. Collins*, 366 S.C. 204 (2005). The Court finds the evidence here meets that standard and the factual allegations in these two cases are quite similar.

Furthermore, some of the quotes from Exhibit 1, a press release issued by the federal government announcing the entry of the guilty plea and the court-imposed fine, illustrate the level of conduct shown by BBC in its dealings with the federal government. If willing to treat the United States military and its service members in this fashion, what likelihood does a private citizen have to avert a similar fate? This answers some of the questions raised by the Court in its October 6, 2023 Order. See Paragraph 7(B), page 43.

While noting that the BBC action, *USA v. Balfour Beatty Communities, LLC* (Criminal No. 21-CR-742 (EGS) involved constructing and maintaining military housing, the Court finds the following comments relevant and applicable to the conduct of Balfour Beatty in this case:

"This pervasive fraud was a consequence of BBC's broken corporate culture, which valued profit over the welfare of servicemembers." Deputy Atty Gen. Lisa Monaco.

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"In defrauding our country's military services, BBC took advantage of their unique position as a military housing provider and put greed and personal profit above our service members." FBI Deputy Director Paul Abbate.

"Balfour Beatty's scheme to delay service request entries into their electronic tracking system to increase their performance-based award violated their contract and wasted valuable taxpayer money." Special Agent Thomas Cannizo of NCIS Southeast Filed Office.

"That BBC would not only fail to deliver this service, but also falsify information to line their own pockets is despicable." David Estes US Attorney for the Southern District of Georgia.

As stated in this Court's Order, "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 contract but that it was accompanied by a fraudulent intent." Order p. 43. This raised the questions cited above in which the Court Order answered: "The only purpose would be to attempt to force an Owner into submission." Id.

STANDARD OF REVIEW

Since *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991), our jurisprudence has considered due process as a part of the review of an award of punitive damages. The United States Supreme Court expounded upon this in *BMW of North America v. Gore*, 517 U.S. 559 at 575 (1996), where it held "constitutional jurisprudence dictate(s) that a person receive notice not only of the conduct that will subject him to punishment, but also the severity of the penalty that a state may impose." "While states possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards." *State Farm v. Campbell*, 538 U.S. 408 (2003).

In South Carolina, our Supreme Court set forth eight factors to consider in a due process review of a punitive damages award. See *Gamble v. Stevenson*, 305 S.C. 104 at 111-112 (1991). The factors are:

1. Degree of culpability
2. Duration of the conduct

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3. Awareness of concealment
4. Existence of similar conduct
5. The likelihood the award will deter others from like conduct
6. Is the award reasonably related to the harm likely to result from the conduct
7. Ability to pay; and
8. Any other appropriate factors.

In *Mitchell, Jr. v. Fortis*, 385 S.C. 570 (2009), our Supreme Court ruled that trial courts must consider both the *Gamble* and *Gore* factors in the review of a punitive damages award. In *Mitchell*, the court then undertook an analysis of 3 factors:

1. Reprehensibility
2. Ratio (Punitive damages to actual damages) and
3. Comparative Penalty awards.

ANALYSIS

Similar to *Mitchell,* this case involves economic rather than physical harm. Also, in this instance, Library Associates was and remains financially vulnerable due to the added cost and loss of time from the delay in construction of the hotel as well as the additional carrying costs incurred as a result of the liens placed upon the hotel. Again, as in *Mitchell*, there were repeated acts of deliberate indifference towards Library Associates as it sought to complete construction of the hotel. Mr. Bennett's letter to CEO Blondin (Ex. 5) resulted in no assistance whatsoever.

Balfour Beatty sought to deny and obfuscate information due to Library Associates when it shut down the Egnyte software site so that information could no longer be shared between the owner and contractors working on the hotel. Clearly, this failure to assist with completing the hotel, coupled with Balfour Beatty's decision to file the Mechanics Lien and bring suit, shows it was aware of its wrongdoing. The facts in the criminal case in which BBC defrauded the US Government shows the existence of similar conduct by a separate subsidiary of the same parent corporation and provides an additional basis for the award of punitive damages. See *Magnolia North POA, Inc. v. Heritage Communities, Inc.,* 397 S.C. 348 (S.C. Ct. App. 2012).

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"Under the settled rule prevailing in this state punitive damages are awarded not only as punishment for a wrong, but also as vindication of a private right, and when under proper allegations a plaintiff proves a wilful, wanton, reckless, or malicious violation of his rights, it is not only the right but the duty of the jury to award damages."

Magnolia North citing to *Sample v. Gulf Ref. Co*., 183 S.C. 399 at 410 (1937).

"Punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence."

Magnolia North citing to *Campbell v. State Farm*, 538 U.S. at 419, supra.

Accordingly, as the court finds Balfour Beatty's behavior to be willful and wanton and proven by clear and convincing evidence, reprehensible behavior is established and punitive damages are appropriate.

S.C. Code Section 15-32-510 et seq.

Since *Mitchell* and *Magnolia North* were decided, the SC General Assembly enacted legislation addressing the award of punitive damages. The statutory scheme is set forth in S.C. Code Section 15-32-510 et seq. Also, our Supreme Court issued an excellent discussion of the statutes relevant to an award of punitive damages in *Garrison v. Target Corp.* 435 S.C. 566 (2022).

A. Section 15-32-530 (A) provides for an award of punitive damages not to exceed three times the amount of compensatory damages unless the court finds that Sections B or C apply. In the event the court finds the terms of Section B apply, the court may award punitive damages not to exceed four times the amount of compensatory damages. Under Section C, there is no cap on punitive damages when the court finds that any one of the three factors cited there are present.

B.1. Analyzing 15-32-530 (B) to the facts of this case, subsection 1 requires the court to prove the wrongful conduct was motivated primarily by financial gain and that the unreasonably dangerous nature of the conduct was known or approved by the managing agent responsible for policy decisions at the culpable party. While Mr. Bennet's letter to CEO Blondin was notice of the problems associated with the contract terms being fulfilled, while the Court finds management

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knew or should have known of the problems, it finds there is a lack of evidence that Balfour Beatty's decision makers approved the conduct.

B.2. Section 15-32-530 (B)(2) requires the court find "the defendant's actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff's damages." While this test is in essence an attempt to determine if Balfour Beatty's actions were criminal, as noted above, a separate BBC entity has been convicted of criminal activity for very similar conduct. This is exactly what Balfour Beatty's motion in limine sought to exclude. While the test does not require a finding of criminal liability, it only requires that it "could subject" Balfour Beatty Construction, LLC to a felony conviction. The Court finds the conduct very similar and so the first part of this test is met.

The second part of the test is that the "act or course of conduct is a proximate cause of the plaintiff's damages." While it would be very difficult to find that Balfour Beatty's course of conduct in shutting down the Egnyte site, in failing to keep the project on time and on task as General Contractor and filing greatly exaggerated mechanic's liens, was THE proximate cause of Library Associates damages, it is not difficult to find that this conduct was certainly A proximate cause of Library Associates' damages which, as testified to by Mr. Bennett, continue to this day.

I conclude that Balfour Beatty's actions satisfy an award of punitive damages under Section 15-32-530 (B)(2). Accordingly, punitive damages must not exceed the greater of four times the amount of compensatory damages in this case.

C. Section 15-32-530 (C) provides for no cap on punitive damages under the three tests there. Only subsection 1 is relevant here as Balfour Beatty has not been convicted of a felony and no allegation of acts under the influence of alcohol or drugs apply. Under the first section, the test requires a showing that "at the time of the injury the defendant had an intent to harm and … that

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the defendant's conduct did in fact harm the claimant." While the court finds that the conduct of Balfour Beatty did harm Library Associates, the court does not find by clear and convincing evidence that it was their intent to harm Library Associates at the time of breach of the contract. As the Court stated a number of times during the course of this trial, it appeared that Balfour Beatty's employees failed to read the contract and follow its terms during the course of administration of the contract during construction. While this has caused the Owner damage, I find it does not rise to the level of "intent to harm" as that term is used in the statute.

CONCLUSION

As the Court has found an award of up to four times the amount of compensatory damages is applicable in this case, and the amount of actual damages came to $3,320,329, the maximum amount of punitive damages allowed in this case is $13,281,316. The Court hereby exercises its discretion and awards the sum of $10 Million Dollars in punitive damages against Balfour Beatty.

IT IS THEREFORE ORDERED that Library Associates is hereby awarded $3,320,329 dollars in actual damages and $10 Million dollars in punitive damages on its cause of action for Breach of Contract accompanied by a fraudulent act for a total sum of $13,320,329 dollars.

IT IS FURTHER ORDERED that Library Associates has previously been awarded the sum of $3,320,329 in actual damages on its claim for Breach of Contract.

IT IS FURTHER ORDERED that Library Associates is hereby required to elect its remedy between these causes of action and shall have twenty (20) days in which to elect. At that time, the Court shall enter its Final Form 4 Order setting forth the full amount of the judgment herein.

It is Further Ordered that the Court shall issue its award of Attorney's Fees and Costs by separate order herein.

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IT IS SO ORDERED!

_____

Mikell R. Scarborough
Master in Equity, Charleston County

_____, 2024

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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/Damages

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; et al.

Third-Party Defendants.

ORDER

This matter came before the Court on Balfour Beatty's Motion, filed April 22, 2024, to Alter or Amend the Order Awarding Punitive Damages and Election of Remedy Pursuant to Rule 59(e), SCRCP.

In its October 6, 2023 Order, the Court "orders a bifurcated hearing on punitive damages pursuant to S.C. Code Section 15-32-510 et seq. for Contractor's breach of contract accompanied by a fraudulent act." (Order, p. 44). Pursuant to the October 6, 2023 Order and the Order of Reference, dated January 7, 2020, this Court has authority to "hear and decide all matters in this

matter and issue a final judgment" in the case with any appeal to the South Carolina Supreme Court or Court of Appeals. S.C. Code Ann. Section 14-11-85 and Rule 53, SCRCP.

Accordingly, the Motion to Alter or Amend the October 6, 2023 Order is **DENIED** as to Item 1 as no Rule 59(e), SCRCP Motion was required as the Court had yet to issue its Order Awarding Punitive Damages.[1] The Motion is also **DENIED** as to Item 2 regarding punitive damages and the Court restates its basis in the April 12, 2024 Order Awarding Punitive Damages.

The Motion to Alter or Amend the October 6, 2023 Order is **GRANTED** as to Item 3 to include the Declaratory Judgment cause of action by Library Associates in its choice of election of remedy.

IT IS SO ORDERED.

This the _____ day of _____ 2024.

_____
Mikell R. Scarborough
Master in Equity

[1] See *Portrait Homes- South Carolina v. Pennsylvania National Mutual Ins. Co*., Op. No. 6038 filed Dec. 13, 2023 (Ct. App. 2023) found in Order, page 2.

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Charleston Common Pleas

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

Case Number: 2019CP1001108

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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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.: 2019-CP-10-01108

BALFOUR BEATTY CONSTRUCTION, LLC
PLAINTIFF(S)

LIBRARY ASSOCIATES, LLC
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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 : Library Associates, LLC timely elected its remedy under breach of contract accompanied by a fraudulent case of action against Balfour Beatty Construction, LLC. Balfour Beatty Construction's Motion to Amend, filed April 22, 2024, is otherwise hereby DENIED.

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)
LIBRARY ASSOCIATES, LLC	BALFOUR BEATTY CONSTRUCTION, LLC	$16,103,118.00
		$
		$

ELECTRONICALLY FILED - 2024 May 06 3:06 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

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.

	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 THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

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

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

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

ELECTRONICALLY FILED - 2024 May 06 3:06 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2024 May 06 3:06 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2024 May 06 3:06 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 May 06 3:06 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2024 May 06 3:06 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

Charleston Common Pleas

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

Case Number: 2019CP1001108

Type: Order/Judgment and Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-05-06 13:49:33 page 6 of 6

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 et al
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:

Upon consideration, this Court DENIES Balfour Beatty Construction LLC's Motions to Alter or Amend, filed October 16, 2023 and filed April 22, 2024. Furthermore, as the Court has stated, Ms. Hadley's testimony was pivotal to understanding the expenses incurred and accordingly these costs should be awarded to Library Associates LLC.

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 05/15/2024 .

Case Party Info Protected for Old North State Masonry LLC,Lithko Contracting LLC
Case Party Info Protected for Watson Electrical Construction Co LLC
Lithko Contracting Inc
Lithko Contracting Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 May 15 1:20 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

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.

ELECTRONICALLY FILED - 2024 May 15 1:20 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

ELECTRONICALLY FILED - 2024 May 15 1:20 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

Charleston Common Pleas

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

Case Number: 2019CP1001108

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-05-15 11:51:37 page 3 of 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Balfour Beatty Construction, LLC)
Plaintiff(s))
)
vs.)
)
Library Associates, LLC and Metropolitan Life Insurance Company, a New York Corporation)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019 - CP - 10 - 1108

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)
- ☐ 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)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)

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

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
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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

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

EXHIBIT
A

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

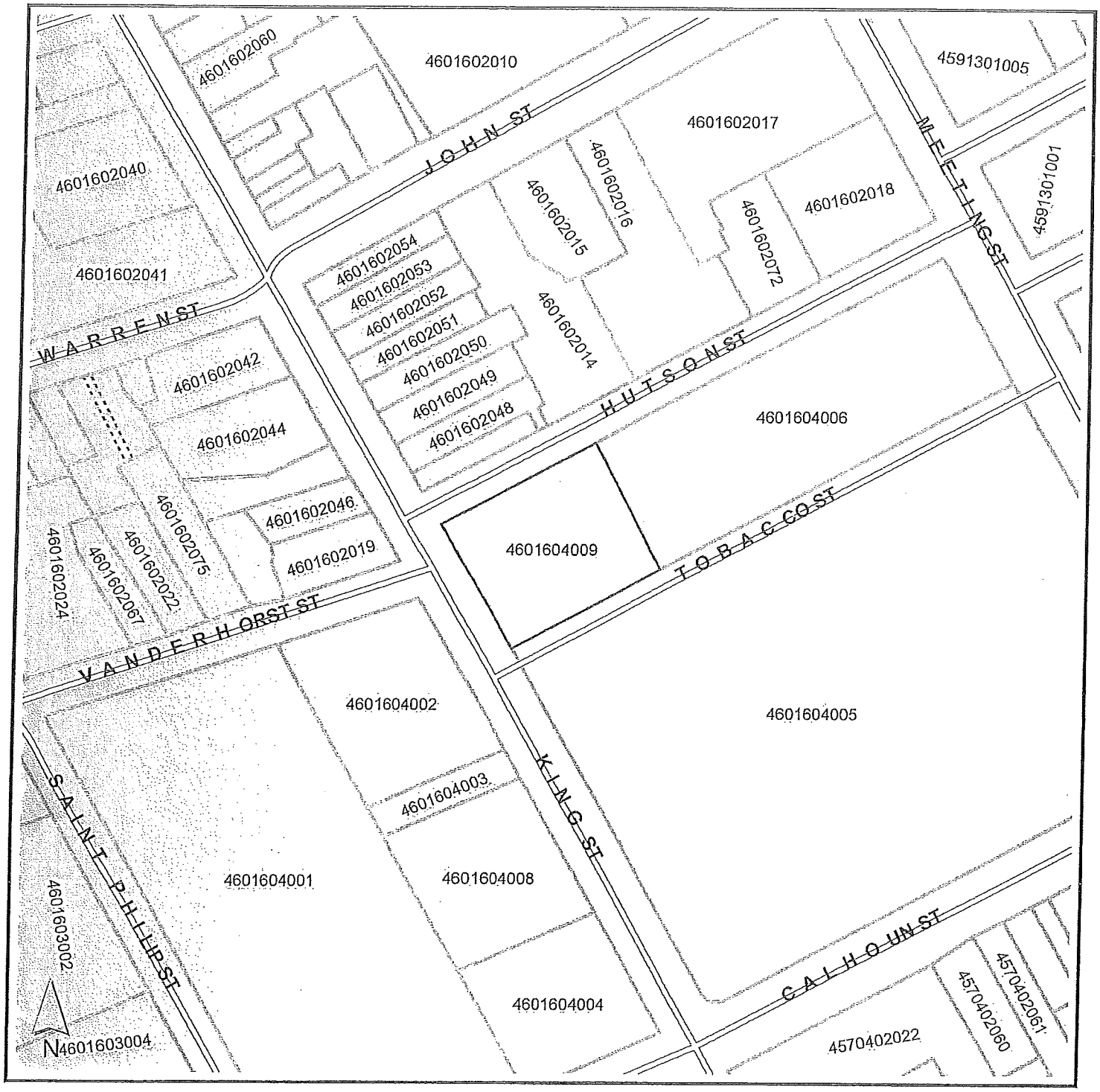
Owner of Property: Library Associates, LLC

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

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

0 90 180 360 Feet
1 inch = 144 feet

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)

KIMBERLY S. NAGY
MY COMMISSION EXPIRES
NOTARY PUBLIC
MARCH 12, 2023
SOUTH CAROLINA

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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										$ -	$ -	$ -
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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!

EXHIBIT
tabbies
B

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 Associtcs, 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**
v.	)	**COMPLAINT AND COUNTERCLAIMS**
	)	
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)
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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
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ATTORNEYS FOR BALFOUR BEATTY CONSTRUCTION, LLC

SERVED VIA US MAIL & EMAIL
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Buist Byars & Taylor, LLC
652 Coleman Blvd, Suite 200
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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)

1516 OLD TROLLEY ROAD, 2ND FLOOR,
PO BOX 50427
SUMMERVILLE, SC 29485

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 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.	)	**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.

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 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
Phone: 888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

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.

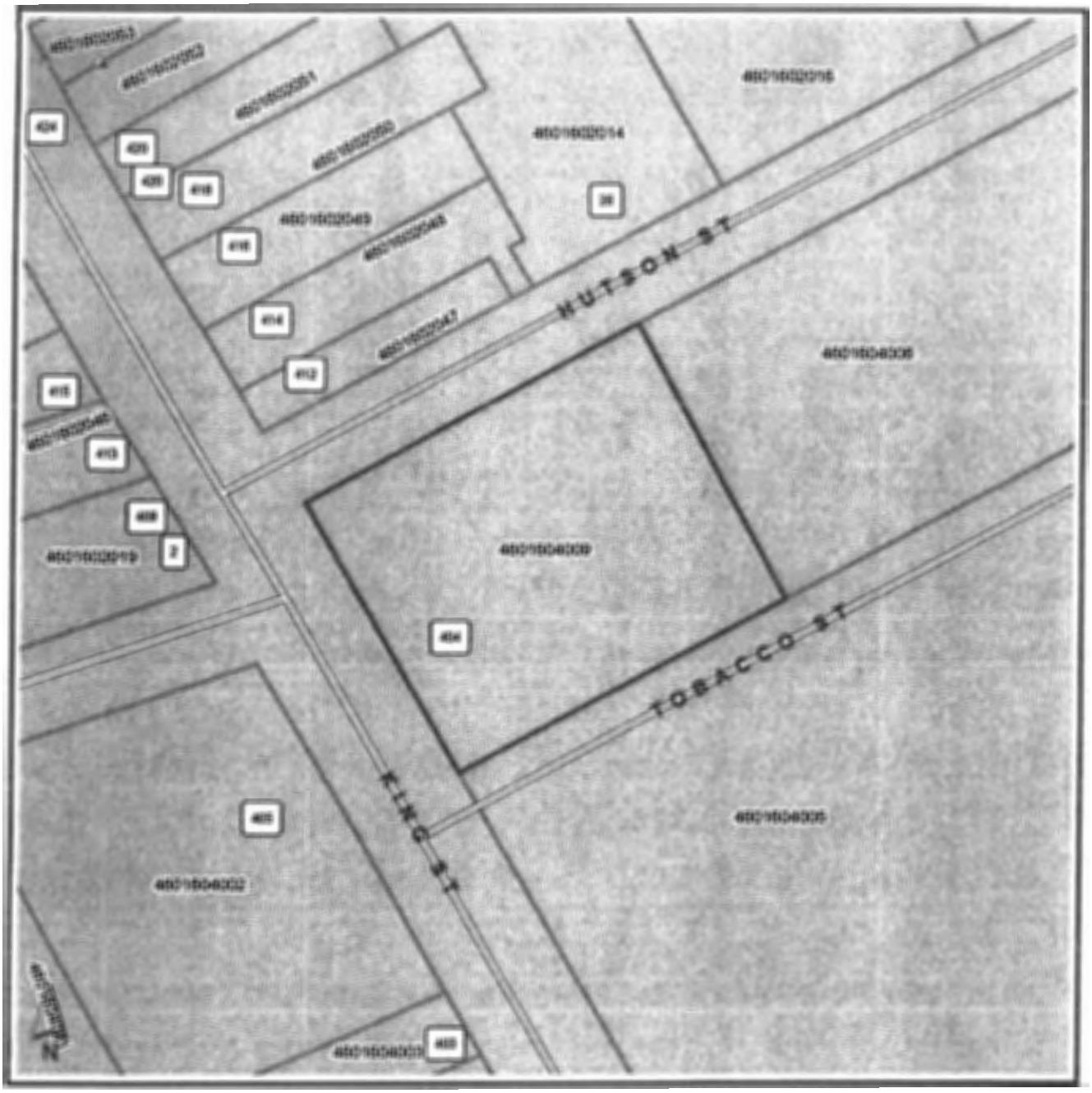
DATED: December 28th, 2016.

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

0 40 80 160 Feet

1 inch = 66 feet

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

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:

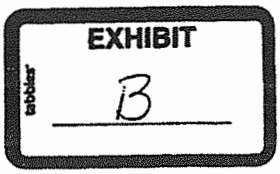
1. That he is the Regional Business Analyst of Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., an Ohio corporation authorized to do business under the laws of the State of South Carolina and has been duly authorized by said business to make this Affidavit.

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.



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 15th 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	660	12/29/2016	7
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 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.

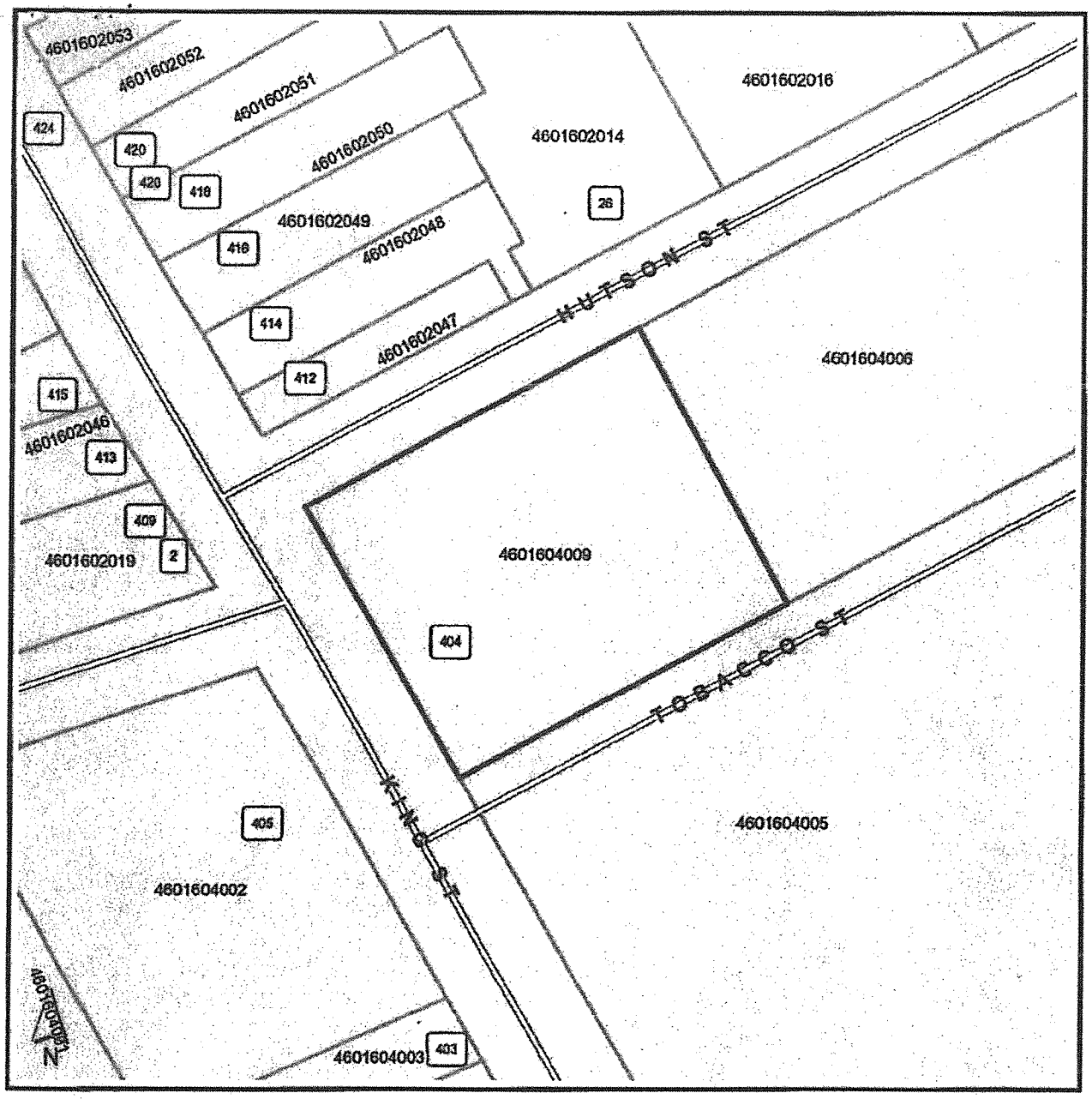
DATED: February 20th, 2017.

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
My Comm. Exp. 06/03/2020
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 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.

EXHIBIT
B

Andrew Rogers

SWORN BEFORE ME this 17th day
of February, 2017.

Linda H. Carder
My Commission Expires: 6/17/2017

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

DRAWER	Drawer 2
CLERK	JBA

0618	460	02/21/2017	7
Book	Page	Recorded Date	# Pgs

0606	660	D	16:33:59
Original Book	Original Page	Doc Type	Recorded Time

BP0758160

PGS: 10

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.

{00423153.DOC V. G039.025701;}

ALL-STATE LEGAL®
EXHIBIT
B

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 A. 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**

EXHIBIT C

ALL-STATE LEGAL

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 Ill, 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	
BERNHARD MCC, LLC, Plaintiff,	
v.	**AFFIDAVIT AND** **VERIFIED STATEMENT OF ACCOUNT**
LIBRARY ASSOCIATES, LLC and BALFOUR BEATTY CONSTRUCTION, LLC, Defendants.	

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

Philip T. Catanzaro

By: Philip T. Catanzaro
Its President

SWORN to and subscribed before me this

4th day of February, 2019

Dawn K. Bujol

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. Ca

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 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	SLW

0775	800	02/05/2019	7
Book	Page	Recorded Date	# Pgs

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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

Sheree A. Hills

NOTARY PUBLIC FOR CHARLESTON

My Commission Expires: 5/26/26

SHEREE 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	799	02/05/2019	6
Book	Page	Recorded Date	# Pgs

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Original Book	Original Page	Doc Type	Recorded Time

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

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

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: Lizh 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 0465, 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
MY COMM EXP.
APRIL 12
2021
WAKE COUNTY, NC
NOTARY PUBLIC

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.	)))))))))))	**CERTIFICATE OF SERVICE**

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:

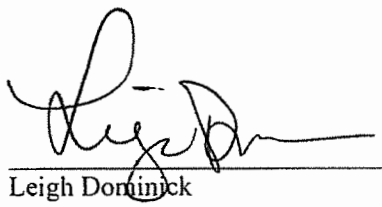
Notice and Certificate of Mechanic's Lien (with Exhibits A & B), dated Jan. 31, 2019

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:

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Note:

# of Pages:	6
# of References:	
Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ 1.00
Postage	$ -
Chattel	$ -
TOTAL	$ 11.00

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843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

0777 - 405

Recording Requested By:
And Return To:

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.

ALL-STATE LEGAL®
EXHIBIT
F

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

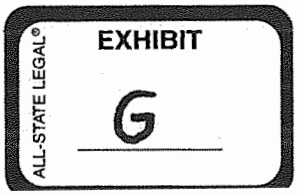
NOTICE IS HEREBY GIVEN that Claimant, by and through the undersigned counsel, does hereby file a mechanic's lien against the real estate described below and the improvements thereon in the principal amount of Three Hundred Fifty-Eight Thousand Seven Hundred Ninety-Six and 25/100 Dollars ($358,796.25), 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.



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

My Commission Expires: June 03, 2019

JENNIFER C FIRE
Notary Public
Davidson County, North Carolina
My Commission Expires June 3, 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:

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Note:

# of Pages:	5
# of References:	
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Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00

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CLERK	ECP

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843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE OFFICE OF THE
REGISTER OF DEEDS

BP0779020

PGS: 9

1st CHOICE GLASS, INC.,

Plaintiff/Lien Claimant,

v.

LIBRARY ASSOCIATES, LLC; and BALFOUR BEATTY CONSTRUCTION, LLC,

Defendants.

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

{00432515.DOCX V. F233.022454;}

2

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 Book

020 Page

02/22/2019 Recorded Date

9 # Pgs

Original Book

Original Page

D Doc Type

14:00:46 Recorded Time

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

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. 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.

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

# of Pages:	5
# of Sats:	
# of References:	

MAKER:
LIBRARY ASSOCIATES LLC

Note:

RECIPIENT:
STRONG TOWER CONST LLC AL

Recording Fee	$	10.00
Extra Reference Cost	$	-
Extra Pages	$	-
Postage	$	-
Chattel	$	-
TOTAL	$	10.00

Original Book:

Original Page:

DRAWER	Drawer 4
CLERK	SLW

0781	071	03/05/2019	5
Book	Page	Recorded Date	# Pgs

		D	10:40:32
Original Book	Original Page	Doc Type	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"):

ALL-STATE LEGAL®
EXHIBIT
J

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. LIBRARY ASSOCIATES, LLC and METROPOLITAN LIFE INSURANCE COMPANY, and BALFOUR BEATTY CONSTRUCTION, LLC General Contractor	**VERIFIED** **STATEMENT OF ACCOUNT**

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
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	875	03/08/2019	5
Book	Page	Recorded Date	# Pgs

		D	11:34:45
Original Book	Original Page	Doc Type	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

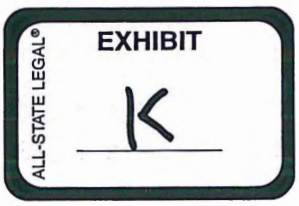
The undersigned, being duly sworn deposes and says:

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

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

EXHIBIT L

ATE 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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e original document

d By:
OBERTSON 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	368	03/20/2019	4
Book	Page	Recorded Date	# Pgs

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Original Book	Original Page	Doc Type	Recorded Time

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

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

ALL-STATE LEGAL®
EXHIBIT
M

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. CLE
COMMISSION EXPIRES
NOTARY
PUBLIC
AUG. 30 2022
WAKE COUNTY N.C.

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
COMMISSION EXPIRES
NOTARY
PUBLIC
AUG. 30 2022
WAKE COUNTY N.C.

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 Sats:

Note:

# of Pages:	5
# of Refs:	
Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00
Drawer	Drawer 1
Clerk	KLH

0784	731	03/21/2019	5
Book	Page	Recorded Date	# Pgs

		D	12:08:39
Original Book	Original Page	Doc Type	Recorded Time

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

4-1-19

STATE OF SOUTH CAROLINA	)	IN THE OFFICE OF THE
	)	REGISTER OF DEEDS
COUNTY OF CHARLESTON	)	
PREMIER EXTERIORS, LLC, (License No. 51201),	)	BP0786720 # PGS: 8
Petitioner,	)	
v.	)	NOTICE AND CERTIFICATE OF MECHANIC'S LIEN
LIBRARY ASSOCIATES, LLC, BALFOUR BEATTY CONSTRUCTION, LLC, and METROPOLITAN LIFE INSURANCE COMPANY,	)	
Respondents.	)	

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

EXHIBIT N

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.

Ellen C Adams
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

By: Justin A. Harvey, President/CEO/ Manager

SWORN to and subscribed before me this 25 day of March, 2019.

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

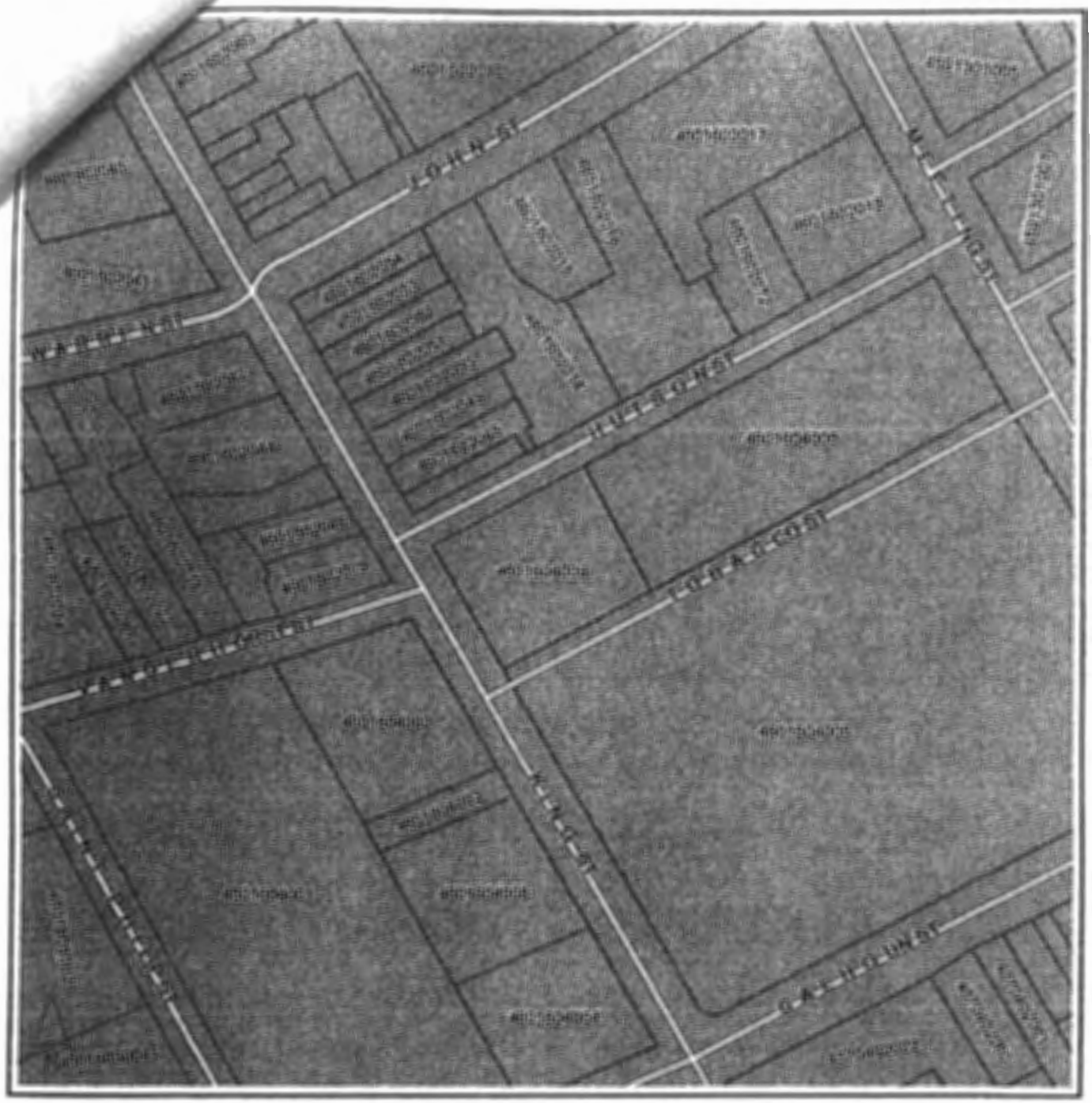
Owner of Property: Library Associates, LLC

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

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: 1/24/2018

DER'S PAGE

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with the original document

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 Pages: 8
# of Sats:
# of References:

Note:

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Extra Reference Cost	$	-
Extra Pages	$	3.00
Postage	$	-
Chattel	$	-
TOTAL	$	13.00

DRAWER: Drawer 3
CLERK: ECP

0786 Book
720 Page
04/01/2019 Recorded Date
8 # Pgs

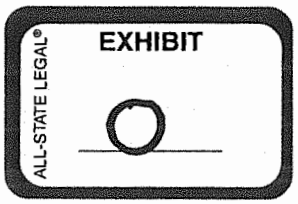
Original Book
Original Page
D Doc Type
11:25:17 Recorded Time

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

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.

Sharon K. Byers
Witness #1

Sharon Byers
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
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)

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

982193 v.1

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)

982193 v.1

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 WARREN 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 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)

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.

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EXHIBIT
Q

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.

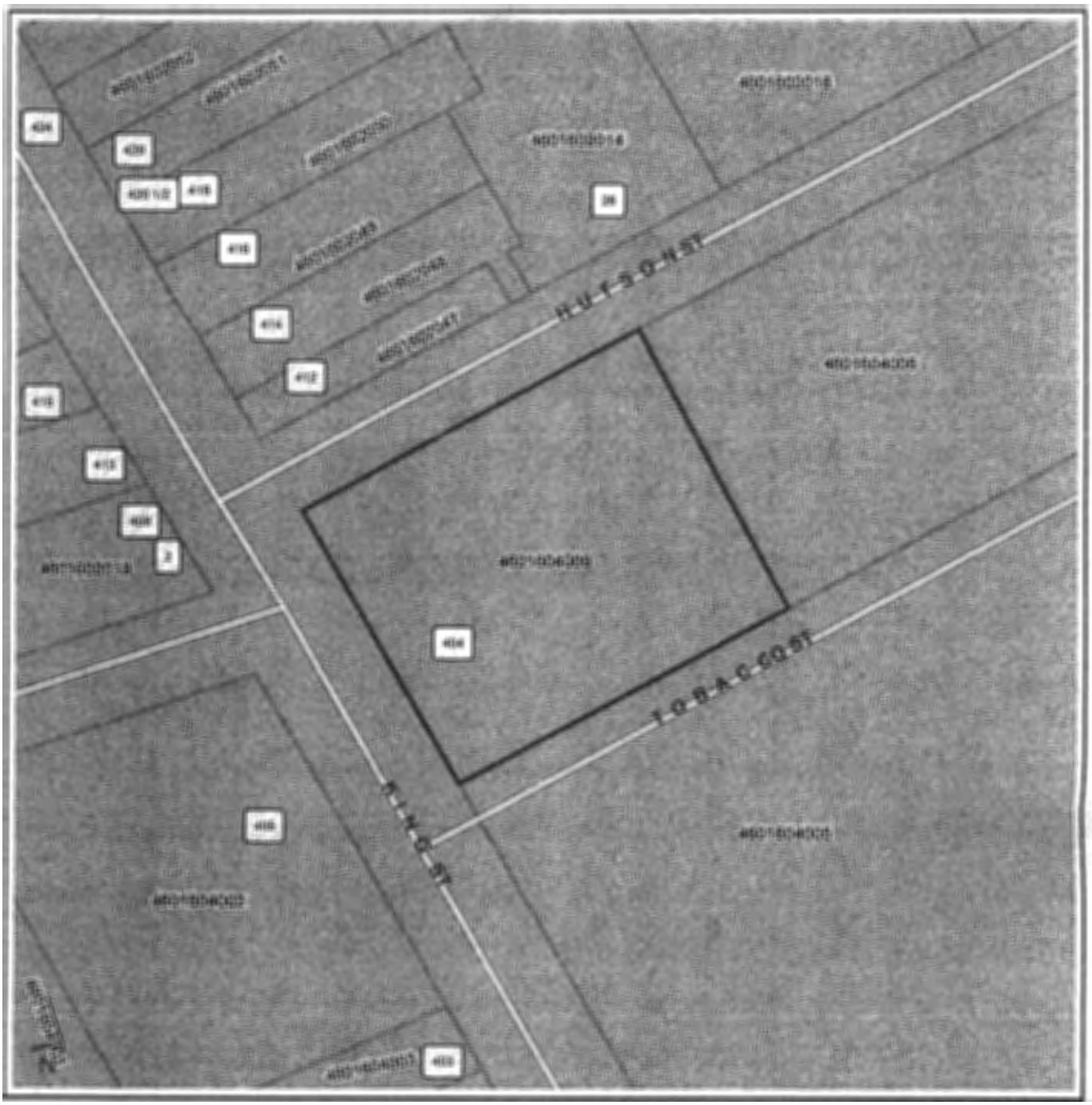
H. Michael Bowers, SC Bar No.: 00801
Mary B. Ramsay, SC Bar No.: 78856
Shumaker, Loop & Kendrick, LLP
176 Croghan Spur Road, Suite 400
Charleston, SC 29407
Ph. 843.996.1900
Fax 843.996.1999

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
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: 2/7/2019

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.

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:

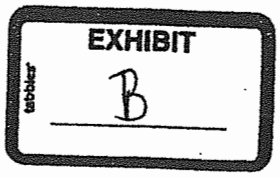
1. That he is the President of Old North State Masonry, LLC, a North Carolina corporation authorized to do business under the laws of the State of South Carolina and has been duly authorized by said business to make this Affidavit.

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

JEANNIE PEREZ-MASI'S NOTARY PUBLIC MECKLENBURG COUNTY, NC

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:

# 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

0777	044	02/12/2019	7
Book	Page	Recorded Date	# Pgs

		D	10:04:37
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

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EXHIBIT
R

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.

TOM ROCHESTER & ASSOCIATES, INC.
d/b/a SOUTHEASTERN ARCHITECTURAL SYSTEMS

Witness #1

Witness #2

By: _____
Name: Mac Wingert
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

982071 v.1 – 31176.9003

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 18 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)

982071 v.1 – 31176.9003

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
(Printed Name of Notary Public)

A. LYNN HYBARGER.
Notary Public, North Carolina
Mecklenburg County
My Commission Expires
November 12, 2022

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
MY COMMISSION EXPIRES
NOTARY PUBLIC
05-21-2024
STATE OF SOUTH CAROLINA

EXHIBIT A

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF ACCOUNT
COUNTY OF Charleston)

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
MY COMMISSION EXPIRES
NOTARY
PUBLIC
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

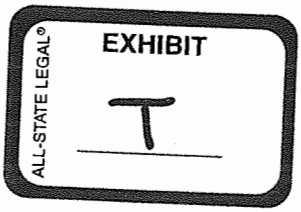
COUNTY OF CHARLESTON

IN THE REGISTER OF DEEDS

LOWCOUNTRY CASE & MILLWORK, INC., Plaintiff,	)	**NOTICE AND CERTIFICATE OF MECHANIC'S LIEN**
v.	)	TMS# 460-16-04-009
LIBRARY ASSOCIATES, LLC and BALFOUR BEATTY CONSTRUCTION, LLC, Defendants.	)	

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 Stanichat

ITS CEO

SWORN TO BEFORE ME
THIS 1st DAY OF ~~APRIL~~ MAY, 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:

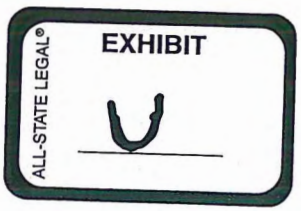
YOU WILL PLEASE TAKE NOTICE that the above-named Claimant, Quantum Coatings, LLC, by and through its undersigned counsel acting on its behalf, has affixed hereto a statement setting forth true and just account of the amount due to Claimant with all just credits given for materials and labor furnished 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

CAROLINE BOYCE
NOTARY PUBLIC
Exp. December 20, 2026
SOUTH CAROLINA

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
Exp. 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

# of Pages:	5
# of Sats:	
# of References:	

MAKER:
LIBRARY ASSOCS LLC ETC

Note:

RECIPIENT:
QUANTUM COATINGS LLC

Recording Fee	$	10.00
Extra Reference Cost	$	-
Extra Pages	$	-
Postage	$	-
Chattel	$	-
TOTAL	$	10.00

Original Book:

Original Page:

DRAWER	Drawer 1
CLERK	KLH

0792	176	04/26/2019	5
Book	Page	Recorded Date	# Pgs

		D	14:13:29
Original Book	Original Page	Doc Type	Recorded Time

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

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
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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
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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 CLERK 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
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CHARLESTON, SC 29401

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Attorneys for Plaintiff Balfour Beatty Construction, LLC

October 1, 2019

EXHIBIT
A

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.	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation;	)	0810-324 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.

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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 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.	)	**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

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.

ANSWER AND COUNTERCLAIMS OF LIBRARY ASSOCIATES, LLC TO AMENDED COMPLAINT OF BALFOUR BEATTY CONSTRUCTION, LLC AND THIRD PARTY COMPLAINT

FILED
2019 OCT 17 AM 9:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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.

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)
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P.O. Box 50427
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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

P: 703.836.6701
F: 703.836.0941
www.cottoncpa.com

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

SHadley

Sam Hadley, CPA/CFF, CFE, CGFM, CCA, CCP
Partner

CC: Brent McDonald, Bundy McDonald, LLC

ALL-STATE LEGAL EXHIBIT B

: 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

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.,

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.

CERTIFICATE OF SERVICE

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:

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Kathy Jo Wentland

Kathy Jo Wentland

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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

SECOND AMENDED SUMMONS

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Second 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 Second

Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint.

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

By: s/Thomas C. Hildebrand, Jr.
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October 12, 2020

Attorneys for Plaintiff Balfour Beatty Construction, LLC

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-10-01108

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.

SECOND AMENDED COMPLAINT
(Non Jury)
(Referral to Master-in-Equity Requested)

The Plaintiff Balfour Beatty Construction, LLC ("Balfour" or "Plaintiff") by way of Second 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:

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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 design and provide the necessary and required design and engineering documents and services, 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 Owner contracted with Design Continuum, Inc. as the interior design

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architect for the project (the "Interior Design Architect") and Interior Design Architect is identified and designated as such in its contract with Library Associates.

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

17. 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).

18. 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

19. 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 (for whom Library Associates is liable), to specifically include, but not limited to, the Architect, the Interior Design Architect and the Owner's Representative. The errors, omissions, wrongful acts and breaches of Owner, and for which Owner is responsible

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and liable (to include its agents, consultants, representatives, Architect, Interior Design Architect and designees) 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

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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

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consultants, to specifically include but not limited to the Architect and Interior Design 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 avoid, identify and address (with approximate lead time) deficiencies in the design and the uncoordinated nature of the design. The Architect's and Interior Design Architect's BIM capabilities were unreasonably, improperly and fundamentally inadequate which led the Architect and Interior Design 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

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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, Interior Design 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

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Balfour for delay costs and damages.

(u) By continuing to make changes and continuing to delay the Project and cause Balfour to incur damages which greatly increased the cost of the Project and the Owner's exposure for the Project when the Owner knew and/or should have known that it lacked sufficient liquidity and funds to pay for all of the changes and the damages it was causing Balfour to incur.

(v) By failing to make any alleged claims against Balfour for delays or other claimed damages or breaches on a timely basis or notify Balfour of such claims which induced Balfour to continue to provide work and materials for the job, but then making such claims at the end of the job and refusing to pay Balfour for the work and materials after the Project was then complete.

20. 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

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

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

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

24. At all times during the performance by Balfour the Property was owned by

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Library Associates.

25. 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.

26. 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.

27. 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".

28. Balfour claims a Mechanic's Lien on the Property as more particularly described in Exhibit A within the Amended Mechanic's Lien.

29. 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)

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

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

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THIRD CAUSE OF ACTION
(Quantum Meriut/Quasi Contract)

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

33. 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.

34. 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)

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

36. 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.

37. 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)

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

39. 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.

40. By directing, inducing and demanding Balfour to proceed with the work despite notice of Balfour's claims (to include claims for delay, impact, acceleration, payment and change orders), by accepting the ongoing benefits and work provided by Balfour, by failing to make any claims against Balfour for claimed damages or delays until the end of the job, and by failing to demand additional claims documentation or demanding that Balfour stop work, the Owner waived, abandoned and is estopped from enforcing or attempting to enforce any claims or defenses, to include any contractual claims or defenses, against Balfour or in defense of Balfour's claims. Owner, by not making any claims against Balfour until the end of the job intended to induce and cause Balfour to rely, and did induce and cause Balfour to reasonably rely on Owner's silence

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and non-enforcement, all to Balfour's damage as stated herein.

SIXTH CAUSE OF ACTION
(Cardinal Change)

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

42. 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)

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

44. 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

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such claims.

EIGHTH CAUSE OF ACTION
(Breach of the Implied Warranty of the Sufficiency of the Plans, Specifications and Construction Administration Services)

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

46. The plans and specifications provided to Balfour by Owner and the Owner's agents, consultants, representatives, design consultants, engineers, Architect, Interior Design Architect and Owner's Representative were defective and contained errors, omissions, conflicts, and busts and were not sufficient for the proper, efficient and timely construction of the Project by Balfour. Furthermore, the Construction Administration services provided by Owner and the Owner's agents, consultants, representatives, design consultants, engineers, Architect, Interior Design Architect and Owner's Representative were defective and not sufficient for the proper, efficient and timely construction of the Project by Balfour. As such, Library Associates breached its implied warranty of the sufficiency of the plans, specifications and design services all to Balfour's damage. Any claim by Library Associates that Balfour is responsible for the deficient plans and specifications, in whole or in part, by any contractual clauses that might exist that might have tasked Balfour with visiting the site, checking the plans and specifications and/or informing itself of the requirements of the work, are invalid and of no effect by virtue of the breaches of Library Associates as described herein.

NINTH CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

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

48. The errors, omissions, breaches, negligence and wrongful acts described herein, to include but not limited to the Owner's failure to pay Balfour undisputed sums,

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Owner's failure to have liquidity and funds to pay for all work and damages caused by its changes, errors and omissions, and Owner's failure to assert claims against Balfour for any delays or breaches of Balfour until the end of the Project, constitute breaches by the Owner of the implied covenant of good faith and fair dealing and negate all of Owner's claims, claimed damages and defenses, contractual and otherwise, and make Owner liable for all of Balfour's damages as stated herein.

TENTH CAUSE OF ACTION
(First to Breach)

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

50. Library Associates was the first to breach the Contract for all of the reasons articulated herein and that will be proven at trial, to include, but not limited to, Owner's failure to pay Balfour undisputed sums on a timely basis, Owner's failure to invest a representative with actual authority as required by the Contract, Owner's failure to have sufficient funds and liquidity to pay for the post-contract changes to the Project and damages including delay damages caused to be incurred by Balfour, and by Owner's failure to timely inform Balfour of claims until the end of the job in order to induce Balfour to continue work. These breaches constitute Owner's first breach of the Contract and make Owner liable for all of Balfour's damages as set forth herein and negate any and all claims and defenses of Owner under the Contract or otherwise, and entitling Balfour to damages as set forth herein.

ELEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

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

52. Library Associates breached its contract with Balfour to include breaching

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its implied covenant of good faith and fair dealing in the particulars set forth above and to include, but not limited to:

(a) Making substantial changes and causing substantial delays without having the funds or liquidity to pay for the changes and the damages that would be incurred by Balfour by virtue of the delays.

(b) By failing to make claims against Balfour for claimed delays in the Project, which Library Associates contends began in mid-2017, until the end of the job.

(c) By not notifying Balfour of Library Associates' current claim that Balfour had allegedly not followed claimed strict contract requirements for making its claims for delays, impacts, accelerations and requested change orders until the end of the job.

(d) By assuring and advising Balfour that Balfour would in fact be paid in full for the work and materials it was providing for the Project.

53. Library Associates had an obligation and duty to inform Balfour of Library Associates' claims and defenses and had an obligation and duty to inform Balfour that Library Associates lacked appropriate funds to pay for all of the work and materials that were being provided, but Library Associates' intentionally withheld advising and misrepresented to Balfour of its issues and positions noted above with the intention to induce Balfour to continue work and to finish the job, and in order to induce Balfour to believe that it was going to be paid in full for the work and materials provided. Library Associates intentionally and deceptively planned to assert claims and defenses at the end of the job with an intention not to pay Balfour after Balfour had expended great sums to complete the job. The fraudulent acts and misrepresentations and failure to act

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and inform, were material and were made with an intention for Balfour to rely on them, and Balfour did reasonably rely on Library Associates' representations, misrepresentations, unfair dealing, and failures to inform Balfour of its intentions, all to Balfour's damage as described herein and entitling Balfour to an award of damages for Library Associates' willful and intentional acts, omissions and breaches.

THIRTEENTH CAUSE OF ACTION
(Mistake)

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

55. Certain Supplementary/Supplemental Conditions ("Conditions") were discussed between Balfour and Library Associates prior to entering into the final Contract that was executed. Those Conditions were proffered by the project architect, Buck Lindsay, as containing provisions that the parties may or may not want to include in the prime Contract. Certain provisions of the Conditions, to specifically include paragraph 9.10.7 (the "Paragraph") were specifically identified and mutually agreed by both Balfour and Library Associates to be deleted and inapplicable to the executed Contract. In fact, both the Owner's Representative, Jim Clements, and Balfour's representative, Bret Estridge, specifically stated in emails (during the Contract negotiations and prior to the execution of the Contract) that that particular Paragraph needed to be struck and it was in fact stricken from the Conditions by both Estridge and Clements. The Conditions were not attached as an actual, attached exhibit to the Contract that was executed by the parties. Despite the fact that this Paragraph was stricken, and it was agreed that the Conditions would not be part of the Contract, Library Associates, upon information and belief, believes that the Paragraph might provide some advantage to it in this litigation and wants to claim that provision in effect and valid

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and is part of the Contract. However, Library Associates Representative, Jim Clements, has testified that the Paragraph was intended to be and was stricken, and was not intended to be part of the Contract. Moreover, Library Associates has refused to abide by other provisions of the Conditions, to specifically include a provision that stated that retainage would be five percent, not ten percent, so Library Associates has waived, abandoned and would be estopped from arguing that the Conditions and particularly the Paragraph were a part of the Contract. Any claimed inclusion of the Conditions and the Paragraph into the Contract, which is denied, was by mistake, was a scrivener's error, and was contrary to the intentions of the parties at the time the Contract was executed.

56. Balfour seeks an adjudication, finding and declaration that if Library Associates maintains that the Conditions were a part of the Contract, and particularly the Paragraph was a part of the Contract, that the Court declare that the Conditions and the Paragraph were not incorporated into the Contract and not binding on the parties by virtue of the doctrine of mistake, and that in addition and/or alternatively, that Library Associates is estopped and has waived and abandoned any right to claim any benefits from the Conditions and the Paragraph.

FOURTEENTH CAUSE OF ACTION
(Damages and Request for Relief)

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

58. 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

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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) Damages for Library Associates' willful, wanton, intentional, reckless and grossly negligent errors, acts, omissions and wrongful acts.

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

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

(f) Interest.

(g) Costs and attorneys' fees.

(h) Lost profits and extended overhead.

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

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

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

(l) A declaration that the Conditions and the Paragraph are not and were not a part of the Contract and are not and were not binding on the parties and/or

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that Library Associates is estopped and has waived and abandoned any right to any claimed benefits from the Conditions or the Paragraph.

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: s/Thomas C. Hildebrand, Jr.
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
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October 12, 2020

Attorneys for Plaintiff Balfour Beatty Construction, LLC

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EXHIBIT
A

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.	)	
Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation;	)	0810-324 7/23/19 JBA
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
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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

EXHIBIT
tabbies
B

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

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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, v. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation. Defendants.	)	**ANSWER AND COUNTERCLAIMS OF LIBRARY ASSOCIATES, LLC TO THE SECOND 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., Bernhard 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, Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, and Balfour Beatty Construction Group, Inc. Third-Party Defendants.	)	

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

1. That each and every allegation of the second 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. Upon information and belief, 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 Parties 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.

17. With regard to Paragraph 16, Answering Defendant admits only that the Interior Design Architect contracted to provide design documents and services in accordance with his contract with Answering Defendant and industry standards. Answering Defendant craves reference to its contract with the Interior Design Architect and denies all allegations inconsistent therewith. The remainder of the allegations in Paragraph 16 are denied as alleged.

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18. Paragraph 17 is denied as alleged. Answering Defendant craves reference to the Contract Documents for the actual language related to the Owner's Designated Representative

19. Paragraph 18 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.

20. Paragraph 19 and all its subparts [(a)-(v)] are denied as alleged.

21. Paragraph 20 is denied as alleged.

22. With regard to Paragraph 21, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

23. Paragraph 22 is denied as alleged.

24. Paragraph 23 is denied as alleged. By way of further response, Plaintiff has breached its contract with Answering Defendant and failed to perform obligations and conditions precedent as outlined in the Answering Defendant's counterclaims.

25. With regard to Paragraph 24, Answering Defendant only admits that it owned the Property during the construction of the Project. The remainder of the allegations in Paragraph 24 are denied as alleged.

26. With regard to Paragraph 25, 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 25 are denied as alleged.

27. Paragraph 26 is denied as alleged.

28. Paragraph 27 is denied as alleged.

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29. Paragraph 28 is denied as alleged.

30. Paragraph 29 is denied as alleged.

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

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. Paragraph 40 is denied as alleged.

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

43. Paragraph 42 is denied as alleged.

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

45. Paragraph 44 is denied as alleged.

46. With regard to Paragraph 45, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

47. Paragraph 46 is denied as alleged.

48. With regard to Paragraph 47, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

49. Paragraph 48 is denied as alleged.

50. With regard to Paragraph 49, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

51. Paragraph 50 is denied as alleged.

52. With regard to Paragraph 51, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

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53. Paragraph 52, including all is subparts [(a)-(d)], is denied as alleged.

54. Paragraph 53 is denied as alleged.

55. With regard to Paragraph 54, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

56. Paragraph 55 is denied as alleged.

57. Paragraph 56 is denied as alleged.

58. With regard to Paragraph 57, Answering Defendant repeats and realleges each of the answers, defenses and counterclaims contained in this pleading as if fully set forth verbatim herein.

59. Paragraph 58, including all its subparts [(a)-(l)], is denied as alleged.

60. 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

61. 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

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

FOR A THIRD AFFIRMATIVE DEFENSE

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

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FOR A FOURTH AFFIRMATIVE DEFENSE

64. 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

65. 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

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

FOR A SEVENTH AFFIRMATIVE DEFENSE

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

FOR AN EIGHTH AFFIRMATIVE DEFENSE

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

FOR A NINTH AFFIRMATIVE DEFENSE

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

FOR A TENTH AFFIRMATIVE DEFENSE

70. 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

71. 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.

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FOR A TWELFTH AFFIRMATIVE DEFENSE

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

FOR A THIRTEENTH AFFIMATIVE DEFENSE

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

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

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

FOR A FIFTEENTH AFFIRMATIVE DEFENSE

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

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

76. 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

77. 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

78. 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.

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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 these Counterclaims pursuant to Rule 13 of the South Carolina Rules of Civil Procedure against Plaintiff Balfour Beatty Construction, LLC (hereinafter referred to as "Plaintiff").

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 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.

81. 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.

82. 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—thereby rendering any cap or limit on liquidated damages unenforceable;

    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.

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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);

x. Failing to perform its contractual obligations in a reckless or grossly negligent manner;

y. Improperly and impermissibly attempting to amend the terms of subcontracts between Plaintiff and its subcontractors through the use of secret agreements—all to the detriment and damage to the Answering Defendant.

83. 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,

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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)

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

85. Answering Defendant entered into a valid and enforceable contract with the Plaintiff.

86. Plaintiff has breached the contract with Answering Defendant.

87. Plaintiff had fraudulent intent relating to the breaching of the contract and not merely related to its making.

88. 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

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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; (7) Improperly and impermissibly attempting to amend the terms of subcontracts between Plaintiff and its subcontractors through the use of secret agreements; and (8) such other circumstances that will be shown at trial.

89. 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)

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

91. 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.

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

93. 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)

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

95. 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.

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

97. 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."

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

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99. 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.

100. 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 knew or should have known were claimed in the mechanic's liens of its subcontractors.

101. 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.

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FOR A TWENTY THIRD DEFENSE AND BY WAY OF A COUNTERCLAIM
(Unfair Trade Practices as to Balfour Beatty Construction, LLC)

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

103. Plaintiff did so enter into a Contract with Answering Defendant to perform construction management services while accepting a relationship of trust and confidence to Answering Defendant. This relationship of trust and confidence specifically related to, among other obligations of Plaintiff, performance of its responsibilities under the contract in a manner that was expeditious and economical in the interest of the Answering Defendant.

104. Plaintiff expressly agreed that the Answering Defendant shall be an intended third party beneficiary of all agreements between Plaintiff and all others related to the project and all such agreements shall so provide.

105. Notwithstanding the relationship of trust and confidence undertaken by Plaintiff, Plaintiff has entered into certain secret agreements with others related to the project that are not in the interest of the Answering Defendant and that are in fact expressly contrary to the interest of the Answering Defendant and the obligations of the Plaintiff under the contract. *See* Subcontractor Responses to Requests for Admissions attached hereto as Exhibits A-G.

106. Upon information and belief, notwithstanding Plaintiff's agreement that Answering Defendant shall be a third party beneficiary of all agreements between Plaintiff and others related to the project and the agreements shall so provide, Plaintiff either concealed this contract requirement from those with which it entered into agreements

relating to the project or did so actively and expressly conspire for the omission of the third party beneficiary requirement. Answering Defendant is not a third party beneficiary to the secret agreements—nor could it be as the secret agreements with others related to the project are not in the interest of the Answering Defendant and are in fact expressly contrary to the interest of the Answering Defendant and the rights of the Answering Defendant under the contract.

107. Plaintiff's actions and undertakings, to-wit, the undertaking and performance of construction management services while also entering into secret agreements contrary to the good faith performance of those construction management services, were part of conduct, trade or commerce within the meaning of S.C. Code Sections 39-5-10(b) and 39-5-20(a).

108. The conduct described hereinabove by Plaintiff including, but not limited to, entering into secret agreements with others that are inconsistent with its obligations under the terms of the contract between Plaintiff and Answering Defendant; entering into secret agreements in an effort to avoid obligations under the terms of the contract between Plaintiff and Answering Defendant; coercing or failing to inform others that Plaintiff was contractually prevented from entering into the secret agreements; attempting to keep the terms of the secret agreements secret; conspiring with others to harm the Answering Defendant; entering into secret agreements that provided a cloak for improper, duplicative and excessive liens to be filed against the Answering Defendant's property; claiming for reimbursement from Answering Defendant for costs it never entered to pay to subcontractors; improperly and impermissibly attempting to amend the terms of subcontracts between Plaintiff and its subcontractors

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through the use of secret agreements; and such other conduct as revealed during discovery, are deceptive and unfair practices within the meaning of S.C. Code Section 39-5-140(a) S.C. Code of Laws as amended.

109. The conduct described above was knowing and willful and Plaintiff knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20.

110. Answering Defendant is a person within the meaning of S.C. Code Section 39-5-140(a) and has suffered as a direct and proximate result of unfair and deceptive acts of Plaintiff, above described, an ascertained loss of money.

111. The aforesaid acts of Plaintiff were unfair and deceptive acts and are susceptible of repetition and, as such, are acts which can, have and will affect the public, generally, by repetition.

112. Said unfair and deceptive acts are acts which will affect members of the public beyond the parties to the above-described action.

113. Answering Defendant is entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for its damages and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Plaintiff and Answering Defendant is entitled to attorney's fees and costs.

FOR A TWENTY FOURTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Civil Conspiracy as to Balfour Beatty Construction, LLC)

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

115. Plaintiff did so combine with Third Party Defendants Bernhard MMC, LLC, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Gulfstream Construction Company, Inc., Watson Electrical Construction Co., LLC, Premier Exteriors, LLC, Pleasant

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Places, Inc., and Old North State Masonry, LLC to enter into a secret, covert and clandestine agreement.

116. In this concert of action, Plaintiff and its co-conspirators purposed the secret agreement to cause harm to Answering Defendant by allowing Plaintiff to attempt to secretly and materially breach fundamental contractual obligations and duties it owed to Answering Defendant. Moreover, Plaintiff improperly, impermissibly, and conspiratorially attempted to amend the terms of subcontracts between Plaintiff and its subcontractors through the use of secret agreements—all to the detriment and damage to the Answering Defendant.

117. As a direct and proximate result of the Plaintiff's overt acts pursuant to a common design, Answering Defendant has sustained actual and special damages which include, but are not limited to, damages its otherwise may have waived under the terms of the contract with Plaintiff, liquidated damages above any limit or cap, consequential damages, attorneys fees and costs, and such other actual and special damages to be shown at trial.

BY WAY OF A THIRD-PARTY COMPLAINT

(Declaratory Judgment pursuant to S.C. Code Ann. Section 15-53-10, *et seq*. and a Cause of Action for Civil Conspiracy)

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

119. Answering Defendant, by way of a Third Party Complaint, hereby alleges a Declaratory Judgment from this Court against Third Party Defendants Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Guy M. Beaty, Inc., Bernhard MMC, LLC, Gulf Stream Construction Company, Inc., Palmetto Automatic Sprinkler

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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, Lowcountry Case & Millwork, Inc., and Quantum Coatings, LLC (hereinafter sometimes collectively referred to as "Subcontractor/Materialmen Lien Claimants").

120. Answering Defendant hereby alleges a Declaratory Judgment from this Court against Third Party Defendant Balfour Beatty Construction Group, Inc.

121. Answering Defendant hereby alleges a Third-Party cause of action for civil conspiracy against Third Party Defendants Bernhard MMC, LLC, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Gulfstream Construction Company, Inc., Watson Electrical Construction Co., LLC, Premier Exteriors, LLC, Pleasant Places, Inc., and Old North State Masonry, LLC.

122. 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.

123. 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

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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.

124. Upon information and belief, Bernhard MMC, 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.

125. 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.

126. 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.

127. 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

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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.

128. 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.

129. 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.

130. 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.

131. 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.

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132. 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.

133. 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.

134. 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.

135. 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.

136. 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

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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.

137. 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.

138. 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.

139. 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)

140. Answering Defendant and Third-Party Plaintiff repeats and realleges the allegations of this entire pleading as if fully stated herein verbatim.

141. 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.

142. The aggregate amount of the liens filed by the Subcontractor/Materialmen Lien Claimants exceed the amount due from the Answering Defendant/Third Party Plaintiff

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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.

143. 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.

144. 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.

145. 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.

146. 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.

147. There exists a justiciable controversy between Answering Defendant/Third Party Plaintiff and Subcontractor/Materialmen Lien Claimants.

148. Answering Defendant/Third Party Plaintiff seek declarations from this Court as follows:

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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)

149. Answering Defendant and Third-Party Plaintiff repeats and realleges the allegations of this entire pleading as if fully stated herein verbatim.

150. Upon information and belief, Plaintiff is wholly owned (100%) by BB Construction Group.

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151. BB Construction Group did so agree and contract to act as a guarantor of the contract for construction of the Project.

152. 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.

153. There exists a justiciable controversy between Answering Defendant/Third Party Plaintiff and BB Construction Group.

154. 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.

FOR A THIRD-THIRD PARTY CAUSE OF ACTION AGAINST
(Civil Conspiracy as to Third Party Defendants Bernhard MMC, LLC, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Gulfstream Construction Company, Inc., Watson Electrical Construction Co., LLC, Premier Exteriors, LLC, Pleasant Places, Inc., and Old North State Masonry, LLC)

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

156. Third Party Defendants Bernhard MMC, LLC, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Gulfstream Construction Company, Inc., Watson Electrical Construction Co., LLC, Premier Exteriors, LLC, Pleasant Places, Inc., and Old North

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State Masonry, LLC (referred to as "Co-Conspirators") did so combine with Plaintiff and each other to enter into a secret, covert and clandestine agreement.

157. In this concert of action, Plaintiff and Co-Conspirators purposed the secret agreement to cause harm to Answering Defendant by allowing Plaintiff to attempt to secretly and materially breach fundamental contractual obligations and duties it owed to Answering Defendant. Moreover, Co-Conspirators improperly, impermissibly, and conspiratorially attempted to amend the terms of subcontracts between Plaintiff and Co-Conspirators through the use of secret agreements—all to the detriment and damage to the Answering Defendant.

158. As a direct and proximate result of Co-Conspirators' overt acts pursuant to a common design, Answering Defendant has sustained actual and special damages which include, but are not limited to, damages its otherwise may have waived under the terms of the contract with Plaintiff, liquidated damages above any limit or cap, consequential damages, attorneys fees and costs, and such other actual and special damages to be shown at trial.

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 against Plaintiff on its claim for breach of contract by and for the terms stated herein, including actual,

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direct, indirect, consequential, incidental, and special damages to be shown at trial;

4. That the Court enter judgment for Answering Defendant against Plaintiff on its claim 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 Answering Defendant against Plaintiff on its claim for unfair trade practices by and for the terms stated herein, including actual, direct, indirect, consequential, incidental, special damages, treble damages, and attorneys' fees and costs to be shown at trial;

6. That the Court enter judgment for Answering Defendant against Plaintiff on its claim for civil conspiracy by and for the terms stated herein, including actual, direct, indirect, consequential, incidental, and special damages to be shown at trial;

7. That the Court enter judgment for punitive damages;

8. That the Court enter a judgment for Answering Defendant against Plaintiff for indemnity damages, including costs and attorneys' fees, related to subcontractor claims or mechanic's liens.

9. That the Answering Defendant be awarded prejudgment interest.

10. 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;

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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;

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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.

11. That the Court enter judgment for Answering Defendant against Third Party Defendants Bernhard MMC, LLC, Lithko Contracting, LLC f/k/a Lithko Contracting, Inc., Gulfstream Construction Company, Inc., Watson Electrical Construction Co., LLC, Premier Exteriors, LLC, Pleasant Places, Inc., and Old North State Masonry, LLC on its claim for civil conspiracy by and for the terms stated herein, including actual, direct, indirect, consequential, incidental, and special damages to be shown at trial;

12. Together with all other damages or relief, whether legal or equitable, that the Court may deem just and proper.

BUNDY MCDONALD, LLC

/s W.H. Bundy, Jr.

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October 20, 2020

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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, v. Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation. Defendants.	)	**THIRD PARTY SUMMONS**
Library Associates, Inc., Third-Party Plaintiff, v. Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernhard 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, 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 Second 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.

s/W.H. Bundy, Jr.
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October 20, 2020
Summerville, SC

ELECTRONICALLY FILED - 2020 Oct 20 10:24 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

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,

WATSON ELECTRICAL CONSTRUCTION, LLC'S RESPONSES TO LIBRARY ASSOCIATES, LLC'S REQUEST FOR ADMISSION

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

Third-Party Defendants.

COMES NOW Third-Party Defendant Watson Electrical Construction Co., LLC ("Watson"), by and through its attorney, and pursuant to Rules 36 of the South Carolina Rules of Civil Procedure, and hereby responds to Defendant/Third-Party Plaintiff Library Associates, LLC ("Library") Requests for Admission in writing and under oath.

GENERAL OBJECTIONS

Plaintiff objects to the Set of Requests for Admission including the "Definitions and Instructions," to the extent the same requests information, materials or documents that are beyond the scope of discovery as permitted in Rules 36, to the extent the same requests information or materials protected by the attorney-client privilege or work product doctrines, and to the extent the same requests information or materials that are not discoverable. These responses are submitted subject to, and without waiving or intending to waive, but on the contrary intending to reserve and reserving the following:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose any of the documents referred to or Responses given, or the subject matter thereof in any subsequent proceeding in, or trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving the subject matter of these inquiries;

C. The right at any time to revise, correct, add or clarify any the Responses set forth herein or in documents referred to herein.

D. The inadvertent production of any document or information that is privileged, that was prepared in anticipation of litigation, that constitutes attorney work product, and that is otherwise immune from discovery, shall not constitute a waiver of any privilege or of any other grounds for objecting to discovery with respect to such document or any other document, or the subject matter thereof, or the information contained therein or the right of Watson to object to the use of any such documents or the information contained therein during the subsequent proceeding.

REQUESTS FOR ADMISSION

1. Admit that You are a party to a Joint Prosecution, Defense and Tolling Agreement.

ANSWER:

Admit. The terms of the Agreement are confidential and Watson hereby objects to Library Associates possession of the terms of the Agreement.

2. Admit that Plaintiff Balfour Beatty Construction, LLC or their Counsel requested that You enter into a Joint Prosecution, Defense and Tolling Agreement with Plaintiff Balfour Beatty Construction, LLC.

ANSWER:

Admit. The terms of the Agreement are confidential and Watson hereby objects to Library Associates possession of the terms of the Agreement.

3. Admit that you had actual knowledge of the terms of Section 2.1.6 of the A133-2009 Agreement between Plaintiff Balfour Beatty Construction, LLC and Defendant/Third-Party Plaintiff Library Associates, LLC at the time You entered into a Joint Prosecution, Defense and Tolling Agreement with Plaintiff Balfour Construction, LLC.

ANSWER:

Denied. The terms of the Agreement are confidential and Watson hereby objects to Library Associates possession of the terms of the Agreement.

This the 9th day of October 2020.

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Attorney for Watson Electrical Construction, Co.,LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **WATSON ELECTRICAL CONSTRUCTION, LLC'S RESPONSES TO LIBRARY ASSOCIATES, LLC'S REQUEST FOR ADMISSION** has been served by electronic mail as follows:

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Sarah DiFranco, Esq.
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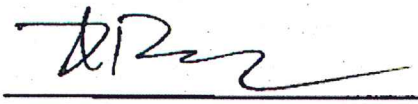
Attorney for Cook & Boardman, LLC

This the 9th day of October 2020.



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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Civil Action No. 209-CP-10-01108

BALFOUR BEATTY CONSTRUCTION, LLC,

Plaintiffs,

vs.

LIBRARY ASSOCIATES, LLC and METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION,

Defendants,

LIBRARY ASSOCIATES, INC.,

Third-Party Plaintiff,

vs.

LITHKO CONTRACTING, LLC, GUY M. BEATY, INC. BERNARD MMC, LLC, GULF STREAM CONSTRUCTION COMPANY, INC., PRECISION WALLS, INCL, 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 db/a/ SOUTHEASTERN ARCHITECTURAL

PREMIER EXTERIORS, LLC'S RESPONSES TO LIBRARY ASSOCIATES, LLC'S REQUESTS FOR ADMISSION

SYSTEMS, FORTON COMPANY, LLC, LOWCOUNTRY CASE & MILLWORK, INC., QUANTUM COATINGS, LLC, BALFOUR BEATTY CONSTRUCTION GROUP, INC.,	)
Third-Party Defendants.	)

COMES NOW **PREMIER EXTERIORS, LLC** ("Premier"), a Defendant in the above-styled action, and hereby respond to Defendant **LIBRARY ASSOCIATES, LLC's** ("Library") Requests for Admission as follows:

GENERAL OBJECTIONS

Premier objects to Library's Set of Requests to Admit including the "Definitions and Instructions," to the extent that the same requests information, materials or documents that are beyond the scope of discovery as permitted in Rule 36, to the extent the same requests information that is confidential, to the extent the same requests information or materials protected by the attorney-client privilege or work product doctrines, to the extent that the same requests information that is protected from disclosure by the common interest doctrine and/or joint defense privilege, and to the extent the same requests information or materials that are not discoverable. These responses are submitted subject to, and without waiving or intending to waive, but on the contrary intended to reserve and reserving the following:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose any of the documents referred to or Responses given, or the subject matter thereof in any subsequent proceeding in, or trial of this action or any other action or proceeding.

B. The right to object to other discovery procedures involving the subject matter of these inquiries;

C. The right at any time to revise, correct, add, or clarify any of the Responses set forth herein or in the documents referred to herein;

D. The inadvertent production of any document or information that is privileged, that was prepared in anticipation of litigation, that constitutes attorney work product, and that is otherwise immune from discovery, shall not constitute a waiver of any privilege or of any other grounds for objecting to discovery with respect to such document or any other document, or the subject matter thereof, or the information contained therein or the right of Premier to object to the use of any such documents or the information contained therein during the subsequent proceeding.

1. Admit that you are a party to a Joint Prosecution, Defense and Tolling Agreement with Plaintiff Balfour Beatty Construction, LLC.

RESPONSE: In responding to Request to Admit No. 1, Premier hereby specifically incorporates by express reference its objections and reservations of rights set forth above. Subject to and without waiving said objections, admitted. Further, responding, the terms of the Joint Prosecution, Defense and Tolling Agreement ("Agreement") are confidential and protected by the common interest/joint defense privilege; therefore, to the extent Library has obtained a copy of said Agreement, Premier objects to Library's possession of same.

2. Admit that Plaintiff Balfour Beatty Construction, LLC or their counsel requested that you enter into a Prosecution, Defense and Tolling Agreement with Plaintiff Balfour Beatty Construction, LLC.

RESPONSE: In responding to Request to Admit No. 2, Premier hereby specifically incorporates by express reference its objections and reservations of rights set forth above. Subject to and without waiving said objections, admitted. Further, responding, the terms of the Agreement are confidential and protected by the common interest/joint defense privilege;

therefore, to the extent Library has obtained a copy of said Agreement, Premier objects to **Library's possession of same.**

3. Admit that you had actual knowledge of the terms of Section 2.1.6 of the A133-2009 Agreement between Balfour Beatty Construction, LLC and Defendant/Third-Party Plaintiff Library Associates, LLC at the time you entered into a Joint Prosecution, Defense and Tolling Agreement with Plaintiff Balfour Beatty Construction, LLC.

RESPONSE: In responding to Request to Admit No. 3, Premier hereby specifically incorporates by express reference its objections and reservations of rights set forth above. Subject to and without waiving said objections, denied. Further, responding, the terms of the Agreement are confidential and protected by the common interest/joint defense privilege; therefore, to the extent Library has obtained a copy of said Agreement, Premier objects to Library's possession of same.

This 14th day of October, 2020.

RAHIMI, HUGHES & PADGETT, LLC

/s/Robert C. Hughes, III
ROBERT C HUGHES, III
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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 **Plaintiffs,** **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, In., 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.**	)	**CERTIFICATE OF SERVICE**

****Pursuant to SC Supreme Court Order dated 4/03/2020 regarding the Operation of Trial Courts during the Coronavirus Emergency, (c)(13), the following is being served by electronic mail only; using the primary email addresses listed in the Attorney Information System (AIS)****

This is to certify that a true copy of the foregoing **PREMIER EXTERIORS, LLC'S RESPONSES TO LIBRARY ASSOCIATES, LLC'S REQUESTS FOR ADMISSION** has been served on counsel for all parties by placing same in the United States Mail in a properly addressed envelope with sufficient postage affixed thereon and/or via electronic mail to all other counsel of record to ensure delivery to:

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This 14th day of October, 2020.

RAHIMI, HUGHES & PADGETT, LLC

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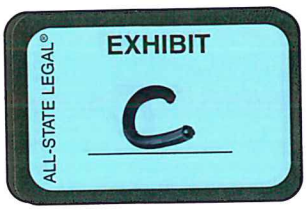
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-1108
	)	
Balfour Beatty Construction, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Pleasant Places, Inc.'s Answers to Library Associates, LLC's Requests to Admit to Pleasant Places, Inc.**
	)	
Library Associates, LLC and Metropolitan Life Insurance Company, a New York Corporation,	)	
	)	
Defendants.	)	

TO LIBRARY ASSOCIATES, LLC AND ITS ATTORNEYS, W.H. BUNDY, JR., ESQUIRE AND M. BRENT McDONALD, ESQUIRE:

Comes now Pleasant Places, Inc. ("pleasant Places") pursuant to SCRCP Rule 36 and answers Third-Party Plaintiff Library Associates, LLC's ("Library") Requests to Admit in the above-captioned matter as follows:

GENERAL OBJECTIONS

Pleasant Places objects to Library's Set of Requests to Admit including the "Definitions and Instructions," to the extent the same requests information, materials or documents that are beyond the scope of discovery as permitted in Rule 36, to the extent the same requests information that is confidential, to the extent the same requests information or materials protected by the attorney-client privilege or work product doctrines, to the extent that the same requests information that is protected from disclosure by the common interest doctrine and/or joint defense privilege, and to the extent the same requests information or materials that are not discoverable. These responses are submitted subject to, and without waiving or intending to waive, but on the contrary intended to reserve and reserving the following:



A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose any of the documents referred to or Responses given, or the subject matter thereof in any subsequent proceeding in, or trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving the subject matter of these inquiries;

C. The right at any time to revise, correct, add or clarify any of the Responses set forth herein or in the documents referred to herein;

D. The inadvertent production of any document or information that is privileged, that was prepared in anticipation of litigation, that constitutes attorney work product, and that is otherwise immune from discovery, shall not constitute a waiver of any privilege or of any other grounds for objecting to discovery with respect to such document or any other document, or the subject matter thereof, or the information contained therein or the right of Pleasant Places to object to the use of any such documents or the information contained therein during the subsequent proceeding.

REQUESTS TO ADMIT

1) Admit that you are a party to a Joint Prosecution, Defense and Tolling Agreement with Plaintiff Balfour Beatty Construction, LLC.

Answer: **Subject to, and incorporating the objections set forth herein above, admitted. The terms of the Joint Prosecution, Defense and Tolling Agreement ("Agreement") are confidential and Pleasant Places hereby objects to Library's possession of the terms of the Agreement.**

2) Admit that Plaintiff Balfour Beatty Construction, LLC or their counsel requested that you enter into a Prosecution, Defense and Tolling Agreement with Plaintiff Balfour Beatty Construction, LLC.

Answer: **Subject to, and incorporating the objections set forth herein above, admitted. The terms of the Joint Prosecution, Defense and Tolling Agreement ("Agreement") are confidential and Pleasant Places hereby objects to Library's possession of the terms of the Agreement.**

3) Admit that you had actual knowledge of the terms of Section 2.1.6 of the A133-2009 Agreement between Plaintiff Balfour Beatty Construction, LLC and Defendant/Third-Party Plaintiff Library Associates, LLC at the time you entered into a Joint Prosecution, Defense and Tolling Agreement with Plaintiff Balfour Beatty Construction, LLC.

Answer: **Subject to, and incorporating the objections set forth herein above, denied. The terms of the Joint Prosecution, Defense and Tolling Agreement ("Agreement") are confidential and Pleasant Places hereby objects to Library's possession of the terms of the Agreement.**

ROBERTSON HOLLINGSWORTH MANOS & RAHN, LLC
550 King Street, Suite 300
Charleston, South Carolina 29403
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Email: mew@roblaw.net; igdalr@roblaw.net

BY: Rachel Igdal
Michael E. Wright
Rachel Igdal
Attorneys for Pleasant Places, Inc.

Charleston, South Carolina
October 12, 2020

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CIVIL CASE NO.: 2019-CP-10-1108
Balfour Beatty Construction, LLC, Plaintiff, v. Library Associates, LLC, et al., Defendants.	)))))))))	**Certificate of Service**

****Pursuant to SC Supreme Court Order dated 4-3-2020 regarding the Operation of Trial Courts during the Coronavirus Emergency, (c)(13), the following is being served by electronic mail only; using the primary email address listed in the Attorney Information System (AIS) ****

I, Elissa Jones, the undersigned employee of Robertson Hollingsworth Manos & Rahn, LLC, hereby certify that I have served ***Pleasant Places, Inc.'s answers to Library Associates, LLC's Requests to Admit to Pleasant Places, Inc.*** in the above-captioned matter by serving the same on the following by electronic mail:

Thomas C. Hildebrand, Jr., Esquire Robert C. Byrd, 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***	W. H. Bundy, Jr., Esquire M. Brent McDonald, Esquire Bundy McDonald, LLC 1516 Old Trolley Road, 2nd Floor Summerville, SC 29485 walter@bundymcdonald.com brent@bundymcdonald.com ***Attorneys for Library Associates, LLC***
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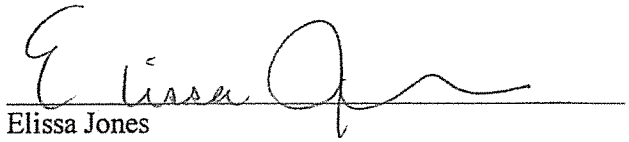
Robert C. Hughes, III, Esquire Rahimi, Hughes & Padget, LLC 35 Bull Street, Suite 590 Savannah, GA 31401 rhughes@rhp-law.com ***Attorney for Premier Exteriors, LLC***	Michael A. Timbes, Esquire Thurmond Kirchner & Timbes, Esquire Middle Atlantic Wharf Charleston, SC 29401 michael@tktlawyers.com ***Attorney for Quantum Coatings, LLC***
John Phillips Linton, Sr., Esquire Jennifer S. Ivey, Esquire Walker Gressette Freeman & Linton, LLC P.O. Box Drawer 22167 Charleston, SC 29413-2242 linton@wgfllaw.com ivey@wgfllaw.com ***Attorney for Bernhard MMC, LLC***	Jaan G. Rannik, Esquire Epting & Rannik, LLC 46-A State Street Charleston, SC 29401 jgr@epting-law.com ***Attorneys for Lowcountry Case & Millwork, Inc.***
Scott R. Miller, Esquire David V. Brennan, Esquire Johnson, Allison & Hord, PA 1065 East Morehead Street Charlotte, NC 28204 smiller@jahlaw.com dbrennan@jahlaw.com ***Attorneys for Tom Rochester & Associates, Inc. d/b/a Southeastern Architectural Systems and Warco Construction, Inc.***	R. Britton Kelly, Esquire Peter Philip, Esquire Kelly Law Firm, LLC 180 Spring Street Charleston, SC 29403 britt@kellylawsc.com peter@kellylawsc.com ***Attorneys for Trimark Foodcraft, LLC and David Allen Company, Inc.***
Steve Smith, Esquire Sam Wheeler, Esquire Smith Closser Wheeler, P.A. 7455 Cross County Road, Suite 1 Charleston, SC 29423-0578 ssmith@scnlaw.com swheeler@scnlaw.com ***Attorneys for Strong Tower Construction, LLC d/b/a Koch Corporation***	Scott R. Miller, Esquire David V. Brennan, Esquire Johnston, Allison & Hord, PA 1065 East Morehead Street Charlotte, NC 28204 smiller@jahlaw.com dbrennan@jahlaw.com ***Attorneys for Warco Construction, Inc.***

Don R. Terry, Esquire Smith Terry Johnson & Windle 150 Milestone Way, Suite C Greenville, SC 29615 dterry@smithterrylaw.com ***Attorney for Old North State Masonry, LLC and Watson Electrical Construction, Co., LLC***	



Elissa Jones

October 12, 2020

Charleston, South Carolina

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.

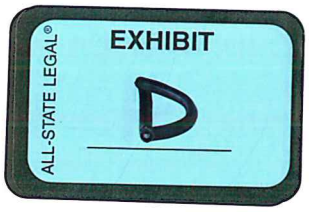
LIBRARY ASSOCIATES, LLC; and METROPOLITAN LIFE INSURANCE COMPANY, a New York Corporation,

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,

OLD NORTH STATE MASONRY, LLC'S RESPONSES TO LIBRARY ASSOCIATES, LLC'S REQUEST FOR ADMISSION