

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2020-00273
Case No. 2017-CP-26-03562

RECEIVED
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SC Court of Appeals

Carolina Cool, Inc., ... Plaintiff,

v.

Garrard Construction Group, Inc., Dave & Buster's of South Carolina, Inc. and
Broadway at the Beach, Inc., and Billy's Plumbing Company, LLC, ... Defendants,

AND

Garrard Construction Group, Inc., ... Third-Party Plaintiff,

v.

RLI Insurance Company, ... Third-Party Defendant.

of which Carolina Cool, Inc. is the Respondent,

and

Garrard Construction Group, Inc. is the Appellant.

**RECORD ON APPEAL
VOLUME I**

HAYNSWORTH SINKLER BOYD, P.A.

J.W. Matthews III, S.C. Bar No. 68581
Sarah P. Spruill, S.C. Bar No. 68337
P.O. Box 2048
Greenville, South Carolina 29602-2048
Telephone: (864) 240-3200
jmatthews@hsblawfirm.com
sspruill@hsblawfirm.com

Attorneys for Appellant

NEILL LAW FIRM, P.A.

Mark D. Neill, S.C. Bar No. 14273
Mary Anna Neill, S.C. Bar No. 15740
P.O. Box 2810
Murrells Inlet, South Carolina 29576
Telephone: (843) 651-8580
mneill@neilllawfirm.com
maneill@neilllawfirm.com

Attorneys for Respondent

INDEX

Orders

Order of June 29, 2018.....	1
Order of October 11, 2018.....	4
Order of December 11, 2018	7
Order of April 1, 2019	10
Order of April 3, 2019	13
Order of April 30, 2019	16
Order of August 23, 2019	19
Order of October 16, 2019.....	23
Order of January 27, 2020	26
Order of February 10, 2020	56
Proposed Order with Designated Exhibits.....	59
1.....	88
2.....	132
3	216
4.....	232
5.....	234
6.....	254
7.....	266
8.....	311
9.....	343
10.....	345
11.....	347
12.....	349
13.....	366
14.....	375
15.....	382
16.....	392
17.....	408
18.....	415
19.....	426
20.....	515

21.....	518
22.....	520
23.....	522
24.....	524
25.....	526
26.....	528
27.....	530
28.....	533
29.....	561
30.....	564
31.....	568
32.....	571
33.....	573
34 Accessible from the Horry County Public Index Case # 2017CP2603562. The Exhibit in full was filed on January 21, 2020 as Filing/ Other Exhibit 34a-34yy. Excerpted at ...	575
35.....	576
36.....	585
37.....	595
38.....	601
39.....	603

Pleadings

Horry County Public Index printed October 13, 2020.....	606
Mechanic's Lien recorded April 12, 2017	621
Complaint filed June 8, 2017	635
Defendants' Answer, Garrard's Counterclaim and Third Party Complaint filed July 6, 2017.....	643
Plaintiff's Reply to Counterclaim filed September 5, 2017.....	659
Motion to Quash Subpoena Issued to Billy's Plumbing filed July 31, 2018.....	667
Plaintiff's Motion for Contempt/Sanctions as to Billy's Plumbing filed November 20, 2018.....	678
Plaintiff's Motion to Compel filed February 13, 2019	681
Plaintiff's Motion to Compel Depositions/Impose Sanctions filed February 15, 2019...	689
Garrard's Brief in Opposition to Plaintiff's Motion to Compel Depositions/Sanctions filed March 18, 2019.....	692

Second Amended Complaint filed May 3, 2019.....	702
Defendants' Answer to Second Amended Complaint, Garrard's Counterclaim and Third Party Claim filed May 10, 2019.....	714
Plaintiff's Reply to Counterclaim filed May 22, 2019	721
Answer (of RLI Insurance) to Third Party Complaint filed May 23, 2019	727
Answer (of Billy's Plumbing) to Second Amended Complaint filed June 27, 2019.....	731
Plaintiff's Motion to Compel against Billy's Plumbing filed September 9, 2019.....	738
Plaintiff's Motion to Compel and Impose Sanctions filed November 4, 2019.....	750
Garrard's Motion for Protective Order filed December 4, 2019	753
Garrard's Brief in Opposition to Plaintiff's Motion to Compel/Sanctions with attached Affidavit of Rebekah Rudd filed December 9, 2019	766
Garrard's Motion to Alter, Amend or Hold in Abeyance filed February 6, 2020	783
Notice of Appeal filed February 13, 2020	792
 <u>Transcripts</u>	
Transcript of Hearing held April 1, 2019.....	830
Transcript of Hearing held December 18, 2019.....	850

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)

Defendants.)

Garrard Construction Group, Inc.,)

Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Consent Scheduling Order

CONSENT SCHEDULING ORDER

Upon motion of the parties, and by and with the consent of the parties, it is hereby ordered that the following deadlines be established in the above-captioned case:

1. The parties shall name expert witnesses, if any, no later than September 14, 2018;
2. All discovery, including depositions, shall be completed by October 19, 2018;
3. Mediation of this case shall be completed by November 2, 2018;
4. The parties shall file all dispositive motions by November 30, 2018; and,
5. This case shall not be called to trial until on or after December 3, 2018.

IT IS SO ORDERED!

The Honorable William H. Seals, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

Dated: _____, 2018
Marion, South Carolina

WE MOVE AND CONSENT:

s/Mark D. Neill, Esq.

Mark D. Neill, Esq.
S.C. Bar No.: 14273
mneill@neilllawfirm.com
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Plaintiff

s/Andrew W. Countryman, Esq.

Andrew W. Countryman, Esq.
S.C. Bar No.: 72700
awc@countrymanlawfirm.com
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
(843) 253-4477
Attorney for Defendants and
Third-Party Plaintiff

s/Robert T. Lyles Esq.

Robert T. Lyles, Esq.
S.C. Bar No.: 10299
rtl@lylesfirm.com

s/Joe K. Cunningham Esq.

Joe K. Cunningham, Esq.
S.C. Bar No.: 101708
jkc@lylesfirm.com
342 East Bay Street
Charleston, SC 29401
(843) 577-7730
Attorneys for Third-Party Defendant



Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Scheduling Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2018-06-28 09:58:29 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	CASE NO: 2017-CP-26-03562
Carolina Cool, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>CONSENT ORDER REGARDING</u>
	)	<u>SUBPOENA TO BILLY'S PLUMBING</u>
Garrard Construction Group, Inc., Dave &	)	<u>COMPANY, LLC</u>
Buster's of South Carolina, Inc. and	)	
Broadway at the Beach, Inc.,	)	
	)	
Defendants.	)	
	)	
Garrard Construction Group, Inc.,	)	
	)	
Third-Party Plaintiff,	)	
vs.	)	
	)	
RLI Insurance Company,	)	
	)	
Third-Party Defendant.	)	

CONSENT ORDER

This matter was scheduled to be heard on October 9, 2018 pursuant to a Motion to Quash Subpoena filed on July 31, 2018. The Plaintiff, Carolina Cool, Inc., issued and served a subpoena upon Billy's Plumbing Company, LLC on June 18, 2018. In response, counsel for Billy's Plumbing Company, LLC filed a motion to quash the subpoena. Prior to the scheduled hearing, the undersigned counsel for the Plaintiff and Billy's Plumbing Company, LLC agreed to the following terms and conditions regarding the subpoena:

1. On or before November 8, 2018, Billy's Plumbing Company, LLC shall produce the documents requested in the subpoena, subject to the restrictions addressed in Paragraph 2;

2. The parties agree that documents containing labor rates, supplier rates and similar information used to formulate bids shall not be produced. As to documents regarding materials for the underlying project, Billy's Plumbing Company, LLC shall have the option to redact pricing information, however, it will not redact any information that would prevent a determination as to what materials were used and the quantity of said materials;

3. Additionally, the parties agree that Billy's Plumbing Company, LLC would not be required to copy and produce again documents it already produced to the Plaintiff on December 14, 2017 and the documents produced to the Plaintiff on October 9, 2018 by Andrew W. Countryman, counsel for Defendants and Third-Party Plaintiff Garrard Construction Group, Inc.

IT IS SO ORDERED!

The Honorable William H. Seals, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

Dated: _____, 2018
Conway, South Carolina

WE SO CONSENT:

s/Mark D. Neill, Esq.

Mark D. Neill, Esq.
S.C. Bar No.: 14273
mneill@neilllawfirm.com
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Plaintiff
Carolina Cool, Inc.

s/Jordan W. Hyman, Esq.

Jordan W. Hyman, Esq.
S.C. Bar No.: 101257
jordan@thehymanlawgroup.com
1208 Third Avenue
Conway, SC 29526
(843) 248-2024
Attorney for Billy's Plumbing Company,
LLC



Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Consent Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2018-10-11 12:03:46 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Carolina Cool, Inc.,)
Plaintiff,)
vs.)
Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)
Defendants.)

Garrard Construction Group, Inc.,)
Third-Party Plaintiff,)
vs.)
RLI Insurance Company,)
Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Amended Consent Scheduling Order

AMENDED CONSENT SCHEDULING ORDER

Upon motion of the parties, and by and with the consent of the parties, it is hereby ordered that the following deadlines be established in the above-captioned case:

1. All discovery, including depositions, shall be completed by June 1, 2019;
2. Mediation of this case shall be completed by July 1, 2019;
3. The parties shall file all dispositive motions by August 1, 2019; and,
4. This case shall not be called to trial until after September 1, 2019.

IT IS SO ORDERED!

The Honorable William H. Seals, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

Dated: _____, 2018
Marion, South Carolina

WE MOVE AND CONSENT:

s/Mark D. Neill, Esq.

Mark D. Neill, Esq.
S.C. Bar No.: 14273
mneill@neilllawfirm.com
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Plaintiff

s/Andrew W. Countryman, Esq.

Andrew W. Countryman, Esq.
S.C. Bar No.: 72700
awc@countrymanlawfirm.com
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
(843) 253-4477
Attorney for Defendants and
Third-Party Plaintiff

s/Robert T. Lyles Esq.

Robert T. Lyles, Esq.
S.C. Bar No.: 10299
rtl@lylesfirm.com

s/Joe K. Cunningham Esq.

Joe K. Cunningham, Esq.
S.C. Bar No.: 101708
jkc@lylesfirm.com
342 East Bay Street
Charleston, SC 29401
(843) 577-7730
Attorneys for Third-Party Defendant



Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Scheduling Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2018-12-11 12:23:22 page 3 of 3

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2603562

Carolina Cool Inc et al
PLAINTIFF(S)

Garrard Construction Group Inc 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:

Plaintiff's Motion/Compel filed 2/13/2019 is RESOLVED. The resolution was placed on the record.

Plaintiff's Motion/Compel filed 2/15/2019 is GRANTED. Plaintiff may scheduled deposition of witnesses for defendant Garrard Construction Group, Inc. on such date, time and at such place as plaintiff chooses provided, however, the plaintiff is required to pay any fees as required by the SCRCP. Plaintiff is granted judgment against the defendant Garrard Construction Group, Inc. for \$3,261.74 in attorney fees and costs incurred by the plaintiff in bringing this motion.

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 04/01/2019.

Garrard Construction Group Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

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Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-04-01 14:42:03 page 3 of 3

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2603562

Carolina Cool Inc et al
PLAINTIFF(S)

Garrard Construction Group Inc 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:

Plaintiff's Motion/Sanctions is GRANTED
Attorney Mark David Neill to prepare a formal order.

Plaintiff's Motion/Alter and or Amend is RESOLVED.

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 04/03/2019 .

Garrard Construction Group Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-04-03 12:36:00 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)

Defendants.)

Garrard Construction Group, Inc.,)

Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

CONSENT ORDER TO
AMEND COMPLAINT

Pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, and with the written consent of all other parties, leave is hereby granted to Carolina Cool, Inc. to file a Second Amended Complaint.

AND IT IS SO ORDERED.

Judge Larry B. Hyman, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

Date: _____, 2019
Conway, South Carolina

WE SO MOVE:

Neill Law Firm, PA
s/Mark D. Neill
Mark D. Neill
P.O. Box 2810
Murrells Inlet, SC 29576
mneill@neilllawfirm.com
Attorney for the Plaintiff
Carolina Cool, Inc.

WE SO CONSENT:

Countryman Law Firm
s/Andrew W. Countryman
Andrew W. Countryman
321 Lingo Way
Suite 102
Mt. Pleasant, SC 29464
awc@countrymanlawfirm.com
Attorney for Defendants and Third-Party Plaintiff

Lyles & Associates, LLC
s/Robert T. Lyles, Jr.
Robert T. Lyles, Jr.
324 East Bay St.
Charleston, SC 29401
rtl@lylesfirm.com
Attorney for Third-Party Defendant



Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Consent Order

So Ordered

s/ Larry B. Hyman 2152

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Carolina Cool, Inc.,)
Plaintiff,)
vs.)
Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc., and Billys)
Plumbing Company LLC,)
Defendants.)

Garrard Construction Group, Inc.,)
Third-Party Plaintiff,)
vs.)
RLI Insurance Company,)
Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Amended Consent Scheduling Order

AMENDED CONSENT SCHEDULING ORDER

The parties, by and through their undersigned counsel move for an amended scheduling order due to the following reasons: The causes of action and defenses asserted by the parties in the above captioned matter involve complicated facts and legal issues. There have been several discovery motions and court hearings held in this matter and the parties have been involved in an extensive discovery process. Furthermore, by way of a Consent Order filed April 30, 2019, Billys Plumbing Company, LLC, was added as a Party-Defendant. Plaintiff filed its Amended Complaint on May 3, 2019. Billy's Plumbing Company, LLC filed its Answer to the Amended Complaint on June 27, 2019. Additional discovery is necessary as a result of the additional claims and defenses asserted in the recently filed pleadings and as a result of the need for additional time to complete discovery in this

case based upon complicated legal and factual issues. Finally, the parties recognize additional time is needed to coordinate a global mediation with all the parties of record, including the newly added Party-Defendant Billys Plumbing Company, LLC.

Accordingly, upon motion of the parties, and by and with the consent of the parties, it is hereby ordered that the following deadlines be established in the above-captioned case:

1. All discovery, including depositions, shall be completed by December 20, 2019;
2. Mediation of this case shall be completed by January 10, 2020;
3. The parties shall file all dispositive motions by January 24, 2020; and,
4. This case shall not be called to trial until on or after February 10, 2020.

IT IS SO ORDERED!

The Honorable Larry B. Hyman, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

Dated: _____, 2019
Conway, South Carolina

WE MOVE AND CONSENT:

s/Mark D. Neill, Esq.

Mark D. Neill, Esq.
S.C. Bar No.: 14273
mneill@neilllawfirm.com
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Carolina Cool, Inc.

s/Andrew W. Countryman, Esq.

Andrew W. Countryman, Esq.
S.C. Bar No.: 72700
awc@countrymanlawfirm.com
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
(843) 253-4477
Attorney for Garrard Construction Group,
Inc., Dave & Busters of South Carolina,
Inc., and Broadway at the Beach, Inc.

s/Robert T. Lyles Esq.

Robert T. Lyles, Esq.
S.C. Bar No.: 10299
rtl@lylesfirm.com

s/Joe K. Cunningham Esq.

Joe K. Cunningham, Esq.
S.C. Bar No.: 101708
jkc@lylesfirm.com
342 East Bay Street
Charleston, SC 29401
(843) 577-7730
Attorneys for RLI Insurance Company

s/Jordan W. Hyman, Esq.

Jordan W. Hyman, Esq.
S.C. Bar No.: 101257
jordan@thehymanlawgroup.com
1208 Third Avenue
Conway, SC 29526
(843) 248-2024
Attorney for Billys Plumbing Company
LLC

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Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Scheduling Order

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Carolina Cool, Inc.,)
Plaintiff,)
vs.)
Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc. and Billy's)
Plumbing Company, LLC)
Defendants.)

Garrard Construction Group, Inc.,)
Third-Party Plaintiff,)
vs.)
RLI Insurance Company,)
Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

CONSENT ORDER REGARDING
DEFENDANT BILLY'S PLUMBING
COMPANY, LLC RESPONSES TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES

CONSENT ORDER

The above captioned case was scheduled to appear before the Court on October 15, 2019 pursuant to the Motion to Compel filed by the Plaintiff, Carolina Cool, Inc. against Defendant Billy's Plumbing Company, LLC. Said Motion was filed on September 9, 2019 and sought an Order compelling Billy's Plumbing Company, LLC to respond to the Requests for Production of Documents and Interrogatories of the Plaintiff dated June 28, 2019. On October 14, 2019, Billy's Plumbing Company, LLC served responses to Plaintiff's discovery, however, said responses are incomplete. It appears to the Court that there is just cause for granting the motion and counsel for Plaintiff and the Defendant Billy's Plumbing Company, LLC consent.

Prior to the scheduled hearing, the undersigned counsel for the Plaintiff and Billy's Plumbing Company, LLC agreed to the following terms and conditions regarding the discovery requests:

1. On or before October 18, 2019, Billy's Plumbing Company, LLC shall provide a full and complete response to the following Interrogatories of the Plaintiff:
 - a. The compensation received for the work performed pursuant to the Dave & Buster Interior Subcontract (#2), as requested pursuant to Subsection (e) of Interrogatory 8.
 - b. The dates of work performed and compensation received for the work performed pursuant to the Dave & Buster Shell Subcontract (#3), as requested pursuant to Subsections (d) & (e) of Interrogatory 8.

In the event Billy's Plumbing Company, LLC shall fail to comply with the provisions of this order, Billy's Plumbing, LLC shall be responsible for any and all attorney's fees and costs incurred by Plaintiff to enforce the terms of the Order, and any additional relief the Court may order.

IT IS SO ORDERED.

The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

Dated: October 14, 2019
Conway, South Carolina

WE SO CONSENT:

s/Mark D. Neill, Esq.
Mark D. Neill, Esq.
S.C. Bar No.: 14273
mneill@neilllawfirm.com
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Plaintiff
Carolina Cool, Inc.

s/Jordan W. Hyman, Esq.
Jordan W. Hyman, Esq.
S.C. Bar No.: 101257
jordan@thehymanlawgroup.com
1208 Third Avenue
Conway, SC 29526
(843) 248-2024
Attorney for Billy's Plumbing Company,
LLC



Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Consent Order

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2019-10-16 11:46:05 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Carolina Cool, Inc.,)
Plaintiff,)
vs.)
Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc., and Billys)
Plumbing Company LLC,)
Defendants.)

Garrard Construction Group, Inc.,)
Third-Party Plaintiff,)
vs.)
RLI Insurance Company,)
Third-Party Defendant.)

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT**

CASE NO: 2017-CP-26-03562

Order Granting Plaintiff's Motion for
Sanctions and Striking Counterclaim of
Defendant Garrard Construction Group, Inc.

Order Granting Motion for Sanctions and Striking Counterclaim

This matter came before the Court on December 18, 2019 pursuant to Plaintiff's Motion for Sanctions Against Defendant Garrard Construction Group, Inc. filed November 4, 2019. Present at the hearing were Mark Neill, counsel for Plaintiff Carolina Cool, Inc. Andrew Countryman, counsel for Defendant Garrard Construction Group, Inc., was also present. After hearing oral arguments, reviewing the facts presented and the record, the Court GRANTS Plaintiff's Motion for the following reasons:

Summary of Facts

This case arises from the construction of the Dave & Buster's restaurant located at Broadway at the Beach in Myrtle Beach. Garrard Construction Group, Inc. (Garrard) was hired

by Broadway at the Beach, Inc. (Broadway), the owner of the real property, to build the outside shell of the building. Garrard was also hired by Dave & Buster's of South Carolina Inc. (Dave & Buster's), the tenant leasing the space from Broadway, to build the interior of the building. As such, Garrard was the general contractor for both the shell and interior portions of the building. On September 1, 2016, Garrard entered into a written contract to do the shell work for Broadway for a fixed price amount \$4,994,912.00.¹ On October 25, 2016, Garrard entered into a written cost-plus contract to do the interior work for Dave & Buster's for approximately \$3,628,786.00.²

Garrard contracted with Carolina Cool, Inc. (Carolina Cool) to provide plumbing for both the shell and interior portions. Garrard and Carolina Cool entered into a subcontract dated October 19, 2016 for the shell (shell subcontract) in the amount of \$36,450.00.³ The shell subcontract price was increased to \$36,450.00 due to a subsequent change order.⁴ Thereafter, on November 18, 2016, the parties entered into a subcontract for the interior (interior subcontract) in the amount of \$294,688.00.⁵

Carolina Cool was scheduled to begin work for the building's shell on November 9, 2016 and the building's interior on December 26, 2017. However, due to delays on the project, Carolina Cool's start dates were pushed back. Carolina Cool was not able to begin its shell work until December 29, 2016 and its interior work on January 3, 2017. On January 20, 2017, Garrard terminated Carolina Cool's interior subcontract and removed Carolina Cool from the project. Garrard hired Billys Plumbing Company LLC (Billys Plumbing) to replace Carolina Cool.

¹ Broadway Contract dated 9-1-2016, Defendant 1. Exhibit 1.

² Dave & Buster's Contract dated 10-26-16, Defendant 45. Exhibit 2.

³ Carolina Cool Shell Subcontract dated 10-19-16, Plaintiff 159. Exhibit 3.

⁴ Change Order to Carolina Cool Shell Subcontract dated November 22, 2016, Plaintiff 278. Exhibit 4.

⁵ Carolina Cool Interior Subcontract dated 11-18-16. Plaintiff 179. Exhibit 5.

Carolina Cool alleges Garrard breached both the shell and interior subcontracts by removing them from the project without justification and failing to pay for the work and materials already provided. Garrard alleges Carolina Cool breached the interior subcontract by not meeting the agreed upon schedule. Garrard further alleges it hired Billys Plumbing to correct and complete the plumbing at additional costs. On April 12, 2017, Carolina Cool filed its Mechanic's Lien in the amount of \$113,350.00 for the value of the work it performed and materials.

Procedural History

Carolina Cool filed its initial Summons and Complaint on June 8, 2017. Garrard, Broadway, and Dave & Buster's filed their Answer and Garrard filed its Counterclaim and Third Party Complaint on July 6, 2017. Attorney Andrew Countryman represents all three Defendants due to indemnification clauses in the contracts between Garrard, Broadway, and Dave & Buster's. By way of a Consent Order filed April 30, 2019, Plaintiff filed its Second Amended Summons and Complaint on May 3, 2019 naming Billys Plumbing as an additional Defendant. On May 10, 2019, Garrard, Broadway, and Dave & Buster's filed their Answer and Garrard refiled its Counterclaim and Third-Party Complaint. Carolina Cool filed its Reply on May 22, 2019; RLI Insurance filed its Answer on May 23, 2019; and Billys Plumbing filed its Answer on June 27, 2019.

The parties have engaged in lengthy and extensive discovery. The record reflects the filing of several motions to compel. There is also a prior Order awarding Carolina Cool sanctions due to Garrard's failure to cooperate in the scheduling of its witnesses' depositions. The current motion before the Court was filed by Carolina Cool after receiving what it describes as a "document dump" from Garrard on September 30, 2019. Carolina Cool's Motion for Sanctions against Garrard was filed on November 4, 2019.

FINDINGS OF FACT

A. Garrard's Discovery Responses:

Carolina Cool served its initial discovery requests on September 28, 2017.⁶ On November 28, 2017, Garrard, Broadway, and Dave & Buster's responded.⁷ Of particular relevancy are the following responses by Garrard:

6. Identify by specific amount, all damages you are claiming in this case.

ANSWER:

(a) \$102,091.78, which is the cost difference to hire Billy's plumbing to perform the work that Carolina Cool contracted to perform on the interior portion of the project. Comprised of:

a. \$71,553.03 and the cost to complete the under-slab plumbing work and corrections to the under-slab plumbing work that Carolina Cool installed incorrectly.

b. \$8,856.25 Garrard was forced to pay ASE (steel erectors) to erect the steel with a large crane resulting from Carolina Cool's inability to complete the under-slab plumbing rough-ins per schedule.

c. \$21,682.50 in General Conditions costs resulting from Carolina Cool's non-performance.

(b) Consequential damages

(c) Lost profits

(d) Attorney's fees TBD

(e) Punitive damages

12. Any and all estimates and contracts evidencing the hiring of subcontractors "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

13. Any and all invoices or other documentation evidencing requests for payment received from the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

14. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between one or more of the Defendants and the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete

⁶ Plaintiff's Initial Interrogatories and Requests for Production dated 10-3-17. Exhibit 6.

⁷ Defendants' Answers to Interrogatories and Responses to Requests for Production dated 11-28-17. Exhibit 7.

work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

In its document production, Garrard produced only two subcontracts with Billys Plumbing— a representation recently proven false as discussed in further detail below. The first was a subcontract dated February 3, 2017 for interior work in the amount of \$350,197.33.⁸ Three change orders to that subcontract were also produced: change order dated April 13, 2017 in the amount of \$4,294.39;⁹ change order dated May 12, 2017 in the amount of \$23,237.22;¹⁰ and change order dated May 31, 2017 in the amount of \$1,679.52.¹¹ The second subcontract was dated February 28, 2017 for shell work in the amount of \$36,884.00.¹² No emails or correspondence between Garrard and Billys Plumbing were produced.

Garrard also produced a summary of its damages, Defendants' 000586,¹³ showing how it calculated its counterclaim for damages. In addition to the cost difference between its subcontracts with Carolina Cool and Billys Plumbing, there was a reference to general conditions costs in the amount of \$21,682.50 allegedly due to a three week delay caused by Carolina Cool.

In reviewing the discovery responses, it became clear to Carolina Cool that not all relevant documentation had been produced. For example, Garrard produced daily jobsite reports for only a few days of the project when Carolina Cool was on site. Garrard failed to produce daily reports for the time period before and only a few after Carolina Cool was terminated. There was no documentation regarding any alleged delays with the completion date for the project.

⁸ Billys Plumbing Interior Subcontract dated 2-3-17, Defendants 434. Exhibit 8.

⁹ Change Order #1 dated 4-13-17, Defendants 431. Exhibit 9.

¹⁰ Change Order #2 dated 5-12-17, Defendants 432. Exhibit 10.

¹¹ Change Order #3 dated 5-31-17, Defendants 433. Exhibit 11.

¹² Billys Plumbing Shell Subcontract signed 3-16-17, Defendants 465. Exhibit 12.

¹³ Garrard's Calculation of Damages, Exhibit 13.

In January 2018, Carolina Cool served additional, more specific discovery requests in an attempt to receive information and documentation.¹⁴ Defendants responded on February 20, 2018 and produced an additional 754 documents Bates stamped Defendants 000587 – Defendants 01341.¹⁵ Of particular relevancy are the following responses:

16. Set forth the total amount of monies paid to Billy's Plumbing Company, Inc. for services and materials provided for the Dave & Buster's Myrtle Beach Interior Project.

ANSWER: Garrard paid Billy's a total of \$379,408.46. See Defendants 000589 – 598 produced with these responses.

17. Set forth the total amount of monies paid to Billy's Plumbing Company, Inc. for services and materials provided for the Dave & Buster's Myrtle Beach Shell Project.

ANSWER: Garrard paid Billy's a total of \$379,408.46. See Defendants 000589 – 598 produced with these responses.

19. With regard to the Dave & Buster's Myrtle Beach Project, set forth whether or not any jobsite meetings were ever conducted by Defendant Garrard Construction Group, Inc.; and if so, for

each jobsite meeting, provide the following information:

- a. The date of the meeting;
- b. The subject matter of the meeting, i.e. worker safety, scheduling;
- c. Identify individuals present for the meeting;
- d. Were any notes regarding the meeting generated, and if so, who has possession of the notes.

ANSWER:

(a) Yes. The initial coordination meeting for the interior took place 12/7/17. Allen Anderson of Carolina Cool attended. Bill Bromley coordinated a weekly subcontractor meeting every Tuesday morning which all trade foremen are required to attend.

(b) The Tuesday coordination meetings relate to scheduling, two-week "look ahead," requests for information, percentage of trade work completion and safety.

(c) Carolina Cool's on-site foreman refused to participate in the weekly meetings.

(d) This is a verbal on-site meeting. Some notes may have been taken but have not been located. This is a meeting for foremen to ask questions and receive direction from the superintendent.

In subsequent discovery responses provided by Billy's Plumbing after it was made a party, Carolina Cool learned Garrard's answers to Interrogatory #16 and #17 were false as discussed in more detail below. Furthermore, in its answer to Interrogatory #19(c), Garrard falsely accused

¹⁴ Plaintiff's Supplemental Interrogatories and Requests for Production dated January 16, 2018. Exhibit 14.

¹⁵ Defendants' Answers to Supplemental Discovery Requests dated February 20, 2018. Exhibit 15.

Carolina Cool's foreman of refusing to attend weekly meetings. Garrard's interior superintendent, William Bromley, admitted during his deposition taken April 16, 2019 that he did not even schedule any meetings during the time Carolina Cool was on the project and that he was not aware of any meetings Carolina Cool failed to attend.¹⁶ The answer also referenced the existence of documentation still not produced regarding scheduling, two-week "look ahead", and percentage of trade work completion.

In November 2018, Carolina Cool served supplemental discovery requests.¹⁷ Defendants responded on March 14, 2019.¹⁸ The responses included an additional 4,232 photographs and an additional 1,632 pages of documents related to project including weekly reports, correspondence, calendars, notes, and payments. Unbeknownst to Carolina Cool, Garrard still held back critically relevant documents as discovered during the deposition of witnesses discussed below.

B. Subpoenas Issued to Billys Plumbing:

On July 18, 2018, Carolina Cool served its second subpoena on Billys Plumbing. In response, Billys Plumbing filed a Motion to Quash on July 31, 2018. A hearing was scheduled for October 9, 2018. On the day before the hearing, Garrard's attorney emailed counsel for Carolina Cool and Billys Plumbing informing them he would not be present for the hearing and that he was providing all his client's documents related to Billys Plumbing consisting of 87 pages.¹⁹ Carolina Cool later discovered Garrard's representation that it only had 87 pages of documents regarding Billys Plumbing was a blatant falsity. Garrard continued to falsely represent it only had two subcontracts with Billys Plumbing and no communications. During the hearing on December 18,

¹⁶ Deposition of William Bromley, April 16, 2019, p.161-163. Exhibit 16.

¹⁷ Carolina Cool's Second Supplemental Requests for Production dated 11-20-18. Exhibit 17.

¹⁸ Defendants' Responses to Second Supplemental Requests for Production and Privilege Log dated 3-14-19. Exhibit 18.

¹⁹ Countryman's Email dated October 8, 2018 and documents Bates stamped Countryman 10-8-18 1- Countryman 10-8-18 87. Exhibit 19.

2019, counsel for Carolina Cool argued this email could have been a signal by Garrard to Billys Plumbing as to what documentation Garrard wanted Billys Plumbing to produce.

In lieu of having a hearing on October 9, 2018, Carolina Cool and Billys Plumbing entered into a Consent Order filed October 11, 2018. Carolina Cool agreed Billys Plumbing could redact certain information due to Billys Plumbing concern its pricing and trade information would become public. Carolina Cool made that concession not knowing Billys Plumbing and Garrard had entered into a time and materials contract dated January 23, 2017 discussed in further detail below. In order to enforce the Consent Order, Carolina Cool was required to file a Motion for Order of Contempt/Sanctions on November 20, 2018, which was granted on April 3, 2019.

Pursuant to the Orders requiring Billys Plumbing to fully respond to Carolina Cool's subpoenas, Billys Plumbing produced over 1,700 documents. Through this production of documents, Carolina Cool finally discovered extremely relevant documents including correspondence and emails between Garrard and Billys Plumbing, as well as, a third subcontract between the parties. The emails showed Garrard had been in contact with Billys Plumbing while Carolina Cool was still working on the project. The emails included the following:

- **Email from Shawn Gill to Scott Gasque dated January 6, 2017:**²⁰

Scott, In follow up to our conversation a few moments ago, please find the link below to the construction drawings for the Dave and Buster's Myrtle Beach Interior project. Please note that the drawings at the below link are the current construction drawings, however Bulletin #1 was released on Tuesday and those sheets concerning any plumbing changes are in the Bulletin #1 folder, in that bulletin #1 they did flip the family restroom lavatory and toilet so you know. Give me a call when you have checked out the site. Thanks

- **Email from Scott Gasque to Shawn Gill dated January 18, 2017:**²¹

Shawn, I have made a site visit and talked to your superintendent Bill. I see Carolina Cool is still on site working. In order for me to be able to help you we need to work out some paper work. We need confirmation on when Carolina Cool will off the project permanently. Also need to work about the material they have

²⁰ Email from Shawn Gill to Scott Gasque dated January 6, 2017, Billy's Plumbing 1762. Exhibit 20.

²¹ Email from Scott Gasque to Shawn Gill dated January 18, 2017, Billy's Plumbing 1772. Exhibit 21.

on site now. I am working on setting up man power to finish the underground. But can not go much further than that until we work out the details. Please let me know how you want me to proceed.

- **Email from Shawn Gill to Scott Gasque dated January 18, 2017:**²²

Scott, Sorry I have been on the phone with our owner and am waiting on confirmation back from our attorney that we are buttoned up on the appropriate notices and paperwork to legally remove the current plumbing contractor. Our attorney is to let me know the exact time we can release them. We are working on it. I will be in touch soon. Thanks

- **Email from Shawn Gill to Scott Gasque dated February 1, 2017:**²³

Scott, Sorry, I was on a site all day and ran out of day, but my coordinator did send me your subcontract to review today through our paperless system and I did not get to review and initial. I will review this evening and if all is good I will have Cherie send it to you in the morning. You should see it tomorrow. Send me your shell number as soon as you get it together tomorrow. Also, as we disucced (sic) last week, could you get me a quote for the revised floor drain and the heat tape on Bulletin #1, I need to get this submitted to the owner. Please note I have to submit the subcontractor change request with any owner change request as back up and they require the change requests to be broken down in Labor, Material, Tax and 10% OH&P. Thanks

Billys Plumbing also produced a previously unknown subcontract, dated January 23, 2017, to furnish material and labor to complete the underslab plumbing.²⁴ There were additional emails between Shawn Gill and Scott Gasque regarding this contract as well:

- **Email from Scott Gasque to Shawn Gill dated January 23, 2017:**²⁵

Shawn, attached is our proposal from the T & M to finish the underground. Please review and return a signed copy as coon as you can. My superintendent should already be on site bu now. I have other man power and equipment headed that way also. Please advise if there is any issues.

- **Email from Shawn Gill to Scott Gasque dated January 23, 2017:**²⁶

Scott, See attached signed copy per your request. Thank you!

²² Email from Shawn Gill to Scott Gasque dated January 18, 2017, Billy's Plumbing 1771. Exhibit 22.

²³ Email from Shawn Gill to Scott Gasque dated February 1, 2017, Billy's Plumbing 50. Exhibit 23.

²⁴ Billys Plumbing Time and Material subcontract dated January 23, 2017, Billy's Plumbing 1787. Exhibit 24.

²⁵ Email from Scott Gasque to Shawn Gill dated January 23, 2017, Billy's Plumbing 1776. Exhibit 25.

²⁶ Email from Shawn Gill to Scott Gasque dated January 23, 2017, Billy's Plumbing 1775. Exhibit 26.

Carolina Cool would not have learned of the January 23, 2017 subcontract and all the email communications had it not aggressively pursued enforcement of its subpoenas. Garrard had refashioned the January 23, 2017 subcontract into the change order dated May 12, 2017 in the amount of \$23,237.22.²⁷ Additionally, the January 23, 2017 time and materials subcontract contained the following relevant terms and conditions:²⁸

- This is an agreement between Garrard Group & Billy's Plumbing Company, LLC. (From here out known as BPC.) **BPC shall not have any contact with Carolina Cool, nor their Bonding Company.** Garrard is to handle any issues that may arise from either party.
- **Garrard Group is to be responsible for all, legal representation if needed to protect BPC from Carolina Cool and/or Bonding Company.** Legal representation shall be of BPC choice.
- Garrard Group agrees to pay the Labor Rates and OH & P percentage as laid forth above in full to BPC with-in net 30 days, regardless if Garrard Group has received reimbursement from the Owner or Bonding Company.
- BPC to supply Garrard Group with a list of man hours, list of material and any additional cost for review for payment. (emphasis added).

In reviewing the content of these emails and the January 23, 2017 subcontract, there is no reasonable explanation as to why these records had not been produced by Garrard except for the conclusion they are detrimental to Garrard's defenses and counterclaim. After receiving the documents from Billys Plumbing, Carolina Cool provided a copy of the documents as part of its supplemental discovery responses.

C. Deposition of Garrard Witnesses:

During this same discovery period, Garrard also hindered Carolina Cool's ability to depose individuals named as witnesses by Garrard. Due to Garrard's failure to cooperate, on February 15, 2019, Carolina Cool filed a Motion to Compel Depositions of Defendants' Witnesses and to Impose Sanctions. An Order Granting the Motion was filed April 1, 2019 requiring the witnesses

²⁷ Change Order #2 dated 5-12-17, Defendants 432. Exhibit 10.

²⁸ Billys Plumbing Time and Material subcontract dated January 23, 2017, Billy's Plumbing 1787. Exhibit 24.

to attend their depositions and awarding fees and costs to Carolina Cool. Thereafter, Carolina Cool deposed the witnesses and the witnesses provided pertinent testimony showing additional discovery violations by Garrard.

1. Deposition of William Bromley:

During the deposition held April 16, 2019 of William Bromley, the interior job superintendent for Garrard, Mr. Bromley testified he had not looked for any relevant emails, nor had he been asked to look:

Ms. Neill: I'll show you what is Bates stamped Billy's Plumbing 1762. It's an email dated January 6th from Shawn to Billy's Plumbing which you're cc'd on, and Shawn is giving them a link to the project plans. Do you recall receiving an email and thinking, Oh, wow, there's a new plumber about to take over?

Mr. Bromley: Do I recall it? No.

Ms. Neill: Do you recall getting emails regarding Billy's Plumbing?

Mr. Bromley: An email like this I wouldn't even look at twice.

Ms. Neill: Do you get a lot of emails?

Mr. Bromley: Yes, I get a lot of emails. If it really doesn't have anything to do with me, and this wouldn't, sending Scott a link, it would just get filed.

Ms. Neill: It just seems like since you're supervising the subcontractors --

Mr. Bromley: But they were not hired as a subcontractor at that time.

Ms. Neill: But it's discussing replacing a current subcontractor.

Mr. Bromley: Okay. But I do not recall that.

Ms. Neill: Have you gone back to look at what emails you might have regarding this project?

Mr. Bromley: No, I have not.

Ms. Neill: Have you been asked to go back and look at emails you may have?

Mr. Bromley: I have not.

Ms. Neill: Is there a possibility you have more emails regarding this project that have not been --

Mr. Bromley: There's a possibility, yes.

Ms. Neill: So from this email it appears, as early as January 6th, plans are being emailed to Billy's Plumbing. Is that correct?

Mr. Bromley: I didn't read it. But if that's what it says, yeah. It's saying here's the drawings and then a bulletin had come out.²⁹

²⁹ Deposition of William Bromley, April 16, 2019, p. 164-166. Exhibit 16.

Mr. Bromley was also asked if he recalled another email produced by Billys Plumbing he was copied on between Garrard and Billys Plumbing to which he replied:

Mr. Bromley: This specific email? No. But it doesn't surprise me any. I mean, that's common communication.

Ms. Neill: And this communication, would you agree it seems to reflect that – It seems pretty evident that a decision has been made for Carolina Cool to be let go?

Mr. Bromley: Yes.³⁰

Even though the emails were between Garrard and Billys Plumbing and copies had already been provided by Carolina Cool, Garrard's counsel interrupted:

Ms. Neill: I will give you a copy of an email, again from Scott Gasque ...Billy's Plumbing Bates stamp 66.

Mr. Countryman: You-all didn't produce this or identify this before the deposition. Right?

Ms. Neill: No. You (sic) actually provided this.³¹

Mr. Countryman: Did you identify it as a potential deposition exhibit for the deposition as Rule 30(j)(8) requires?

Ms. Neill: This is not a deposition exhibit right now.

Mr. Countryman: It's a document that you're showing the witness. I can read you the language of the rule if you'd like.

Ms. Neill: Well, it's something that you had and it came from Scott to Shawn Gill, but it's something that apparently you-all have not produced in discovery, even though you had it in your records.

Mr. Countryman: That has nothing to do with the rule, which says deposing counsel shall provide to opposing counsel a copy of all documents showing to the witness during the deposition, either before the deposition begins or contemporaneous with the showing of the document to the witness, which you obviously have not done. You've identified the labels. That's fine –

Ms. Neill: We provided this to you before, though.

Mr. Countryman: That's not what the rule says, does it? I'm just asking if you specifically identified that document as something that you would use in the deposition before. I don't think you have.³²

³⁰ Deposition of William Bromley, April 16, 2019, p. 172. Exhibit 16.

³¹ The document was produced by Billys Plumbing in response to the subpoena. It was an email between Shawn Gill, Project Manager for Garrard, and Scott Gasque of Billys Plumbing. All documents received from Billys Plumbing had been produced to Garrard prior to the deposition.

³² Deposition of William Bromley, April 16, 2019, p. 167-168. Exhibit 16.

This exchange reveals no denial by Garrard's counsel of having the emails or being aware of the emails. There was no denial that Garrard failed to produce the emails to Carolina Cool. Furthermore, Mr. Bromley had not even been asked to look for emails. Remarkably, even after the deposition, Garrard failed to produce the communications it had with Billys Plumbing.

Mr. Bromley also testified his permanent residence was in Waleska, Georgia, and he had no intention of living in Massachusetts.³³ He was only temporarily living in Massachusetts because he was currently working for Garrard on a Dave & Buster's project located in Cape Cod. This information was important because prior to his deposition, Garrard's counsel requested Carolina Cool reimburse Mr. Bromley mileage and witness fess of \$1,081.76 for roundtrip travel from Massachusetts instead of calculating mileage from his residence in Georgia.³⁴ This request is particularly outrageous given the fact that Carolina Cool had been seeking to depose Mr. Bromley for over a year and counsel for Garrard had initially offered to host the deposition in Mt. Pleasant. Carolina Cool did compensate Mr. Bromley his mileage calculated from his residence in Georgia at less cost.

2. Deposition of Shawn Gill:

On April 17, 2019, Carolina Cool deposed Shawn Gill, Garrard's Project Manager for the entire Dave & Buster's project. Mr. Gill testified regarding a timeline he drafted that had not been produced:

Mr. Gill:	I would have to look at data reports and then also the timeline that I submitted.
Ms. Neill:	And when you say "timeline," what document are you referring to?
Mr. Gill:	I provided a timeline during this whole period of what was moved and when. It was part of the discovery.
Ms. Neill:	Okay. And what would that timeline look like? Is it entitled "Timeline"?

³³ Deposition of William Bromley, April 16, 2019, p. 6, 212-213. Exhibit 16.

³⁴ Correspondence from Andrew Countryman dated April 12, 2019. Exhibit 27.

Mr. Gill: Yeah. It's entitled "Timeline." I believe it's a three-page document.
 Mr. Countryman: That may be work product. I'm not sure of the context of the production. If we produced it, you're welcome to ask him about it, but I need to look at it and see if it's attorney work product.
 Ms. Neill: I'm not familiar with having a timeline. Do you recall when you made the timeline?
 Mr. Gill: I do not remember.
 Ms. Neill: Was it within the last couple of years?
 Mr. Gill: It was during this time to basically document what was going on specifically in relation to the project and the Carolina Cool situation
 Ms. Neill: And when you say "this time," you're talking about -- you were kind of motioning towards the calendar. During January?
 Mr. Gill: Yes, in January.
 Ms. Neill: So sometime in -- gosh, it's amazing it was two years ago. So sometime in January of 2017 there was a timeline?
 Mr. Gill: It probably would have been late January 2017, yes.
 Ms. Neill: Is that something that would be created under the 360 software?
 Mr. Gill: No. It was an independent document that I created just to document.
 Ms. Neill: Like a Word document?
 Mr. Gill: Yeah. It was a Word document.³⁵

Later during the deposition when the missing timeline was referenced again, Garrard's attorney offered the following while looking at files on his laptop computer:

Mr. Countryman: I think I have that.
 Ms. Neill: Mr. Countryman, you believe you have what Mr. Gill is talking about?
 Mr. Countryman: Yeah. I'm looking at it to see if it's privileged. I'm looking at a discovery folder that I have not had access to before today. I produced stuff that I'd received. So I didn't remember whether I had gotten this and produced it before. And I don't know as we sit here right now if I have. But would you let me talk with him for a second privately to see if there's any issue with privilege or work product? If there's not, then I can produce it to you.³⁶

Mr. Countryman's statement, if accurate, reveals Garrard's counsel had just received on April 17, 2019 a discovery folder which may or may not contain relevant documents not yet

³⁵ Deposition of Shawn Gill, April 17, 2019, p. 31-33. Exhibit 28.

³⁶ Deposition of Shawn Gill, April 17, 2019, p. 158. Exhibit 28.

produced. In fact, the timeline had not been previously produced, along with other documents. discussed by Mr. Gill. For example, Mr. Gill testified regarding the existence of emails between Garrard and its subcontractors, as well as, with Broadway and Dave & Buster's:

Ms. Neill: And when you say the e-mails, between who?
 Mr. Gill: You know, there was always e-mails from him to subcontractors, subcontractors to him, as well as myself between me and my superintendent, me and Bill or Pat on that project.
 Ms. Neill: And have you gathered those e-mails related to this project?
 Mr. Gill: To the best of my knowledge, I've submitted -- we did a -- when you get that many e-mails, you did a search for that whole thing and turned them over to Rebekah, and then she submitted them with the -- to Andrew with the discovery requests.
 Ms. Neill: And when would that have taken place?
 Mr. Gill: Um, there were -- I believe there were some e-mails on the first discovery request and then we figured out how to go in and consolidate them and print them to PDF, and so there were more that were sent with the second discovery request.
 Ms. Neill: Okay. And approximately when was that second discovery request?
 Mr. Gill: Two months ago.
 Ms. Neill: Did you -- how did you communicate with Seth McCoy with Broadway?
 Mr. Gill: Via phone and e-mail.
 Ms. Neill: And how did you communicate with Dave & 8 Buster's folks?
 Mr. Gill: Both phone and e-mail and through Expesite when we submit RFIs or change requests or submittals. I guess that would be considered communication as well.
 Mr. Countryman: Mary Anna, I didn't withhold anything from that. I'm looking at what I produced to you all recently. I don't see e-mails, other than the ones that were between -- it looks like stuff that was between Garrard and Burroughs & Chapin. But if there's something we missed, that's fine. But I was not withholding anything.

By Ms. Neill: Thank you.³⁷

Mr. Gill also testified about the existence of emails between himself and Billys Plumbing:

Ms. Neill: And did you tell Billy's Plumbing that?
 Mr. Gill: I did. And I believe I also told him in an e-mail to hold tight; you know, we don't know what direction this is going to go.
 Ms. Neill: And from this period of time, January 25 2017, where are all your e-mails stored?
 Mr. Gill: In Office 365, our e-mail server, I guess you would call it.

³⁷ Deposition of Shawn Gill, April 17, 2019, p. 100-101. Exhibit 28.

Ms. Neill: And have you looked for e-mails you may have had with anybody at Billy's Plumbing?

Mr. Gill: Yes.

Ms. Neill: And have you found e-mails?

Mr. Gill: Yeah. So we did a -- it was requested through the second discovery request, Rebekah and I went into my e-mails and did a search for anything that was Scott Gasque or Billy's Plumbing. And anything that came up on that, Rebekah printed a PDF and provided to our attorney.

Ms. Neill: And you've provided those documents?

Mr. Gill: Yes.

Mr. Countryman: I don't recall there being any e-mails in that production in April.

Ms. Neill: I have not received any e-mails regarding Billy's Plumbing except for what Billy's Plumbing just gave us in response to the Subpoena.

Mr. Countryman: Let me check on that -- I didn't receive something and failed to give it to you in that regard. Let me see if there's something that I overlooked.

Mr. Gill: Me and Rebekah did that, and I assume she got that to you. I can check with Rebekah, but we did do a search for that.

By Ms. Neill: So there are more e-mails possibly out there from you to Billy's Plumbing?

Mr. Gill: In addition to what?

Ms. Neill: The zero that I have.

Mr. Gill: There were some, and I served all those up. We printed them to PDF, and I'll circle back with Rebekah and make sure those are part of -- but there were e-mails between me and Billy's Plumbing.³⁸

Mr. Gill's testimony shows Garrard did indeed have emails with Billy's Plumbing that it failed to produce. As set forth above, the emails in question contain critical information that even a layman would recognize as being relevant to the litigation. Even if the emails were not determined to be relevant, they should have been produced as requested.

During the deposition it was discovered other documentation had not been produced. For example, Garrard produced weekly construction reports regarding the interior portion of the project, but week three, which was one of five weeks Carolina Cool was there, was missing. After

³⁸ Deposition of Shawn Gill, April 17, 2019, p. 182 - 184. Exhibit 28.

Mr. Gill was asked why week three had not been produced, Mr. Countryman found it in his files on his laptop and stated "I apologize for that oversight. I don't know why that didn't come through the first time."³⁹

During the deposition it was further determined documents had not been produced in the manner they had been routinely maintained. In looking at construction schedules created during the project, it was difficult to ascertain to which week the schedule corresponded because they were not dated. Mr. Gill explained that each report had been created and saved in separate files and each file name would have included the date it was created. Mr. Gill testified:

I know all this gets -- what it looks like to me is it gets lumped in as a PDF. And if they were the individual files, like we have them saved, it would -- you know, you would be able to pull it up and look at that percentage and say, okay, this is that schedule by the file name.⁴⁰

In order for Mr. Gill to determine the dates of documents he himself created, Mr. Gill looked at Mr. Countryman's laptop to view the files in the format in which they were provided to Mr. Countryman:

Mr. Countryman: What she's looking at, I have the same thing pulled up; they're just color copies. Those are probably easier to read because they're bigger print, but the color you can see here.

Mr. Gill: But the file name is what's important to me to be able to determine which date that was -- the update for that date.

Mr. Countryman: I don't have that right here. I can pull that up under Dropbox. I just put everything in one PDF. So you're saying that the data files -- the individual calendars have dates on them, which will let you tell us when each one was created?

Mr. Gill: By the file name, yes.

Ms. Neill: Yeah. Because that's the important information that we need.

Mr. Countryman: Well, then, I'm looking at his Dropbox where he -- a link where he sent me those.

Ms. Neill: Why don't we go ahead and mark this as Plaintiff's 14 so we can refer to the same document while we're talking on the record?

³⁹ Deposition of Shawn Gill, April 17, 2019, p. 110, line 17-p. 111, line 5.; p. 113, line 25- p. 114, line 7. Exhibit 28.

⁴⁰ Deposition of Shawn Gill, April 17, 2019, p. 125, lines 18-23. Exhibit 28.

Ms. Neill: And just for the record, we're looking at what has been marked as Plaintiffs 14, and we're comparing it to some schedules that are being shown on the personal laptop computer of Mr. Countryman.⁴¹

This testimony reveals the documents were not produced to Carolina Cool in the manner in which they were created and maintained. Instead, they were provided in a manner which hindered Carolina Cool's ability to determine important information.

Thereafter, Mr. Gill was asked if he created schedules for the time period after Carolina Cool was terminated:

Ms. Neill: Now, are there additional schedules after January 19th?
 Mr. Gill: Yes.
 Ms. Neill: And would you also have those?
 Mr. Gill: Yes.
 Ms. Neill: And is that something that you have been asked to look for?
 Mr. Gill: I understood that we were to supply the schedule updates for the duration in question.
 Ms. Neill: Not for the whole project?
 Mr. Gill: I did not understand it that way, the best I remember.
 Ms. Neill: So you --
 Mr. Gill: But I would be happy to -- we have those schedules.
 Ms. Neill: You have those schedules for the --
 Mr. Countryman: I can get you those if they haven't been provided.
 Ms. Neill: And you're saying it's your understanding you weren't supposed to produce any additional schedules than the ones we have in Exhibit 14?
 Mr. Gill: Yes.⁴²

Mr. Gill also testified regarding the January 23, 2017 subcontract with Billys Plumbing which had not been produced to Carolina Cool:

Ms. Neill: Now, after Carolina Cool left the project, according to the job site reports, it looks like Billy's Plumbing was there the following Monday; is that correct?
 Mr. Gill: Correct.
 Ms. Neill: And I'll show you what is Bates stamped - let's see. What is it? Defendant's 17- -- I'm sorry -- Billy's Plumbing 1787. And it looks like a document from Billy's Plumbing, and it's dated January 23rd. Do you remember receiving that?

⁴¹ Deposition of Shawn Gill, April 17, 2019, p. 131, line 3 – 132, line 9, Exhibit 28.

⁴² Deposition of Shawn Gill, April 17, 2019, p. 138, line 20 -p. 139, line 17, Exhibit 28.

Mr. Gill: Yes.
 Ms. Neill: And is that your signature on the document?
 Mr. Gill: It is.
 Ms. Neill: And would this be a document that you would keep a record of in your file?
 Mr. Gill: So this was basically based on the -- the plumbing lines that were roughed in incorrectly and the ones that weren't finished. There was no way to put a hard number on that to complete it. So Billy's Plumbing gave me rates to -- hourly rates to repair that and replace, because there was no way to put a hard number on it. In addition, Billy's Plumbing did not want to be -- the stuff that wasn't going to be touched that was installed, they did not want to be responsible for any issues down the road.
 Ms. Neill: That Carolina Cool had been involved with?
 Mr. Gill: Correct.
 Ms. Neill: And this looks like a contract to me, correct?
 Mr. Gill: Correct. It's an hourly rate agreement is what it is.
 Ms. Neill: An hourly rate agreement. And you maintained that in your file for the Myrtle Beach Dave & Buster's project?
 Mr. Gill: Yes. It would have been -- yes.
 Ms. Neill: And are there any other documents that you would have had with Billy's Plumbing, any other agreements?
 Mr. Gill: We had a subcontract with them at a later date to do the -- everything from the slab up. This was specifically for the underslab. And then we had a formal subcontract similar to what our subcontract was with Carolina Cool for all the work above the slab.
 Ms. Neill: And during the course of this lawsuit, did you look for your agreements you had with Billy's Plumbing?
 Mr. Gill: Yeah. When we were asked for discovery, we were asked for their subcontract, their checks, their pay applications and all that.
 Ms. Neill: And would this document be regarding their subcontracts?
 Mr. Gill: Would be what?
 Ms. Neill: A subcontract you would have with Billy's Plumbing?
 Mr. Gill: Yes. This should be on -- in our files, yes.
 Ms. Neill: Because Billy's Plumbing, they didn't contract directly with the owner, right?
 Mr. Gill: No.
 Ms. Neill: They contracted with Garrard?
 Mr. Gill: That's correct.
 Ms. Neill: And do you have any idea why Garrard wouldn't have produced this document in discovery?
 Mr. Gill: I don't know why we wouldn't have. I mean, if it wasn't provided -- if it wasn't provided, it wasn't intentional.⁴³

⁴³ Deposition of Shawn Gill, April 17, 2019, p. 185, line 24 -p. 188, line 13. Exhibit 28.

Mr. Gill was further asked about an invoice from by Billys Plumbing which had not been produced by Garrard:

Ms. Neill: You mentioned a few moments ago an invoice, and I just want to see if this is the invoice you were talking about. It's dated March 31st.

Mr. Gill: Yes. This would be the invoice related to those hourly rates.

Ms. Neill: Again, would an invoice from a subcontractor be something that you would regularly keep in your project file?

Mr. Gill: This would be with the accounting file, yes. With -- any invoices paid to Billy's Plumbing, this would be with it, yes.

Ms. Neill: And do you have any information as to why it wasn't produced by Garrard?

Mr. Gill: I don't know why it wouldn't have been. It wouldn't have been intentional.

Ms. Neill: Let's mark that as Plaintiff's 26.

Mr. Gill: I believe we provided all the checks that we paid Billy's Plumbing, so there should be a check in the amount of whatever this invoice was.

Mr. Countryman: I think that's right. And for the record, I produced a ton of material. If there are things that arise out of this deposition that you don't have and you think you should, I'll happily get you that material. But there was nothing withheld intentionally. To the extent that you don't have something that you think you should have, I'm happy to address that.

By Ms. Neill: That's the problem in discovery. One side doesn't know what the other one has. And then you get bits and pieces, and we got that from Billy.⁴⁴

Mr. Gill's testimony reveals serious violations of the Rules of Civil Procedure by Garrard. Mr. Gill personally executed the contract and personally received the invoice from Billys Plumbing. The documents would have been maintained in the same file in which other documents had been pulled and produced to Carolina Cool. This indicates someone deliberately determined not to produce those documents. Furthermore, Mr. Countryman's interjection shows a complete misunderstanding of a party's responsibility in responding to discovery requests. Had not Carolina

⁴⁴ Deposition of Shawn Gill, April 17, 2019, p. 189- 191. Exhibit 28.

Cool subpoenaed Billys Plumbing and then followed up with motions to compel, key evidence in Garrard's possession would have never come to light.

3. Deposition of Pat Watson:

On May 8, 2019, Carolina Cool deposed Pat Watson who was the project manager for the shell portion of the project. He also testified regarding emails that should exist and notes he personally drafted. He further testified he had not been asked to find documents relevant to the project:

Ms. Neill: How did you stay in contact with Shawn Gill regarding this Myrtle Beach Dave and Buster's site?
 Mr. Watson: We had several phone calls every day and e-mails back and forth a lot.
 Ms. Neill: Would there be notes on the project from you after February 20th?
 Mr. Watson: I would think so, but at some point in time I do quit taking them, when I see that I don't need to take them no more. I ain't gonna have no issues, I'm getting close to being done, then I'll quit taking them.
 Ms. Neill: In February of 2017, you weren't close to being done though were you?
 Mr. Watson: I should have still been making notes.
 Ms. Neill: Have you been asked to find any notebooks or notes for this lawsuit?
 Mr. Watson: No, ma'am.⁴⁵

4. Deposition of John Mulleady:

On May 15, 2019, Carolina Cool conducted the 30(b)(6) deposition of Dave & Buster's. Mr. John Mulleady testified regarding payments to Garrard for the interior portion of the project:

Ms. Neill: And did Dave & Buster's make the payments as requested from Garrard Construction?
 Mr. Mulleady: Yes, I think we did. Doesn't show that we have anything withholding.
 Ms. Neill: And how would the payments have been made?
 Mr. Mulleady: Either check or wire. I don't know. They do it both -- accounting does it both ways.
 Ms. Neill: And would the accounting department retain documentation of making those payments?
 Mr. Mulleady: They should, yeah.
 Ms. Neill: Would those documents be something that Dave & Buster's would retain in their file for this project?
 Mr. Mulleady: They should.

⁴⁵ Deposition of Patrick Watson, May 8, 2019, p. 14, lines 20-24. Exhibit 29.

Ms. Neill: Do you know why those documents weren't produced to us?
 Mr. Mulleady: No, I don't.
 Ms. Neill: You think that is something that could be provided to us?
 Mr. Mulleady: I guess.
 Ms. Neill: Yes?
 Mr. Mulleady: Yes.⁴⁶

D. Carolina Cool's Letter of August 22, 2019:

Several months passed after the depositions and Defendants did not produce the missing documentation discussed during the depositions. In a letter dated August 22, 2019,⁴⁷ counsel for Carolina Cool detailed all occurrences the witnesses testified regarding the existence of evidence that had not yet been produced:

In reviewing the deposition transcripts of the other witnesses for Defendant Garrard, the witnesses confirmed the existence of other relevant documents that I have not found in my review of documents produced thus far during discovery. Specifically, the witnesses confirmed the existence of the following:

- Documentation of payments from Dave & Buster's to Garrard Construction referenced by Mr. Mulleady on pages 68 & 69 of his deposition;
- Change orders for the interior contract referenced by Mr. Mulleady on pages 71 & 73 of his deposition;
- Work Orders with supporting documentation referenced by Mr. Mulleady on pages 75, 101 & 101 of his deposition;
- Emails referenced by Mr. Mulleady on pages 87, 88 & 92 of his deposition;
- Emails between Pat Watson and Shawn Gill referenced by Pat Watson on page 14 of his deposition;
- Pat Watson's complete notebook referenced by Pat Watson on pages 56-58 of his deposition;
- Pat Watson's emails with MH Brown referenced by Pat Watson on page 76 of his deposition;
- Pat Watson's progress reports for February 21, 2017 – March 24, 2017 referenced by Mr. Watson on page 100 of his deposition;
- Complete copy of the document marked as Exhibit 2 to Mr. Bromley's deposition discussed on page 155 of the deposition;
- Emails that Mr. Bromley may have as discussed on page 165 of his deposition;

⁴⁶ Deposition of John Mulleady, May 25, 2019, p. 68-69. Exhibit 30.

⁴⁷ Correspondence to Andrew Countryman dated August 22, 2019. Exhibit 31.

- The meeting agendas Mr. Bromley created as discussed on page 189 of his deposition;
- NSO calendar discussed by Mr. Gull in his deposition at page 118;
- The four schedules (Exhibit 14 to Mr. Gill's deposition) that you attempted to email to Mary Anna on April 17, 2019 which was not received as discussed on page 137 of Mr. Gill's deposition;
- All schedule updates for the project as discussed by Mr. Gill on pages 138-139;
- All documentation that Mr. Gill referenced in his deposition on pages 183 and 184 regarding Billys Plumbing – he testified there were documents printed and provided.

In as much as these documents have been previously requested in Plaintiff's Request for Production of Documents, please provide these documents no later than **September 6, 2019**. If you believe you already provided them, please let me know when those documents were produced and how they were Bates stamped.

After Garrard failed to respond the August 22, 2019 letter, Carolina Cool's counsel requested in a subsequent letter dated September 16, 2019 the documents be produced within ten days to avoid the necessity of a motion to compel.⁴⁸

E. Garrard's Document Dump of September 25, 2019:

In response to Carolina Cool's letters, on September 25, 2019, Garrard produced over four thousand documents. The letter from Garrard's counsel stated:

I enclose a disc with material labeled "Garrard 9.25.19 prod. 1-4,401." This is material from Garrard responsive to your August 22, 2019, letter and is a supplement to my clients' production in discovery.⁴⁹

In reviewing the documents on the enclosed disc, Carolina Cool discovered 4,201 pages on the disc, not 4,401.⁵⁰ The documents on the disc did not appear to be in any particular order and many were copies of documents previously produced in discovery but with different Bates stamp. For example, hundreds of pages of Daily Progress Reports were once again produced Bates

⁴⁸ Correspondence from Mark Neill dated September 16, 2019. Exhibit 32.

⁴⁹ Correspondence from Andrew Countryman dated September 25, 2019. Exhibit 33.

⁵⁰ Garrard 9.25.19 prod. 000001-004201. Exhibit 34.

stamped Garrard 9.25.19 prod. 002947---3295. These reports were not even requested in the August 22, 2019 letter. While the majority of reports had previously been produced, buried within were some newly produced reports found at Bates stamped Garrard 9.25.19 prod. 002967---002974 and 003094-003169. Counsel for Carolina Cool was required to spend many unnecessary hours digging through the thousands of documents in order to determine which were duplicates and which contained new information. The fact that the documents were not in chronological order added to the burden.

Shockingly, in the 4,201 documents produced, Garrard failed to produce all the specifically requested emails and subcontract documents Mr. Gill testified existed between Garrard and Billys Plumbing. Carolina Cool could only find three of them: an email from Scott Gasque on January 18, 2017, Bates stamped Garrard 9.25.19 prod. 004119; an email from Shawn Gill dated January 18, 2017, Bates stamped Garrard 9.25.19 prod. 004122; and an invoice from Billys Plumbing dated March 31, 2017 Bates stamped Garrard 9.25.19 prod. 004009. It is troubling Garrard produced the invoice and the two emails hidden in a document dump two years after Carolina Cool served its initial discovery. Garrard continued to fail to produce the January 23, 2017 subcontract with Billys Plumbing.

F. Discovery Responses of Billys Plumbing:

After Billys Plumbing became a party defendant, Carolina Cool served discovery requests. Interrogatory #8 asked Billys Plumbing to identify all contracts it entered into regarding the Dave & Buster's project. After not receiving any response, Carolina Cool filed a motion to compel on September 9, 2019 and a hearing was scheduled for October 15, 2019. The parties entered into a consent order prior to the hearing, which was filed October 16, 2019. Pursuant to the order, Billys

Plumbing provided a very different response than offered by Garrard during the two years of discovery:

8. Identify each and every contract you entered into regarding the Myrtle Beach Dave & Buster's project setting forth the following information:
 - a. The parties to the contract;
 - b. The date of the contract;
 - c. The work you were to perform;
 - d. The dates you performed the work;
 - e. The compensation you received for performing the work.

ANSWER:

1. Dave & Buster's Underground Contract – **Contract entered into between Billy's Plumbing Company and Garrard on January 23, 2017** to furnish labor and materials to correct and complete the underground plumbing portion of the Dave & Buster's project. The work was performed on a time and materials basis and the dates of said work are contained in the time cards previously provided by Defendant and described as Plaintiff's bates stamp documents "Billy's Plumbing 75-80." Defendant **Billy's Plumbing was compensated in an amount of \$23,237.22.**
2. Dave & Buster's Interior Subcontract – Contract entered into between Billy's Plumbing and Garrard Construction Company on February 1, 2017. Defendant Billy's Plumbing Company would direct Plaintiff's attention to the scope of work and scope of work breakdown included in the contract as well as its attachments as referenced in Defendant Garrard Construction Company bates stamp documents "Countryman 10-8-18 38-68." Dates of said work are contained in the time cards previously provided by Defendant to Plaintiff's Counsel on July 9, 2019. Defendant Billy's Plumbing was compensated in the amount of \$356,171.24.
3. Dave & Buster's Shell Subcontract – Contract entered into between Billy's Plumbing and Garrard Construction on March 16, 2017. Defendant Billy's Plumbing Company would direct Plaintiff's attention to the scope of work and scope of work breakdown included in the contract as well as its attachments as referenced in Defendant Garrard Construction Company bates stamp documents "Countryman 10-8-18 69-83. **Defendant Billy's Plumbing Company has no record of ever being compensated for work performed under this contract.** Said work would have been performed during the dates and times provided in the time cards previously provided by Defendant to Plaintiff's Counsel on July 9, 2019.⁵¹ (Emphasis added).

⁵¹ Billy's Plumbing Responses to Plaintiff's Interrogatories, dated October 18, 2019. Exhibit 35.

Billys Plumbing identified the January 23, 2017 subcontract as a separate agreement. In contrast, Garrard attempted to hide the contract and show the monies paid Billys Plumbing was for a change order to the Interior Subcontract subsequently executed. Carolina Cool was astonished to learn that no compensation had been paid by Garrard to Billys Plumbing pursuant to the Shell Subcontract, which certainly is a crucial factor in determining the validity of Garrard's counterclaim against Carolina Cool.

G. Carolina Cool's Motion for Sanctions:

As one could imagine, it took several days for Carolina Cool's counsel to review the materials in the document dump. After reviewing the information provided by Garrard and the newly produced information from Billys Plumbing, Carolina Cool filed its Motion for Sanctions on November 4, 2019.

H. Garrard Withdraws its Counterclaim for lost profits:

In its counterclaim and in its answers to interrogatories, Garrard claimed it was entitled to lost profits. This is one of the reasons Carolina Cool continuously requested information from Garrard regarding what it paid Billys Plumbing, what work Billys Plumbing performed, Garrard's requests for payment to Broadway and Dave & Buster's, and monies received from those requests. Even after delivering the document dump, Garrard failed to provide critical information regarding its alleged damages. By way of Supplemental Requests for Production, Carolina Cool requested financial statements, profit and lost statements, expense statements, and income statements regarding the project.⁵² Carolina Cool also noticed the Rule 30(b)(6) deposition of Garrard to inquire into these matters. In response, Garrard served Supplemental/Amended Answers to Interrogatories stating, "Garrard is not making a claim for lost profits and withdraws such a claim

⁵² Supplemental Requests for Production to Garrard dated November 4, 2019. Exhibit 36.

to the extent prior pleadings refer to one.”⁵³ In a letter dated November 29, 2019, Garrard’s counsel further stated:

Garrard is not claiming lost profits as a damage in this case. Therefore, topics regarding profits and the like have no bearing on the claims between the parties and are unlikely to lead to the discovery of admissible evidence. In fact, these topics are not necessary for this litigation at all.⁵⁴

Carolina Cool’s resulting frustration is understandable in that it had battled for two years to receive information regarding Garrard’s lost profits just to have Garrard claim the information was not relevant. Carolina Cool argued during the hearing, with merit, Garrard only withdrew its claim after it was forced to produce documentation showing it had no damages.

I. Hearing held December 18, 2019:

A lengthy hearing was held on December 18, 2019 to consider Carolina Cool’s Motion for Sanctions against Garrard for discovery violations. After hearing from counsel for Carolina Cool and Garrard, reviewing the record, and considering facts presented, the Court grants Carolina Cool’s Motion for the following reasons:

CONCLUSIONS OF LAW

For more than two years, Defendant Garrard obstructed the discovery process and prejudiced Carolina Cool’s ability to prepare for trial. The record shows three scheduling orders have been filed in this case. The first Scheduling Order, filed June 29, 2018, required discovery to be completed by October 19, 2018 with the case being up for trial in December 2018. Defendant Garrard consented to that Order knowing it had withheld critical evidence from the Plaintiff. An Amended Scheduling Order, filed December 11, 2018, had a discovery deadline of June 1, 2019.

⁵³ Supplemental/Amended Answers to Interrogatories dated November 18, 2019. Exhibit 37.

⁵⁴ Letter from Andrew Countryman dated November 29, 2019. Exhibit 38.

Defendant Garrard once again consented to the Order with knowledge it was continuing to holdback critical evidence from the Plaintiff. The third Scheduling Order, filed August 23, 2019, imposed a revised discovery deadline of December 20, 2019, with the case being up for trial in February 2020. Even after the document dump on September 25, 2019, Garrard continued in its failure to produce documents.

SCRCP Rule 37 (b) allows the Court to impose sanctions or order costs against a party or attorney whose conduct necessitated the motion. There must be a showing of intentional disobedience on the part of the sanctioned party. The rule “empowers the Court to impose a wide variety of sanctions. “In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice.” Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). A sanction which results in a default or dismissal is harsh punishment which should be imposed only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party. *See generally* Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

In Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), Mitchell failed to disclose the existence of a videotape in a personal injury case which the Court determined was relevant to the issue of damages. Mitchell had the videotape for over two years before disclosing its existence just days before trial. The Court discussed:

The entire thrust of the discovery rules involves full and fair disclosure, “to prevent a trial from becoming a guessing game or one of surprise for either party.” State Highway Dep't v. Booker, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973) (*quoting* Hodge v. Myers, 255 S.C. 542, 545, 180 S.E.2d 203, 205 (1971)). Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). Unless

the party who has failed to submit to discovery can show lack of prejudice, reversal is required. Id. at 46, 362 S.E.2d at 319.

In the present case, Garrard acted in willful disobedience and in gross indifference to the rights of Carolina Cool. Even after being sanctioned by Order filed April 10, 2019 for failing to cooperate in the scheduling depositions of its own witnesses, Garrard continued to holdback documents responsive to Carolina Cool's discovery requests and relevant to the parties' claims and defenses. Garrard also violated the scheduling orders. Garrard's discovery responses were incomplete, and the manner in which documents were produced prejudiced the Plaintiff's ability to prepare for trial. As such, the Court finds the striking of Garrard's Counterclaim to be a reasonable and fair sanction. Furthermore, the Court finds it is reasonable and fair to require Garrard to pay Carolina Cool attorney fees and costs in the amount of \$9,301.54 for the time spent by its counsel to review Garrard's discovery responses and deposition testimony, to draft the August 22, 2019 letter, to review the 4,201 pages of documents produced by Garrard, to draft and file the motion for sanctions, and to prepare and attend the hearing.⁵⁵

IT IS SO ORDERED!

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit

Dated: January __, 2020
Conway, South Carolina

⁵⁵ Affidavit of Mark D. Neill. Exhibit 39.



Horry Common Pleas

Case Caption: Carolina Cool Inc VS Garrard Construction Group Inc , defendant, et al
Case Number: 2017CP2603562
Type: Order/Sanctions

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-01-27 13:11:35 page 30 of 30

ELECTRONICALLY FILED - 2020 Jan 27 4:31 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2603562

Carolina Cool Inc et al
PLAINTIFF(S)

Garrard Construction Group Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Motion to Alter or Amend and To Hold In Abeyance of Garrard Construction Group, Inc. is DENIED.

This motion is decided on the contents of defendant's motion without oral arguments.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/10/2020.

Garrard Construction Group Inc
Billys Plumbing Company LLC

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Carolina Cool Inc , plaintiff, et al VS Garrard Construction Group Inc
, defendant, et al
Case Number: 2017CP2603562
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-02-10 10:36:27 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Carolina Cool, Inc.,

Plaintiff,

vs.

Garrard Construction Group, Inc., Dave &
Buster's of South Carolina, Inc. and
Broadway at the Beach, Inc., and Billys
Plumbing Company LLC,

Defendants.

Garrard Construction Group, Inc.,

Third-Party Plaintiff,

vs.

RLI Insurance Company,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Order Granting Plaintiff's Motion for
Sanctions and Striking Counterclaim of
Defendant Garrard Construction Group, Inc.

Order Granting Motion for Sanctions and Striking Counterclaim

This matter came before the Court on December 18, 2019 pursuant to Plaintiff's Motion for Sanctions Against Defendant Garrard Construction Group, Inc. filed November 4, 2019. Present at the hearing were Mark Neill, counsel for Plaintiff Carolina Cool, Inc. Andrew Countryman, counsel for Defendant Garrard Construction Group, Inc., was also present. After hearing oral arguments, reviewing the facts presented and the record, the Court GRANTS Plaintiff's Motion for the following reasons:

Summary of Facts

This case arises from the construction of the Dave & Buster's restaurant located at Broadway at the Beach in Myrtle Beach. Garrard Construction Group, Inc. (Garrard) was hired

by Broadway at the Beach, Inc. (Broadway), the owner of the real property, to build the outside shell of the building. Garrard was also hired by Dave & Buster's of South Carolina Inc. (Dave & Buster's), the tenant leasing the space from Broadway, to build the interior of the building. As such, Garrard was the general contractor for both the shell and interior portions of the building. On September 1, 2016, Garrard entered into a written contract to do the shell work for Broadway for a fixed price amount \$4,994,912.00.¹ On October 25, 2016, Garrard entered into a written cost-plus contract to do the interior work for Dave & Buster's for approximately \$3,628,786.00.²

Garrard contracted with Carolina Cool, Inc. (Carolina Cool) to provide plumbing for both the shell and interior portions. Garrard and Carolina Cool entered into a subcontract dated October 19, 2016 for the shell (shell subcontract) in the amount of \$36,450.00.³ The shell subcontract price was increased to \$36,450.00 due to a subsequent change order.⁴ Thereafter, on November 18, 2016, the parties entered into a subcontract for the interior (interior subcontract) in the amount of \$294,688.00.⁵

Carolina Cool was scheduled to begin work for the building's shell on November 9, 2016 and the building's interior on December 26, 2017. However, due to delays on the project, Carolina Cool's start dates were pushed back. Carolina Cool was not able to begin its shell work until December 29, 2016 and its interior work on January 3, 2017. On January 20, 2017, Garrard terminated Carolina Cool's interior subcontract and removed Carolina Cool from the project. Garrard hired Billys Plumbing Company LLC (Billys Plumbing) to replace Carolina Cool.

¹ Broadway Contract dated 9-1-2016, Defendant 1. Exhibit 1.

² Dave & Buster's Contract dated 10-26-16, Defendant 45. Exhibit 2.

³ Carolina Cool Shell Subcontract dated 10-19-16, Plaintiff 159. Exhibit 3.

⁴ Change Order to Carolina Cool Shell Subcontract dated November 22, 2016, Plaintiff 278. Exhibit 4.

⁵ Carolina Cool Interior Subcontract dated 11-18-16. Plaintiff 179. Exhibit 5.

Carolina Cool alleges Garrard breached both the shell and interior subcontracts by removing them from the project without justification and failing to pay for the work and materials already provided. Garrard alleges Carolina Cool breached the interior subcontract by not meeting the agreed upon schedule. Garrard further alleges it hired Billys Plumbing to correct and complete the plumbing at additional costs. On April 12, 2017, Carolina Cool filed its Mechanic's Lien in the amount of \$113,350.00 for the value of the work it performed and materials.

Procedural History

Carolina Cool filed its initial Summons and Complaint on June 8, 2017. Garrard, Broadway, and Dave & Buster's filed their Answer and Garrard filed its Counterclaim and Third Party Complaint on July 6, 2017. Attorney Andrew Countryman represents all three Defendants due to indemnification clauses in the contracts between Garrard, Broadway, and Dave & Buster's. By way of a Consent Order filed April 30, 2019, Plaintiff filed its Second Amended Summons and Complaint on May 3, 2019 naming Billys Plumbing as an additional Defendant. On May 10, 2019, Garrard, Broadway, and Dave & Buster's filed their Answer and Garrard refiled its Counterclaim and Third-Party Complaint. Carolina Cool filed its Reply on May 22, 2019; RLI Insurance filed its Answer on May 23, 2019; and Billys Plumbing filed its Answer on June 27, 2019.

The parties have engaged in lengthy and extensive discovery. The record reflects the filing of several motions to compel. There is also a prior Order awarding Carolina Cool sanctions due to Garrard's failure to cooperate in the scheduling of its witnesses' depositions. The current motion before the Court was filed by Carolina Cool after receiving what it describes as a "document dump" from Garrard on September 30, 2019. Carolina Cool's Motion for Sanctions against Garrard was filed on November 4, 2019.

FINDINGS OF FACT

A. Garrard's Discovery Responses:

Carolina Cool served its initial discovery requests on September 28, 2017.⁶ On November 28, 2017, Garrard, Broadway, and Dave & Buster's responded.⁷ Of particular relevancy are the following responses by Garrard:

6. Identify by specific amount, all damages you are claiming in this case.

ANSWER:

(a) \$102,091.78, which is the cost difference to hire Billy's plumbing to perform the work that Carolina Cool contracted to perform on the interior portion of the project. Comprised of:

a. \$71,553.03 and the cost to complete the under-slab plumbing work and corrections to the under-slab plumbing work that Carolina Cool installed incorrectly.

b. \$8,856.25 Garrard was forced to pay ASE (steel erectors) to erect the steel with a large crane resulting from Carolina Cool's inability to complete the under-slab plumbing rough-ins per schedule.

c. \$21,682.50 in General Conditions costs resulting from Carolina Cool's non-performance.

(b) Consequential damages

(c) Lost profits

(d) Attorney's fees TBD

(e) Punitive damages

12. Any and all estimates and contracts evidencing the hiring of subcontractors "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

13. Any and all invoices or other documentation evidencing requests for payment received from the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

14. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between one or more of the Defendants and the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete

⁶ Plaintiff's Initial Interrogatories and Requests for Production dated 10-3-17. Exhibit 6.

⁷ Defendants' Answers to Interrogatories and Responses to Requests for Production dated 11-28-17. Exhibit 7.

work at the project” as alleged in paragraph 43 of Defendants’ Answer and Garrard’s Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants’ possession/control is included in its production with these responses.

In its document production, Garrard produced only two subcontracts with Billys Plumbing— a representation recently proven false as discussed in further detail below. The first was a subcontract dated February 3, 2017 for interior work in the amount of \$350,197.33.⁸ Three change orders to that subcontract were also produced: change order dated April 13, 2017 in the amount of \$4,294.39;⁹ change order dated May 12, 2017 in the amount of \$23,237.22;¹⁰ and change order dated May 31, 2017 in the amount of \$1,679.52.¹¹ The second subcontract was dated February 28, 2017 for shell work in the amount of \$36,884.00.¹² No emails or correspondence between Garrard and Billys Plumbing were produced.

Garrard also produced a summary of its damages, Defendants’ 000586,¹³ showing how it calculated its counterclaim for damages. In addition to the cost difference between its subcontracts with Carolina Cool and Billys Plumbing, there was a reference to general conditions costs in the amount of \$21,682.50 allegedly due to a three week delay caused by Carolina Cool.

In reviewing the discovery responses, it became clear to Carolina Cool that not all relevant documentation had been produced. For example, Garrard produced daily jobsite reports for only a few days of the project when Carolina Cool was on site. Garrard failed to produce daily reports for the time period before and only a few after Carolina Cool was terminated. There was no documentation regarding any alleged delays with the completion date for the project.

⁸ Billys Plumbing Interior Subcontract dated 2-3-17, Defendants 434. Exhibit 8.

⁹ Change Order #1 dated 4-13-17, Defendants 431. Exhibit 9.

¹⁰ Change Order #2 dated 5-12-17, Defendants 432. Exhibit 10.

¹¹ Change Order #3 dated 5-31-17, Defendants 433. Exhibit 11.

¹² Billys Plumbing Shell Subcontract signed 3-16-17, Defendants 465. Exhibit 12.

¹³ Garrard’s Calculation of Damages, Exhibit 13.

In January 2018, Carolina Cool served additional, more specific discovery requests in an attempt to receive information and documentation.¹⁴ Defendants responded on February 20, 2018 and produced an additional 754 documents Bates stamped Defendants 000587 – Defendants 01341.¹⁵ Of particular relevancy are the following responses:

16. Set forth the total amount of monies paid to Billy's Plumbing Company, Inc. for services and materials provided for the Dave & Buster's Myrtle Beach Interior Project.

ANSWER: Garrard paid Billy's a total of \$379,408.46. See Defendants 000589 – 598 produced with these responses.

17. Set forth the total amount of monies paid to Billy's Plumbing Company, Inc. for services and materials provided for the Dave & Buster's Myrtle Beach Shell Project.

ANSWER: Garrard paid Billy's a total of \$379,408.46. See Defendants 000589 – 598 produced with these responses.

19. With regard to the Dave & Buster's Myrtle Beach Project, set forth whether or not any jobsite meetings were ever conducted by Defendant Garrard Construction Group, Inc.; and if so, for

each jobsite meeting, provide the following information:

- a. The date of the meeting;
- b. The subject matter of the meeting, i.e. worker safety, scheduling;
- c. Identify individuals present for the meeting;
- d. Were any notes regarding the meeting generated, and if so, who has possession of the notes.

ANSWER:

(a) Yes. The initial coordination meeting for the interior took place 12/7/17. Allen Anderson of Carolina Cool attended. Bill Bromley coordinated a weekly subcontractor meeting every Tuesday morning which all trade foremen are required to attend.

(b) The Tuesday coordination meetings relate to scheduling, two-week "look ahead," requests for information, percentage of trade work completion and safety.

(c) Carolina Cool's on-site foreman refused to participate in the weekly meetings.

(d) This is a verbal on-site meeting. Some notes may have been taken but have not been located. This is a meeting for foremen to ask questions and receive direction from the superintendent.

In subsequent discovery responses provided by Billy's Plumbing after it was made a party, Carolina Cool learned Garrard's answers to Interrogatory #16 and #17 were false as discussed in more detail below. Furthermore, in its answer to Interrogatory #19(c), Garrard falsely accused

¹⁴ Plaintiff's Supplemental Interrogatories and Requests for Production dated January 16, 2018. Exhibit 14.

¹⁵ Defendants' Answers to Supplemental Discovery Requests dated February 20, 2018. Exhibit 15.

Carolina Cool's foreman of refusing to attend weekly meetings. Garrard's interior superintendent, William Bromley, admitted during his deposition taken April 16, 2019 that he did not even schedule any meetings during the time Carolina Cool was on the project and that he was not aware of any meetings Carolina Cool failed to attend.¹⁶ The answer also referenced the existence of documentation still not produced regarding scheduling, two-week "look ahead", and percentage of trade work completion.

In November 2018, Carolina Cool served supplemental discovery requests.¹⁷ Defendants responded on March 14, 2019.¹⁸ The responses included an additional 4,232 photographs and an additional 1,632 pages of documents related to project including weekly reports, correspondence, calendars, notes, and payments. Unbeknownst to Carolina Cool, Garrard still held back critically relevant documents as discovered during the deposition of witnesses discussed below.

B. Subpoenas Issued to Billys Plumbing:

On July 18, 2018, Carolina Cool served its second subpoena on Billys Plumbing. In response, Billys Plumbing filed a Motion to Quash on July 31, 2018. A hearing was scheduled for October 9, 2018. On the day before the hearing, Garrard's attorney emailed counsel for Carolina Cool and Billys Plumbing informing them he would not be present for the hearing and that he was providing all his client's documents related to Billys Plumbing consisting of 87 pages.¹⁹ Carolina Cool later discovered Garrard's representation that it only had 87 pages of documents regarding Billys Plumbing was a blatant falsity. Garrard continued to falsely represent it only had two subcontracts with Billys Plumbing and no communications. During the hearing on December 18,

¹⁶ Deposition of William Bromley, April 16, 2019, p.161-163. Exhibit 16.

¹⁷ Carolina Cool's Second Supplemental Requests for Production dated 11-20-18. Exhibit 17.

¹⁸ Defendants' Responses to Second Supplemental Requests for Production and Privilege Log dated 3-14-19. Exhibit 18.

¹⁹ Countryman's Email dated October 8, 2018 and documents Bates stamped Countryman 10-8-18 1- Countryman 10-8-18 87. Exhibit 19.

2019, counsel for Carolina Cool argued this email could have been a signal by Garrard to Billys Plumbing as to what documentation Garrard wanted Billys Plumbing to produce.

In lieu of having a hearing on October 9, 2018, Carolina Cool and Billys Plumbing entered into a Consent Order filed October 11, 2018. Carolina Cool agreed Billys Plumbing could redact certain information due to Billys Plumbing concern its pricing and trade information would become public. Carolina Cool made that concession not knowing Billys Plumbing and Garrard had entered into a time and materials contract dated January 23, 2017 discussed in further detail below. In order to enforce the Consent Order, Carolina Cool was required to file a Motion for Order of Contempt/Sanctions on November 20, 2018, which was granted on April 3, 2019.

Pursuant to the Orders requiring Billys Plumbing to fully respond to Carolina Cool's subpoenas, Billys Plumbing produced over 1,700 documents. Through this production of documents, Carolina Cool finally discovered extremely relevant documents including correspondence and emails between Garrard and Billys Plumbing, as well as, a third subcontract between the parties. The emails showed Garrard had been in contact with Billys Plumbing while Carolina Cool was still working on the project. The emails included the following:

- **Email from Shawn Gill to Scott Gasque dated January 6, 2017:**²⁰

Scott, In follow up to our conversation a few moments ago, please find the link below to the construction drawings for the Dave and Buster's Myrtle Beach Interior project. Please note that the drawings at the below link are the current construction drawings, however Bulletin #1 was released on Tuesday and those sheets concerning any plumbing changes are in the Bulletin #1 folder, in that bulletin #1 they did flip the family restroom lavatory and toilet so you know. Give me a call when you have checked out the site. Thanks

- **Email from Scott Gasque to Shawn Gill dated January 18, 2017:**²¹

Shawn, I have made a site visit and talked to your superintendent Bill. I see Carolina Cool is still on site working. In order for me to be able to help you we need to work out some paper work. We need confirmation on when Carolina Cool will off the project permanently. Also need to work about the material they have

²⁰ Email from Shawn Gill to Scott Gasque dated January 6, 2017, Billy's Plumbing 1762. Exhibit 20.

²¹ Email from Scott Gasque to Shawn Gill dated January 18, 2017, Billy's Plumbing 1772. Exhibit 21.

on site now. I am working on setting up man power to finish the underground. But can not go much further than that until we work out the details. Please let me know how you want me to proceed.

- **Email from Shawn Gill to Scott Gasque dated January 18, 2017:**²²

Scott, Sorry I have been on the phone with our owner and am waiting on confirmation back from our attorney that we are buttoned up on the appropriate notices and paperwork to legally remove the current plumbing contractor. Our attorney is to let me know the exact time we can release them. We are working on it. I will be in touch soon. Thanks

- **Email from Shawn Gill to Scott Gasque dated February 1, 2017:**²³

Scott, Sorry, I was on a site all day and ran out of day, but my coordinator did send me your subcontract to review today through our paperless system and I did not get to review and initial. I will review this evening and if all is good I will have Cherie send it to you in the morning. You should see it tomorrow. Send me your shell number as soon as you get it together tomorrow. Also, as we disucced (sic) last week, could you get me a quote for the revised floor drain and the heat tape on Bulletin #1, I need to get this submitted to the owner. Please note I have to submit the subcontractor change request with any owner change request as back up and they require the change requests to be broken down in Labor, Material, Tax and 10% OH&P. Thanks

Billys Plumbing also produced a previously unknown subcontract, dated January 23, 2017, to furnish material and labor to complete the underslab plumbing.²⁴ There were additional emails between Shawn Gill and Scott Gasque regarding this contract as well:

- **Email from Scott Gasque to Shawn Gill dated January 23, 2017:**²⁵

Shawn, attached is our proposal from the T & M to finish the underground. Please review and return a signed copy as coon as you can. My superintendent should already be on site bu now. I have other man power and equipment headed that way also. Please advise if there is any issues.

- **Email from Shawn Gill to Scott Gasque dated January 23, 2017:**²⁶

Scott, See attached signed copy per your request. Thank you!

²² Email from Shawn Gill to Scott Gasque dated January 18, 2017, Billy's Plumbing 1771. Exhibit 22.

²³ Email from Shawn Gill to Scott Gasque dated February 1, 2017, Billy's Plumbing 50. Exhibit 23.

²⁴ Billys Plumbing Time and Material subcontract dated January 23, 2017, Billy's Plumbing 1787. Exhibit 24.

²⁵ Email from Scott Gasque to Shawn Gill dated January 23, 2017, Billy's Plumbing 1776. Exhibit 25.

²⁶ Email from Shawn Gill to Scott Gasque dated January 23, 2017, Billy's Plumbing 1775. Exhibit 26.

Carolina Cool would not have learned of the January 23, 2017 subcontract and all the email communications had it not aggressively pursued enforcement of its subpoenas. Garrard had refashioned the January 23, 2017 subcontract into the change order dated May 12, 2017 in the amount of \$23,237.22.²⁷ Additionally, the January 23, 2017 time and materials subcontract contained the following relevant terms and conditions:²⁸

- This is an agreement between Garrard Group & Billy's Plumbing Company, LLC. (From here out known as BPC.) **BPC shall not have any contact with Carolina Cool, nor their Bonding Company.** Garrard is to handle any issues that may arise from either party.
- **Garrard Group is to be responsible for all, legal representation if needed to protect BPC from Carolina Cool and/or Bonding Company.** Legal representation shall be of BPC choice.
- Garrard Group agrees to pay the Labor Rates and OH & P percentage as laid forth above in full to BPC with-in net 30 days, regardless if Garrard Group has received reimbursement from the Owner or Bonding Company.
- BPC to supply Garrard Group with a list of man hours, list of material and any additional cost for review for payment. (emphasis added).

In reviewing the content of these emails and the January 23, 2017 subcontract, there is no reasonable explanation as to why these records had not been produced by Garrard except for the conclusion they are detrimental to Garrard's defenses and counterclaim. After receiving the documents from Billys Plumbing, Carolina Cool provided a copy of the documents as part of its supplemental discovery responses.

C. Deposition of Garrard Witnesses:

During this same discovery period, Garrard also hindered Carolina Cool's ability to depose individuals named as witnesses by Garrard. Due to Garrard's failure to cooperate, on February 15, 2019, Carolina Cool filed a Motion to Compel Depositions of Defendants' Witnesses and to Impose Sanctions. An Order Granting the Motion was filed April 1, 2019 requiring the witnesses

²⁷ Change Order #2 dated 5-12-17, Defendants 432. Exhibit 10.

²⁸ Billys Plumbing Time and Material subcontract dated January 23, 2017, Billy's Plumbing 1787. Exhibit 24.

to attend their depositions and awarding fees and costs to Carolina Cool. Thereafter, Carolina Cool deposed the witnesses and the witnesses provided pertinent testimony showing additional discovery violations by Garrard.

1. Deposition of William Bromley:

During the deposition held April 16, 2019 of William Bromley, the interior job superintendent for Garrard, Mr. Bromley testified he had not looked for any relevant emails, nor had he been asked to look:

Ms. Neill: I'll show you what is Bates stamped Billy's Plumbing 1762. It's an email dated January 6th from Shawn to Billy's Plumbing which you're cc'd on, and Shawn is giving them a link to the project plans. Do you recall receiving an email and thinking, Oh, wow, there's a new plumber about to take over?

Mr. Bromley: Do I recall it? No.

Ms. Neill: Do you recall getting emails regarding Billy's Plumbing?

Mr. Bromley: An email like this I wouldn't even look at twice.

Ms. Neill: Do you get a lot of emails?

Mr. Bromley: Yes, I get a lot of emails. If it really doesn't have anything to do with me, and this wouldn't, sending Scott a link, it would just get filed.

Ms. Neill: It just seems like since you're supervising the subcontractors --

Mr. Bromley: But they were not hired as a subcontractor at that time.

Ms. Neill: But it's discussing replacing a current subcontractor.

Mr. Bromley: Okay. But I do not recall that.

Ms. Neill: Have you gone back to look at what emails you might have regarding this project?

Mr. Bromley: No, I have not.

Ms. Neill: Have you been asked to go back and look at emails you may have?

Mr. Bromley: I have not.

Ms. Neill: Is there a possibility you have more emails regarding this project that have not been --

Mr. Bromley: There's a possibility, yes.

Ms. Neill: So from this email it appears, as early as January 6th, plans are being emailed to Billy's Plumbing. Is that correct?

Mr. Bromley: I didn't read it. But if that's what it says, yeah. It's saying here's the drawings and then a bulletin had come out.²⁹

²⁹ Deposition of William Bromley, April 16, 2019, p. 164-166. Exhibit 16.

Mr. Bromley was also asked if he recalled another email produced by Billys Plumbing he was copied on between Garrard and Billys Plumbing to which he replied:

Mr. Bromley: This specific email? No. But it doesn't surprise me any. I mean, that's common communication.

Ms. Neill: And this communication, would you agree it seems to reflect that – It seems pretty evident that a decision has been made for Carolina Cool to be let go?

Mr. Bromley: Yes.³⁰

Even though the emails were between Garrard and Billys Plumbing and copies had already been provided by Carolina Cool, Garrard's counsel interrupted:

Ms. Neill: I will give you a copy of an email, again from Scott Gasque ...Billy's Plumbing Bates stamp 66.

Mr. Countryman: You-all didn't produce this or identify this before the deposition. Right?

Ms. Neill: No. You (sic) actually provided this.³¹

Mr. Countryman: Did you identify it as a potential deposition exhibit for the deposition as Rule 30(j)(8) requires?

Ms. Neill: This is not a deposition exhibit right now.

Mr. Countryman: It's a document that you're showing the witness. I can read you the language of the rule if you'd like.

Ms. Neill: Well, it's something that you had and it came from Scott to Shawn Gill, but it's something that apparently you-all have not produced in discovery, even though you had it in your records.

Mr. Countryman: That has nothing to do with the rule, which says deposing counsel shall provide to opposing counsel a copy of all documents showing to the witness during the deposition, either before the deposition begins or contemporaneous with the showing of the document to the witness, which you obviously have not done. You've identified the labels. That's fine –

Ms. Neill: We provided this to you before, though.

Mr. Countryman: That's not what the rule says, does it? I'm just asking if you specifically identified that document as something that you would use in the deposition before. I don't think you have.³²

³⁰ Deposition of William Bromley, April 16, 2019, p. 172. Exhibit 16.

³¹ The document was produced by Billys Plumbing in response to the subpoena. It was an email between Shawn Gill, Project Manager for Garrard, and Scott Gasque of Billys Plumbing. All documents received from Billys Plumbing had been produced to Garrard prior to the deposition.

³² Deposition of William Bromley, April 16, 2019, p. 167-168. Exhibit 16.

This exchange reveals no denial by Garrard's counsel of having the emails or being aware of the emails. There was no denial that Garrard failed to produce the emails to Carolina Cool. Furthermore, Mr. Bromley had not even been asked to look for emails. Remarkably, even after the deposition, Garrard failed to produce the communications it had with Billys Plumbing.

Mr. Bromley also testified his permanent residence was in Waleska, Georgia, and he had no intention of living in Massachusetts.³³ He was only temporarily living in Massachusetts because he was currently working for Garrard on a Dave & Buster's project located in Cape Cod. This information was important because prior to his deposition, Garrard's counsel requested Carolina Cool reimburse Mr. Bromley mileage and witness fees of \$1,081.76 for roundtrip travel from Massachusetts instead of calculating mileage from his residence in Georgia.³⁴ This request is particularly outrageous given the fact that Carolina Cool had been seeking to depose Mr. Bromley for over a year and counsel for Garrard had initially offered to host the deposition in Mt. Pleasant. Carolina Cool did compensate Mr. Bromley his mileage calculated from his residence in Georgia at less cost.

2. Deposition of Shawn Gill:

On April 17, 2019, Carolina Cool deposed Shawn Gill, Garrard's Project Manager for the entire Dave & Buster's project. Mr. Gill testified regarding a timeline he drafted that had not been produced:

Mr. Gill:	I would have to look at data reports and then also the timeline that I submitted.
Ms. Neill.	And when you say "timeline," what document are you referring to?
Mr. Gill:	I provided a timeline during this whole period of what was moved and when. It was part of the discovery.
Ms. Neill.	Okay. And what would that timeline look like? Is it entitled "Timeline"?

³³ Deposition of William Bromley, April 16, 2019, p. 6, 212-213. Exhibit 16.

³⁴ Correspondence from Andrew Countryman dated April 12, 2019. Exhibit 27.

Mr. Gill: Yeah. It's entitled "Timeline." I believe it's a three-page document.
 Mr. Countryman: That may be work product. I'm not sure of the context of the production. If we produced it, you're welcome to ask him about it, but I need to look at it and see if it's attorney work product.
 Ms. Neill: I'm not familiar with having a timeline. Do you recall when you made the timeline?
 Mr. Gill: I do not remember.
 Ms. Neill: Was it within the last couple of years?
 Mr. Gill: It was during this time to basically document what was going on specifically in relation to the project and the Carolina Cool situation
 Ms. Neill: And when you say "this time," you're talking about -- you were kind of motioning towards the calendar. During January?
 Mr. Gill: Yes, in January.
 Ms. Neill: So sometime in -- gosh, it's amazing it was two years ago. So sometime in January of 2017 there was a timeline?
 Mr. Gill: It probably would have been late January 2017, yes.
 Ms. Neill: Is that something that would be created under the 360 software?
 Mr. Gill: No. It was an independent document that I created just to document.
 Ms. Neill: Like a Word document?
 Mr. Gill: Yeah. It was a Word document.³⁵

Later during the deposition when the missing timeline was referenced again, Garrard's attorney offered the following while looking at files on his laptop computer:

Mr. Countryman: I think I have that.
 Ms. Neill: Mr. Countryman, you believe you have what Mr. Gill is talking about?
 Mr. Countryman: Yeah. I'm looking at it to see if it's privileged. I'm looking at a discovery folder that I have not had access to before today. I produced stuff that I'd received. So I didn't remember whether I had gotten this and produced it before. And I don't know as we sit here right now if I have. But would you let me talk with him for a second privately to see if there's any issue with privilege or work product? If there's not, then I can produce it to you.³⁶

Mr. Countryman's statement, if accurate, reveals Garrard's counsel had just received on April 17, 2019 a discovery folder which may or may not contain relevant documents not yet

³⁵ Deposition of Shawn Gill, April 17, 2019, p. 31-33. Exhibit 28.

³⁶ Deposition of Shawn Gill, April 17, 2019, p. 158. Exhibit 28.

produced. In fact, the timeline had not been previously produced, along with other documents. discussed by Mr. Gill. For example, Mr. Gill testified regarding the existence of emails between Garrard and its subcontractors, as well as, with Broadway and Dave & Buster's:

Ms. Neill: And when you say the e-mails, between who?
Mr. Gill: You know, there was always e-mails from him to subcontractors, subcontractors to him, as well as myself between me and my superintendent, me and Bill or Pat on that project.
Ms. Neill: And have you gathered those e-mails related to this project?
Mr. Gill: To the best of my knowledge, I've submitted -- we did a -- when you get that many e-mails, you did a search for that whole thing and turned them over to Rebekah, and then she submitted them with the -- to Andrew with the discovery requests.
Ms. Neill: And when would that have taken place?
Mr. Gill: Um, there were -- I believe there were some e-mails on the first discovery request and then we figured out how to go in and consolidate them and print them to PDF, and so there were more that were sent with the second discovery request.
Ms. Neill: Okay. And approximately when was that second discovery request?
Mr. Gill: Two months ago.
Ms. Neill: Did you -- how did you communicate with Seth McCoy with Broadway?
Mr. Gill: Via phone and e-mail.
Ms. Neill: And how did you communicate with Dave & 8 Buster's folks?
Mr. Gill: Both phone and e-mail and through Expesite when we submit RFIs or change requests or submittals. I guess that would be considered communication as well.
Mr. Countryman: Mary Anna, I didn't withhold anything from that. I'm looking at what I produced to you all recently. I don't see e-mails, other than the ones that were between -- it looks like stuff that was between Garrard and Burroughs & Chapin. But if there's something we missed, that's fine. But I was not withholding anything.

By Ms. Neill: Thank you.³⁷

Mr. Gill also testified about the existence of emails between himself and Billys Plumbing:

Ms. Neill: And did you tell Billy's Plumbing that?
Mr. Gill: I did. And I believe I also told him in an e-mail to hold tight; you know, we don't know what direction this is going to go.
Ms. Neill: And from this period of time, January 25 2017, where are all your e-mails stored?
Mr. Gill: In Office 365, our e-mail server, I guess you would call it.

³⁷ Deposition of Shawn Gill, April 17, 2019, p. 100-101. Exhibit 28.

Ms. Neill: And have you looked for e-mails you may have had with anybody at Billy's Plumbing?

Mr. Gill: Yes.

Ms. Neill: And have you found e-mails?

Mr. Gill: Yeah. So we did a -- it was requested through the second discovery request, Rebekah and I went into my e-mails and did a search for anything that was Scott Gasque or Billy's Plumbing. And anything that came up on that, Rebekah printed a PDF and provided to our attorney.

Ms. Neill: And you've provided those documents?

Mr. Gill: Yes.

Mr. Countryman: I don't recall there being any e-mails in that production in April.

Ms. Neill: I have not received any e-mails regarding Billy's Plumbing except for what Billy's Plumbing just gave us in response to the Subpoena.

Mr. Countryman: Let me check on that -- I didn't receive something and failed to give it to you in that regard. Let me see if there's something that I overlooked.

Mr. Gill: Me and Rebekah did that, and I assume she got that to you. I can check with Rebekah, but we did do a search for that.

By Ms. Neill: So there are more e-mails possibly out there from you to Billy's Plumbing?

Mr. Gill: In addition to what?

Ms. Neill: The zero that I have.

Mr. Gill: There were some, and I served all those up. We printed them to PDF, and I'll circle back with Rebekah and make sure those are part of -- but there were e-mails between me and Billy's Plumbing.³⁸

Mr. Gill's testimony shows Garrard did indeed have emails with Billy's Plumbing that it failed to produce. As set forth above, the emails in question contain critical information that even a layman would recognize as being relevant to the litigation. Even if the emails were not determined to be relevant, they should have been produced as requested.

During the deposition it was discovered other documentation had not been produced. For example, Garrard produced weekly construction reports regarding the interior portion of the project, but week three, which was one of five weeks Carolina Cool was there, was missing. After

³⁸ Deposition of Shawn Gill, April 17, 2019, p. 182 - 184. Exhibit 28.

Mr. Gill was asked why week three had not been produced, Mr. Countryman found it in his files on his laptop and stated "I apologize for that oversight. I don't know why that didn't come through the first time."³⁹

During the deposition it was further determined documents had not been produced in the manner they had been routinely maintained. In looking at construction schedules created during the project, it was difficult to ascertain to which week the schedule corresponded because they were not dated. Mr. Gill explained that each report had been created and saved in separate files and each file name would have included the date it was created. Mr. Gill testified:

I know all this gets - - what it looks like to me is it gets lumped in as a PDF. And if they were the individual files, like we have them saved, it would - - you know, you would be able to pull it up and look at that percentage and say, okay, this is that schedule by the file name.⁴⁰

In order for Mr. Gill to determine the dates of documents he himself created, Mr. Gill looked at Mr. Countryman's laptop to view the files in the format in which they were provided to Mr. Countryman:

Mr. Countryman: What she's looking at, I have the same thing pulled up; they're just color copies. Those are probably easier to read because they're bigger print, but the color you can see here.

Mr. Gill: But the file name is what's important to me to be able to determine which date that was -- the update for that date.

Mr. Countryman: I don't have that right here. I can pull that up under Dropbox. I just put everything in one PDF. So you're saying that the data files -- the individual calendars have dates on them, which will let you tell us when each one was created?

Mr. Gill: By the file name, yes.

Ms. Neill: Yeah. Because that's the important information that we need.

Mr. Countryman: Well, then, I'm looking at his Dropbox where he -- a link where he sent me those.

Ms. Neill: Why don't we go ahead and mark this as Plaintiff's 14 so we can refer to the same document while we're talking on the record?

³⁹ Deposition of Shawn Gill, April 17, 2019, p. 110, line 17-p. 111, line 5.; p. 113, line 25- p. 114, line 7. Exhibit 28.

⁴⁰ Deposition of Shawn Gill, April 17, 2019, p. 125, lines 18-23. Exhibit 28.

Ms. Neill: And just for the record, we're looking at what has been marked as Plaintiff's 14, and we're comparing it to some schedules that are being shown on the personal laptop computer of Mr. Countryman.⁴¹

This testimony reveals the documents were not produced to Carolina Cool in the manner in which they were created and maintained. Instead, they were provided in a manner which hindered Carolina Cool's ability to determine important information.

Thereafter, Mr. Gill was asked if he created schedules for the time period after Carolina Cool was terminated:

Ms. Neill: Now, are there additional schedules after January 19th?
Mr. Gill: Yes.
Ms. Neill: And would you also have those?
Mr. Gill: Yes.
Ms. Neill: And is that something that you have been asked to look for?
Mr. Gill: I understood that we were to supply the schedule updates for the duration in question.
Ms. Neill: Not for the whole project?
Mr. Gill: I did not understand it that way, the best I remember.
Ms. Neill: So you --
Mr. Gill: But I would be happy to -- we have those schedules.
Ms. Neill: You have those schedules for the --
Mr. Countryman: I can get you those if they haven't been provided.
Ms. Neill: And you're saying it's your understanding you weren't supposed to produce any additional schedules than the ones we have in Exhibit 14?
Mr. Gill: Yes.⁴²

Mr. Gill also testified regarding the January 23, 2017 subcontract with Billy's Plumbing which had not been produced to Carolina Cool:

Ms. Neill: Now, after Carolina Cool left the project, according to the job site reports, it looks like Billy's Plumbing was there the following Monday; is that correct?
Mr. Gill: Correct.
Ms. Neill: And I'll show you what is Bates stamped - let's see. What is it? Defendant's 17- -- I'm sorry -- Billy's Plumbing 1787. And it looks like a document from Billy's Plumbing, and it's dated January 23rd. Do you remember receiving that?

⁴¹ Deposition of Shawn Gill, April 17, 2019, p. 131, line 3 – 132, line 9. Exhibit 28.

⁴² Deposition of Shawn Gill, April 17, 2019, p. 138, line 20 -p. 139, line 17. Exhibit 28.

Mr. Gill: Yes.

Ms. Neill: And is that your signature on the document?

Mr. Gill: It is.

Ms. Neill: And would this be a document that you would keep a record of in your file?

Mr. Gill: So this was basically based on the -- the plumbing lines that were roughed in incorrectly and the ones that weren't finished. There was no way to put a hard number on that to complete it. So Billy's Plumbing gave me rates to -- hourly rates to repair that and replace, because there was no way to put a hard number on it. In addition, Billy's Plumbing did not want to be -- the stuff that wasn't going to be touched that was installed, they did not want to be responsible for any issues down the road.

Ms. Neill: That Carolina Cool had been involved with?

Mr. Gill: Correct.

Ms. Neill: And this looks like a contract to me, correct?

Mr. Gill: Correct. It's an hourly rate agreement is what it is.

Ms. Neill: An hourly rate agreement. And you maintained that in your file for the Myrtle Beach Dave & Buster's project?

Mr. Gill: Yes. It would have been -- yes.

Ms. Neill: And are there any other documents that you would have had with Billy's Plumbing, any other agreements?

Mr. Gill: We had a subcontract with them at a later date to do the -- everything from the slab up. This was specifically for the underslab. And then we had a formal subcontract similar to what our subcontract was with Carolina Cool for all the work above the slab.

Ms. Neill: And during the course of this lawsuit, did you look for your agreements you had with Billy's Plumbing?

Mr. Gill: Yeah. When we were asked for discovery, we were asked for their subcontract, their checks, their pay applications and all that.

Ms. Neill: And would this document be regarding their subcontracts?

Mr. Gill: Would be what?

Ms. Neill: A subcontract you would have with Billy's Plumbing?

Mr. Gill: Yes. This should be on -- in our files, yes.

Ms. Neill: Because Billy's Plumbing, they didn't contract directly with the owner, right?

Mr. Gill: No.

Ms. Neill: They contracted with Garrard?

Mr. Gill: That's correct.

Ms. Neill: And do you have any idea why Garrard wouldn't have produced this document in discovery?

Mr. Gill: I don't know why we wouldn't have. I mean, if it wasn't provided -- if it wasn't provided, it wasn't intentional.⁴³

⁴³ Deposition of Shawn Gill, April 17, 2019, p. 185, line 24 -p. 188, line 13. Exhibit 28.

Mr. Gill was further asked about an invoice from by Billys Plumbing which had not been produced by Garrard:

Ms. Neill: You mentioned a few moments ago an invoice, and I just want to see if this is the invoice you were talking about. It's dated March 31st.

Mr. Gill: Yes. This would be the invoice related to those hourly rates.

Ms. Neill: Again, would an invoice from a subcontractor be something that you would regularly keep in your project file?

Mr. Gill: This would be with the accounting file, yes. With -- any invoices paid to Billy's Plumbing, this would be with it, yes.

Ms. Neill: And do you have any information as to why it wasn't produced by Garrard?

Mr. Gill: I don't know why it wouldn't have been. It wouldn't have been intentional.

Ms. Neill: Let's mark that as Plaintiff's 26.

Mr. Gill: I believe we provided all the checks that we paid Billy's Plumbing, so there should be a check in the amount of whatever this invoice was.

Mr. Countryman: I think that's right. And for the record, I produced a ton of material. If there are things that arise out of this deposition that you don't have and you think you should, I'll happily get you that material. But there was nothing withheld intentionally. To the extent that you don't have something that you think you should have, I'm happy to address that.

By Ms. Neill: That's the problem in discovery. One side doesn't know what the other one has. And then you get bits and pieces, and we got that from Billy.⁴⁴

Mr. Gill's testimony reveals serious violations of the Rules of Civil Procedure by Garrard. Mr. Gill personally executed the contract and personally received the invoice from Billys Plumbing. The documents would have been maintained in the same file in which other documents had been pulled and produced to Carolina Cool. This indicates someone deliberately determined not to produce those documents. Furthermore, Mr. Countryman's interjection shows a complete misunderstanding of a party's responsibility in responding to discovery requests. Had not Carolina

⁴⁴ Deposition of Shawn Gill, April 17, 2019, p. 189- 191. Exhibit 28.

Cool subpoenaed Billys Plumbing and then followed up with motions to compel, key evidence in Garrard's possession would have never come to light.

3. Deposition of Pat Watson:

On May 8, 2019, Carolina Cool deposed Pat Watson who was the project manager for the shell portion of the project. He also testified regarding emails that should exist and notes he personally drafted. He further testified he had not been asked to find documents relevant to the project:

Ms. Neill: How did you stay in contact with Shawn Gill regarding this Myrtle Beach Dave and Buster's site?
Mr. Watson: We had several phone calls every day and e-mails back and forth a lot.
Ms. Neill: Would there be notes on the project from you after February 20th?
Mr. Watson: I would think so, but at some point in time I do quit taking them, when I see that I don't need to take them no more. I ain't gonna have no issues, I'm getting close to being done, then I'll quit taking them.
Ms. Neill: In February of 2017, you weren't close to being done though were you?
Mr. Watson: I should have still been making notes.
Ms. Neill: Have you been asked to find any notebooks or notes for this lawsuit?
Mr. Watson: No, ma'am.⁴⁵

4. Deposition of John Mulleady:

On May 15, 2019, Carolina Cool conducted the 30(b)(6) deposition of Dave & Buster's. Mr. John Mulleady testified regarding payments to Garrard for the interior portion of the project:

Ms. Neill: And did Dave & Buster's make the payments as requested from Garrard Construction?
Mr. Mulleady: Yes, I think we did. Doesn't show that we have anything withholding.
Ms. Neill: And how would the payments have been made?
Mr. Mulleady: Either check or wire. I don't know. They do it both -- accounting does it both ways.
Ms. Neill: And would the accounting department retain documentation of making those payments?
Mr. Mulleady: They should, yeah.
Ms. Neill: Would those documents be something that Dave & Buster's would retain in their file for this project?
Mr. Mulleady: They should.

⁴⁵ Deposition of Patrick Watson, May 8, 2019, p. 14, lines 20-24. Exhibit 29.

Ms. Neill: Do you know why those documents weren't produced to us?
Mr. Mulleady: No, I don't.
Ms. Neill: You think that is something that could be provided to us?
Mr. Mulleady: I guess.
Ms. Neill: Yes?
Mr. Mulleady: Yes.⁴⁶

D. Carolina Cool's Letter of August 22, 2019:

Several months passed after the depositions and Defendants did not produce the missing documentation discussed during the depositions. In a letter dated August 22, 2019,⁴⁷ counsel for Carolina Cool detailed all occurrences the witnesses testified regarding the existence of evidence that had not yet been produced:

In reviewing the deposition transcripts of the other witnesses for Defendant Garrard, the witnesses confirmed the existence of other relevant documents that I have not found in my review of documents produced thus far during discovery. Specifically, the witnesses confirmed the existence of the following:

- Documentation of payments from Dave & Buster's to Garrard Construction referenced by Mr. Mulleady on pages 68 & 69 of his deposition;
- Change orders for the interior contract referenced by Mr. Mulleady on pages 71 & 73 of his deposition;
- Work Orders with supporting documentation referenced by Mr. Mulleady on pages 75, 101 & 101 of his deposition;
- Emails referenced by Mr. Mulleady on pages 87, 88 & 92 of his deposition;
- Emails between Pat Watson and Shawn Gill referenced by Pat Watson on page 14 of his deposition;
- Pat Watson's complete notebook referenced by Pat Watson on pages 56-58 of his deposition;
- Pat Watson's emails with MH Brown referenced by Pat Watson on page 76 of his deposition;
- Pat Watson's progress reports for February 21, 2017 – March 24, 2017 referenced by Mr. Watson on page 100 of his deposition;
- Complete copy of the document marked as Exhibit 2 to Mr. Bromley's deposition discussed on page 155 of the deposition;
- Emails that Mr. Bromley may have as discussed on page 165 of his deposition;

⁴⁶ Deposition of John Mulleady, May 25, 2019, p. 68-69. Exhibit 30.

⁴⁷ Correspondence to Andrew Countryman dated August 22, 2019. Exhibit 31.

- The meeting agendas Mr. Bromley created as discussed on page 189 of his deposition;
- NSO calendar discussed by Mr. Gull in his deposition at page 118;
- The four schedules (Exhibit 14 to Mr. Gill's deposition) that you attempted to email to Mary Anna on April 17, 2019 which was not received as discussed on page 137 of Mr. Gill's deposition;
- All schedule updates for the project as discussed by Mr. Gill on pages 138-139;
- All documentation that Mr. Gill referenced in his deposition on pages 183 and 184 regarding Billys Plumbing – he testified there were documents printed and provided.

In as much as these documents have been previously requested in Plaintiff's Request for Production of Documents, please provide these documents no later than **September 6, 2019**. If you believe you already provided them, please let me know when those documents were produced and how they were Bates stamped.

After Garrard failed to respond the August 22, 2019 letter, Carolina Cool's counsel requested in a subsequent letter dated September 16, 2019 the documents be produced within ten days to avoid the necessity of a motion to compel.⁴⁸

E. Garrard's Document Dump of September 25, 2019:

In response to Carolina Cool's letters, on September 25, 2019, Garrard produced over four thousand documents. The letter from Garrard's counsel stated:

I enclose a disc with material labeled "Garrard 9.25.19 prod. 1-4,401." This is material from Garrard responsive to your August 22, 2019, letter and is a supplement to my clients' production in discovery.⁴⁹

In reviewing the documents on the enclosed disc, Carolina Cool discovered 4,201 pages on the disc, not 4,401.⁵⁰ The documents on the disc did not appear to be in any particular order and many were copies of documents previously produced in discovery but with different Bates stamp. For example, hundreds of pages of Daily Progress Reports were once again produced Bates

⁴⁸ Correspondence from Mark Neill dated September 16, 2019. Exhibit 32.

⁴⁹ Correspondence from Andrew Countryman dated September 25, 2019. Exhibit 33.

⁵⁰ Garrard 9.25.19 prod. 000001-004201. Exhibit 34.

stamped Garrard 9.25.19 prod. 002947---3295. These reports were not even requested in the August 22, 2019 letter. While the majority of reports had previously been produced, buried within were some newly produced reports found at Bates stamped Garrard 9.25.19 prod. 002967---002974 and 003094-003169. Counsel for Carolina Cool was required to spend many unnecessary hours digging through the thousands of documents in order to determine which were duplicates and which contained new information. The fact that the documents were not in chronological order added to the burden.

Shockingly, in the 4,201 documents produced, Garrard failed to produce all the specifically requested emails and subcontract documents Mr. Gill testified existed between Garrard and Billys Plumbing. Carolina Cool could only find three of them: an email from Scott Gasque on January 18, 2017, Bates stamped Garrard 9.25.19 prod. 004119; an email from Shawn Gill dated January 18, 2017, Bates stamped Garrard 9.25.19 prod. 004122; and an invoice from Billys Plumbing dated March 31, 2017 Bates stamped Garrard 9.25.19 prod. 004009. It is troubling Garrard produced the invoice and the two emails hidden in a document dump two years after Carolina Cool served its initial discovery. Garrard continued to fail to produce the January 23, 2017 subcontract with Billys Plumbing.

F. Discovery Responses of Billys Plumbing:

After Billys Plumbing became a party defendant, Carolina Cool served discovery requests. Interrogatory #8 asked Billys Plumbing to identify all contracts it entered into regarding the Dave & Buster's project. After not receiving any response, Carolina Cool filed a motion to compel on September 9, 2019 and a hearing was scheduled for October 15, 2019. The parties entered into a consent order prior to the hearing, which was filed October 16, 2019. Pursuant to the order, Billys

Plumbing provided a very different response than offered by Garrard during the two years of discovery:

8. Identify each and every contract you entered into regarding the Myrtle Beach Dave & Buster's project setting forth the following information:
 - a. The parties to the contract;
 - b. The date of the contract;
 - c. The work you were to perform;
 - d. The dates you performed the work;
 - e. The compensation you received for performing the work.

ANSWER:

1. Dave & Buster's Underground Contract – **Contract entered into between Billy's Plumbing Company and Garrard on January 23, 2017** to furnish labor and materials to correct and complete the underground plumbing portion of the Dave & Buster's project. The work was performed on a time and materials basis and the dates of said work are contained in the time cards previously provided by Defendant and described as Plaintiff's bates stamp documents "Billy's Plumbing 75-80." Defendant **Billy's Plumbing was compensated in an amount of \$23,237.22.**
2. Dave & Buster's Interior Subcontract – Contract entered into between Billy's Plumbing and Garrard Construction Company on February 1, 2017. Defendant Billy's Plumbing Company would direct Plaintiff's attention to the scope of work and scope of work breakdown included in the contract as well as its attachments as referenced in Defendant Garrard Construction Company bates stamp documents "Countryman 10-8-18 38-68." Dates of said work are contained in the time cards previously provided by Defendant to Plaintiff's Counsel on July 9, 2019. Defendant Billy's Plumbing was compensated in the amount of \$356,171.24.
3. Dave & Buster's Shell Subcontract – Contract entered into between Billy's Plumbing and Garrard Construction on March 16, 2017. Defendant Billy's Plumbing Company would direct Plaintiff's attention to the scope of work and scope of work breakdown included in the contract as well as its attachments as referenced in Defendant Garrard Construction Company bates stamp documents "Countryman 10-8-18 69-83. **Defendant Billy's Plumbing Company has no record of ever being compensated for work performed under this contract.** Said work would have been performed during the dates and times provided in the time cards previously provided by Defendant to Plaintiff's Counsel on July 9, 2019.⁵¹ (Emphasis added).

⁵¹ Billy's Plumbing Responses to Plaintiff's Interrogatories, dated October 18, 2019. Exhibit 35.

Billys Plumbing identified the January 23, 2017 subcontract as a separate agreement. In contrast, Garrard attempted to hide the contract and show the monies paid Billys Plumbing was for a change order to the Interior Subcontract subsequently executed. Carolina Cool was astonished to learn that no compensation had been paid by Garrard to Billys Plumbing pursuant to the Shell Subcontract, which certainly is a crucial factor in determining the validity of Garrard's counterclaim against Carolina Cool.

G. Carolina Cool's Motion for Sanctions:

As one could imagine, it took several days for Carolina Cool's counsel to review the materials in the document dump. After reviewing the information provided by Garrard and the newly produced information from Billys Plumbing, Carolina Cool filed its Motion for Sanctions on November 4, 2019.

H. Garrard Withdraws its Counterclaim for lost profits:

In its counterclaim and in its answers to interrogatories, Garrard claimed it was entitled to lost profits. This is one of the reasons Carolina Cool continuously requested information from Garrard regarding what it paid Billys Plumbing, what work Billys Plumbing performed, Garrard's requests for payment to Broadway and Dave & Buster's, and monies received from those requests. Even after delivering the document dump, Garrard failed to provide critical information regarding its alleged damages. By way of Supplemental Requests for Production, Carolina Cool requested financial statements, profit and lost statements, expense statements, and income statements regarding the project.⁵² Carolina Cool also noticed the Rule 30(b)(6) deposition of Garrard to inquire into these matters. In response, Garrard served Supplemental/Amended Answers to Interrogatories stating, "Garrard is not making a claim for lost profits and withdraws such a claim

⁵² Supplemental Requests for Production to Garrard dated November 4, 2019. Exhibit 36.

to the extent prior pleadings refer to one.”⁵³ In a letter dated November 29, 2019, Garrard’s counsel further stated:

Garrard is not claiming lost profits as a damage in this case. Therefore, topics regarding profits and the like have no bearing on the claims between the parties and are unlikely to lead to the discovery of admissible evidence. In fact, these topics are not necessary for this litigation at all.⁵⁴

Carolina Cool’s resulting frustration is understandable in that it had battled for two years to receive information regarding Garrard’s lost profits just to have Garrard claim the information was not relevant. Carolina Cool argued during the hearing, with merit, Garrard only withdrew its claim after it was forced to produce documentation showing it had no damages.

I. Hearing held December 18, 2019:

A lengthy hearing was held on December 18, 2019 to consider Carolina Cool’s Motion for Sanctions against Garrard for discovery violations. After hearing from counsel for Carolina Cool and Garrard, reviewing the record, and considering facts presented, the Court grants Carolina Cool’s Motion for the following reasons:

CONCLUSIONS OF LAW

For more than two years, Defendant Garrard obstructed the discovery process and prejudiced Carolina Cool’s ability to prepare for trial. The record shows three scheduling orders have been filed in this case. The first Scheduling Order, filed June 29, 2018, required discovery to be completed by October 19, 2018 with the case being up for trial in December 2018. Defendant Garrard consented to that Order knowing it had withheld critical evidence from the Plaintiff. An Amended Scheduling Order, filed December 11, 2018, had a discovery deadline of June 1, 2019.

⁵³ Supplemental/Amended Answers to Interrogatories dated November 18, 2019. Exhibit 37.

⁵⁴ Letter from Andrew Countryman dated November 29, 2019. Exhibit 38.

Defendant Garrard once again consented to the Order with knowledge it was continuing to holdback critical evidence from the Plaintiff. The third Scheduling Order, filed August 23, 2019, imposed a revised discovery deadline of December 20, 2019, with the case being up for trial in February 2020. Even after the document dump on September 25, 2019, Garrard continued in its failure to produce documents.

SCRCF Rule 37 (b) allows the Court to impose sanctions or order costs against a party or attorney whose conduct necessitated the motion. There must be a showing of intentional disobedience on the part of the sanctioned party. The rule “empowers the Court to impose a wide variety of sanctions. “In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice.” Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). A sanction which results in a default or dismissal is harsh punishment which should be imposed only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party. *See generally* Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

In Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), Mitchell failed to disclose the existence of a videotape in a personal injury case which the Court determined was relevant to the issue of damages. Mitchell had the videotape for over two years before disclosing its existence just days before trial. The Court discussed:

The entire thrust of the discovery rules involves full and fair disclosure, “to prevent a trial from becoming a guessing game or one of surprise for either party.” State Highway Dep’t v. Booker, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973) (*quoting* Hodge v. Myers, 255 S.C. 542, 545, 180 S.E.2d 203, 205 (1971)). Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). Unless

the party who has failed to submit to discovery can show lack of prejudice, reversal is required. Id. at 46, 362 S.E.2d at 319.

In the present case, Garrard acted in willful disobedience and in gross indifference to the rights of Carolina Cool. Even after being sanctioned by Order filed April 10, 2019 for failing to cooperate in the scheduling depositions of its own witnesses, Garrard continued to holdback documents responsive to Carolina Cool's discovery requests and relevant to the parties' claims and defenses. Garrard also violated the scheduling orders. Garrard's discovery responses were incomplete, and the manner in which documents were produced prejudiced the Plaintiff's ability to prepare for trial. As such, the Court finds the striking of Garrard's Counterclaim to be a reasonable and fair sanction. Furthermore, the Court finds it is reasonable and fair to require Garrard to pay Carolina Cool attorney fees and costs in the amount of \$9,301.54 for the time spent by its counsel to review Garrard's discovery responses and deposition testimony, to draft the August 22, 2019 letter, to review the 4,201 pages of documents produced by Garrard, to draft and file the motion for sanctions, and to prepare and attend the hearing.⁵⁵

IT IS SO ORDERED!

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit

Dated: January __, 2020
Conway, South Carolina

⁵⁵ Affidavit of Mark D. Neill. Exhibit 39.

EXHIBIT 1

Contract No. 16066

CONSTRUCTION CONTRACT
(Site Work and Vertical)

THIS CONTRACT INCLUDES A MANDATORY ARBITRATION PROVISION
PURSUANT TO SC CODE ANN. SECTION 15-48-10 ET SEQ.

This Construction Contract (the "Contract") is by and between Broadway at the Beach, Inc. ("Owner") and Garrard Construction Inc. ("Contractor") for the following Project: Dave & Buster's Shell Construction (the "Project").

1. **EFFECTIVE DATE.** The effective date of this Construction Contract ("Contract") between Owner and Contractor is the 1st day of September, 2016 (the "Effective Date").

2. **CONTRACT DOCUMENTS**

2.1. The "Contract Documents" consist of this Contract, any written amendments to the same, Change Orders, Construction Change Directives, performance and payment bonds (if required), and any notice to proceed.

2.2. The Contract Documents include the following Exhibits, which are incorporated herein:

Exhibit No.	Description
A	Scope of Work (may include sitework, vertical construction, or both)
B	Basis of Compensation and Payment Schedule
C	Drawings or Plan List
D	Specifications
E	Initial Progress Schedule
F	Schedule of Values
G	Application for Payment Form
H	Form of Interim Lien Waiver
I	Form of Final Lien Waiver
J	Change Order Form
K	Vendor/Contractor Insurance Requirements - Minimum
L	Field Order Form

2.3. This Contract, including the Exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, quotes, bids or tenders and will prevail over any subsequent purchase order confirmation or similar document issued by Owner unless expressly accepted and agreed to in writing by Contractor. This Contract may be executed in counterparts and by facsimile or electronic transmission.

2.4. Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project Site, become generally familiar with local conditions (including but not limited to physical conditions and

Page 1 of 20

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local labor conditions) under which the Work is to be performed and correlated personal observations with the requirements of the Contract Documents. Contractor acknowledges careful review and consideration of all Contract Documents prior to signature, including the Drawings (Exhibit C), the Specifications (Exhibit D), lines, grades, and conditions at the Project Site.

2.5. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of ambiguities within or between parts of the Contract Documents, the contractor shall 1) provide the better quality or greater quantity of Work, or 2) comply with the more stringent requirement, either or both in accordance with Designer's interpretation.

2.6. Contractor shall keep one (1) set of all drawings, plans, specifications, bulletins, instructions, and approved shop drawings readily available for construction purposes at the Project site.

2.7. If the Specifications conflict with the Drawings, Contractor shall request clarification from Owner.

2.8. Figured dimensions of the Drawings shall govern, except where dimensions depend upon the dimensions of a specified product, in which case the dimension of the product shall govern.

3. SCOPE OF WORK.

3.1. The "Work" shall mean everything expressly and implicitly required to be done, completed, performed or furnished by the Contractor under this Contract including, but not limited to, labor, materials, products, services, and equipment necessary to complete the Scope of Work. The Scope of Work is fully described in Exhibit A.

3.2. "Project Site" is the place or places under Owner's control where the Work is to be performed.

4. CONTRACT PRICE; PAYMENT AND COMPLETION

4.1. The "Contract Price" is the total amount to be paid by the Owner to the Contractor for the Work pursuant to the Contract. The Contract Price shall be a fixed price of \$4,994,912.00 payable as prescribed in Exhibit B for the design portion of the Project. The Contract Price for the Construction portion of the Project shall be established by Change Order in the event that the Owner approves the design and authorizes construction.

4.2. Based on Contractor's Applications for Payment, which shall be in the form attached as Exhibit G, Owner shall pay Contractor all undisputed amounts according to the Payment Schedule in Exhibit B, less ten percent (10%) retainage.

4.3. Each Application for Payment shall be based on the Schedule of Values. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

4.4. Contractor shall submit its Application for Payment on the twenty-fifth (25) day of the month. Within seventy-two (72) hours after receipt of Contractor's Application for Payment, Owner shall issue a certificate for payment for such amount as the Owner determines is properly due or notify Contractor in writing of Owner's reasons for withholding certification in whole or in part. Owner and Contractor shall work together in good faith to

resolve any such disputed payments. Within twenty (20) days after issuance of a certificate for payment, Owner shall make payment of all undisputed amounts directly to Contractor by check or bank wire transfer.

4.5. Contractor shall timely pay all vendors, suppliers, and subcontractors who have done work or furnished materials under this Contract. Contractor shall cause any and all liens filed against the Project to be removed immediately. Contractor shall indemnify Owner to the maximum extent allowed by law, against any and all claims or liens asserted against Owner by any party who has done work or furnished materials for the Project pursuant to this Contract and shall be liable to Owner for any attorney fees incurred by Owner as a result of such claims, subject, however, to Owner having paid all undisputed amount otherwise due to the Contractor for the Work performed and completed by Contractor through the date of any such claim or lien.

4.6. Each Application for Payment shall be accompanied by waivers and releases of lien forms signed by Contractor and Contractor's vendors, suppliers, and subcontractors for which reimbursement is sought as a part of the applied for progress payment. Contractor shall use the forms attached hereto as Exhibit H and Exhibit I.

4.7. Contractor shall pay all sales, use, and similar taxes for the Project and shall provide an affidavit of the Contractor stating that sales and use tax will be or has been paid in accordance with all governmental requirements.

4.8. *Payment at Substantial Completion.* Upon Substantial Completion, the Owner shall make payment to the Contractor of all amounts then due, plus the value of any Retainage held, less the value of any punch list items as provided herein. "Substantial Completion" shall mean the time at which construction has progressed to the point where the Work (or a specified part of it) is sufficiently complete, in accordance with the Contract Documents, so that it (or a specified part of it) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion.

4.9. *Final Acceptance and Payment.* The Owner shall make final payment to the Contractor, including the release of any Retainage held, within thirty (30) days of Final Acceptance. "Final Acceptance" shall mean the milestone upon which the Owner, Designer, and Contractor are in agreement that the Work is complete and, except for stated exceptions, no further Work is required, except for repairs or replacements as specified.

4.10. Owner certifies that it has funds available to pay the full amount of the Contract Price as of the execution of this Contract.

5. CONTRACT TIME(S)

5.1. The estimated date of commencement of the Project is October 3, 2016 for landscaping and October 10, 2016 for demolition, and the Contract Substantial Completion date is May 19, 2017, subject to adjustment by Change Order or as otherwise provided in the Contract Documents.

5.1.1. Contractor agrees that it shall commence CMU Installation no later than December 23, 2016, subject to any Class 1 or Class 2 causes (see Section 7.2.4.) or adverse weather days in excess of those contemplated by this contract (see Section 7.4.2.). Contractor acknowledges that Owner has contracted with the tenant for whom this project is being built to provide CMU Installation by a certain date on or about December 23, 2016 and that Owner will incur damages if this commencement of CMU Installation is not met. Therefore, Contractor shall be liable to Owner for liquidated damages (but not as a penalty) for \$2,500 per day for each day of delay in the commencement of CMU Installation beyond December 23, 2016, subject to any Class 1 or Class 2 causes (see Section 7.2.4.) or adverse weather days in excess of those contemplated by this contract (see Section 7.4.2.). Any liquidated damages for which Contractor is liable as a result of failing to begin CMU Installation by December 23, 2016 shall not affect or limit any liquidated damages provided for in section 5.3.

5.2. All time limits for interim completion dates, if any, Substantial Completion, and completion and readiness for Final Acceptance are of the essence of the Contract.

5.3. Contractor and Owner recognize that time is of the essence of this Contract and that Owner will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that, if Contractor fails to substantially complete the Work in accordance with the project's schedule, Contractor shall be liable, as liquidated damages (but not as a penalty), for the following amounts: (a) for the first seven (7) days, no liquidated damages; b) for any day of delay thereafter, \$2,500.00 per day. All amounts owed to Owner under this Section 5.3 shall be deducted by Owner from any amount otherwise due to Contractor or, if deductions are not sufficient to compensate Owner fully, the applicable liquidated damages shall be paid to Owner by Contractor upon written demand. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$2,500.00 for each day that expires after the time specified in Section 5.1 for completion and readiness for final payment until the Work is completed and ready for final payment.

6. PROGRESS SCHEDULE AND REPORTING

6.1. The Contractor, promptly after being awarded the Contract, shall prepare and submit to the Owner a "Progress Schedule" for the Work. The Progress Schedule shall not exceed time limits imposed by the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the work and Project, and shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the Work. The initial Progress Schedule is attached hereto as Exhibit E.

6.2. If submittals are required by the Designer, Contractor shall prepare a submittal schedule promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall provide the same to the Owner for approval. The Owner's approval shall not be delayed or withheld unreasonably. The submittal schedule shall (1) be coordinated with the Progress Schedule, and (2) allow the Owner reasonable time to review submittals. If the Contractor fails to provide a submittal schedule, the Contractor shall not be entitled to any increase in Contract Price or extension of Contract Time based on the time required for review of submittals.

6.3. The Progress Schedule shall be in bar chart or critical path management format satisfactory to the Owner that shall also (1) provide a graphic representation of all activities and events that will occur during performance of the work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

6.4. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Progress Schedule and shall promptly advise the Owner of any delays or potential delays. Whenever the approved Progress Schedule no longer reflects actual conditions and progress of the Work or the Contract Times are modified in accordance with the terms of the Contract Documents, the Contractor shall update the Progress Schedule to reflect such conditions. Weekly progress reports, including but not limited to, daily field reports,

requests for Change Orders, Change Orders, schedule updates and other pertinent Project-related information must be submitted. This progress report shall be submitted in the format approved by the Owner.

6.5. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary.

7. DELAYS AND EXTENSIONS OF TIME

7.1. Contractor is not entitled to an extension of time, compensation of any nature, costs, or damages, if the Contractor is delayed by any event or risk which was within the scope of the Contractor's contractual responsibility to foresee, estimate, control, plan for, contract for, and manage in order to accomplish the Work required by the Contract Documents. The bases for any extension of time shall be determined by the Progress Schedule.

7.2. A basis may exist for an extension of time if:

7.2.1 The Contractor is delayed in performing the Work, but solely to the extent that delays are caused by events that are beyond the control and/or contractual responsibility of the Contractor, its subcontractors, sub-subcontractors, and suppliers at every tier;

7.2.2 Delays directly impact the Contractor's ability to achieve completion of the Work in accordance with the Contract Time requirements established by the Contract Documents, as amended by executed Change Order.

7.2.3 Delays cannot be made up by reasonable efforts which do not increase the cost of the Work; and

7.2.4 Delays stem from the following causes:

- (1) Class 1 causes: (i) an act or failure to act on the part of the Owner, any consultant or employee of the Owner, or of Other Contractors employed by the Owner that is a breach of this Contract; or (ii) an injunction against Owner or Owner's Representatives;
- (2) Class 2 causes: A Class 2 cause of delay is any other cause of delay not the responsibility of either the Owner or the Contractor, as defined herein. Such causes, include, but are not limited to, acts of God; riots; civil commotions; acts of War; unavoidable casualties to the Work in progress, except where Insurance pays the cost of overcoming resulting delays or an adjustment in Contract Price that eliminates the need for an extension of time; epidemics; quarantine restrictions; organized labor disputes; freight embargoes; abnormal labor and material shortages not customarily encountered or caused by events not reasonable foreseeable; or other cause traditionally defined as "force majeure."

7.3. If the basis exists for an extension of time and the Contractor has timely submitted a written claim documenting the basis for such extension, the Owner may exercise one of the following options:

7.3.1. For Class 1 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and grant a corresponding adjustment in the Contract Price. The Contract Price will be adjusted only to the extent of those necessary and reasonable Project Site costs made necessary as a consequence of the delay;

7.3.2. For Class 2 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and there will be no corresponding adjustment in the Contract Price. The Contractor's sole recourse will be entitlement to a time extension.

7.3.3. The Owner may order the Contractor to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays; provided, however, if Contractor, after employing commercially reasonable efforts, is unable to work on an accelerated basis, it shall advise Owner in writing (which includes the bases for its inability to accelerate and the commercially reasonable efforts taken by Contractor to accelerate) and such failure to accelerate shall not be a default by Contractor hereunder but shall not excuse the Contractor from the imposition and payment of Liquidated Damages if Contractor fails to achieve Substantial Completion with the Contract Time as described in Article 5. If Contractor is able to accelerate construction activity, the Owner shall then adjust the Contract Price to compensate the Contractor for such directed acceleration. The Contractor's direct costs used in determining such adjustment to the Contract Price are limited to properly substantiated and documented premium or overtime labor costs or other costs necessary to accomplish such acceleration; or

7.3.4. The Owner may employ a combination of the above remedies.

7.4. *Adverse Weather.*

7.4.1. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled Work.

7.4.2. Three (3) Calendar days per month are allowed for adverse weather conditions. Any days beyond these three (3) days will result in an extension in the contract time as well as compensation for General Conditions cost not to exceed \$1,211 per day. Adverse weather conditions are defined as precipitation, lightning, temperature or winds that prevent critical path progression to be completed in a safe and quality manner. Adverse weather days shall be noted on daily reports and shall be agreed upon by the Contractor and the Owner within 48 hours of the adverse occurrence. If not noted and agreed by the Contractor and Owner within 48 hours, there shall be no extension based on such adverse weather day. Evidence sufficient for the Owner to make a determination shall be required that work was scheduled to occur on an Adverse Weather Day for it to apply.

7.4.3. Extensions of Contract Time due to unusual adverse weather conditions shall not entitle the Contractor to claims for cost due to extended project overhead, damages, or additional compensation as a consequence of such delay except as provided in section 7.4.2.

7.5. Extensions of time associated with a Change Order that adjusts the Scope of Work or Cost of the Work shall be noticed and resolved as a part of and contemporaneously with the procedures of Section 12. A Change Order shall be a final adjudication of all time impact costs associated with such Change Order.

7.6. The Contractor is not entitled to a separate extension of the Contract Time for each one of the causes of delay that may have concurrent or interrelated effects on the progress of the Work. Concurrent causes of delay shall be considered a single delay. Furthermore, the Contractor is not entitled to an extension of time for concurrent delays that include delays due to the fault of the Contractor that, regardless of the delay caused by the Owner, increase the duration of the Work.

7.7. The Contractor shall not be entitled to any additional compensation for its inability to complete the Work early (or prior to the date of Substantial Completion set forth in the Contract) due to a Class 1 or Class 2 cause, as enumerated above.

7.8. No claims for extensions of time will be considered for delays caused by conditions existing at the time bids or proposals were received and of which the Contractor should have reasonably been expected to have knowledge.

8. PERFORMANCE OF THE WORK

8.1. *Party Representatives.* "Representative" shall mean the person authorized in writing from time to time by the Contractor or the Owner, as the case may be, to carry out or exercise, as agent, the duties, responsibilities or rights of the Contractor or Owner on the Project, as set forth more particularly herein.

8.2. *Compliance with Laws:*

8.2.1. *Permits and Licenses.* Contractor shall be properly licensed to perform all Work and shall be properly registered to conduct business in the state in which the Project is located. Contractor, at its sole cost and expense, will obtain all necessary permits and licenses and will give all necessary notices prior to commencement of the Work, unless Owner agrees otherwise in writing.

8.2.2. *Compliance with Governmental Requirements.* In performing the Work, Contractor Group (as hereinafter defined) will comply with all local, state and federal laws, codes, rules, ordinances, regulations, requirements, orders, standards and permits (herein collectively referred to as "Governmental Requirements") including, without limitation, the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986, the Immigration and Naturalization Reform Act, and the safety and health rules and regulations established by or pursuant to the Occupational Safety and Health Act of 1970, all as amended from time to time.

8.2.3. *Compliance with Storm Water Discharge Laws and Plan.* Contractor acknowledges that the discharge of storm water from certain construction sites is governed by the Governmental Requirements. Owner will obtain necessary authorizations to discharge storm water and develop a plan (the "Storm Water Discharge Plan") in accordance with the Governmental Requirements. Contractor agrees, without limitation of its general obligations under Section 8.1.2, as follows:

- a. Prior to commencing the Work, Contractor will review the Storm Water Discharge Plan and familiarize Contractor Group with those parts of the Storm Water Discharge Plan that apply to its activities.
- b. Contractor Group will comply with the Storm Water Discharge Plan and all Governmental Requirements related to storm water discharges applicable to its activities.
- c. Contractor Group will cooperate with Owner, all Separate Contractors and consultants of Owner, and all regulatory agencies having jurisdiction over the Project in complying with the Storm Water Discharge Plan including, but not limited to, executing any documents required by the Governmental Requirements related to storm water discharges, participating in training and compliance review programs, and undertaking inspections and monitoring as requested by Owner.

- d. Contractor Group will handle construction chemicals and construction debris in accordance with requirements of the Storm Water Discharge Plan.
- e. Contractor Group will avoid damaging erosion or sediment controls installed by or on behalf of Owner, will immediately bring to the attention of Owner any damage that Contractor Group may do to such erosion or sediment controls, and will be responsible for the reasonable costs of repairing any erosion or sediment controls that Contractor Group may damage.

8.2.4. *Compliance with Immigration Reform and Control Act ("IRCA").* Contractor agrees that it will not assign any of its employees to the Project prior to Contractor completing the employment eligibility verification process as required by IRCA and verifying that the employee is lawfully eligible to work in the United States. Contractor further agrees that it will retain Form I-9 Employment Eligibility Verification relating to any employee currently or previously assigned to the Project for the period mandated by applicable law. To the extent Contractor engages subcontractors, Contractor agrees to require each subcontractor to verify that any worker, whether an employee or an independent contractor, assigned to the Project by the subcontractor, is lawfully eligible to work in the United States.

8.2.5. *Contractor Group.* The term "Contractor Group" includes Contractor, Subcontractors, their employees or agents, or any of their sub-subcontractors, employees or agents. Contractor will be responsible for all obligations of the Contractor Group.

8.3. *Contractor's Supervision.*

8.3.1. Contractor's Representative shall represent Contractor in all matters pertaining to this Contract and instructions given to him shall be held as given to Contractor. Contractor's Representative must be thoroughly familiar with Contract Documents.

8.3.2. Contractor shall station a competent superintendent, supervisor, and other necessary assistants on the Project Site, all as satisfactory to Owner. The original superintendent assigned to the Work shall not be replaced or substituted permanently or on a temporary basis by another without written notice of the same to Owner.

8.3.3. Contractor specifically agrees to provide additional supervisory personnel at the Project Site if and when the Owner deems it necessary.

8.3.4. Contractor shall, at all times, be responsible for the conduct and discipline of Contractor's employees, subcontractors or persons employed by subcontractors. All workers must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any supervisor or worker employed by Contractor or any subcontractor who, in the opinion of Owner, does not perform his/her work or supervision in a skillful manner or appears to be incompetent or to act in a disorderly or intemperate manner or with disregard for Owner's rules, procedures or policies shall, at the written request of Owner or Designer, be removed from the Project Site immediately and shall not be employed again in any portion of the work without the written approval of Owner or Designer. This clause is not intended to conflict with established collective bargaining agreements, nor is it designed to influence Contractor's control over hiring or firing of its personnel.

8.4. *Materials.* Unless otherwise agreed to by Owner, all materials shall be new, of best quality, and of uniform pattern. Unless otherwise agreed to by Owner, the chemical and physical properties of all materials shall comply with the requirements of the Scope of Work.

8.5. *Codes and Standards.* All codes, Specifications (Exhibit D), standards, manuals, and installation, application, and maintenance instructions referred to in the Contract Documents shall be the latest published editions at the date of submission of Contractor's proposal.

8.6. *Measurements and Drawings.* Contractor shall be responsible for the correctness of Contractor's figures and shall satisfactorily correct, without extra charge to Owner, any of Contractor's Work which does not fit, furnishing additional work at no charge, if required for that purpose.

8.7. *Record Drawings.*

8.7.1. Designer shall provide Contractor with "certified/issued for construction" Drawings in hard format which shall be considered the Drawings of record. While e-mailed copies of the originals are encouraged to facilitate the design process, Designer will rely solely on Drawings of record for design purposes and must have hard copies prior to providing "certified / issued for construction" Drawings. Copies of the Drawings or a list of the Drawings are attached hereto as Exhibit C.

8.7.2. Electronic Drawings transmitted by e-mail or other methodology: (a) are encouraged to facilitate the design process; (b) will be accepted for information and approval purposes only; (c) shall be submitted with only one (1) Drawing per AutoCAD (.dwg) file; zip files will be accepted and are preferred; (d) shall be accompanied by the respective plotting set-ups; and (e) shall not be accepted as the Drawings of record.

8.7.3. As the Work progresses, the Contractor shall record on one (1) set of the Drawings, all changes and deviations from the Drawings in locations, elevations and grades of pile centers, foundations, walls, footings, pedestals, piers and other salient features, including conduits, cable runs, sewers, drainage lines, manholes and all other service and drainage systems with their appurtenances, both inside and outside the building, which are to be buried or otherwise concealed from view. Contractor shall record with accuracy the final locations, elevations and sizes of the aforementioned by off-set distances in feet and inches to permanent, visible reference features such as foundations of buildings, column lines, etc. At the completion of the Work, or such parts of the Work, Contractor shall deliver these mark-up prints to the Owner.

8.8. *Obligation to Maintain Project Site.* Contractor shall, at all times, maintain the Project Site in a clean and orderly fashion. Prior to Final Acceptance, the construction area shall be cleaned up to the satisfaction of Owner and all scrap and excess materials removed by Contractor from the Project Site. Trash bins are to be furnished by and disposed of by Contractor.

8.9. *Safety and Accident Prevention.*

8.9.1. Precautions shall be taken at all times for the protection of persons (including employees) and property, and hazardous conditions shall be guarded against and eliminated. Contractor is solely responsible for the enforcement of safety with respect to the Work and the area and manner in which it is performed.

8.9.2. *Compliance with OSHA Regulations.* Contractor acknowledges that the OSHA Hazard Communication Standard promulgated pursuant to the Occupational Safety and Health Act of 1970, as amended, and any and all state laws related to occupational health and safety (collectively the "OSHA Regulations") require, among other things, all contractors and subcontractors to exchange Safety Data Sheets and share information about precautionary measures necessary to protect all workers on the project. In this regard, Contractor specifically agrees, without limitation of its general obligation under this Section 8, as follows:

- a. Contractor Group will fully comply with the OSHA Regulations and will cooperate with Owner and all Separate Contractors of Owner in order to assure compliance with OSHA

Regulations.

- b. Contractor accepts full responsibility and liability for the training of Contractor Group's employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Project. Contractor will make available for Owner's review all records and logs indicating such training was administered by Contractor to its employees.
- c. Contractor Group will assist Owner in complying with OSHA Regulations and will cooperate with any investigation of the Project.
- d. Before Contractor Group uses any chemicals in its performance of the Work for Owner or incorporates any chemicals into materials or products supplied to Owner or to the Project, Contractor must give Owner prior written notice of the existence and the possible exposure to such chemicals and deliver a Safety Data Sheet to Owner and maintain copies at Project Site.

8.10. *Environmental.* Contractor is responsible for immediate notification to Owner of any spill or discharge of oil or other regulated substances or chemicals discovered at the Project Site.

8.11. *Owner as Third-Party Beneficiary.* In subcontracting for any part of the Work, the Contractor shall ensure that the subcontractor shall expressly agree to be bound by all of the terms of this Contract. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract. Contractor shall ensure that the Owner is named as an intended third-party beneficiary of such subcontracts.

9. OWNER'S PROJECT ADMINISTRATION

9.1. *Owner's Representative.* Administration of the Contract will be provided by the Owner's project manager, who shall be the Owner's Representative.

9.2. *Designer.* The Designer is that professional engineer, architect, or firm of professional engineers or architects, designated by Owner to prepare the design for the Project and perform supervisory or other work on the Project. Duties, rights, and responsibilities between the Owner and Designer are governed by the contract between Owner and Designer.

9.3. *Separate Contractors.* Owner reserves the right to let separate contracts in connection with undertaking the Work in general (the "Separate Contractors"), and Contractor shall properly coordinate Contractor's work with that of the Separate Contractors. If any part of Contractor's work depends, for its proper execution or result, upon the work of a Separate Contractor, Contractor shall report promptly to Designer any defects in the work of such Separate Contractor that may interfere with the proper execution of Contractor's work.

10. INSPECTION AND TESTING

10.1. If the Contract Documents, laws, ordinances, or any public authority requires any Work to be tested or approved, Contractor shall give Owner timely notice that the Work is ready for inspection and if the inspection is by an authority other than Owner, notice of the date fixed for such inspection. Inspections by Owner will be promptly made.

10.2. Owner's inspection is to assure Owner that the Work is generally being carried out in conformity with the Contract Documents. It is not intended that Owner will inspect in such a way as to relieve Contractor from responsibility for properly carrying out the work and/or completing the work without defects in workmanship.

10.3. *Reinspection.*

10.3.1. If, at any time or times while the Work is in progress or during the guarantee period following the issuance of the Certificate of Final Acceptance, the Owner has any doubts as to whether the Work is in accordance with the Contract, the Contractor shall permit any requested inspections, reinspections or samplings.

10.3.2. Should an inspection or reinspection reveal that the Work or any part thereof is not in accordance with the Contract or that it is necessary to repair or modify part of the Work, the Contractor will bear the expense of the inspection or reinspection, and of the repair or modification of the Work, and of restoration, all to the satisfaction of the Owner.

10.4. *Punch List.* Upon Substantial Completion, the Contractor shall immediately prepare a punch list of items to be completed for Final Acceptance. Owner will then supplement the punch list with its items to be completed for Final Acceptance and any items identified by the Designer. Owner shall be entitled to withhold 200% of the estimated value of the punch list until Final Payment.

11. DEFECTIVE WORK

11.1. Contractor shall promptly remove from the Project Site or re-execute, as required by Owner, any defective work and replace materials, which have been determined by Owner as failing to conform to the Contract Documents. Defective work, whenever found at any time prior to the Final Acceptance of the work, will be rejected regardless of previous inspection.

11.2. Contractor shall promptly replace and re-execute such defective work, without expense to Owner, and shall bear the expense of making good all work damaged by such defective work or its removal or replacement.

11.3. If Owner determines that it is not expedient to correct or remove work not completed in accordance with the Contract Documents, Owner may deduct from the Contract price the difference in value between the Work as completed and that called for by the Contract, the amount of which shall be mutually determined by Owner and Contractor.

11.4. *Cutting, Patching and Fitting.* Contractor shall not endanger any existing work by cutting, digging or otherwise, and shall not cut or alter the work of any Separate Contractor, without consent of Owner.

11.5. *Owner's Right to Perform the Work.* If Contractor neglects to perform the Work properly or in accordance with the Contract Documents, Owner, after five (5) days' written notice to Contractor, may, without prejudice to any other right or remedy Owner may have, make good any deficiencies and/or perform any incomplete or undone Work, and Contractor shall pay and reimburse Owner for all direct expenses and costs incurred by Owner in connection with such actions.

12. CHANGES

12.1. A "Change Order" is a written instrument signed by the Owner's appropriate and authorized representative and Contractor, stating their agreement upon the change in the Work, the amount of adjustment, if any, in the Contract Price, and the extent of time adjustment, if any, in the Contract Times. Change Orders shall be

in the form attached to this Agreement as Exhibit J. Contractor acknowledges that the amount of the Change Order shall determine which representative of the Owner must sign the Change Order.

12.2. "Construction Change Directive" shall mean a written order instructing the Contractor to proceed with the alteration, variation, deviation or supplemental Work and shall indicate on the Construction Change Directive how payment for the additional Work will be computed. Either execution of the Construction Change Directive by the Contractor or performance of the Work by the Contractor following receipt of the Construction Change Directive shall constitute the Contractor's agreement with the Construction Change Directive, including the manner of computation for payment. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time. After the completion of the work provided for in the Construction Change Directive and agreement on the computation of payment, the parties shall enter a Change Order for this work.

12.3. A "Field Order" is a verbal order to the Contractor issued by the Owner not resulting in a change to the Contract Price or the Contract Time. Such Field Work Order shall be confirmed by use of the Field Work Order form attached as Exhibit L.

12.4. After execution of the Contract, changes in the Work may only be accomplished by Change Order, Construction Change Directive or Field Order, without invalidating the Contract. All written changes shall be considered Contract Documents.

12.5. Notwithstanding anything in this Section 12 to the contrary, the parties hereto acknowledge and agree that any Construction Change Directive and/or Field Order not due to the fault, error, or omission of the Contractor that results in an increase in the time to complete the Work within the Contract Time or that impacts the critical path of Contractor's Work shall result in an adjustment to the Contract Time, which shall be documented by Change Order.

13. WARRANTIES

13.1. The Contractor warrants that all work, materials and equipment provided hereunder shall be (a) of good quality and new (unless otherwise specified); (b) as described in the specification; (c) of uniform quality, free from faults and defects in materials and of manufacture and construction; and (d) in accordance with the Contract Documents for a period of not less than one (1) calendar year from the date of Substantial Completion.

13.2. The Contractor includes in this warranty materials or equipment specified by the Owner or Designer by brand name or as a sole source. Contractor shall not be obligated under this warranty past the period of time granted by a manufacturer's warranty with respect to any manufactured item constituting a part of the Work by Contractor. The warranty required by the Contract Documents or otherwise prescribed by law and shall be in addition to all other rights and remedies available to the Owner pursuant to the Contract Documents and applicable law.

13.3. With respect to any other aspect of the Work, the Contractor will assign to the Owner any warranty or warranties that it obtains from any subcontractor or other entity providing labor, material or services to the Contractor. Warranties furnished shall be in addition to and cumulative of all warranties, express or implied, provided by the Contract. Contractor shall bear the cost of correcting any destroyed or damaged construction caused by Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents, but not limited to any of the warranties furnished by the Contractor.

14. INDEMNITY AND CONSEQUENTIAL DAMAGES

14.1 The Contractor shall indemnify, defend and hold harmless the Owner (including its officers, directors and agents), Owner's lender(s), their officers, directors and agents, from and against any and all damages, injury, liability, loss or compensation, including attorneys' fees, consequential damages, losses and expenses and any other costs, charges or expenses which it or they may suffer or incur, and shall defend and hold them harmless from and against any and all claims, demands and actions, including legal fees threatened or brought against them associated with arising out of or resulting from the performance of the Work or material used, to the extent that any such damage, injury, liability, loss, expense, claim, demand or action, as the case may be, is caused in whole or in part by any negligent act or omission of the Contractor, its subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is also caused in part by a party indemnified hereunder. Without limiting the generality of the foregoing, the Contractor's obligations hereunder shall extend to damages, losses, expenses, claims, demands and actions attributable to personal injury, sickness, disease or death of a person, to injury, loss, theft, damage or destruction to or of property, loss of use of property, and hindering, impeding or injuring the operation of the Owner's Project Site or any part thereof.

14.2 In any and all claims against the Owner or the Designer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and except as provided in Section 14.4 hereinafter, the indemnification obligation under this Section 14 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

14.3. The obligations of the Contractor under this Section 14 shall not extend to the liability of the Designer, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Designer, its agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

14.4. Notwithstanding anything herein to the contrary, Owner's sole remedy against Contractor for any damage suffered by Owner (including its officers, directors, and agents) and/or Owner's lender (their officers, directors, and agents) arising out of a delay in completion of the Work, shall be exclusively determined according to Section 5.3.

14.5. Contractor's liability to Owner (including its officers, directors, and agents) and Owner's lender(s) (their officers, directors, and agents) for consequential damages shall be limited to a maximum of Four Million Dollars (\$4,000,000.00). This cap on consequential damages shall not be a cap on the liability of Contractor for any other damages that may be suffered by Contractor, including specifically the costs of any repair or response resulting from defects in the Contractor's Work or deviations from the contract documents or any indemnity obligations.

15. INSURANCE AND BONDS

15.1 *Insurance Coverage and Limits.* Prior to commencement of the Work, Contractor shall obtain and maintain at its own expense insurance in accordance with its classification of risk as General Contractor and in the minimum limits set forth in Exhibit K with all terms and conditions set forth on Exhibit K being incorporated herein by this reference.

15.2. *Additional Insured.* All policies, with the exception of Workers Compensation, shall be endorsed to name the Owner, Designer, Owner's lender, if any, as additional insured(s) on a primary and non-contributory basis. The additional insured clause shall be ISO Additional Insured Endorsement CG 20 10 11 85 or a substitute providing equivalent coverage under the general liability and umbrella program and approved by the Owner.

15.3. *Acceptability and Evidence of Insurance.*

15.3.1. All insurance required to be maintained by Contractor hereunder shall be provided by an insurance policy or policies (or the renewal or replacement thereof) acceptable to Owner and issued by an insurance company qualified to do business in the State where the Project is located and holding a current Best's rating of A-9 or better. Should Contractor change insurance carriers during such term, Contractor shall provide continuous and uninterrupted coverage as herein provided and shall, without demand, provide Owner with proof of same.

15.3.2. In addition, Contractor shall require that any subcontractor, vendor or other person engaged by Contractor to participate in the performance of the Work shall obtain insurance with minimum limits equivalent to their classification set forth on Exhibit K.

15.3.3. Contractor shall provide proof of insurance by submitting certificates together with applicable endorsements of all required insurance to the Owner prior to the commencement of Work. Certificates of insurance shall provide that the coverage therein afforded shall not be canceled or reduced by the insured except by written notice to Owner given at least thirty (30) days prior to the effective date of such cancellation or reduction. If the coverage evidenced by such certificate is canceled or reduced, Contractor shall procure and furnish to Owner before the effective date of such cancellation or reduction new certificates evidencing insurance which conforms to the above requirements.

15.3.4. If, at any time, Contractor fails to maintain the insurance Contractor is required to maintain pursuant to this Contract or to provide Owner with evidence of such insurance as herein above provided, Owner may, but shall not be obligated to, take out and maintain such insurance in which event Owner may deduct the cost of such insurance from any amounts due and payable to Contractor hereunder.

15.3.5. A waiver of subrogation clause will be included in all policies in favor of the Owner, to the extent applicable to the particular insurance coverage.

15.4. *Payment and Performance Bonds.* The Owner shall have the right to require the Contractor and/or its subcontractors to furnish bonds in such form and amounts as the Owner may consider adequate and with such surety as the Owner may approve, which shall guarantee the faithful performance of the provisions of the Contract and the payment of Contractor's creditors. To the extent the Owner requires a bond to be furnished pursuant to this Section 15.4, then the Contract Price shall be increased by Change Order to cover the cost of any such bond.

15.5. *Property Insurance.*

15.5.1. Contractor shall secure, pay for and maintain whatever property insurance he may deem necessary for protection against loss of owned or rented capital equipment, facilities and tools, including any tools owned by mechanics and any tools, equipment scaffolds, bracings, stagings, towers, forms and similar items owned or rented by him or his subcontractors. Owner, Designer and other consultants shall have no liability with respect to such equipment facilities and tools. The requirement to secure and maintain the above insurance is solely for the benefit of Contractor. Failure of Contractor to secure such insurance or to maintain

adequate levels of coverage shall not obligate Owner, Designer or their agents or employees for any losses of owned or rented equipment.

15.5.2. Owner will provide All-Risk Property (Builders Risk) Insurance for the full value of the Work and will absorb deductible losses not covered by such insurance, without, however, waiving its right to proceed against any negligent party. The property policy will list as and insured, the Owner, and as additional insureds, the Contractor, and any subcontractors, as their interests may appear. The policy will cover wind and flood and will also cover all materials and supplies intended to become a permanent part of the Work while on or about the Project Site, or while in off-site storage at such locations or in transit in the Project Site.

15.5.3. Any loss insured under Subsection 15.5.2 is to be adjusted by the Owner and made payable to the Owner of Subsection 15.5.4. The Contractor shall pay each subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his sub-contractors in similar manner.

15.5.4. The Owner shall have power to adjust and settle any loss with the insurers.

15.5.5. The Owner and Contractor waive all rights against each other and the subcontractors, sub-subcontractors, agents and employees each of the other for all damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Section 15.5 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner.

16. TERMINATION

16.1 Termination by Owner for Default:

16.1.1 The occurrence of any one or more of the following events will justify termination for cause:

- a. Contractor's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to correctly prepare, manage, and adhere to the Progress Schedule);
- b. Contractor's disregard of laws or regulations of any public body having jurisdiction;
- c. Contractor's violation in any substantial way of any provisions of the Contract Documents.

16.1.2 If one or more of the events identified in Section 16.1.1 occur, Owner may, after giving Contractor five (5) days' written notice of its intent to terminate the services of Contractor and an opportunity to cure, exclude Contractor from the Project Site, take possession of the Work, and complete the Work as Owner may deem expedient.

16.1.3 If Owner proceeds as provided in this Section 16.1, Contractor shall not be entitled to receive any further payment until the Work is completed. The Contractor shall be liable to the Owner for any excess in the price of a new contract executed by the Owner for the purpose of completing the Work, over and above the Contract Price. In addition, the Contractor shall be liable to the Owner for any and all damages which the Owner shall suffer because of delay in or interruption of the Work in progress or because of the termination of the Contract.

16.1.4 If the Owner takes over the Work, it is specifically agreed that the Owner may take possession either in whole or in part of the Project Site and of all materials, tools, and equipment of the Contractor at the Project Site for the purpose of completing the Work, and the Contractor shall not be entitled to receive any further payments until the Work is completed and finally accepted. Upon completion and Final Acceptance of the Work, the Owner will determine the total of the expenses incurred or accrued in completing the Work, including without limitation, additional overhead and legal fees incurred or accrued by the Owner to effect such takeover and to complete the Work and any other losses or damages suffered by the Owner. If the balance of the Contract Price unpaid at the time the Work is taken over exceeds such total expenses, losses and damages, the amount of such excess shall be paid to the Contractor as its final payment in accordance with the Special Conditions. If the total of such expenses, losses and damages exceeds the balance of the Contract Price unpaid at the time the Work is taken over, the Contractor shall pay to the Owner within ten (10) days after receipt of an invoice therefor the amount of such excess. The Contractor shall also pay all expenses, costs and attorneys' fees reasonably incurred by the Owner in recovering such excess from the Contractor.

16.1.5 The Owner may not terminate this Contract for default if Contractor begins within five (5) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within thirty (30) days of receipt of said notice.

16.2. Termination by Owner for Convenience.

16.2.1 The Owner may, at its sole option and without cause, terminate this Contract in whole or in part at any time for Owner's convenience and without cause by five (5) days' written notice thereof to the Contractor, even though the Contractor is not in default under the Contract.

16.2.2 Upon termination for convenience, the Owner shall pay the Contractor for all the Work properly done by the Contractor together with reasonable costs resulting directly from such termination and not previously paid for, including a reasonable allowance for the Contractor's profit for the Work actually performed (but not for any anticipated profit on unexecuted Work or for costs that were not actually incurred and which the Owner is not legally obligated to pay).

16.2.3 Upon written notice from Owner of such termination for Owner's convenience, Contractor shall immediately:

- a. Cease operations as directed by Owner in the notice;
- b. Take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- c. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

16.2.4 In case of such termination for Owner's convenience, Contractor shall act in good faith to mitigate its losses and damages; nevertheless, Contractor shall be entitled to recover the following from Owner:

- a. Payment for all Work executed up to the time of termination;
- b. All costs already incurred in preparation for performance of the terminated portion of the Contract, including purchased materials and supplies, plus 5% profit on such costs;

- c. All costs already incurred in storage, transportation, protection and disposition of property acquired or produced for the Contract, plus 5% profit on such costs;
- d. All direct costs for termination activities incurred by Contractor, including Contractor's actual costs of demobilization, plus 5% profit on such costs; and

16.3 Termination by Contractor for Default.

16.3.1 The Contractor shall be entitled to stop the Work or terminate the Contract by notice in writing to the Owner only under the following circumstances:

- a. Without prior notice if the Work should be stopped permanently, or for a period of three (3) months, under an order of any court or other public authority of competent jurisdiction through no act or fault of the Contractor or of anyone employed by it; or
- b. Five (5) days after giving notice to the Owner, should the Owner fail to make payment on the Contractor's Applications for Payment, unless within such five (5) days the Owner pays the undisputed amount due.

16.3.2 After termination of the Contract pursuant to this Section 16.3, the Contractor shall be entitled to recover from the Owner payment for all of the Work executed with a reasonable allowance for profit, and for any proved loss sustained upon any equipment, materials, tools, construction equipment and machinery, but not for any anticipated profit on unexecuted Work or for costs which were not incurred and which the Contractor is not legally obligated to pay.

17. **CLAIMS.** "Claim" shall mean a demand or assertion by the Contractor 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. Claims shall be made within twenty-one (21) days after occurrence of the event giving rise to the Claim or within twenty-one (21) days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Owner. The responsibility to substantiate a Claim shall rest with the party making the Claim. Except as provided to the contrary in the Contract or agreed to in writing, both parties shall proceed diligently with performance of the Contract pending final resolution of a claim.

18. DISPUTE RESOLUTION

18.1 **Mediation.** Any dispute between the parties or Claim arising out of or related to this Contract shall be subject to mediation as a condition precedent to arbitration. The parties shall endeavor to resolve their disputes by mediation which shall be in accordance with the Mediation Rules of the American Arbitration Association currently in effect, but shall not be administered by the AAA. Request for mediation shall be made in writing to the other party to this Contract. The request for mediation may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties. The parties shall share the mediator's fee equally. The mediation shall be held in Myrtle Beach, South Carolina, unless another location is mutually agreed upon. Any agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

18.2 Arbitration.

18.2.1 Disputes not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Arbitration Rules of the American Arbitration

Association currently in effect, but shall not be administered by the AAA. The demand for arbitration shall be made in writing to the other party to this Contract. Arbitration shall be held in Myrtle Beach, South Carolina, unless another location is mutually agreed upon;

18.2.2 A demand for arbitration shall be made within a reasonable time after the dispute has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations.

18.2.3 Arbitration shall be conducted by an independent arbitrator mutually selected by the parties. If the parties do not mutually agree on an arbitrator who is willing and able to serve, arbitration shall be by a three member panel. If three arbitrators are to be selected, Owner and Contractor shall each select an arbitrator. The two arbitrators so selected shall select a third who will act as the chair of the arbitration panel.

18.2.4 Any arbitrator selected pursuant to this provision shall be an attorney with excellent academic and professional credentials, who (a) is a member of the Bar of the State of South Carolina, (b) has been actively engaged in the practice of law for at least fifteen (15) years, and (c) specializes in construction litigation, with substantial experience in the subject matter of this Contract. The arbitrator(s) shall have no direct, material social, political or business relationship of any sort with any of the parties, their respective legal counsel, or any other person or entity materially involved in the dispute.

18.2.5 Any arbitration arising out of or relating to this Contract shall include, by consolidation or joinder or in any other manner, design professionals, subcontractors or any other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Contract shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

18.2.6 Discovery in arbitration shall be limited to matters directly relevant to the controversy or Claim in arbitration. The parties to the arbitration shall not be permitted to file motions of any kind, except for motions to compel the discovery of relevant evidence.

18.2.7 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

18.2.8 Contractor shall include an arbitration provision containing substantially the same terms as this provision in each of its agreements with subcontractors, suppliers, and any other entity contracted to Contractor for this Project, specifically requiring joinder of necessary parties.

18.3 *Opt Out of Arbitration; Litigation.* To the extent that all necessary parties cannot be joined in arbitration, Owner has the sole option of voiding the arbitration provision contained in this Contract with respect to the applicable dispute and proceeding to litigation in a court of competent jurisdiction. Owner, in its sole discretion, will determine if all necessary parties cannot be joined in arbitration. If Owner voids the arbitration provision as provided herein, the parties agree to litigate the applicable Claims before the South Carolina state circuit court in Horry County, South Carolina. The dispute shall be tried by a sitting state court judge without a jury. THE CONTRACTOR AND OWNER WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL. Any legal proceeding arising out of or relating to this Contract shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Contract to the extent necessary for a final resolution of the matter in controversy.

18.4 Unless otherwise agreed in writing, Contractor shall carry on performance of the Work and maintain its progress during the pendency of any dispute or litigation, and except for amounts which Owner is entitled to withhold under any provision of the Contract, Owner shall continue to make payments to Contractor in accordance with this Contract.

18.5 *Prevailing Party*. If any action or arbitration arises between the parties arising from or relating to this Contract, then the prevailing party in such action or arbitration shall be entitled to recover from the other party all of its costs of action or arbitration, including attorneys' fees and costs. Prior to trial or arbitration, either party may provide the other party an offer of settlement, and, within ten days thereafter, the party served may respond by filing and serving its offer of settlement. The offer shall specify the amount, exclusive of interest and costs, that the party serving the offer is willing to agree constitutes a settlement of the dispute. Until the trial or arbitration date, the parties may submit offers and counteroffers to each other, the last of which will supersede all other offers. A settlement offer is considered rejected unless an acceptance in writing is provided to the party making the offer. If the offer is rejected, it may be considered solely for the purpose of awarding costs and litigation expenses under this Section 18.5. If the plaintiff makes no written offer of settlement, the amount prayed for in its complaint is considered to be its final offer of settlement. If the defendant makes no written offer of settlement, the value of its counterclaim is considered to be its negative offer of settlement. If the defendant has not asserted a counterclaim, its offer of settlement is considered to be zero. For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. The party whose offer is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney's fees. For the purpose of this Contract, the term "attorney's fees" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplication and other similar expenses, air freight and messenger charges, telecommunication charges and fees billed for law clerks, paralegal and other persons not admitted to the bar but performing services under the supervision of any attorney.

19. **NOTICES.** Written notices required or permitted to be given shall be in writing and sent by (a) registered or certified mail, return receipt requested, postage prepaid; (b) reputable overnight carrier service (such as United Parcel Service) for next business day morning delivery, all fees prepaid; or (c) facsimile transmission with telephone verification of receipt as follows:

TO CONTRACTOR:

Tim Wright
Garrard Construction Inc.
One Sugarloaf Center
1960 Satellite Blvd Ste. 2300
Duluth, GA 30097
770-822-1944
twright@garrardgroup.com

TO OWNER for Construction related matters:

Seth McCoy
Broadway at the Beach, Inc.
8800 Marina Parkway
Myrtle Beach, SC 29572
843-848-4449
seth.mccoy@bccompany.com

TO OWNER for all other matters:

Legal Department
8800 Marina Parkway
Myrtle Beach, SC 29572
Attn: Legal Department

20. ASSIGNMENT; THIRD PARTY BENEFICIARIES.

20.1 Contractor may not assign this Contract, in whole or in part, without the prior written consent of Owner. Owner may, without the consent of the Contractor, assign, sublet or transfer any rights under or interest in this Contract to any entity which is an affiliate of Owner or for whom Owner or any affiliate of Owner is rendering development management services, or to any lender of Owner or any affiliate of Owner.

20.2 Unless expressly provided otherwise in this Contract, nothing in this Contract shall be construed to create, impose, or give rise to any duty owed by Owner or Contractor to any third party. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

21. MISCELLANEOUS

21.1 *Governing Law.* This Contract and the rights and duties of the parties hereunder shall be governed by the laws of the State of South Carolina.

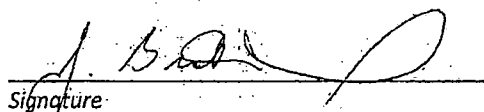
21.2 *Binding Effect.* The covenants, agreements, and obligations contained in the Contract Documents shall be binding upon the parties and their successors and assigns.

21.3 *Amendments.* This Contract shall not be altered, amended, or modified except in writing signed by both Owner and Contractor.

21.4 *Severability.* If any provision of this Contract shall to any extent be legally invalid, the remainder of the Contract shall not be affected, and each provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

Owner: Broadway at the Beach, Inc.

Contractor: Garrard Construction, Inc.


Signature
J. Britton Pennell
Printed Name and Title

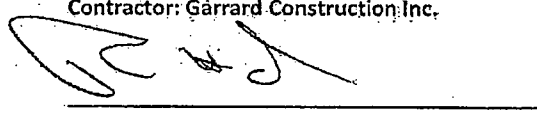

Signature
Ron Garrard President
Printed Name and Title

EXHIBIT A
Scope of Work

Construction of the Dave & Buster's 40,000 sf shell.

Bid Proposal and Clarifications:

Broadway at the Beach, 40,000SF Dave & Buster's
8800 Marina Parkway, Myrtle Beach, South Carolina 29572
Purchasing Department
843-848-4449

BID FORM

BID DUE DATE AND TIME: 2:00P.M., July 28, 2016

ADDRESS:

Burroughs & Chapin Co. Inc.
8800 Marina Parkway
Myrtle Beach, SC 29572
Seth.mccoy@bcccompany.com

Bidder Acknowledges receipt of the following Amendment Numbers: Addendum #1 7-21-16

PROJECT: Broadway at the Beach, 40,000 SF Dave & Buster's

In compliance with this Invitation for Bids, the bidder hereby proposes to perform all work in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated herein.

Required submittals:

Bid Form (This document)
Completed Certificate of Familiarity
Schedule of Values
Project Schedule

Contractor: Garrard Construction

Contractor's Signature _____

Date August 17, 2016

CERTIFICATE OF FAMILIARITY

The undersigned, having fully familiarized himself with the information contained within this entire solicitation and applicable amendments, submits the attached bid and other applicable information to Owner, which I verify to be true and correct to the best of my knowledge. I certify that this bid is made without prior understanding, agreement, or connection with any corporation,

firm or person submitting a bid for the same materials, supplies or equipment, and is in all respects, fair and without collusion or fraud. *By submission of a signed bid, I certify, under penalties of perjury, that the below company complies with section 12-54-1020(B) of the SC Code of Laws 1976, as amended, relating to payment of any applicable taxes.* I certify that I am authorized to sign this bid and I agree to abide by all conditions and requirements of this solicitation and propose to perform all work for the construction of this project in strict accordance with the contract documents, within the set time limits set forth therein, and at the prices stated herein. I further certify that this bid is good for a period of sixty (60) days, unless otherwise stated.

Garrard Construction Group
Company Name as registered Authorized Signature
with the IRS
1960 Satellite Blvd., Suite 2300
Correspondence Address Printed Name
Duluth, GA 30097
City, State, Zip Title
August 17, 2016 Telephone (770) 822-1944 Fax (770) 822-4633
Date Telephone Number Fax Number
1960 Satellite Blvd., Suite 2300
Remittance Address
Duluth, GA 30097 E-Mail jwright@garrardgroup.com
City, State, Zip Email address
(770) 822-1944
Telephone Number Toll-Free Number if available
58-2087047
Federal Tax ID Number SC Sales and Use Tax Number
Contractor's License Number: G107172

Bid Submittal Form for Broadway at the Beach, 40,000-SF D&B	
Project Information	
Bid Submittal Date: Revised 08/17/2016	
Project Name: Broadway at the Beach, 40,000-SF D&B	
Owner: Broadway at the Beach, Inc.	
Architect: LS3P Associates LTD.	
Contractor Information	
Company: Garrard Construction	
SC License Number: G107172	
Address: 1960 Satellite Blvd., Suite 2300 Duluth, GA 30097	

Project: Dave & Buster's Revised August 17, 2016 Broadway at the Beach
 Myrtle Beach, SC

The following clarifications are provided to help clarify the scope of work included in our bid proposal.

1. General

- a. Bid proposal based on "Construction Documents" dated 7/6/16, as prepared by LS3P.
- b. Payment and Performance Bonds are not included.
- c. Building permit fee and plan review fees are to be paid by Owner and are not included.
- d. Any impact fees or City Bonds are not included. Builder's risk insurance is by others.
- e. We do not include any material testing or special inspections.
- f. This revised proposal is based on a September 29, 2016 mobilization and a final completion date/turnover on May 3, 2017. This duration includes the Dave & Busters buildout. See attached schedule.
- g. Expedited approvals (submittal and RFI review/approval within 7 working days) are required to meet project schedule.

2. Sitework

a. Demolition

- i. We do not include the removal of any hazardous materials or special waste.
- ii. Demolition contractor reserves all salvage rights to materials inside and outside the structure, including landscape.

b. Earthwork/Erosion Control

- i. We have included minimal grading to the site. We exclude any import or export of material.
- ii. We assume that all existing subgrade is suitable for new construction, and do not included any rock removal or remediation of existing soils
- iii. We exclude all other sitework, including concrete curb/gutter, asphalt paving, site lighting, landscaping, fencing, parking striping/signage, etc
- iv. NPDES storm water monitoring is not included.
- v. Site excavation is priced as a classified site. Rock excavation, rock ripping, boulder/concrete reduction, undercutting, subgrade stabilization, stabilization stone, scarifying and re-compacting subgrade, aeration of soils, chemical additives, hazardous waste removal and unsuitable soils have not been included.
- vi. Relocation, modification, repairing and capping of existing public utilities, other than what is specifically indicated, is not included.

Defe@deratsl 000024

- vii. Cost of new services to the building such as natural gas, power, telephone, cable, etc. has not been included, other than what is specifically indicated.

c. Site Utilities

- i. We have included connecting to existing utilities as indicated on the civil drawings.
- ii. We assume adequate water pressure for the Fire Sprinkler system and domestic water service.

d. Landscape

- i. We have not included any work associated with irrigation systems.

e. Foundations

- i. Driven piers to be 8", 0.8 CCA treated timber piles.
- ii. Piles will be driven to 35' below existing grade or to practical refusal, whichever comes first.
- iii. We include one (1) test pile installed in production pile location.
- iv. We have not included a static load test. Should a static load test be required, please add \$30,000 to our budget proposal.

3. Concrete

- a. We have not included the 4" thick slab-on-grade, as it is indicated as "Future" on the structural drawings.
- b. We have included a 4" sand base below the slab-on-grade as recommended in the geotechnical report.
- c. We have not included any pavers or specialty finishes at sidewalks.

4. Masonry

- a. We have included the masonry screen wall.

5. Steel

- a. We have included approximately 60 tons of joist, girders and bridging, 459 squares of roof deck and 156 tons of structural and miscellaneous steel.

6. Carpentry

- a. Exterior wood boxcar planks only come in lengths of 8'. The specifications call for random lengths between 4' long and 9' long.
- b. Revised pricing is based on replacing the GFRC components indicated on the construction documents with a smooth finish EIFS system.

Defendants 000025

7. Thermal & Moisture Protection

- a. We have included a mechanically fastened roof system.
- b. We include running the roof membrane up the back of the parapet walls at all locations except the front and rear main sloped entrances. There, we will terminate the roof membrane at approximately 30' above f.f. (typical parapet height) then install the specified metal panels to the top.
- c. If we are able to eliminate the deck on the roof system, please deduct \$27,000 from our base bid.

8. Doors & Windows

- a. We have included "Windstorm" hardware for hollow metal doors 128B & 147.
- b. We have included the hardware set specified for door 128B for door 147. There was no hardware specified for door 147.
- c. We have included decorative stationary carriage doors as manufactured by Carriage House Door Company in lieu of the specified Real Carriage Door.
- d. We have included storefront/curtain wall systems as manufactured by Kawneer.
- e. We have included spandrel glass as manufactured by Oldcastle in lieu of specified Viracon.
- f. We have included Nabco Gyro Tech single slide automatic entry doors in lieu of the specified Record USA.
- g. We have not included water testing and NFRC testing.

9. Finishes

- a. N/A.

10. Specialties

- a. N/A.

11. Equipment

- a. N/A.

12. Furnishings

- a. N/A.

13. Special Construction

- a. N/A.

14. Conveying Equipment

- a. N/A.

15. Mechanical

a. Fire Protection

- i. We have only included stubbing the fire protection service piping into the building. The new wet pipe sprinkler system is to be included in the tenant finish work.

b. Plumbing

- i. All plumbing per sheet P-101.

c. HVAC

- i. We have included providing and installing fourteen (14) Trane RTUs and wind rated & seismic roof curbs as indicated on sheet M101.

16. Electrical

- a. We have included electrical work as indicated on sheet E-101.

- b. There is no existing hand hole as stated on sheet E101.

c. Lightning Protection

- i. System is based on utilizing aluminum components on the roof and copper components for other portions of the system.
- ii. We have included adhering the lightning protection system directly to the roof membrane and does not include any special pads, pavers, membrane strips, etc., under the roof conductors.
- iii. We have included a ground counterpoise as specified. No other grounding is included.
- iv. We have included a minimum lightning rated surge protection device for the main electrical service as required by lightning protection standards.

EXHIBIT B
Basis of Compensation and Payment Schedule

(Fixed Price)

1. Payment Schedule.

1.1. Payments to the Contractor will be made on a percentage completion basis, unless the Owner and Contractor agree to a Payment Schedule as follows:

1.2. If payments are to be made on a percentage complete basis, Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed using the Schedule of Values to calculate that percentage.

2. **Unit Prices:** If any additional Work is requested in writing by Owner as provided in the Contract, Owner and Contractor agree that the Additional Work may be based, in whole or in part, on the Unit Prices set forth below and that such Unit Prices shall be in effect and shall not be increased or decreased throughout the duration of the Project:

Item No.	Description	Unit	Unit Price

3. Allowances.

3.1. Allowances included in the Contract Price, if any, are as follows:

3.1.1. Contractor warrants and represents that the amount of each allowance whether set forth above or not is sufficient to complete the Project consistent with the manner and quality of the other portions of the Project as set forth in the Contract Documents. Contractor shall report monthly on the status of allowances showing the total spent to date and the amount anticipated to be spent in the coming month.

3.2. Unless otherwise provided in the Contract Documents,

3.2.1. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Project Site and all required taxes, less applicable trade discounts;

3.2.2. Contractor's costs for unloading and handling at the Project Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances; and

Defendants 000028

3.2.3. Whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances.

Defendants 000029

EXHIBIT C
Drawings

Dave & Buster's Construction Documents prepared by LS3P and dated 07/06/2016 inclusive of Addendum 1 dated 07/21/16

Defendants 000030

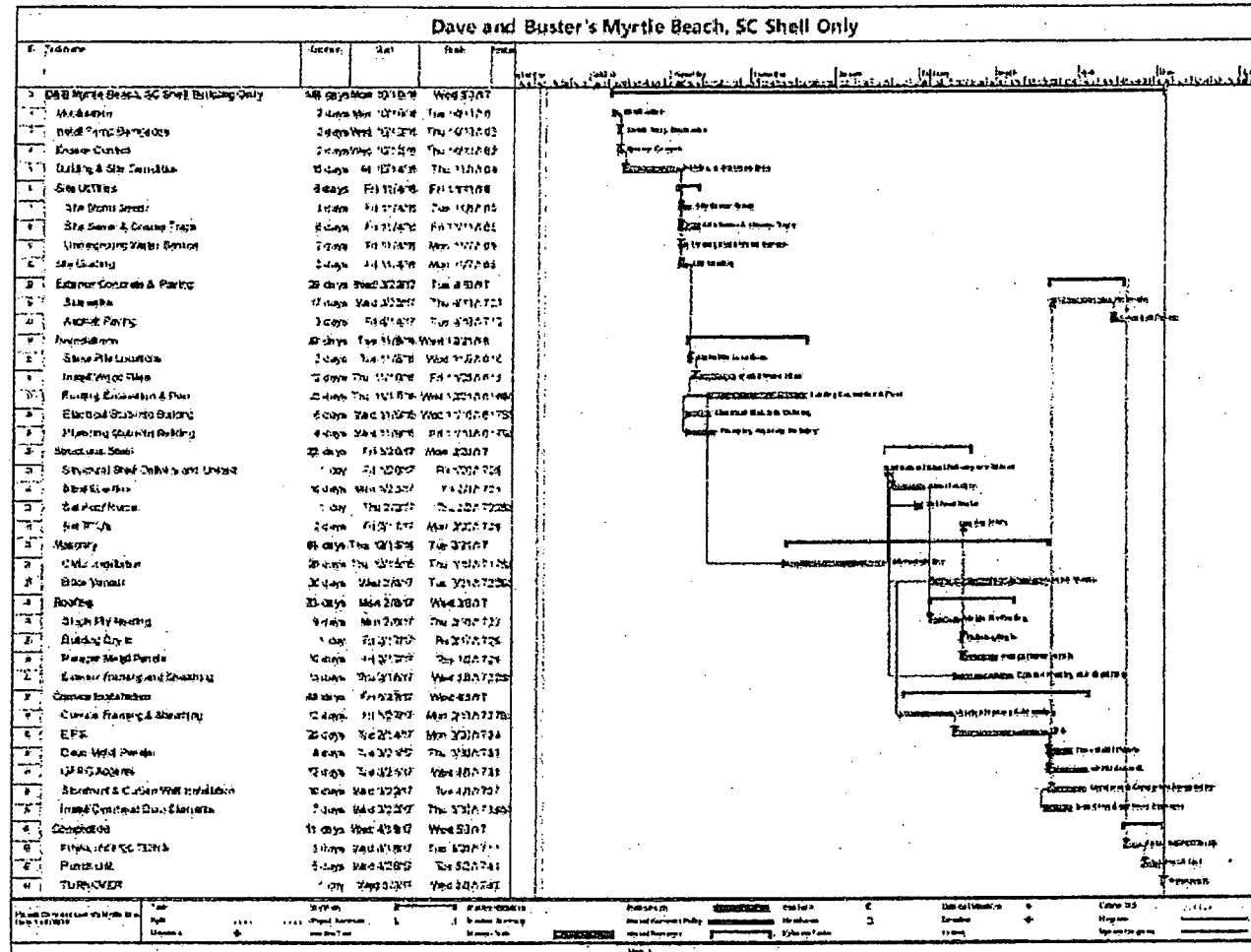
EXHIBIT D
Specifications

Dave & Buster's Project Manual by LS3P dated July 6, 2016

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

Defendants 000031

EXHIBIT E
Initial Progress Schedule



Defendant: 000032

EXHIBIT "F" - SCHEDULE OF VALUES

Page 1 of 2

CONTINUATION SHEET									
AIA DOCUMENT G701									
AIA Document G701, APPLICATION AND CERTIFICATE FOR PAYMENT, continues.						APPLICATION NO.		20 Jan 20	
Contractor's agreed performance is stated in the certificate for cost, including overhead and profit, is stated in the amount of \$						APPLICATION DATE		20 Jan 20	
The Schedule for Payment when the work is completed is as follows:						ARCHITECT'S PROJECT NO.			
A	B	C	D	E	F	G	H	I	J
Item	Description of Work	Subcontractor's Value	Contractor's Fee	Contractor's Overhead & Profit	Subcontractor's Fee	Contractor's Overhead & Profit	Subcontractor's Fee	Contractor's Overhead & Profit	Subcontractor's Fee
100	General Construction Supervision	\$ 10,000.00							\$ 10,000.00
200	Testing and Inspection								
300	Field Engineering / Surveying								
400	Building Development	\$ 95,000.00							\$ 95,000.00
500	Site Development	\$ 15,000.00							\$ 15,000.00
600	Site Work	\$ 4,000.00							\$ 4,000.00
700	Plant and Equipment / Tree Protection	\$ 14,000.00							\$ 14,000.00
800	Earthwork	\$ 24,000.00							\$ 24,000.00
900	Site Demolition / Water	\$ 4,000.00							\$ 4,000.00
1000	Sanitary Sewer System	\$ 9,000.00							\$ 9,000.00
1100	Storm Drainage	\$ 12,000.00							\$ 12,000.00
1200	Fencing	\$ 10,000.00							\$ 10,000.00
1300	Grass, Shrubs, Gravel Cover	\$ 14,000.00							\$ 14,000.00
1400	Wood Piles / Casings	\$ 17,000.00							\$ 17,000.00
1500	Site Construction / Substructure	\$ 25,000.00							\$ 25,000.00
1600	Concrete Foundations & Retain	\$ 33,000.00							\$ 33,000.00
1700	Masonry	\$ 11,000.00							\$ 11,000.00
1800	Structural Steel Fabrication	\$ 47,000.00							\$ 47,000.00
1900	Structural Steel Erection	\$ 10,000.00							\$ 10,000.00
2000	Misc. Work	\$ 7,000.00							\$ 7,000.00
2100	Corrugated Metal Panels	\$ 12,000.00							\$ 12,000.00
2200	Roofing / Carpentry Labor & Materials	\$ 4,000.00							\$ 4,000.00
2300	GFRC Coping & Trim	\$ 6,000.00							\$ 6,000.00
2400	EIFS System	\$ 12,000.00							\$ 12,000.00
2500	Roofing / Flashing / Insulation	\$ 4,000.00							\$ 4,000.00
2600	Block Retain & Thruways	\$ 10,000.00							\$ 10,000.00
2700	Carpentry Labor & Materials	\$ 10,000.00							\$ 10,000.00
2800	Automotive Doors	\$ 5,000.00							\$ 5,000.00
2900	System Cabinet & Grating	\$ 11,000.00							\$ 11,000.00
3000	Interior Finishing	\$ 11,000.00							\$ 11,000.00
3100	Painting	\$ 20,000.00							\$ 20,000.00
PAGE SUBTOTAL		\$ 424,500.00							\$ 424,500.00

THE ACCOUNTING UNIT: CONTINUATION SHEET FOR COST - PAGE 1 OF 1

THE ARCHITECT'S CERTIFICATE FOR PAYMENT: THE ARCHITECT'S CERTIFICATE FOR

EXHIBIT F
 Schedule of Values

DefectReport 000033

122

EXHIBIT G**Application for Payment Form****CONTRACTOR:**

Garrard Construction Inc.

Address: _____

APPLICATION NUMBER: _____**APPLICATION DATE:** _____**PROJECT NAME:** _____**PURCHASE ORDER NUMBER:** _____**CONTRACT NUMBER:** _____

The undersigned requests payment for work completed during the period from _____ to _____ in accordance with the terms the contract for the above referenced project as shown in detail on the attached continuation sheet and summarized as follows:

1. Original Contract Sum	\$ _____
2. Approved Change Orders through No. _____	\$ _____
3. Contract Sum to Date (Line 1 + Line 2)	\$ _____
4. Value of Work Completed to Date	\$ _____
5. Retainage: _____ % on Work Completed to Date	\$ _____
6. Total Earned Less Retainage (Line 4 less Line 5)	\$ _____
7. Less: Amount Previously Paid	\$ _____
8. Amount Due this Request (Line 6 less Line 7)	\$ _____

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents.

CONTRACTOR:

Garrard Construction Inc.

*Signature*_____
*Printed Name*_____
Title - Owner, Officer or Duly Authorized Representative

Defendants 000035

EXHIBIT H **Form of Interim Lien Waiver**

Owner: Broadway at the Beach, Inc. Contractor: Garrard Construction Inc. Project: Dave & Buster's Shell Construction
Pay Period: _____
Partial Payment: \$ _____

<u>CONTRACT AMOUNT</u>	<u>PREVIOUSLY BILLED</u>	<u>BILLED THIS PERIOD</u>	<u>TOTAL BILLED TO DATE</u>

Contractor certifies that the work performed and the materials supplied to Owner, as shown above, represent the actual value of the work performed under the terms of the contract between Owner and Contractor (the "Contract") and all authorized changes to the same relating to the Project through _____ (date).

Contractor also certifies that payments, less applicable retention, have been or will be made to (1) all subcontractors and suppliers; and (2) for all materials, equipment rentals, and labor used in or in connection with the performance of the Contract and the Project. Contractor also certifies that it has notified the Owner of all changes and requested changes to the Contract as of the date first given above, in accordance with the terms of the Contract, and that there are no outstanding requests for change of which the Contractor is aware but of which the Owner has not been notified.

Contractor represents that it has complied with the federal, state and local tax laws, including Social Security, Unemployment Compensation, and Workers' Compensation laws as applicable to the performance of the Contract and the Project, and that all labor performed and materials furnished have been provided without discrimination as to race, creed, color, national origin, gender or age.

In consideration of the prior payments received and upon receipt of the Partial Payment identified above, the Contractor waives, releases, and relinquishes all claims (including payment bond claims and other known claims not made in accordance with the Contract) or rights of lien related to the Contract and the Project and agrees to hold Owner harmless from any claim (including payment bonds claims) or lien made by its subcontractors, suppliers, vendors, equipment lessors, or any other party for whom the Contractor is responsible pursuant to the Contract.

The following subcontractors and suppliers have furnished or are furnishing materials for the Project and have provided or are providing labor on the Project. Contractor represents that there is due and to become due, respectively, the amounts set opposite their names for materials and labor. This representation is made to Owner for the purpose of procuring from Owner Partial Payment on the Contract, and is a full, true and complete statement of all such persons, the amounts paid, due and to become due them relative to the Contract and the Project through the date first given above.

(LIST ALL SUBCONTRACTORS, SUPPLIERS AND EQUIPMENT USED IN OR IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT AND THE PROJECT (VALUE OVER \$5,000.00) -- USE AN ADDITIONAL SHEET IF NECESSARY.

<u>Name, City & Phone</u>	<u>Contract For</u>	<u>Total Amount</u>	<u>Previous Paid</u>	<u>Due this Request</u>	<u>Contract Total</u>

Date: _____

Contractor: Garrard Construction Inc.

Subscribed and sworn before me this _____ day of _____,

By: _____

_____, 20____

Printed Name: _____

Notary Public for: _____

Title: _____

My Commission Expires: _____

Defendant 000037

EXHIBIT I **Form of Final Lien Waiver**

Owner: _____ Contractor: _____ Project: _____
 Broadway at the Beach, Inc. Garrard Construction Inc. Dave & Buster's Shell Constriction
 Pay Period: _____
 Final Payment: \$ _____

<u>CONTRACT AMOUNT</u>	<u>PREVIOUSLY BILLED</u>	<u>BILLED THIS PERIOD</u>	<u>TOTAL BILLED TO DATE</u>

Contractor certifies that the work performed and the materials supplied to Owner, as shown above, represent the actual value of the work performed under the terms of the contract between Owner and Contractor (the "Contract") and all authorized changes to the same relating to the Project through _____ (date).

Contractor also certifies that payments, less applicable retention, have been or will be made to (1) all subcontractors and suppliers; and (2) for all materials, equipment rentals, and labor used in or in connection with the performance of the Contract and the Project. Contractor also certifies that it has notified the Owner of all changes and requested changes to the Contract as of the date first given above, in accordance with the terms of the Contract, and that there are no outstanding requests for change of which the Contractor is aware but of which the Owner has not been notified.

Contractor represents that it has complied with the federal, state and local tax laws, including Social Security, Unemployment Compensation and Workers' Compensation laws as applicable to the performance of the Contract and the Project, and that all labor performed and materials furnished have been provided without discrimination as to race, creed, color, national origin, gender or age.

In consideration of the prior payments received and upon receipt of the Final Payment identified above, the Contractor waives, releases, and relinquishes all claims (including payment bond claims and other known claims not made in accordance with the Contract) or rights of lien related to the Contract and the Project and agrees to hold Owner harmless from any claim (including payment bonds claims) or lien made by its subcontractors, suppliers, vendors, equipment lessors, or any other party for whom the Contractor is responsible pursuant to the Contract.

The following subcontractors and suppliers have furnished or are furnishing materials for the Project and have provided or are providing labor on the Project. Contractor represents that there is due and to become due, respectively, the amounts set opposite their names for materials and labor. This representation is made to Owner for the purpose of procuring from Owner Final Payment on the Contract, and is a full, true and complete statement of all such persons, the amounts paid, due and to become due them relative to the Contract and the Project.

LIST ALL SUBCONTRACTORS, SUPPLIERS AND EQUIPMENT USED IN OR IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT AND THE PROJECT (VALUE OVER \$5,000.00) -- USE AN ADDITIONAL SHEET IF NECESSARY.

Name, City & Phone	Contract For	Total Amount	Previous Paid	Due this Request	Contract Total

Date: _____

Contractor: Garrard Construction Inc.

Subscribed and sworn before me this _____ day of _____

By: _____

_____, 20____

Printed Name: _____

Notary Public for: _____
My Commission Expires: _____

Title: _____

Defendant 000039

EXHIBIT J
Change Order Form

CHANGE ORDER FORM
OWNER AND CONTRACTOR AGREEMENT

CONTRACTOR:

CHANGE ORDER NUMBER:

DATE:

PROJECT NAME:

CONTRACT NUMBER:

THE CONTRACT IS CHANGED AS FOLLOWS:

Add the following:

1. Total this Change Order -

The Original Contract Sum	\$0.00
The net change by previously authorized Change Orders	\$0.00
The Contract Sum Prior to this Change Order	\$0.00
The Contract Sum will be increased by this Change Order in the amount of:	\$0.00
The new Contract Sum including this Change Order	\$0.00

The Contract Time will be changed by (0) Days

The Date of Substantial Completion as of the date of this Change Order Therefore is:

NOT VALID UNTIL SIGNED BY THE CONTRACTOR AND OWNER

Contractor:
Garrard Construction Inc.

Owner:
Broadway at the Beach, Inc.

(Signature)

(Signature)

(Printed Name)

(Printed Name)

Date

Date

Defendants 000040

EXHIBIT K
VENDOR/CONTRACTOR INSURANCE REQUIREMENTS-- MINIMUM

VENDOR CLASSIFICATIONS	HIGH	MODERATE	LOW
	- Asbestos Removal⁽¹⁾ - Boiler Repair/Maintenance - Carpentry Outside - 3+ Stories - Chemical Sales & Service - Construction/ Demolition/ Excavation - see General Contractor - Crane Inspection & Repair - Crane Rental Service - Electrical Contractor - Elevator / Escalator - Explosive Delivery - General Contractor - Lagoon Dredging - Land Clearing - Lift Truck - Painting - 3 Stories and Over - Roofing Contractor - Scaffolding Contractor - Tree Removal - Waste Disposal - Regulated⁽¹⁾ - Welding Supply Delivery & Service	- Air Compressor Service - Architects, Engineers & Designers⁽²⁾ - Carpentry Inside or < 3 stories - Chemical & Water Tank Cleaning & Inspection - Central Station Alarm Monitor - Door Repair - Janitorial Service - Gutter Contractor - HVAC - Insulation Installation - Lighting Repair - Painting - Under 3 stories - Paving/ Concrete Work - Pest Control Services - Plumbing Contractor - Security Guard & Patrol Service - Sheet Metal Work - Tile/Flooring Contractor - Waste Hauling & Waste Paper Delivery (unregulated) - Water Pump Repair - Well Pump Inspection - Window Cleaning > stories	- Barricade Construction - Delivery Companies - Lawn Care & Landscaping (use Moderate if available) - Office Equipment Repair - Parking - Snow Removal; Sweeper - Parking Service with/ without Valet - Uniform Service - Vending Machine Contractor - Window Cleaning up to 2 Stories - Pressure Washer - Surveyor⁽²⁾ - Telephone Repair (High if outdoor lines)

REQUIRED INSURANCE COVERAGE			
• General Liability -- Including Contractual Liability and Completed Operations	\$1,000,000 Each Occurrence \$2,000,000 Aggregate	\$1,000,000 Each Occurrence \$2,000,000 Aggregate	\$ 500,000 Each Occurrence \$1,000,000 Aggregate
• Automobile Liability -- Including Hired and Non-Owned Vehicles	\$2,000,000 Combined Single Limit for Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage	\$ 500,000 Combined Single Limit for Bodily Injury and Property Damage
• Workers' Compensation	Statutory Limits for the State(s) in which the work is performed	Statutory Limits for the State(s) in which the work is performed	Statutory Limits for the State(s) in which the work is performed
• Employers Liability	\$1,000,000 Each Accident \$1,000,000 Each Employee -- Disease \$1,000,000 Policy Limit - Disease	\$500,000 Each Accident \$500,000 Each Employee -- Disease \$500,000 Policy Limit - Disease	\$100,000 Each Accident \$100,000 Each Employee -- Disease \$500,000 Policy Limit - Disease
• ⁽¹⁾ Environmental Liability	\$5,000,000 Each Occurrence	\$1,000,000 Each Occurrence	\$1,000,000 Each Occurrence
• Umbrella Liability	\$2,000,000 Each Occurrence \$2,000,000 Aggregate	\$1,000,000 Each Occurrence \$1,000,000 Aggregate	\$1,000,000 Each Occurrence \$1,000,000 Aggregate
• ⁽²⁾ Professional Liability	\$1,000,000 Each Claim	\$1,000,000 Each Claim	\$1,000,000 Each Claim

GENERAL REQUIREMENTS FOR ALL INSURANCE	
A	Broadway at the Beach, Inc. and Burroughs & Chapin TRS, Inc. are named as Additional Insured on a primary basis under the General policy. General Liability Insurance shall be provided on an ISO Commercial General Liability form without any additional limiting or exclusionary endorsements amending the terms contained therein (exceptions should be noted in the contract - refer to Nancy Farmer).
B	Limits required for General, Auto or Employers Liability can be met with higher Umbrella Liability limits;

Defendants 000041

C.	A Waiver of Subrogation is to be provided to Broadway at the Beach, Inc. and Burroughs & Chapin TRS., Inc. for GL, Auto and Workers' Compensation.
D.	Certificate Holder should be Broadway at the Beach, Inc. 8820 Marina Parkway, Myrtle Beach, SC 29572
E.	Certificate must evidence 30 days written notice of cancellation or non-renewal in coverage
F.	Original certificate of Insurance (ACORD form) to be delivered to Broadway at the Beach, Inc. prior to commencement of any work or service.
G.	Vendor/Contractor required to pay all deductibles or self-insured retentions carried under these policies of insurance.

Defendants 000042

EXHIBIT K
FIELD WORK ORDER

No. _____

To: Garrard Construction Inc. ("Contractor")

From: Broadway at the Beach, Inc. ("Owner")

Owner hereby authorizes Contractor to perform or delete the following work:

[describe work to be performed or deleted]

There shall be no change in the Contract Price or Contract Time as a result of this Field Work Order.

OWNER:

CONTRACTOR:

Date: _____

Date: _____

Defendants 000043

EXHIBIT 2

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

**Standard Form of Agreement Between
Dave & Buster's, Inc. and Contractor
Cost of Work Plus Fee - Guaranteed Maximum Price**

Rev. September 20, 2013
(DBGMAX)

AGREEMENT made as of the 25th day of October, 2016

BETWEEN the Owner: Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220

and the Contractor: Garrard Construction
1960 Satellite Blvd., Suite 2300
Duluth, GA 30097

The Project: Dave & Buster's – Broadway at the Beach
1322 Celebrity Square
Myrtle Beach, SC

The Architect: SBLM Architects
33 Walt Whitman Road, Suite 204
Huntington Station, NY 11746

The Owner and Contractor agree as set forth below:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 16. If anything in the Contract Documents is inconsistent with this Agreement, the Agreement shall govern. As used herein, the term "General Conditions" refer to Dave & Buster's, Inc.'s General Conditions of the Contract for Construction, latest revision as set forth in Article 16.

ARTICLE 2
THE WORK

Contractor shall perform all the work (hereinafter "Work") required by the Contract Documents for:

Tenant improvement work, Interior Construction of the Dave & Buster's per the drawings referenced on the attached Exhibit "B" drawing, bidding documents, specifications, schedule, and qualifications.

ARTICLE 3
THE CONTRACTOR'S DUTIES AND STATUS

Contractor accepts the relationship of trust and confidence established between him and Owner by this Agreement. He covenants with Owner to furnish reasonable skill and judgment and to cooperate with the Architect and others in furthering the interests of Owner. He agrees to furnish efficient business administration and superintendence and to use reasonable efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

ARTICLE 4
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall be commenced upon execution of this contract and, subject to authorized adjustments, Substantial Completion shall be achieved not later than ~~May 8, 2017~~ May 19, 2017



ARTICLE 5
COST OF THE WORK AND GUARANTEED MAXIMUM COST

5.1 Owner agrees to reimburse Contractor for the Cost of the Work and for Contractor's General Conditions as defined in Article 8 and stipulated in Article 6 herein. Such reimbursement shall be in addition to the Contractor's Fee stipulated in Article 6, and shall conform to the terms of the General Conditions, Exhibit A.

5.2 The maximum cost to Owner, including the Cost of the Work, Contractor's General Conditions, and the Contractor's Fee, is guaranteed not to exceed the sum of **Three Million Six Hundred Twenty-Eight Thousand Seven Hundred Eighty-Six Dollars (\$3,628,786.00)** such Guaranteed Maximum Cost shall be increased or decreased for Changes in the Work as provided in Article 7, and the General Conditions, Exhibit A.

5.3 Savings under the Contract shall be determined as set forth herein. Contractor and Owner shall within ten (10) days of execution of this Contract agree upon an estimated cost of the Work (the "Estimated Cost"). In the event the actual cost of the Work is less than the Estimated Cost, fifty percent (50%) of the difference shall belong to Owner, and fifty percent (50%) of such difference shall be paid by Owner to Contractor. In no event shall the Estimated Cost be more than Guaranteed Maximum Cost.

ARTICLE 6
CONTRACTOR'S FEE AND GENERAL CONDITIONS

6.1 In consideration of the performance of the Contract, Owner agrees to pay Contractor in current funds as compensation for his services a Contractor's Fee as follows:

(One Hundred Eighty-One Thousand Four Hundred Thirty-Nine Dollars)
(\$181,439.00)

Items included in Contractor's Fee are further set forth in the Dave & Buster's Summary Breakdown for Cost of Work, Fees & General Conditions Items attached hereto and incorporated by reference.

6.2 For Changes in the work, the Contractor's Fee shall be adjusted as follows:

For added changes, the Contractor's Fee shall be increased by a total of 17% of the unadjusted cost of the change order. This amount is in lieu of any overhead, profit, or similar costs pursuant to Section 5 of the General Conditions, Exhibit A.

For deductive changes, the Contractor's Fee shall be decreased by a total of 17% of the unadjusted cost of the change order. This amount is in lieu of any overhead, profit, or similar costs pursuant to Section 5 of the General Conditions, Exhibit A.

- 6.3 The Contractor shall be paid that percentage of his Fee equal to the percentage completion of the Work at the time of the respective Application for Payment with each progress payment, and the balance of his Fee shall be paid at the time of final payment.
- 6.4 Owner agrees to pay the Contractor in current funds as compensation for his General Conditions the stipulated sum of **Two Hundred Five Thousand Five Hundred Fifty-Four Dollars (\$205,554.00)** for the items set forth in subparagraphs 8.1.12 through 8.1.17, and as further set forth in the Dave & Buster's Summary Breakdown for Cost of Work, Fees & General Condition Items attached hereto and incorporated by reference. Owner shall pay Contractor for those amounts of Contractor's General Conditions actually incurred in each respective Application for Payment.

ARTICLE 7
CHANGES IN THE WORK

- 7.1 Owner may make Changes in the Work as provided in the Contract Documents. Contractor shall be reimbursed for Changes in the Work in accordance with Section 5 of the General Conditions, Exhibit A.
- 7.2 The Contractor's Fee and General Conditions for Changes in the Work shall be 17% as set forth in Paragraph 6.2.

ARTICLE 8
COSTS TO BE REIMBURSED

- 8.1 The term Cost of the Work shall mean costs necessarily incurred in the proper performance of the work and paid by Contractor. Such costs shall be at rates not higher than the standard paid in the locality of the work except with prior consent of Owner, and shall include the items set forth below in this Article 8.
- 8.1.1 Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.
- 8.1.2 Payments made by Contractor to Subcontractors for Work performed pursuant to subcontracts under this Agreement. Unless otherwise approved by Owner in writing prior to the issuance of a subcontract, all subcontracts shall be on a lump sum, fixed price basis.
- 8.1.3 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by Contractor, Subcontractors, or workers, which are consumed in the performance of the Work,

and costs less salvage value on such items used but not consumed which remain the property of Contractor.

- 8.1.4 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, rented from others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rates consistent with those prevailing in the area.
- 8.1.5 Cost of premiums for all bonds and insurance which Contractor is required by the Contract Documents to purchase and maintain.
- 8.1.6 Sales, use or similar taxes related to the Work and for which Contractor is liable imposed by any governmental authority.
- 8.1.7 Permit fees, royalties, damages for infringement of patents and costs of defending suits therefor, and deposits lost for causes other than Contractor's, subcontractors or their employees or agent's negligence, or for the defense and indemnity of actions under General Conditions Section 8.
- 8.1.8 Cost or removal of all site debris.
- 8.1.9 Costs incurred due to an emergency affecting the safety of persons and property.
- 8.1.10 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.
- 8.1.11 Items specified in subparagraphs 8.1.12 through 8.1.16 below are to be included in and made a part of the stipulated sum specified in subparagraph 6.4 above as Contractor's General Conditions, , and as further set forth in the Dave & Buster's Summary Breakdown for Cost of Work, Fees & General Condition Items attached hereto and incorporated by reference.
- 8.1.12 Wages paid for labor in the direct employ of Contractor in the performance of the work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by Owner and Contractor, and including such welfare or other benefits, if any, as may be payable with respect thereto.
- 8.1.13 Salaries of Contractor's personnel when stationed at the field office, in whatever capacity employed. Personnel engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.
- 8.1.14 Cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees

of Contractor and included in the Cost of Work under Subparagraphs 8.1.12 and 8.1.13.

- 8.1.15 The portion of reasonable travel and subsistence expenses of Contractor or of his officers or employees incurred while traveling in discharge of duties connected with the Work, other than local travel associated with the Work.
- 8.1.16 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the Work.

ARTICLE 9

COSTS NOT TO BE REIMBURSED

- 9.1 The term Cost of the Work shall not include any of the items set forth below in this Article 9.
 - 9.1.1 Expenses of Contractor's principal and branch offices other than the field office.
 - 9.1.2 Any part of Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
 - 9.1.3 Except as specifically provided for in Subparagraph 8.1.4 or in the modifications thereto, rental costs of machinery and equipment.
 - 9.1.4 Overhead or general expenses of any kind, except as may be expressly included in Article 8.
 - 9.1.5 Costs due to the negligence of Contractor, and subcontractor, sub-subcontractors, material men or supplies, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of the defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property, and the discharge of obligations under General Conditions Sections 8, 23.5, 24, 27.5, and 28.9.
 - 9.1.6 The cost of any item not specifically and expressly included in the items described in Article 8.
 - 9.1.7 Costs in excess of the Guaranteed Maximum Costs, if any, as set forth in Article 5 and adjusted pursuant to Article 7.
 - 9.1.8 Salaries or other compensation of the Contractor's personnel at the Contractor's principal office and branch offices.

ARTICLE 10
DISCOUNTS, REBATES AND REFUNDS

- 10.1 All cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

ARTICLE 11
SUBCONTRACTS AND OTHER AGREEMENTS

- 11.1 All portions of the Work that Contractor's organization does not perform shall be performed under Subcontracts or by other appropriate agreement with Contractor. Contractor shall request bids from Subcontractors and shall, upon request, deliver such bids to Owner. Owner may determine, with the advice of Contractor, which bids will be accepted. Owner's acceptance or rejection of any Subcontractor shall not discharge or reduce in any way Contractor's responsibility for its Subcontractors.
- 11.2 All Subcontracts shall conform to the requirements of the Contract Documents. To the extent possible, all Subcontracts will be fixed price, lump sum agreements. Subcontracts on any other basis require Owner's prior written approval. Subcontracts awarded on the basis of the cost of such work plus a fee shall also be subject to the provisions of this Agreement insofar as applicable. All Subcontracts shall comply with the General Conditions, Exhibit A.

ARTICLE 12
ACCOUNTING RECORDS

- 12.1 Contractor shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the system shall be satisfactory to Owner and in accordance with the General Conditions. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract, and the Contractor shall preserve all such records for a period of three years, or for such longer period as may be required by law, after final payment. In accordance with Section 11 of the General Conditions, Exhibit A, Owner reserves the right to audit Contractor, and Contractor shall promptly reimburse or credit Owner all amounts due Owner as a result of such audit.

ARTICLE 13
APPLICATIONS FOR PAYMENT

- 13.1 Contractor's applications for progress payments and final payment shall be in accordance with the General Conditions, Exhibit A.

ARTICLE 14
PAYMENTS TO THE CONTRACTOR

14.1 Payment shall be made by Owner in accordance with the General Conditions, Exhibit A.

ARTICLE 15
TERMINATION OF CONTRACT

15.1 The Contract may be terminated by Owner as provided in the Contract Documents.

ARTICLE 16
MISCELLANEOUS PROVISIONS

- 16.1 Terms used in this Agreement which are defined in the Contract Documents shall have the meanings designated in those Contract Documents.
- 16.2 The Contract Documents, which constitute the entire agreement between Owner and Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

Dave & Buster's Stores, Inc. General Conditions of the Contract for Construction, Rev. December 5, 2013 ("General Conditions"), Exhibit A.

Exhibit "B" – List of Bid Documents

Exhibit "C" – Bid Breakdown

Dave & Buster's Summary Breakdown for Cost of Work, Fees & General Condition Items (attached hereto).

This Agreement entered into as of the day and year first written above.

DAVE & BUSTER'S STORES, INC.

Name

SVP Development

Title

Date

11/11/16

CONTRACTOR: Garrard Construction Group
(Ron Garrard) (insert name)

Name

President

Title

Date

11-9-16

DAVE & BUSTER'S SUMMARY BREAKDOWN FOR COST OF WORK,
FEES & GENERAL CONDITION ITEMS

C = Reimbursement Cost of Work
F = Contractor's Fee
G = Contractor's General Conditions
H = Dave & Buster's Provided Items

DAVE & BUSTER'S - PROVIDED ITEMS
H Change Order Project Drawings
H Building Permit
H Concrete testing
H Construction Electricity Charge after Turnover
H Verify Building Pad & Benchmarks
H Impact Fees
H Permanent Utility Tap & Connection Fees
H Plan Check Fee
H Quality Control - Special and/or Additional Inspections
H Samples & Drawings Dave & Buster's supplied materials
H Soil testing
H Structural verification
H Testing laboratories

CONSTRUCTION UTILITIES
G Construction Electricity Charges
C Electric Lines Installation
C Electric Lines Maintenance
C Electric Meter/Start-up Fee
C Gas Connections
G Gas Fuel Monthly Charge
C Gas Fuel Testing
C Gas Lines
C Water Connection
C Water Lines
G Water Monthly Charges

DAVE & BUSTER'S SUMMARY BREAKDOWN FOR COST OF WORK,
FEES & GENERAL CONDITION ITEMS

C = Reimbursement Cost of Work
F = Contractor's Fee
G = Contractor's General Conditions
H = Dave & Buster's Provided Items

TEMPORARY CONSTRUCTION
G Barricades
G Common Area Final Clean up
C Covered Walkways/Construction Tunnels
G Drinking Water & Ice
G Equipment Repair Shop
G Fence
G Field Office
G Final Clean up
G Gates
G General Clean up
G Janitor
G Project Signs - contractor
C Replace Broken Glass
C Roads
C Rubbish Chutes
G Storage Sheds & Trailers
G Temporary Enclosures
G Temporary Telephone (Pay Telephone)
G Temporary Toilets
G Tool Shed
G Trailer Set-up

SPECIAL PROJECT REQUIREMENTS
G As built drawings
G CPM scheduling
C Temporary Construction Generator
C Temporary Generator fuel
G Mobilization Expense
G Traffic Control
G Travel Expense

PERMITS & FEES
G Business license - contractor
G Contractor license
G Fees & Assessments - contractor

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10/25/2016

Page 11 of 81

DAVE & BUSTER'S SUMMARY BREAKDOWN FOR COST OF WORK,
FEES & GENERAL CONDITION ITEMS

C = Reimbursement Cost of Work
F = Contractor's Fee
G = Contractor's General Conditions
H = Dave & Buster's Provided Items

SMALL TOOL ALLOWANCE
G Drills, Electric or Air
G Hand tools
G Skillsaws
G Vacuum Cleaners
G Wheel barrows
G Bits, Blades and Tool Accessories

EQUIPMENT RENTAL
C Air Compressors
C Air tools
C Column clamps
C Concrete buckets
C Concrete buggies
C Concrete Floor finishing machine
C Electric generators
C Forklifts
C Hoppers
C Ice machines
C Laser levels
C Levels
C Office furniture
C Radial arm saws
C Scaffolding & accessories
C Shoring
C Skid loaders
C Space heaters
C Sweepers
C Table saws
C Tampers
C Tractor loaders
C Transits
C Trucks - dump
C Trucks - Flat bed
C Trucks - Pickup
C Trucks - Semi Tractor/trailer
C Trucks - water
C Trucks - winch
C Vibrating rollers
C Welding machines

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Page 11 of 83

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DAVE & BUSTER'S SUMMARY BREAKDOWN FOR COST OF WORK,
FEES & GENERAL CONDITION ITEMS

C = Reimbursement Cost of Work
F = Contractor's Fee
G = Contractor's General Conditions
H = Dave & Buster's Provided Items

HOISTING
C Concrete pump
C Crane operator
C Crane rental
C Hoist engineer
C Hoist operator
C Hoist mobilization
C Hoist tower
C Hydraulic crane
C Hydraulic crane operator
C Mobile crane
C Mobile crane operator
C Oiler
C Signal man
C Temporary lift operator
C Temporary lifts

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DAVE & BUSTER'S SUMMARY BREAKDOWN FOR COST OF WORK,
FEES & GENERAL CONDITION ITEMS

C = Reimbursement Cost of Work
F = Contractor's Fee
G = Contractor's General Conditions
H = Dave & Buster's Provided Items

SUPERVISION
G Project Superintendent
G Punchlist crew
G Surveyor
G Assistant Project Superintendent
G Clerk
G Engineers Helpers
G Field Engineer
G Office Manager
G Project Engineer
G Project Manager
G Site secretary - contractor
G Stenographer
G Subsistence

FIELD OFFICE EXPENSE - G.C.
G Initial Project Drawings
G Computers
G Copy Machines
G FAX machine
G Field engineering/Project layout
G Field Office Expense
G First Aid Supplies
G Hard Hats
G Office Supplies
G Progress Photographs
G Safety Equipment
G Samples & Drawings
G Overnight courier
G Phone Connections
G Phone Long Distance
G Phone Monthly Charge
G Postage
G Progress Photographs
G Dave & Buster's Project Signs
G Watchman or Security Service

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EXHIBIT A

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

**Rev. December 5, 2013
(DBGENCON - SC)**

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

TABLE OF CONTENTS

1. WORK TO BE PERFORMED, DOCUMENTS FORMING THE AGREEMENT, AND DEFINITIONS.....	1
2. DUTIES OF CONTRACTOR.....	3
3. DUTIES OF OWNER.....	6
4. CONTRACT SUM AND COST OF CONSTRUCTION.....	8
5. CHANGES IN THE WORK.....	8
6. PAYMENT BY OWNER.....	12
7. TIME OF THE WORK.....	13
8. CONTRACTOR'S DEFENSE, INDEMNIFICATION, WARRANTIES AND GUARANTEES.....	16
9. INSURANCE.....	20
10. OWNERSHIP OF THE WORK.....	23
11. ACCOUNTING, INSPECTION AND AUDIT.....	24
12. DISPUTE RESOLUTION.....	25
13. TERMINATION OF AGREEMENT.....	26
14. TEMPORARY CONSTRUCTION FACILITIES.....	27
15. USE OF SITE AND PREMISES.....	29
16. SUBMITTALS TO OWNER.....	30
17. SHOP DRAWINGS.....	30
18. SAMPLES.....	32
19. RECORD DRAWINGS AND MAINTENANCE INSTRUCTIONS.....	33
20. MATERIALS AND EQUIPMENT.....	33
21. SUBSTITUTION OF MATERIAL.....	34
22. WORKERS AND WORKMANSHIP.....	35
23. INSPECTION OF WORK AND TESTING OF MATERIALS.....	36
24. CORRECTION OF WORK.....	37
25. CUTTING AND PATCHING.....	38
26. CLEAN-UP.....	38
27. PROTECTION OF THE WORK.....	39
28. PROTECTION OF PERSONS AND PROPERTY.....	40
29. FIRE PRECAUTIONS AND PROTECTION.....	41
30. ENVIRONMENTAL CONTROL.....	42
31. MISCELLANEOUS.....	43

1. Work To Be Performed, Documents Forming The Agreement, and Definitions

1.1 Contractor shall provide, perform and/or cause to be provided or performed all of the "Work," set forth in Article 2 of the Agreement. The "Work" includes the following:

- (a) All of the labor, materials (including associated purchase orders and subcontracts), equipment and services necessary for the proper management, construction and completion of the Project in accordance with the Contract Documents and the "Construction Documents" (as defined below);
- (b) All work shown on the Drawings;
- (c) All improvements in connection with the Project and all site work for the Project;
- (d) The "Subcontracted Work" and the "General Contractor Work," both as defined below;
- (e) All other items to be performed or provided under the terms hereof by the Contractor or designated herein as included in the Work; and
- (f) All other work necessary or appropriate to construct the Project in accordance with the Contract Documents, excluding only work marked "NIC" on the Drawings and Specifications and the items listed as "Exclusions" and made a part of the Agreement.

1.2 The terms "Subcontracted Work" and "General Contractor Work" shall have the following meanings:

- (a) "Subcontracted Work" shall mean all Work not performed by Contractor's own personnel.
- (b) "General Contractor Work" shall mean all Work to be performed, supervised or directed by Contractor's own personnel of whatever nature; purchase orders for General Contractor Work; all Work recognized as being the responsibility of the Contractor under the Agreement; the payment and performance by Contractor of all of its obligations under the Agreement including those set forth in Section 4 hereof; and such other work as shall be necessary for the proper management, layout, direction and supervision of all Subcontracted Work.

1.3 Any written change to this Agreement shall be in writing and signed by Owner and Contractor and, when so signed, shall constitute a "Change Order" binding on the parties hereto, shall be become part of this Agreement and, where inconsistent herewith, shall amend the Agreement. Changes in the Work and "Change Orders" shall be handled as set forth in Section 5, herein.

1.4 The "Contract Documents" are those documents set forth in Article 1 of the Agreement, and further enumerated in Article 7 of the Agreement.

1.5 The "Architect" is the person or organization licensed to practice architecture and identified in the Agreement, and shall be deemed to include the Architect's duly authorized representatives, including

engineers on the Architect's staff and consultants and engineers employed by the Architect. The Architect shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide access so the Architect may perform his functions under his agreement with the Owner. The Architect will review shop drawings, samples and other construction data, and may, as requested by Owner, render decisions regarding the design and other elements specified by or within the Architect's area of expertise. Nothing contained in the Contract Documents shall create any contractual relationship between the Architect and the Contractor. The Architect will not be responsible for the acts or omissions of the Contractor, any subcontractors, any of their agents or employees or any other persons performing any of the Work. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures, nor for safety precautions, including requirements of OSHA or programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

1.6 A "subcontractor" is a person or organization who has a direct contract with the Contractor to perform any of the Work on the Project. A sub-subcontractor is a person or organization who has a direct or indirect contract with a subcontractor to perform any of the Work on the Project. Where the context so requires or suggests, the term "subcontractor" shall also be deemed to refer to sub-subcontractors. The terms subcontractor and sub-subcontractor are referred to throughout the Contract Documents as if singular in number and masculine in gender, and mean a subcontractor or sub-subcontractor, as the case may be, and its respective authorized representatives.

1.7 Contractor agrees, with respect to any items or trades treated as an allowance under the "Contract Sum", as hereinafter defined, (i) to work closely with Owner and the Architect to reduce any allowance quotation submitted by Contractor, (ii) to re-bid major trades and subcontracts when requested by Owner, (iii) to suggest to Owner changes which Contractor believes will result in a lower cost for such allowance items and (iv) to provide Owner and its representatives (including the Architect) with full access to all information underlying Contractor's calculation of such allowance.

1.8 In general, Drawings shall show dimensions, positions, materials and kinds of construction. Specifications shall describe quality of materials, workmanship and methods. Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. Should Contractor become aware of an error in the Specifications or Drawings, or in work by others affecting this Work, the Contractor shall at once notify in writing the Owner who will issue instructions as to procedure. If the Contractor proceeds with the Work based on any such error of which Contractor is aware, or if which in the exercise of reasonable care and diligence should be aware, without instructions from the Owner, the Contractor shall correct, at no cost to Owner, any resulting damage or defects. This includes Specification typographical errors and Drawing notational errors where the intent is doubtful. Figured dimensions on scale Drawings and on full-size Drawings shall govern. In the event of a conflict between the Specifications and the Drawings, regarding material, quality, size, shape or dimension, the Specifications shall govern.

1.8.1 Contractor shall visit the site, familiarize himself with the local conditions under which the Work is to be performed and correlate his observations with the requirements of the Contract Documents.

1.8.2 The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided herein necessary for the proper execution and completion of the Project. It is intended that Work not covered under any heading, section, branch, class or trade of the Specifications shall be supplied if it is required elsewhere in the Contract Documents or is reasonably inferable as being necessary to produce the intended results. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

1.9 As used herein, the terms "days" shall mean calendar days.

2. Contractor Duties

2.1 The relationship of Contractor with Owner shall be that of an independent contractor. However, Contractor recognizes the relationship of trust and confidence established by the Agreement and agrees to furnish its best skill and judgment and to cooperate with Owner, the Architect and such other consultants as may be engaged by Owner in pursuing the best interests of Owner. Contractor agrees to furnish efficient business administration and supervision in connection with the Project and to maintain at all times an adequate supply of workmen and materials and to use its best efforts to perform the Work in the best workmanlike manner and in the most expeditious and economical manner, consistent at all times with the best interest of Owner. Contractor shall meet with Owner and Owner's agents, at such time, and from time to time, as Owner requests to review the Work and the progress schedule, and for such other purposes as Owner desires.

2.2 Commencing with the execution of the Agreement, Contractor shall furnish Owner with information concerning costs, availability of materials and equipment, methods of construction and other pertinent information which Contractor may possess or obtain and which may be of value to Owner in completing the Project. Contractor shall report to the Owner and Architect, in writing, any inconsistencies, errors and omissions in the Construction Documents which Contractor may observe or which may come to its attention, and Contractor shall require its subcontractors to report to Contractor or the Owner and Architect, in writing, any such inconsistencies, errors and omissions which they may observe or which may come to their attention.

2.3 Contractor shall provide for the benefit of the Project a competent and skilled field organization containing at all times a sufficient number of personnel to perform the Work and to supervise such performance, including a project manager, project engineers, superintendents and assistants, foremen, engineers and detailers, timekeepers and clerks, cost accountants, material checkers, watchmen, skilled and common laborers and such other workmen and supervisory personnel as the Work may require. Both the number of persons from time to time employed in connection with the Project by Contractor, and the persons so employed, shall be subject to the approval of Owner, which approval shall not be unreasonably withheld. Contractor shall supervise all of the Work, including all Subcontracted Work, and shall prepare all schedules, estimates and reports as reasonably required by Owner.

(a) Contractor agrees to appoint a "Project Manager" for the Work, which Project Manager shall be responsible for the administration of this Agreement so long as he shall remain in the employ of Contractor or can be retained by Contractor.

(b) Notwithstanding the foregoing, Contractor agrees that, at the written request of Owner, the Project Manager and any successor(s) thereto shall be replaced by Contractor and another person acceptable to Owner shall be immediately engaged by Contractor as Project Manager. The Owner shall have the same right as it relates to the project superintendent, project engineer, and other supervisory project personnel.

2.4 Contractor shall provide and maintain a sufficient number of temporary buildings for the operation of its field organization and each of its subcontractors, Owner and the Architect, as well as for storage of all materials and housing of machinery, tools and equipment. Contractor shall provide such other temporary construction and facilities as may be required for the Work. Contractor further agrees to utilize staging areas, if designated by Owner.

2.5 Contractor at all times shall provide adequate and sufficient machinery, equipment, tools and supplies as may be required for the Work.

2.6 Contractor shall negotiate and award subcontracts and purchase orders subject to the terms of the Contract Documents. Owner shall have full access and rights to all information concerning the negotiation of all Subcontracted Work, purchase orders and all awards thereof in excess of Five Thousand Dollars (\$5,000.00).

(a) All purchases shall be made utilizing standard written purchase order forms. Each purchase order shall set forth in detail the pertinent data as to its terms and conditions consistent with the Agreement.

(b) If requested by Owner, Owner shall be furnished with two (2) executed copies of all purchase orders and subcontract awards in excess of \$5,000.

(c) Whenever reasonably requested by Owner in advance of the award of any subcontracts or purchase orders, Contractor shall establish unit prices ("Unit Prices") as part of the subcontracts or purchase orders. Such Unit Prices shall be established for additions as well as deletions.

2.7 Contractor shall have full and complete authority and responsibility for the performance of all Subcontracted Work, and for each of its subcontractors and material suppliers. Contractor shall be fully responsible to Owner for the acts and omissions of each of its subcontractors and material suppliers, and of persons employed either directly or indirectly by them, and for the acts and omissions of Contractor's own employees, which responsibility shall be unaffected by any bankruptcy proceedings affecting any of them or any other inability to perform their obligations. Contractor agrees that no portion of the Contract Documents, nor any contract entered into between Contractor and any of its subcontractors or material suppliers, shall create any direct contractual relationship between any of such subcontractors or material suppliers and Owner.

2.8 Contractor shall purchase all materials and services required for construction of the Project and as otherwise required to perform fully all of the Work.

2.9 Contractor shall cooperate with Owner's fixture contractor(s) in the coordination of the installation of store fixtures without additional compensation.

2.10 Contractor shall cooperate with Owner and Architect at all times in order to obtain all necessary permits, authorizations, bonds and licenses required by any governmental authority having jurisdiction over all or any part of the Work.

2.11 All Work performed for the Contractor by a subcontractor shall be pursuant to an appropriate agreement between the Contractor and the subcontractor (and where appropriate between subcontractors and sub-subcontractors), which agreements shall be subject to Owner's review and approval, and which shall contain provisions that:

- (a) Preserve and protect the rights of the Owner in accordance with the Contract Documents;
- (b) Make such subcontract subject to the terms of the Agreement and the other Contract Documents and require that such Work be performed in accordance with the requirements of the Contract Documents;
- (c) Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a part, in reasonable time to enable the Contractor to apply for payment in accordance with the Agreement;
- (d) Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to Subcontracted Work shall be submitted to the Contractor (via any subcontractor or sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for similar claims by the Contractor upon the Owner;
- (e) Waive all rights the Contractor and subcontractor may have against one another or the Owner for damages caused by fire or other perils covered by the property insurance described in the Agreement, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee; and
- (f) Obligate each subcontractor specifically to consent to the provisions of this Paragraph 2.11. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Paragraph 2.11, and identify to the subcontractor any terms and conditions of the proposed subcontract which may materially vary from the terms and conditions of the Contract Documents. Each subcontractor shall similarly make copies of the Contract Documents available to his sub-subcontractors.

2.12 Contractor's Design Responsibilities shall include, but not be limited to the following:

2.12.1 Structural design of all temporary construction, equipment and appliances used in the performance of the Work and not a permanent part thereof, including, but not necessarily limited to, hoisting equipment, cribbing, shoring and the temporary bracing of structural steel, is the sole responsibility of the Contractor. All such items shall conform with the requirements of governing codes and all rules, regulations and orders of all authorities having jurisdiction.

2.122 Contractor shall not impose loading upon any part of the Work under construction or upon existing construction upon or adjacent to the site of the Work, in excess of safe limits, or loading which will damage the structural, architectural, mechanical, electrical or other components. All damage which occurs as a result of overloading shall be repaired or the damaged Work replaced at Contractor's sole expense, all as directed by the Owner.

2.13 Coordination by Contractor shall include, but not be limited to the following:

2.13.1 Contractor and each subcontractor shall be responsible for examining all Drawings, all sections of Specifications and all items of addenda and all modifications to inform themselves of requirements for their part of the Work. Owner assumes no responsibility for omission of an indication of an item or part of Work from a location on one Drawing which is indicated on any other Drawing. Specifications are divided into sections for convenience of Contractor. Items or parts of Work specified shall constitute the responsibility of Contractor regardless of where they are located in Specifications.

2.132 Contractor shall supervise all measurements taken in the field necessary to insure timely fabrication, delivery, and proper fitting together of the entire Work.

2.14 Contractor recognizes and agrees that certain items to be incorporated into the Work may be purchased and supplied by Owner (hereinafter "FBO Items"). Contractor shall be responsible for coordinating the delivery and receipt of all FBO Items for the Project to be incorporated into the Work. Contractor shall offload, handle, store and as appropriate, incorporate all FBO Items into the Work in accordance with the Contract Documents. In the event particular FBO Items are to be installed, hooked up or commissioned by others, Contractor shall prepare the necessary locations and adjoining elements of the Work to accept such items, and shall coordinate Contractor's activities so as to facilitate installation or incorporation of such FBO Items by Owner's other contractor or supplier.

3.0 Owner Duties

3.1 The Owner shall provide surveys showing the boundaries of the property, easements and location of underground utilities.

3.2 The Owner shall obtain and pay for all necessary easements.

3.3 Decisions and approvals required of the Owner shall be rendered with reasonable promptness, so as not to delay the Work.

3.4 The Owner shall provide the Contractor with soil and subsurface reports relating to the Project, to the extent such exist, and Contractor timely requests such information. Owner shall have no responsibility for the information contained therein or the accuracy thereof. All soil, geotechnical and related subsurface information is intended for Owner's benefit, and Contractor is not entitled to rely upon such information. In the event Contractor desires or requires soil, geotechnical or subsurface information, Contractor shall obtain such information at Contractor's sole expense.

3.5 The Owner shall pay all property taxes and property assessments levied against any portion of the Project.

3.6 The Owner shall appoint a Construction Manager as its full-time representative on the Project with whom the Contractor may consult and whose instructions and decisions shall be binding. No Change Order, Field Order or bulletin shall be valid or effective unless authorized on behalf of the Owner by the following appointed individuals within the limits shown:

Owner's Construction Manager: Maximum \$10,000.00 - Cumulative monthly
 Owner's Senior Vice President – Development: Amounts in excess of \$10,000.00

3.7 The Owner shall make all payments due Contractor in accordance with the Agreement.

3.8 The Owner's agreement with the Architect may provide for the Architect's obligation to:

(a) Produce Construction Documents which comply with all applicable codes and regulations.

(b) Review all shop drawings, samples and other submissions of Contractor and its subcontractors for conformance with the design requirements of the Project and for compliance with Construction Documents. Architect shall not be responsible for checking exact dimensions of shop drawings.

(c) Interpret, as requested by Owner, the Construction Documents and coordinate the design and engineering of all systems and subsystems to assure that the architectural, structural and mechanical elements and components will be complete and compatible.

3.9 Owner retains the right to award separate contracts relating to portions of the Project as Owner, in its sole discretion, deems appropriate. Contractor agrees to sequence and coordinate the Work with such separate contracts at no additional cost to Owner.

3.9.1 Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their portions of the Work, and shall properly connect and coordinate his Work with theirs.

3.9.2 If any part of Contractor's Work depends for proper execution or results upon the Work of any other separate contractor, Contractor shall inspect and promptly report to the Owner any apparent discrepancies or defects in such Work that render it impossible for such proper execution and results. Failure of Contractor to so inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

3.9.3 Should Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle and resolve such dispute with such other contractor. If such separate contractor sues the Owner or initiates a dispute proceeding on account of any damage alleged to have been so sustained, Owner shall notify Contractor who shall defend such proceedings at Contractor's sole expense; and if any judgment or award against Owner arises from such proceedings, Contractor shall pay or satisfy it and shall reimburse Owner for all attorneys' fees and dispute resolution costs which Owner has incurred.

3.10 In accordance with Section 12.6 herein, the Owner may, at its election, decide all claims, disputes and other matters in question between the Contractor and the Owner relating to the performance of the Work or the interpretation of the Contract Documents. Such decision will be rendered in writing within a reasonable time. The Owner may refer any such claim or dispute to the Architect. The Owner's decision, or the Architect's, if referred by or from the Owner's Senior Vice President - Development, shall be final and binding on the parties.

4.0 Contract Sum and Cost of Construction

4.1 Notwithstanding anything to the contrary contained in the Contract Documents, Contractor shall fully, timely and completely perform the Work in accordance with the Contract Documents for the Contract Sum. The Contract Sum may be increased or decreased only as provided in the Agreement. Contractor shall be entitled to no other compensation for construction of the Work and Contractor's sole remuneration shall be the amount of the Contract Sum. Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold up to 150% of any payment to the Contractor under the Contract Documents in addition to retained amounts, or such other amounts as permitted by law, if and for so long as the Contractor fails to perform any of its obligations under the Contract Documents or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to any amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor. In the case of a contract containing a Guaranteed Maximum Price, all cost savings accrue to the Owner.

5. Changes in the Work

5.1 "Change Order" shall mean (i) any written amendment or modification to the Agreement or the other Contract Documents signed by both Owner and Contractor and (ii) any change in the Work ordered by Owner pursuant to Paragraph 5.3 or requested by Contractor and agreed to by Owner pursuant to such provision.

5.2 "Field Order" shall mean a written instruction by the Owner instructing the Contractor to perform certain activities and to incorporate such labor, services, materials and equipment into the Work in accordance with Paragraphs 5.3 and 5.4 below. Field Orders may be issued by the Owner prior to agreement on adjustment, if any, in the Contract Sum or Contract Time.

5.3 Owner reserves the right to order in writing alterations, additions to or deletions from the Work from the Contract Documents at any time prior to completion and acceptance of the Work by Owner. Contractor shall comply with any and all such Field Orders, or as appropriate, Change Orders. Contractor may request or propose changes in the Work; provided, however, Owner shall be under no obligation to agree to or accept any such requested or proposed change. Contractor shall not make any change or deviation from the Construction Documents without Owner's prior written approval, and Contractor at all times shall be fully liable to Owner for any unauthorized changes in or deviations from the Construction Documents. Except where expressly provided in the Agreement, no Change Order shall be made, nor shall any adjustment in the Contract Sum or Contract Time be recognized hereunder, unless Contractor shall have received a written Change Order or Field Order executed by Owner prior to making any such change.

5.4 In the event it is undetermined or it is disputed whether an order by Owner with respect to the Work constitutes a change in the Work, and thus, whether a Change Order is appropriate, Owner reserves the right to issue a Field Order concerning such labor, services, materials and equipment, and Contractor shall, without delay, fully and completely take, or cause to be taken, all such actions necessary to incorporate such labor, services, materials, and equipment into the Project. Contractor's compliance with a Field Order is without prejudice to Contractor's rights, provided that Contractor complies with all requirements of the Contract. In the event Contractor believes a Field Order, or some part thereof, constitutes a change in the Work, Contractor shall timely and completely follow the procedures associated with Change Orders set forth herein. In no event shall Contractor delay or stop the Work or cause any adverse impact to the Contract Schedule as a result of questions or disputes relating to the appropriateness or necessity for a Change Order.

5.5 Whenever the necessity for a change arises, and when so ordered by Owner in writing, Contractor shall take all steps necessary to halt any Work in the area of the change that might be affected by the change. Changes in the Work shall be performed fully and completely and in accordance with the Drawings and Specifications, except for the deviations specifically called for by the Change Order. Materials utilized in the changed Work shall be as specified in the Contract Documents insofar as the Contract Documents do not conflict with the conditions set forth in the Change Order.

5.6 Whenever a Field Order directing work is received by Contractor, or Contractor requests a change, Contractor shall prepare and submit to Owner a full and completely detailed estimate of the cost of the Work for such direction or change and, as applicable, an estimate of the additional time required by Contractor within which to perform which would extend the Date of Substantial Completion and/or of the reduction in costs and time due to the omission of Work which was to have been performed for the Contract Sum. Estimates of costs for added Work shall be based upon the cost to Contractor for such Work at market values current at the time the directed or changed Work is requested, unless otherwise covered by Unit Prices. Estimates of the amount to be deducted from the Contract Sum due to the omission of Work shall be based upon the cost of the Work to Contractor for the labor, materials and equipment which would have been used on such Work, using the same values thereof at the time the Contract Sum was established, unless otherwise covered by Unit Prices. Contractor shall include no more than ten percent (10%) of the cost of such Work as full compensation for Contractor's field overhead, general conditions, main office overhead and profit. The same percentage used for Contractor's field overhead, general conditions, main office overhead and profit shall apply to both additive and deductive change orders.

5.7 The estimates to be provided by Contractor shall contain the following information:

(a) For any portion of the directed or changed Work which shall be performed by a subcontractor, Contractor shall furnish Owner with a detailed estimate of the costs to the subcontractor for labor, materials and equipment to be used, and any other applicable costs charged by such subcontractor, including a markup by the subcontractor not to exceed ten percent (10%) on all direct labor and materials purchased. Subcontractor will be allowed five (5%) markup on all sub-subcontracted work only to cover the subcontractor's supervision, general conditions, general overhead and profit, unless otherwise approved in writing by Owner prior to award of the subcontract.

(b) Sub-subcontractors' charges shall be limited to the terms of the preceding paragraph. A sub-subcontractor's markup on a lower tier sub-subcontractor's total charges shall not exceed five percent (5%) of the cost of such charges, unless approved in writing by Owner prior to award of the subcontract and shall specifically not include any other additional markup for overhead and profit.

5.8 Except as otherwise provided below, Contractor's quotations, supported by detailed estimates, shall be submitted within ten (10) days after the Field Order directing the work or the change is received by Contractor, or Contractor requests a change. Contractor's quotation shall include the period of time allowed for approval by Owner, which shall be not less than ten (10) days. Any change which the Contractor feels will require additional time extension to achieve the dates set forth in Paragraph 7.2 shall be handled pursuant to Paragraph 7.5 herein as it relates to the requested time extension.

5.9 Changes in the Work required as a result of imminent peril to persons or property, discovery of errors in the Construction Documents requiring immediate clarification in order to avoid a serious work stoppage, changes of a kind where the extent of the Work involved cannot be determined until completed, and unexpected or unforeseen site conditions or changes under any other circumstance when deemed necessary by Owner may be authorized by Owner upon written notice thereof to Contractor or, in the case of imminent peril to persons or property, orally, where it is obvious that the change must be ordered immediately. Contractor shall commence performance of any such change immediately upon receiving such authorization. After commencing any such change, Contractor shall submit a detailed estimate within the same time and in the same manner set forth above for ordinary changes. Contractor also shall submit time and materials records for such Work until an agreement is reached upon the appropriate adjustment to the Contract Sum.

5.10 In the event that Owner and Contractor fail to agree on any adjustment in the Contract Sum for any change in the Work pursuant to a Change Order or a clarification of the Construction Documents which Contractor claims is a Change Order, Contractor, upon issuance of a Field Order from Owner, shall immediately proceed to perform the Work which is the subject of the Field Order or a Change Order dispute or discussion. Contractor shall create and maintain for each day's work a daily work sheet containing a detailed summary of the actual costs of the labor, materials and equipment used in the Work which is the subject of the Field Order, in a form to be approved by Owner. Contractor similarly shall indicate all savings in labor, materials and equipment, as well as supervisory personnel, in connection with that portion of the Work which is the subject of the Field Order. Where Contractor performs Work subject to a Field Order at locations away from the job site, in lieu of such daily work sheet, Contractor shall furnish a detailed statement of labor, material and equipment used on such Work. In addition, upon completion of such Field Order Work, Contractor shall furnish Owner with a detailed time and materials statement of the cost of the Work as a result of such Field Order.

5.11 All of the information to be provided by Contractor pursuant to this Section 5 shall be provided in such detail that quantity, unit of work, labor, material, equipment and incidentals required to perform the Work are clearly identified and itemized either in assembly or unit prices, or as further the Owner may reasonably require. All statements and work sheets to be provided by Contractor with respect to changes in the Work shall be signed by Contractor, who shall certify, warrant and represent that to the best of Contractor's knowledge the information is true and correct, but such certification shall not preclude subsequent adjustment based upon a later audit.

5.12 For any additive changes in the Work, Contractor shall be entitled only to such adjustment in time by which the Date of Substantial Completion (as defined herein) is delayed due to performance of the added Work. Each estimate for an addition to the work submitted by Contractor shall state the amount of additional time that Contractor considers that the Date of Substantial Completion will be delayed as a result of the requested change. Failure to request additional time when submitting such estimates shall constitute a waiver by Contractor of any right to claim subsequently any adjustment in the time for the Date of Substantial Completion based upon such changed Work. In each instance the request for additional time shall include appropriate credit for time saved as a result of changes in or deletions to the Work. Appropriate changes in time for deductive changes to the Work shall be handled in the same manner. Contractor nonetheless shall have the right to request a Change Order extending the Date of Substantial Completion when the cumulative effect of several Change Orders, by the nature of the Work described therein, reasonably causes the time of performance to exceed the aggregate of the time extensions already allowed in the same Change Orders. It is the Contractor's obligation to demonstrate to the Owner how any requested time extension has adversely impacted the Project's Critical Path Schedule. Only time extensions which have been demonstrated to adversely impact the Project's Critical Path Schedule shall constitute a valid time extension for extending the Date of Substantial Completion.

5.13 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- (a) By mutual acceptance of a sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) By unit prices stated in the Contract Documents or subsequently agreed upon;
- (c) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

(d) If none of the methods set forth above in 5.13(a), 5.13(b) or 5.13(c) is agreed upon, the Contractor, provided he receives a Field Order, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Owner on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit not to exceed the amounts set forth in Paragraphs 5.6 and 5.8 above, as appropriate. In such case, and also under 5.13(c) above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. All indirect costs whether incurred on or off the Project Site shall be included in the Contractor's overhead. Such indirect costs include, without limitation, insurance, taxes, bonds, salaries of Contractor's personnel unless the Work is performed with Contractor's own forces, local travel, and expenses of Contractor's principal and branch offices.

5.14 In the event Owner and Contractor are unable to reach agreement on issues relating to or concerning Field Orders, Change Orders, request for a Change Order, or any other aspect of the Work, such dispute and issues shall be decided in accordance with the provisions of Paragraph 12 herein.

6. Payment By Owner

6.1 Owner shall pay the Contract Sum in the manner and at the times hereinafter specified in the agreement. All applications for payments must be submitted on Owner's payment forms and be accompanied by waivers of claims and liens from Contractor and all "major" subcontractors and material suppliers for the portion of Work certified to be in place for which payment has been made. "Major" subcontractors and material suppliers will be regarded as those whose contract sum exceeds Ten Thousand Dollars (\$10,000.00) for their respective portion of the Work.

6.2 On or about the 25th of the month the Contractor shall deliver to the Owner for its approval, an itemized written statement on forms approved by Owner showing (i) the actual cost and the amount which is due and payable with respect thereto for Work completed and the projection of the work to be completed to the end of the month (in place and incorporated into the Work) and materials stored at the Project site or at Owner approved off-site storage areas, as itemized per Contractor's schedule thereof, during said month less all applicable retentions therefrom, (ii) the percentage of the Work completed during such month and the total percentage of the Work completed through such month, and (iii) an updated progress CPM schedule for the Work.

6.3 Within twenty one (21) days of receiving a proper and complete pay request as set forth in 6.2 above, Owner shall remit to Contractor with respect to the preceding month that portion of the Contract Sum that the Owner approved in its "Certificate of Payment" and excluding from such amount: (i) a retention equal to ten percent (10%) of the approved amount of such Work (including the General Contractor Work, the Subcontracted Work) as defined herein, (ii) any amount in excess of the cost of the Work performed by Contractor during such month, (iii) any portion of the cost of the Work for such month to the extent it exceeds the cost of the Work attributable to the percentage of the Work completed during such month, and as applicable, (iv) any additional amounts Owner is entitled to withhold pursuant to the terms of the Agreement.

6.4 Contractor shall at all times make available to Owner records and invoices of all disbursements made by Contractor for materials, labor, payments to subcontractors and other expenses incurred by Contractor. To the extent any discounts, rebates or other credits are due Owner on account of Owner's prepayments or otherwise, all such discounts, rebates and other credits shall appear in said statements as credits due to the Owner.

6.5 Owner may withhold payment to Contractor to the extent necessary to protect Owner upon the occurrence of any one or more of the following events:

- (a) any failure of Contractor to comply fully with any requirement of the Contract Documents, including any failure of Contractor to make any payment to any subcontractor or material supplier without cause;
- (b) any failure of Contractor to substantiate that previous payments made by Owner have been applied as provided by this Section 6, regardless of whether Contractor has a legitimate dispute with a subcontractor or material supplier;
- (c) the filing, delivery or recordation of any claim, lien, stop notice or similar matter against Owner, Contractor, any subcontractor, sub-subcontractor, materials supplier or the

Project, or the existence of any allegation or dispute concerning payment or performance between any of such parties, notwithstanding any failure of any of them to file, deliver or record any notice or similar required by law; provided, however, the amount which Owner may withhold pursuant to this subparagraph (c) shall be limited to payments to Contractor for General Contractor Work and payments with respect to the Work performed by the claimant involved, subject to the further limitation that the amount so withheld shall not exceed the greater of (i) the amount(s) claimed or in controversy or (ii) the face amount(s) of any and all bonds posted by the Owner to release any mechanics' or similar liens filed against the Project or any part of the Owner's property, plus twenty-five percent of such face amount(s) as reasonable attorneys' fees to defend any actions on such bonds; and provided further that if Contractor provides a bond for the benefit of Owner pursuant to Paragraph 8.12 hereof with respect to the amount claimed or in controversy, the Owner will not withhold payments with respect thereto;

(d) any damage caused to any other contractor or subcontractor by reason of the negligent acts of Contractor, or persons or entities for whom Contractor is responsible; or

(e) any reasonable concern by Owner regarding Contractor's timely or proper performance of the Work or Contractor's ability to timely and properly complete the Work.

7. Contract Time and Schedule

7.1 Contractor shall commence the Work promptly after receipt of a Letter of Intent/Notice to Proceed in the form issued by Owner and shall prosecute the Work diligently to completion. The Work (including the relevant portions thereof referred to below) shall be completed on the date(s) agreed upon by Owner and Contractor as set forth below. The "Date of Substantial Completion" of the Work is the date when (i) the Work is sufficiently completed, in accordance with the Construction Documents, as modified by any Change Orders, so that the Owner can fully occupy the Project for the use for which it was intended, (ii) if the Project is located in a state which provides for the filing of a notice of completion or similar notice, a valid notice of completion or similar notice may be recorded, and (iii) the local governmental authority having jurisdiction over the Project has issued its final certificate of occupancy for all of the Work. The "Date of Final Completion" of the Work is the date when any and all corrective Work ordered by the Owner, after a semi-final inspection, has been consummated to the Owner's satisfaction. The "Certificate of Final Completion" shall be a document issued by the Owner after the Date of Final Completion and after final inspection has been made and shall not be unreasonably withheld. Notwithstanding the above, Owner may allow minor corrective Work to be completed after the Certificate of Final Completion is issued. Issuance of the Certificate of Final Completion fixes the Date of Final Completion and must be issued prior to final payment by the Owner, with exceptions contained in this Agreement.

7.2 Ten (10) days following Owner's notice to proceed, Contractor shall provide to Owner the Critical Path Schedule, showing timely completion of the Work as required by the Agreement. Upon receipt of the initial Critical Path Schedule, Owner may accept same as submitted or reject and note deficiencies. If the schedule is rejected, the deficiencies noted shall be corrected and a new schedule shall be submitted within ten (10) days. In any case, the complete Critical Path Schedule must be approved by Owner prior to any payments being made. The Critical Path Schedule shall be in the form of a network using Critical Path Methodology (CPM), clearly showing construction activities, dependencies and durations. The critical path activities shall be highlighted and float time for non-critical activities shall

be listed. Longer duration activities shall be broken into sub-activities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule logic and content; however, the following activities must be included in all cases: (a) Contract award; (b) mobilization; (c) site grading; (d) pad preparation; (e) utilities; (f) material procurement; (g) shell construction; (h) shell dry-in; (i) interior construction; (j) coordination meeting with Owner Furnished Equipment vendors; (k) kitchen construction; (l) TV and IT installation; (m) punch list walk; (n) Certificate of Occupancy; (o) turn-over to Owner's Operations; (p) Grand Opening/Opening to public; (q) warranty and operation and maintenance manuals; and (r) Project closeout. In the event Contractor falls behind the Critical Path Schedule, or otherwise fails to progress properly towards timely completion of the Work, Owner shall have the right to require Contractor, without cost or expense to Owner or change in the Contract Sum, to take all steps necessary to improve progress, including, without limitation, overtime work and additional days, and to submit for Owner's approval a revised Critical Path Schedule showing the manner in which the originally scheduled progress will be restored and the Work timely completed as required by the Agreement. Contractor shall keep the Critical Path Schedule current to reflect changes caused by delays permitted hereunder. A Critical Path Schedule showing the latest schedule and actual status of the Work shall, in any case, be submitted on a monthly basis with the pay request.

7.3 Should Contractor, in the opinion of Owner, fail, refuse or neglect to supply a sufficient number of workmen, adequate equipment, or to deliver materials with such promptness as to prevent any delay in the progress of any portion of the Work resulting in Contractor's (or any of its subcontractors' or suppliers') failure to prosecute the Work to completion in a timely manner, then, in addition to any and all other rights and remedies of Owner, Owner shall have the right upon five (5) days' prior written notice, to direct Contractor to furnish additional labor, including overtime, and to expedite delivery of materials which shall be sufficient to accelerate and complete the Work, and the Contract Sum shall not be increased on account of such direction by Owner. Nothing contained herein shall be deemed to preclude Contractor's right, following completion of the Work, to contest by appropriate proceedings any determination by Owner that additional workmen or expedited deliveries were appropriate. Should Contractor neglect or refuse to comply with such directive, Owner shall have the right (but not the obligation) to obtain and pay for such goods and services directly, and the Contract Sum shall be reduced in a like amount, and, in addition thereto, Owner may exercise any other right or remedy granted by this Agreement (including termination hereof for cause) or granted by law. The payment thereof by Owner pursuant to the foregoing shall not be deemed to cure or waive Contractor's default.

7.4 If Contractor is delayed at any time in the progress of the Work by (a) any act or omission of Owner, the Architect or any separate contractor or consultant employed by Owner (but not resulting from or based on any default by Contractor or any of its subcontractors, or any failure by Contractor or its subcontractors to comply with the Contract Documents); (b) labor disputes (provided same are not occasioned by Contractor's failure to pay its employees or subcontractors); (c) fire, extraordinarily severe inclement weather, earthquake, extraordinarily unusual delay in transportation, inability to obtain necessary materials, equipment or labor or by any act or lack of action by governmental authority through no fault of Contractor; or (d) any cause beyond the reasonable control of Contractor and its subcontractors, then the dates set forth in Paragraph 7.2 may be extended for a period equal to the time by which the completion of the Work or the relevant portions thereof is delayed by reason of such causes, provided in each instance that the Critical Path Schedule is affected and a timely and proper claim is made as set forth in Paragraph 7.5 below. For purposes hereof, "extraordinarily severe inclement weather" shall mean weather patterns that may not reasonably be anticipated during the period

of construction of the Work, and which at a minimum, exceed the thirty (30) year return interval for such events according to the National Oceanographic and Atmospheric Administration (NOAA) for the Project area.

7.5 All claims for extensions of time shall be made in writing to Owner not more than ten (10) days after the occurrence of the cause for delay of which Contractor is aware, or in the exercise of reasonable care should have been aware, by which Contractor seeks to extend the dates set forth in Paragraph 7.2 pursuant to Paragraph 7.4 above. Failure to request such extensions of any such dates by Contractor in accordance with the foregoing shall constitute a waiver of any right to claim subsequently any adjustment in any such dates based upon any of such causes. It will be the Contractor's obligation to demonstrate to the Owner how any requested time extension has adversely impacted the Project's Critical Path Schedule. Only time extensions which have been demonstrated to impact the Project's Critical Path Schedule shall constitute a valid time extension for extending such date.

7.6 In the event that Owner desires to accelerate Contractor's performance of the Work (for reasons other than those set forth in Paragraph 7.3 above) with greater speed than contemplated by Paragraph 7.2, Contractor shall, upon written notice thereof from Owner, employ overtime labor and expedite delivery of materials as directed by Owner. Such notice shall be deemed a Change Order and the Contract Sum shall be adjusted on account of such Change Order as provided elsewhere herein.

7.7 Notwithstanding the fact that a dispute, controversy or question shall have arisen relating to (i) the interpretation of any provision of the Agreement, (ii) the performance of any Work, (iii) payments which Owner claims it is entitled to withhold pursuant to Paragraphs 4.1 or 6.5 hereof or (iv) otherwise, the Contractor agrees that it will not directly or indirectly stop or delay any Work required to be performed or stop or delay the delivery of any materials required to be furnished hereunder, pending the outcome of such dispute or controversy.

7.8 Owner shall have the right to occupy portions of the Project as and when completed, but prior to Date of Final Completion, only if Owner accepts such portions as substantially complete (subject to punch list corrections) and Owner agrees to the commencement of warranties and guarantees as to such occupied portions.

8. Contractor's Defense, Indemnification, Warranties and Guarantees

8.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUBSIDIARIES, AFFILIATES, STOCKHOLDERS, SUCCESSORS AND ASSIGNS (COLLECTIVELY HEREINAFTER THE "INDEMNITEES"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, LOSSES, EXPENSES INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, AND OTHER LIABILITIES OF EVERY KIND ARISING OUT OF OR IN CONNECTION WITH ANY WAY RELATED TO OR RESULTING FROM OR ALLEGED TO ARISE OUT OF OR TO BE IN ANY WAY RELATED TO THIS AGREEMENT OR CONTRACTOR'S PERFORMANCE OF THE WORK OR ANY OTHER ACTIVITIES OF CONTRACTOR OR THOSE FOR WHOM CONTRACTOR MAY BE RESPONSIBLE, SUCH INDEMNIFICATION SHALL INCLUDE CLAIMS OF OR DAMAGES ARISING OR RESULTING FROM THE CONDUCT OF INDEMNITEES INCLUDING THEIR NEGLIGENCE OR NEGLIGENCE FOR

~~CLAIMS OR DAMAGES PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEES~~

8.2 CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEES WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEES EVEN WHERE THE ALLEGATIONS MAY BE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY.

8.3 CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION, AND CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION WILL SURVIVE ANY TERMINATION OF THE AGREEMENT.

8.4 Contractor agrees that if any legal action or other proceeding of any nature is brought against Owner, Owner's landlord where applicable, or Contractor, or any of their respective officers, directors, agents, representatives, consultants or employees, the Architect, or any of them (whether or not any other party defendant shall be joined in the action), because of any of the foregoing matters against which Contractor agrees to indemnify Owner or Owner's landlord, Contractor shall at its own cost and expense, settle or defend such action, paying all costs, expenses and attorneys' fees involved therein. Notwithstanding the foregoing, in any action of the nature described above in which Owner or Owner's landlord is named as a party, Contractor agrees that its selection of legal counsel supplied in connection with any such action shall be subject to Owner's prior written approval, and Owner shall have the right to participate in the defense of any such action at no cost to Owner. The obligations of Contractor under this paragraph shall not extend to the liability of the Architect, its agents, consultants or employees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, Drawings or Specifications, or (ii) the giving of or the failure to give directions or instructions by the Architect, its agents or employees, provided that the giving or failure to give any such directions or instructions is the primary cause of the injury or damage, unless Contractor in exercise of reasonable care should have known, as appropriate, that the giving of such instruction was improper or that such direction or instruction should have been given.

8.5 Contractor shall defend all suits and claims for infringement of any patent, copyright, trademark or other intellectual property rights and shall hold the Owner and Owner's landlord free and harmless from and against any and all loss, liability, claim, damage, demand, cost and expense on account thereof, except that Owner, or Owner's landlord where applicable, shall be responsible for all such loss, liability, claim, damage, demand, cost and expense when a particular design, process or product of a particular manufacturer is specified by Owner. If Contractor has reason to believe that the design, process or product specified by Owner is an infringement of a patent, Contractor shall be responsible for such loss unless Contractor promptly provides such information in writing to the Architect and Owner.

8.6 Owner, or Owner's landlord where applicable, shall have no obligation to pay or reimburse Contractor with respect to any of the costs and expenses incurred by Contractor in accordance with paragraphs 8.1 through 8.5 above, except to the extent Owner reimburses Contractor for the cost of procuring insurance required by the Contract. In the event any such loss, liability, claim, damage, demand, cost or expense is asserted against or incurred by Owner or Owner's landlord or their agents, representatives, consultants, or employees, in connection with the foregoing, Owner, in addition to all other rights and remedies it may have with respect thereto, may withhold and offset from any payment then or thereafter due to Contractor under the terms of this Agreement an amount sufficient in Owner's judgment to protect and indemnify against any such matter.

8.7 In addition to Contractor's warranty and any guarantees or warranties of Contractor set forth herein or in any other Contract Documents, all of the Work, including all of the materials and equipment incorporated therein, is guaranteed by Contractor against failure due to defects in workmanship, materials and improper installation for a period of one (1) year following the date on which the completed Work is accepted by the Owner or the Date of Substantial Completion, whichever is earlier, unless in each case a longer period of time is specifically provided for in the Contract Documents or is implied by law ("Contractor's Guarantee"). If, within such one year period, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after the Date of Substantial Completion by the period of time between the Date of Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice after discovery of the condition.

8.7.1 Any Work performed following the issuance of the Certificate of Final Completion and the replacement of any Work, including any of the materials and equipment incorporated therein, pursuant to the foregoing guarantee of Contractor, also shall be unconditionally guaranteed in accordance with the foregoing for a period of one (1) year after completion of replacement, as the case may require, of each such item of Work.

8.7.2 Nothing contained in Paragraphs 8.7 and 8.7.1 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Paragraphs 8.7 and 8.7.1 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

8.7.3 Contractor shall cause all guarantees and warranties from subcontractors, materialmen and equipment suppliers to be made directly to Owner as well as Contractor and Contractor shall furnish Owner with written evidence of such guarantees and warranties. All of such guarantees and warranties (including Contractor's warranties and guarantees under the Contract Documents) shall include the cost of all labor, materials and other costs required to replace defective, unsound or improper Work and materials, including damage to adjacent equipment or materials and the replacement or refinishing of same. As part of the Work, Contractor promptly shall enforce all of said guarantees and warranties for Owner's benefit if Owner shall request Contractor so to do. Neither payment hereunder, including the

final payment to Contractor, nor Owner's use and occupancy of the Project or any part thereof, shall release Contractor from liability to Owner for workmanship, materials and equipment incorporated into the Work which are found to be defective, unsound or improper or otherwise covered by any such guarantees or warranties.

88 Contractor warrants to Owner and Architect that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved or authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

89 The Contractor's warranties (including Contractor's Guarantee) shall cover all Work in the Contract Documents, whether or not any portion or trade has been assigned or sublet. In the event any portion of the Work is performed by assignees or subcontractors, their written warranty to Owner covering their respective portions of the Work for the periods required shall be collected by Contractor, who shall deliver them, together with his own warranty, to Owner. Assignees' and subcontractors' warranties shall expressly provide that the same may be enforced directly by Owner, if he so elects, and shall run concurrently with the Contractor's warranties. All such warranties shall be secured by the Contractor's performance bond when such bond is required. No warranties by subcontractors shall in any way relieve Contractor of his warranty obligations or obligate Owner to proceed under any subcontractor warranty in lieu of or before proceeding against Contractor's warranties.

8.10 Where any material, process or method of operation or application procedure is required which, in the opinion of Contractor, would render the finished Work unsuitable for the required warranty, then before any Work is started, such matter shall be objected to in writing to the Owner stating reasons therefore and recommending a substitute so that the Work, when completed, will be suitable for the required warranty. In the event the Contractor's recommendation is approved, the Work shall be installed in accordance therewith and at no change in the Contract Document price unless otherwise authorized.

8.11 Defective materials, equipment and workmanship occurring within any warranty period may be repaired where such repair produces results in conformity to Contract Documents requirements relating to appearance, performance and reliability. Where the nature of the defective materials, equipment and workmanship is such that acceptable results cannot be obtained by repair, such defective items shall be removed and replaced with new materials, equipment and workmanship complying with Contract Documents. All remedial Work shall be subject to Owner's approval.

8.12 Payment and performance bonds shall be provided by Contractor at the request of Owner. It is expressly understood that the cost of the bond is to only include the direct cost, to the Contractor, from the bonding company; those items not to be included in bond cost are mark-up and/or general administrative expenses of the contractor's home office.

8.13 Contractor shall not have, and hereby waives, any right to file any mechanic's lien, or claim of any sort or kind, against the premises of Owner or any part thereof, unless Contractor shall have given Owner ten (10) days' prior written notice of Contractor's intention to file such lien or claim and a statement of the basis of such lien or claim. Contractor agrees that providing such notice shall be a condition precedent to its rights to file any such lien or claim. Contractor shall not permit or suffer any

mechanic's or other similar lien filed by any subcontractor, material vendor, laborer or materialman to remain upon the premises of Owner and shall satisfy and have discharged any lien so filed within fifteen (15) days of its filing or such earlier period as may be necessary to avoid enforcement thereof. Contractor shall have the right to bond off or provide other satisfactory security against any unreasonable and improper lien which Contractor desires to contest. Contractor agrees to indemnify and hold Owner, and Owner's landlord where applicable, free and harmless from and against any and all loss, liability, claim, damage, cost and expense from any lien on the Project which is placed on or remains on the Project in connection with the Work, or any stop notice or similar action on the part of any subcontractor, material vendor, laborer or materialman, and Contractor shall at its sole cost and expense save and defend Owner, and Owner's landlord where applicable, from any and all cost and expense in connection therewith. In the event Contractor should neglect or refuse to cause any such mechanic's or other similar lien promptly to be discharged or bonded off as required above, Owner, after giving Contractor seven (7) days' written notice of its intention so to do, shall have the right, but not the obligation, to bond off such lien and such payment incurred by Owner shall be credited to the account of the Owner. Owner shall be entitled to offset one hundred percent of the amounts so bonded, plus twenty-five percent of such amounts as reasonable attorneys' fees, against payments thereafter becoming due to Contractor hereunder. Owner may exercise any other right or remedy granted by the Agreement (including termination hereof for cause) or granted by law. The bonding off of any lien by Owner pursuant to the foregoing shall not be deemed to cure or waive Contractor's default.

8.14 Should Contractor neglect or refuse to pay promptly when due any legitimate or undisputed expense incurred by it pursuant to the Agreement, Owner, after giving Contractor seven (7) calendar days' written notice of its intention so to do, shall have the right but not the obligation, to pay such expense directly and such payments shall be credited to the account of the Owner. Owner shall be entitled to offset the amounts so paid against payments thereafter becoming due to Contractor hereunder. Owner may exercise any other right or remedy granted by the Agreement (including termination hereof for cause) or granted by law. The payment of any expense by Owner pursuant to the foregoing shall not be deemed to cure or waive Contractor's default. Owner will not make any such payment, however, without prior consultation with Contractor or an explanation of Contractor's reason for refusing to pay promptly such expense as and when due.

9. Insurance

9.1 Prior to the commencement of any Work or the performance of any service hereunder by Contractor or any of its subcontractors, Contractor shall procure the following insurance coverage and maintain such insurance in full force and effect until all of the Work is completed and accepted for final payment, unless otherwise specified herein. All such insurance shall be for the benefit and protection of Owner and Contractor and shall name Owner, its subsidiaries and affiliated companies, and their respective officers, directors, Owner's landlord and any party who owns a fee interest in and to the real property to be improved by the Project, or any construction lender for such project, as additional insureds. All insurance companies, the form of all policies and the provisions thereof shall be subject to Owner's prior approval. The insurance to be procured and maintained by Contractor as hereinabove provided shall consist of the following:

- (a) Statutory worker's compensation and occupational disease insurance and employer's liability insurance, as required by the Worker's Compensation Act of the state in

which the Project is located, and employer's liability insurance with minimum limits of not less than \$500,000.

- (b) Commercial General Liability Insurance, such policy to include the following provisions:

- (i) Coverage and Limits of Liability:

General Aggregate Limit (other than products/completed operations).....\$2,000,000
 Products Completed Operations Aggregate Limit \$2,000,000
 Personal & Advertising Injury Limit\$2,000,000
 Each Occurrence Limit\$10,000,000
 Fire Damage Limit (any one fire)\$100,000
 Medical Expense Limit (any one person)\$5,000

- (ii) Designated Construction Projects General Aggregate Limit

- (iii) Products-Completed Operations Insurance to remain in force for a minimum of two years after completion of the job, or the length of the guarantee, whichever is greater.

- (iv) Contractual Liability:

- (1) Specifically insuring the liability assumed under the Contract Documents entered into between the Contractor and Owner
- (2) With respect to the contractual obligation of Contractor to provide liability insurance to Owner, this policy shall apply to any loss or claim before any contribution by the insurance of Owner.

- (v) XCU Coverage (delete exclusions if present)

- (vi) Waiver of Subrogation in favor of Owner

- (vii) Coverage to be written on an occurrence basis policy form.

(viii) Primary Insurance - This policy is to be primary coverage, and any other insurance in force for the Owner shall act as excess coverage only and not contribute in the payment of any claim made hereunder to the extent of the limits of liability afforded hereunder. Equivalent additional insured coverage shall also be provided by Contractor to Owner on Contractor's umbrella policy on a "follow form" basis and that additional insured umbrella policy coverage shall be primary to any other coverage available to Owner.

(ix) Notice of Occurrence - The failure to give timely notice to the insurance company of any occurrence giving rise to a claim hereunder shall not be construed as late notice unless an executive officer of the named insured had actual knowledge of the occurrence and then failed to notify the insurance company in accordance with the policy conditions.

(x) Cancellation - In the event of cancellation, material change or non-renewal, sixty (60) days advance written notice by certified mail will be sent to Owner and Contractor.

(xi) The insurance shall not contain any exclusions other than exclusions forming a part of the standard liability insurance policy as currently in use by the Insurance Services Office, except that all exclusions otherwise contained therein that are in conflict with the conditions and coverage as required by this Agreement shall be void; provided, however, in no event shall such insurance prohibit cross-liability of other insured parties covered by such insurers (severability of interest).

(c) Commercial Automobile Liability - Including all owned, non-owned and hired vehicles, with limits of liability not less than \$1,000,000 combined single limit (CSL).

(d) Umbrella Excess Liability with limits of not less than \$5,000,000 providing coverage over primary insurance coverage, written on a following form basis.

(e) Owner shall be included as an additional insured under the commercial general liability policy of Contractor required by this Agreement, including for both ongoing and product-completed operations coverage (equivalent in scope to the coverage under CG 20 10 11 85, or if that form is unavailable, both forms CG 20 10 10 01 and CG 20 37 10 01) for a period of ten years following substantial completion of the work. For clarity, as to liability of Owner, the additional insurance obtained and retained by Contractor shall provide coverage for the negligence or fault of Owner, including the sole negligence of Owner.

(f) Such other insurance and coverage as Owner may reasonably request.

(g) Certificates of Insurance applicable to this section, shall be provided as follows on AIA Document G705 or Accord Form 25-S, Accord Form 27, as applicable, and shall specifically set forth evidence of all coverage required by this Paragraph 9.1 and shall reference job site by location and address.

(i) Certificate or signed binder to be issued and addressed to:

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attention: Construction Department

(ii) Certificate must provide sixty (60) days notice of any material change or cancellation. Any wording limiting notice to "best efforts, endeavor to advise, not responsible to notify, etc." WILL RESULT IN CERTIFICATE BEING REJECTED.

(h) In the event that Contractor fails to procure or maintain any of the insurance required pursuant to this Section, Owner, at its election, but without any obligation to do so, may obtain such insurance for the benefit of Owner and Contractor and may either reduce the Contract Sum in a like amount or deduct the cost thereof from any payment then or thereafter due to Contractor.

9.2 Contractor shall obtain builder's risk and physical damage insurance naming Owner as an additional insured and Loss Payee, for the following items on standard "All Risk" or, "Cause of Loss - Special Form", forms, subject to the standard terms, conditions, and exclusions therein set forth, in an amount not less than One Hundred Percent (100%) of the completed value thereof, subject to standard exclusions and deductible limitations satisfactory to Owner (not to exceed \$10,000), but any net loss incurred by Contractor as a result of such standard exclusions or deductible limitations shall be reimbursed by Owner. Such insurance shall include coverage at least with respect to the following:

(a) The structures upon and in which the Work shall be performed (to the extent that it includes the premises hereinabove described).

(b) All insurable items of the Work and materials once such materials are incorporated into the Work, are located upon the premises of the Project or are located at off-site storage areas approved by Owner.

(c) Owner, Contractor, and all subcontractors waive all rights each against the others for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 9.2, except such rights as they may have to the proceeds of such insurance. Similar waivers will be included in all subordinate contracts of Owner, Contractor and subcontractors where legally required for validity.

(d) Such insurance shall contain a loss payable endorsement in favor of the Owner or its order, as their interests may appear.

(e) Valuation - Shall be the replacement cost at time of loss with new material of like kind and quality.

(f) Subrogation - In all cases of loss, all rights of subrogation by the insurance company for loss caused by Owner, Contractor or any subcontractor are waived.

(g) Cancellation - In the event of cancellation, material change or non-renewal, sixty (60) days advance written notice by certified mail will be sent to the Owner and contractor.

(h) Transit coverage applicable to Work and Materials transported to and from any off-site storage area.

9.3 All sums insured under Contractor's property insurance shall be made payable jointly to Contractor and Owner as insureds, subject to the requirements of any applicable mortgagee clause. The Contractor shall pay the subcontractors their proportionate shares of insurance proceeds to which the Contractor is entitled hereunder.

9.4 Prior to obtaining the insurance required by Paragraph 9.2, Contractor shall inform Owner in writing of the cost to Contractor of obtaining such insurance. At Owner's option, Owner shall thereafter have the right to obtain such insurance on Contractor's behalf and the Contract Sum shall be reduced by the insurance costs so avoided by Contractor.

10. Ownership of the Work

10.1 Subject to Contractor's obligations to obtain insurance as aforesaid, ownership of all and each part of the Work as and when completed and incorporated in the Work, and to each and all of the materials as and when affixed to the Project and incorporated therein, shall be in the Owner. Ownership of all materials and equipment delivered to the Project site or approved off-site storage areas, but not affixed to the Project and incorporated therein, shall become the property of Owner at such time that such materials are paid for by Owner, and under no circumstances shall material which has been delivered to the Project site or storage areas be removed without Owner's prior written approval.

10.2 The Contractor hereby agrees to hold Owner and Owner's landlord harmless from any claims or damage of any type including consequential damages on account of loss of use, to any personal property belonging to the Contractor, its subcontractors, suppliers, employees or representatives regardless of whether Contractor is deemed responsible in whole or in part for such damage and whether caused in whole or in part by Contractor's negligence.

11. Accounting, Inspection and Audit

11.1 Contractor shall check all materials, equipment, labor and services of any type involved with or incorporated into the Work and shall keep full, detailed and accurate records and accounts thereof, showing the actual net costs to Contractor of all items of labor, materials, supplies, services and other expenditures of whatever nature for which payment or reimbursement is authorized or required under the terms of the Agreement, as may be necessary for proper financial management under the Agreement, and the system of accounting shall be satisfactory to Owner or to an auditor appointed by Owner. Contractor shall retain and preserve all such records for a period satisfactory to Owner (but not less than three (3) years) after final payment hereunder. Owner and its representatives, employees and agents shall be afforded complete access at all reasonable times to all of the Contractor's books, records, correspondence, instructions, drawings, receipts, vouchers, accounts, memoranda and all other materials with respect to the cost of the Work for any Change Order or disputed sum hereunder. The foregoing obligations shall survive any expiration or termination of the Agreement and the completion of the Work contemplated hereby.

11.2 Contractor's records, including but not limited to accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts

earned, insurance rebates and dividends, and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Agreement (all foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and reproduction by Owner's agents or its authorized representative to adequately permit evaluation and verification of costs of the Work, and any invoices, Change Orders, payments or claims submitted by the Contractor or any of his payees pursuant to the execution of the Contract Documents.

11.3. Such audits may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations), as they may apply to costs associated with the Agreement.

11.4. Contractor shall require all subcontractors, sub-subcontractors, insurance agents and material suppliers to comply with the provisions of this Section by insertion of the requirements hereof in a written contract agreement between Contractor and such party. Contractor will cooperate fully and will cause all of its officers, directors, agents, representatives and successors and all of its subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.

11.5. Owner's agent or its authorized representative shall have access to the Contractor's facilities, shall have access to all necessary records and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article.

11.6. If an audit inspection or examination in accordance with this Article discloses overcharges of any nature by the Contractor to the Owner in excess of one percent (1%) of the total contract billings, the actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments or payments which must be made as a result of any such audit or inspection of the Contractor's invoices or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of Owner's findings to Contractor.

12. Dispute Resolution

12.1 All claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof, may, at the sole option of the Owner, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Owner and Contractor expressly agree that this provision is bargained for and agreed upon, and that this provision shall be specifically enforceable in any court of competent jurisdiction. Nothing in this Section 12 shall be deemed to require the Owner to subject disputes under the Contract Documents to arbitration. If the Owner does not opt for arbitration, claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement shall be resolved in accordance with Section 12.2 herein.

12.2 All claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof or relating thereto which Owner does not elect to subject to arbitration shall be decided a court in litigation, and any civil action in furtherance thereof shall be brought exclusively in either the U.S. District Court for the Northern District of Texas, Dallas Division, or the District Courts of Dallas County, Texas.

12.3 As a condition precedent to the institution of any action (lawsuit, arbitration, etc.) hereunder, all disputes shall be submitted to mediation before a professional mediator mutually selected by the parties. Such mediations shall be conducted at a mutually agreed time and place, shall not be less than one day in length, and the costs and expenses of the mediator shall be split equally between the parties. Only upon the unsuccessful completion of such mediations shall either party have the right to pursue further resolution of outstanding issues hereunder.

12.4 When the Owner has opted for arbitration, the following will apply:

12.4.1 Arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or any other manner, any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the arbitration. Consolidation shall be decided by an arbitrator in accordance with AAA rules. The arbitrator(s) shall decide procedural and substantive issues regarding arbitrability and whether conditions precedent have been satisfied.

12.4.2 Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association Regional Office of Dallas, Texas. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when the applicable statute of limitations would bar institution of a legal or equitable proceeding based on such claim, dispute or other matter in question. Arbitration hearings will be held in Dallas, Texas.

12.4.3 The award rendered by arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

12.4.4 The Federal Arbitration Act shall apply and govern disputes submitted to arbitration.

12.4.5 If the amount in controversy is in excess of \$250,000, then the matter shall be decided by a panel of three arbitrators selected in accordance with the applicable rules of the AAA. All other matters shall be decided by a single arbitrator. If it becomes apparent that the amount in controversy exceeds \$250,000 after the selection of a single arbitrator, the AAA shall either add two more arbitrators to the panel or select a new panel of three arbitrators, whichever it deems more appropriate and efficient under the circumstances.

12.5 This Section 12 shall survive the expiration or earlier termination of the Contract. Unless otherwise agreed in writing, Contractor shall carry on the Work and shall maintain the Project Schedule during any and all disputes, including but not limited to mediation, trial, or as applicable, arbitration

proceedings, and the Owner shall continue to make payments not in dispute to the Contractor in accordance with this Agreement.

13. Termination of Agreement

13.1 Owner shall have the right to terminate the Agreement at any time without cause and without liability to Contractor by giving Contractor fifteen (15) days' prior written notice; provided, however, Owner shall reimburse Contractor for that portion of the Contract Sum for which Contractor is obligated to pay prior to the effective date of such termination, less all payments previously made by Owner. All subcontracts shall contain provisions permitting termination on the same basis as the Agreement. If the Agreement is terminated after construction has commenced, Owner shall pay to Contractor an amount equal to that which would be payable under Paragraph 13.3 hereof.

13.2 If Contractor persistently or repeatedly refuses or fails to supply sufficient properly skilled workmen or proper materials required for the Work, if Contractor fails to make prompt payment to subcontractors or for materials or labor, if Contractor persistently or repeatedly disregards laws, ordinances, rules, regulations or orders of any governmental authority having jurisdiction over the Project, or if Contractor otherwise is in violation of a material provision of any of the Contract Documents, then Owner may, without prejudice to any right or remedy, and after giving Contractor and its surety, if any, fifteen (15) days' prior written notice, terminate the Agreement and take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor and any materials stored at off site areas and Owner may complete the Work by whatever method Owner may deem expedient. In any such case, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds the cost to Owner of completing the Work, including compensation for the Architect's additional services, Owner shall reimburse Contractor (to the extent of said difference) for costs incurred but not previously paid to Contractor. If the cost to Owner of finishing the Work exceeds the unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner.

13.3 If the Work is stopped for a period of ninety (90) days under order of any court or any governmental authority having jurisdiction over the Project, through no fault or act or neglect of Contractor or any of its subcontractors, or any of their agents or employees, or any other person performing any of the Work under a contract with Contractor, or if Owner is guilty of a breach of any material provision of the Agreement and a cure for such breach is not commenced within fifteen (15) days after written notice from Contractor, then in any such event Contractor may, upon seven (7) days' prior written notice to Owner terminate the Agreement and recover from Owner payment for that portion of the Contract Sum payable to the effective date of such termination as defined elsewhere herein.

13.4 Contractor shall use its best efforts to make all contracts, subcontracts, purchase orders and other commitments entered into by Contractor in connection with the performance of the Work hereunder in a form assignable to Owner. In the event of any termination of the Agreement for any reason, as a condition to any payments to Contractor, Contractor shall, at the request of Owner, assign to Owner any such contracts, subcontracts, purchase orders and commitments as Owner designates, and Contractor shall use its best efforts to obtain consent to the assignment of any such contract, subcontract, purchase order and commitment not otherwise assignable in accordance with its terms and to assist in an orderly transition. All of the Owner's rights and obligations hereunder may be assigned by Owner to

any party who owns a fee interest in and to the real property to be improved by the Project, Owner's landlord or any other party who is a construction lender therefor.

13.5 In the event of any termination of this Agreement, Contractor shall provide Owner with a detailed description of the costs and expenses incurred by Contractor within sixty (60) days after written notice of termination has been provided as herein required.

14. Temporary Construction Facilities

14.1 Contractor shall provide and maintain hoists, bunkers, scaffolds and other temporary construction facilities (including the dual-gate system), excepting only such as are specifically required to be provided by others. Temporary hoists, bunkers and other temporary construction facilities (including the dual-gate system) shall be located in or about the Project in such a position as is practicable and where it will not interfere with the progress of the Work.

14.2 Contractor shall protect the construction site and surrounding public areas in compliance with the requirements of applicable codes and regulations of public agencies having jurisdiction. The obtaining and paying for all required permits and inspections in connection therewith shall be the responsibility of the Contractor. Where so required Contractor shall provide and maintain in working order at all times warning lights and pay all costs in connection therewith.

14.3 Upon completion of the Project, or prior thereto when so authorized or required to maintain job progress, protective fence and canopy and related construction shall be removed by the Contractor and the space occupied thereby restored to its original condition as approved by authorities having jurisdiction.

14.4 Contractor shall provide and maintain, in compliance with local custom and applicable codes and regulations of authorities having jurisdiction, complete temporary toilet facilities.

14.5 Upon completion of the Project, or prior thereto when so authorized, temporary toilet facilities shall be disconnected and all equipment and temporary construction connected therewith removed from the site.

14.6 Contractor shall arrange for connections and pay for water and electric service for power and light, including temporary connections used by subcontractors during the progress of the Work and until final acceptance. Should Contractor fail to settle claims for water, electric power or other material used in the Work, the Owner may reserve from the monies due or to become due to the Contractor a sum sufficient to satisfy such claims, and should any such claim remain unsettled for thirty (30) days after notice thereof has been given the Contractor, the Owner may settle such claim or claims out of the monies reserved and the amount expended for such purposes shall be deducted from monies due or to become due to the Contractor.

14.7 In the event of partial occupancy by the Owner or a tenant with Owner's written permission prior to final acceptance, the payment of charges for water, electricity and fuel for the portion of the Project occupied shall be the responsibility of the Owner or the tenant involved and the account name for the applicable utility service shall be changed accordingly to reflect the responsible party.

14.8 The Contractor shall provide two (2) independent telephones in the construction trailer and a computer with internet connection for the field supervision to communicate via the internet and/or email.. One telephone shall be a cellular telephone. The superintendent shall carry this telephone with him when he is on the job site away from the trailer. The Contractor shall subscribe to the optional features of "call waiting" and "call hold" for both construction telephones.

14.9 Signs furnished by the Owner shall be erected on the site as and where required by the Owner. Contractor shall not place or allow to be placed any signs, billboards or posters on any portion of the site or the Project, except upon written permission from the Owner and then only of a size, material, color and type and at a location approved by the Owner.

14.10 Elevators may be used during the course of construction by Contractor once the elevators are declared operable by the elevator subcontractor, provided that the Contractor shall adequately protect all parts of the equipment, machinery, controls and cabs from damage or harm of any nature; and elevators shall be available to all other separate contractors and subcontractors as may be required by the Owner.

15. Use of Site and Premises

15.1 The working area outside of the building lines for use of storage of materials, for equipment operations and for temporary buildings is the area bounded by the limiting streets and property lines, unless otherwise restricted by the Drawings or Specifications. Such other space, including public sidewalks and roadways as may be permitted for temporary use by the applicable building codes or public authorities at the place of construction, may be used and the cost, if any, shall be borne solely by Contractor. Disturbed public areas shall be put back into their original state at completion of use, as approved and accepted by public authorities having jurisdiction.

15.2 Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not encumber the site with any extraneous materials or equipment.

15.3 The site shall not be encumbered by the storage of materials for extended periods prior to the time when installation of such materials will be required. No trenches required for utility systems and like operations shall be excavated until material required therefore is ready for installation and completion of such Work in the shortest time possible.

15.4 Contractor shall afford opportunity and facilities for the introduction and storage of material on the site and in the structure by subcontractors. Workmen, subcontractors or other representatives shall be admitted to the site only for the proper execution of the Work and shall have no tenancy.

15.5 Contractor shall send notices, make all necessary arrangements and perform all services for protection and maintenance of all public utilities during the construction period and until final acceptance of Project by Owner.

15.6 Contractor, at its sole cost and expense, shall obtain and pay for permits and inspections required to use public streets, sidewalks, curbs and paving, including cutting openings therein and shall post guarantees and bonds required and be responsible for repair and correction of damage as required by authorities having jurisdiction.

15.7 Contractor shall give all notices and comply with all laws, ordinances, rules and regulations and valid orders of any public authority bearing on the performance of the Work. If Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted by appropriate modification. If the Contractor performs any Work, knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice in writing to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

15.8 Until acceptance of the Project, or partial or full occupancy by Owner, Contractor, at its sole cost and expense, shall be the building manager and shall be responsible for providing and maintaining temporary doors for security, for locking and unlocking entrances, for protection of all parts from damage or from wetting by rains or flood water, for provision of safety and enforcement of safety regulations, for preventing unauthorized persons from entering the property, for general orderliness, for care of the adjacent properties and public ways abutting the property of Owner and for any temporary assignment of space within the site or premises.

16. Submittals to Owner

16.1 Contractor shall submit the following schedules to the Owner for approval no later than ten (10) days after Owner's request for each item. Contractor shall update each schedule listed below at the end of each month, if necessary to ensure accuracy.

16.1.1 Contemplated progress schedule by trade.

16.1.2 Contemplated payment schedule - indicate contemplated costs on a monthly basis.

16.1.3 Shop drawing and materials sample schedule - list all required shop drawings and samples for each part of the Work with reference to applicable technical section numbers. Include submission and required return dates.

16.1.4 Guarantees, warranties and bond schedule - list all required guarantees, warranties and bonds, other than warranties and guarantees required by these Contract Documents, including the Contractor's 1-year obligation to restore defects.

16.2 Contractor shall submit schedules for the review and approval of the Owner. If changes affecting the schedules are made in the Project by the Owner as the Work progresses, Contractor shall notify the Owner of the effect within five (5) days of receipt of written authorization to proceed with changes.

16.3 The progress schedule shall be revised from time to time as may be required to reflect changes in job progress or authorized extensions of construction time.

17. Shop Drawings

17.1 Shop drawings and/or plates and brochures, as required, shall be prepared by Contractor and submitted for approval well in advance of the time information will be required in order that the Work will not be delayed; provided, however, in no event shall any shop drawings be submitted more than twenty (20)

days after the notice to proceed. No Work indicated on any one shop drawing shall be started until such drawing has been approved.

17.2 Electronic drawing compatible with the Architect's CAD system shall be submitted to the Architect for his checking. Required corrections will be noted on the Electronic Drawings and the Electronic Drawing will be returned to the Contractor via email, who shall make the necessary revisions and resubmit the revised Electronic Drawing for final approval. The Electronic Drawing, after the required corrections have been checked, or if correct when initially submitted and requiring no revisions, will be returned via email with properly approval / revision notation to the Contractor, who shall then make distribution to all parties concerned, including one copy for the Architect and, unless otherwise provided, one copy for the Owner.

17.3 Unless otherwise provided in the various trade sections of the Specifications, shop drawings requiring the interrelation of Work within a trade and shop drawings which require coordination and checking with shop drawings of another trade shall be submitted together to facilitate proper checking and coordination. In the event such coordinated submission is not made, the Contractor may be notified and checking of the shop drawings submitted will be delayed by the Architect until the remainder of the related shop drawings are submitted. Any delay in the Work resulting from Contractor's failure to comply with this requirement shall be the responsibility of Contractor and no extension of completion time will be allowed to compensate for delay in checking and return of the affected shop drawings.

17.4 So far as practicable and in order to facilitate the approval of shop drawings and their prompt return, each shop drawing shall bear a cross reference note referring to the detail number, sheet number or numbers of the Drawings showing the same Work and the Specification section covering the Work shown on the shop drawing.

17.5 Shop drawings shall indicate accurately the job conditions and dimensions and to conform to indications on the Drawings, the requirements of the Specifications and applicable supplementary details and instructions. They shall indicate the complete methods of connection, jointing, support, anchorage, reinforcement and other features of construction, together with necessary easements and clearances in the work of others, and relation of Work so detailed to finished surfaces of abutting Work. Materials and finishes of Work so detailed shall be indicated thereon.

17.6 The Architect's checking of shop drawings shall apply in a general sense only and will not relieve Contractor from the responsibility for proper fitting and construction of Work, nor from furnishing material and Work required by the Drawings, Specifications and related documents, which may not be indicated, or which may be indicated differently, on the approved shop drawings.

17.7 Shop drawings and schedules of all trades shall be submitted only by Contractor, who shall indicate by a signed stamp on the drawings or on the email transmitting said documents that he has checked the shop drawings and that the Work shown on them is in accordance with the Contract Documents and has been checked for dimensions and relationship with work of all other trades involved. Under no conditions should shop drawings be submitted to the Architect by anyone other than the Contractor.

17.8 The checking of shop drawings and/or schedules by the Architect shall not relieve Contractor of responsibility for deviations or omissions from Drawings or the Specifications, unless he has in writing called the Architect's attention to such deviations and/or omissions at the time of submission of shop

drawings, nor shall it relieve him of the responsibility for errors or omissions of any kind in shop drawings or schedules, unless such deviations, changes or omissions are duly approved as such and noted by specific approval on the drawings. When Contractor does call such deviations or omissions to the attention of the Architect, he shall state in his letter whether such deviations, changes or omissions involve any extra cost. If this is not mentioned, it will be assumed that no extra cost is involved for making the change, deviation or omission. Letters fully describing any deviations, changes or omissions, together with the reasons therefor, shall be submitted by Contractor to the Architect, with copy to the Owner, together with the affected drawings.

17.9 Any changes, deviations or omissions which affect the scope of the Work, appearance, or time or price shall be considered a Change Order and shall be subject to approval by Owner in the manner provided for other Change Orders.

17.10 Shop drawings which involve changes in the design concept of the Project, the basic methods of assembly or reduce the quality of the Work may be returned to Contractor without checking unless valid reason for the change is established at the time of submission.

17.11 No portion of the Work requiring a shop drawing, product data or sample submission shall be commenced until the submission has been approved by Architect. All such portions of the Work shall be performed in accordance with approved shop drawings, product data and samples. All changes made by Architect or Contractor or directions issued by Architect in connection with preparation of shop drawings, product data and samples which involve a change in cost or in time of performance hereunder shall be made and implemented in accordance with the procedures specified for Change Orders.

18. Samples

18.1 Contractor shall prepare and submit for Architect's approval all samples as required by the various trade sections of the Specifications and samples of other materials as may subsequently be requested. Unless specified otherwise, samples shall be submitted in duplicate.

18.2 Samples shall be submitted in sufficient time to allow the Architect reasonable time for consideration and so as not to delay progress of the Work in the event re-submission should be required.

18.3 Each sample shall be labeled with the following information and shall have a blank space large enough for the approval stamp:

- 183.1 Project name and location.
- 183.2 Name of Contractor.
- 183.3 Name of subcontractor and manufacturer.
- 183.4 Name, finish and composition of the material.
- 183.5 Location and/or intended use of the material.
- 183.6 Reference to Specification section and Drawing sheet number.

18.4 Upon approval, the samples will be stamped or labeled to indicate approval and one of the samples returned to Contractor. The approved sample retained by the Architect will constitute the standard of quality and appearance of all materials of the type represented by the samples to be installed. In the event samples are not approved, Contractor will be given the reasons for disapproval and shall re-submit samples until approval is obtained.

18.5 At the option of Owner or Architect, samples will be subject to testing, and in such events such additional samples as may be required, shall be supplied by Contractor at no additional cost.

19. Record Drawings and Maintenance Instructions

19.1 Contractor shall furnish Owner a CD with a complete set of electronic record drawings for the Work of each trade section where so required by the technical section, and one set of printed record drawings. Record drawings shall be prepared and submitted to Contractor by each of the subcontractors as required in compliance with the following Paragraphs.

19.2 Each subcontractor shall provide and keep current a complete "as-built" record set of blueline prints, which shall be corrected daily and shall show every change from the original Drawings and Specifications, and shall show the exact "as-built" locations, sizes and kinds of equipment. Prints for this purpose may be obtained from the Architect at cost. This set of drawings shall be kept on the job site and shall be used only as a record set. The foregoing shall not be construed as authorization to Contractor to make changes in the layout without definite authorization in each case.

19.3 At the completion of the Project, Contractor shall deliver to the Architect two (2) copies (or such number is otherwise specified elsewhere in the Contract Documents) of manufacturer's manuals providing for Owner's guidance full details of the suggested care and maintenance of all visible surfaces and equipment included in this Project.

19.4 Contractor shall furnish all literature of each manufacturer relating to equipment, including motors or other manufactured equipment. He shall also submit cuts, wiring diagrams, instruction sheets and all other information pertaining to same that would be useful to Owner in the operation and maintenance of same, to the extent that this information is reasonably available from manufacturers and/or is not shown on the as-built drawings.

20. Materials and Equipment

20.1 Contractor warrants to Owner that all materials and equipment furnished under the Contract Documents will be new and the best of their respective kinds, unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy required by law or by other portions of the Contract Documents.

20.2 Especially manufactured or fabricated Work made to detail and delivered to the site with the intention of forming a part of the permanent structure, when accepted, shall be considered as the property of

Owner, and the value thereof, upon acceptable substantiation, may be included in the periodic requests for payment. Form lumber and bulk building materials, including brick, aggregate and cement, shall be considered as the property of Contractor until actually incorporated into the Work, and the value thereof shall not be included in the periodic requests for payment.

203 Insofar as is practicable, material of one manufacture for each specific purpose shall be used throughout the Project, except where otherwise required, and where the nature of such allows, shall be delivered to the site in original and unbroken cases, cartons or containers with the name or brand of the manufacturer plainly marked thereon.

204 Owner reserves the right to purchase material or supplies directly and furnish them to Contractor for installation in compliance with the Contract Documents. Contractor agrees to accept all FBO materials and incorporate same into the Work as required by Owner.

205 Construction materials which do not become a permanent part of the construction and which have previously been used in the Work and are proposed to be re-used, shall be sorted as to class, size and kind and piled and stored in an orderly manner and kept readily accessible. Such materials may be re-used in the Work, provided they are structurally sound, clean, entirely suitable and approved for the intended use by Owner. Re-used form lumber for exposed concrete surfaces shall be of such quality so as to produce concrete surfaces of the same appearance and quality as the surfaces produced by the initial use of the forms.

206 Where installation of Work is required to be performed in accordance with the product manufacturer's instructions, Contractor shall, unless otherwise provided in the Contract Documents, procure and distribute the necessary copies of such instructions. Manufacturer's instructions shall be subject to approval and/or modification by the Owner. Unless otherwise required, Contractor shall obtain and deliver to the Owner two copies of such instructions at least two weeks prior to start of the Work involved.

21. Substitution of Material

21.1 Where materials, equipment or process are specified in a Specification by patent, proprietary name or name of the manufacturer, such Specification shall, unless otherwise specified or restricted, be deemed to be used for the purpose of establishing a standard for that particular item and shall be deemed to be followed by the words "or other as approved by the Architect or Owner." Any bidder, manufacturer or distributor may offer for approval any material, item of equipment or process which he considers to be equal in every respect to that indicated or specified.

21.2 Requests for approval of materials, equipment or processes not named in the Specifications shall be submitted in writing as a part of the submission of proposals. Requests for approval shall be accompanied by such supplemental technical information and/or samples, where required, as may be necessary for evaluation of the product.

21.3 If, in the opinion of the Owner or Architect, the suggested substitution is equal to the material, equipment or process originally specified, or otherwise fulfills the requirements of the Project, the approval will be confirmed in writing to Owner and Contractor. Approval of proposed substitutions shall not be deemed to have relieved Contractor of responsibility for the proper execution of the Work nor from warranty and maintenance requirements imposed by the Contract Documents.

21.4 Where no substitutions are proposed or approved in conformity with the provisions of this Article, then no deviation from the materials, equipment or process specified will be allowed, excepting only the following cases and provided in each such case the substitution has been approved by the Owner or Architect:

21.4.1 The manufacture or production of the specified material, process or equipment has been discontinued.

21.4.2 The specified material, process or equipment is not available in sufficient quantity or quantities to complete the Work. Failure of Contractor to award subcontracts in sufficient time, or failure of Contractor or the subcontractor involved to place orders for materials so as to insure delivery without delaying the Work, will not constitute cause for approval of substitute materials.

21.4.3 Delays beyond the control of Contractor, such as strikes, lock-outs, storms, fires or acts of God, which preclude the procurement and delivery of materials or equipment for purposes of the Project, and for such other reasons as the Owner or Architect may deem to justify the substitution.

22. Workers and Workmanship

22.1 Contractor and its subcontractors shall at all times enforce strict discipline and good order among their employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

22.2 Contractor shall not employ any labor on its own payroll nor allow any subcontractor to employ any labor which may cause dissension with other workers on the premises.

22.3 The workmanship of apprentices and helpers shall not be allowed where that of journeymen and master mechanics is necessary to obtain the required standard of workmanship. Workmen employed shall be competent and skilled in the performance of their particular Work and shall be employed under the prevailing local working conditions and in the status customary in projects of the size and type involved. Workmen or supervisory personnel deemed incompetent or improperly employed, or whose Work on this Project could result in a work stoppage or unacceptable results, then or at any subsequent time during the Project, shall be dismissed forthwith and shall not be re-employed on the Project. The fact that journeymen or master mechanics were employed in the execution of sub-standard Work shall have no effect upon the acceptance or rejection of such Work.

22.4 In the hiring of employees for the performance of Work by Contractor or any subcontractor, neither Contractor nor any subcontractor shall by reason of race, religion or color discriminate against any citizen who is qualified and available to perform the Work to which the employment relates, nor shall Contractor or any subcontractor discriminate in any manner against or intimidate any employee on account of race, religion or color.

22.5 Workmanship shall be the best of its respective kind for each of the various trades and shall be executed in accordance with the Contract Documents and under direct supervision of competent representatives of Contractor and the various subcontractors, and of the manufacturer where so required.

226 Contractor and all of his subcontractors are responsible for complying with all aspects of United States Immigration law, including but not limited to the Immigration Reform and Control Act of 1986, and verifying employment eligibility for its workforce.

23. Inspection of Work and Testing of Materials

23.1 Except as may be modified in the various technical sections of the Specifications, the procedures for inspection of Work and testing of materials under this Section shall apply.

23.2 Materials and products to be incorporated in the Project shall, at Owner's decision, be subject to inspection and testing, both at the site and in the shops or plants of manufacture. Contractor shall give timely notice of the readiness of any Work, products or materials that are required by the Contract Documents or by public authority having jurisdiction to be inspected, tested or approved.

23.3 Access to the Work wherever it is in preparation or progress shall be permitted at all times and Contractor shall provide safe and proper facilities for such access and inspection.

23.4 Work required to be inspected shall be left exposed until inspected and approved. Should such Work be covered without approval, when directed by Owner it shall be uncovered for examination and recovered after approval at no additional cost to Owner. Re-examination of questionable concealed Work may be ordered by Owner and/or governmental inspection authorities having jurisdiction.

23.5 If Owner determines that any Work requires special inspection, testing or approval which the preceding paragraphs do not include, he will instruct Contractor to order such special inspection, test or approval and Contractor shall give notice as noted in preceding paragraphs. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents or with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, Contractor shall bear all costs thereof, including the Architect's additional services made necessary by such failure and the cost of such testing or inspection; otherwise Owner shall bear such costs and an appropriate Change Order shall be issued.

23.6 Required inspections and tests and the reports shall be made by a qualified testing engineer or laboratory selected or approved by Owner. Certified copies of test reports shall be furnished as follows:

- 23.6.1 One copy to Owner.
- 23.6.2 One copy to Architect.
- 23.6.3 One copy to consulting engineer.
- 23.6.4 One copy to Contractor.
- 23.6.5 One copy to the building department under whose jurisdiction the Project is constructed.
- 23.6.6 One copy to the supplier of the material tested.

237 If Owner or Architect wishes to observe the inspections, tests or approvals required by this Section, they will do so promptly and, where applicable, at the source of supply.

238 Neither the observations of the Architect nor inspections, tests or approvals by persons other than Contractor, shall relieve Contractor from his obligations to perform the Work in accordance with the Contract Documents.

239 Preliminary inspection and approval of materials during the process of manufacture or at the time of delivery and intermediate inspection and approval of installed Work before covering shall be subject to the Contract Documents relating to final inspection and acceptance of the Work as a whole and to the provisions of the Contractor's warranty.

23.10 Except as otherwise provided herein, the cost of testing and inspection shall be paid by Owner.

24. Correction of Work

241 Contractor shall promptly remove from the premises all Work determined by Owner prior to completion to fail to conform to the Contract Documents, whether or not incorporated into the improvements under construction, and Contractor shall promptly replace and re-execute or cause to be replaced and re-executed all such Work. Contractor shall not be entitled to reimbursement for the cost of such removal, replacement and re-execution.

242 If Contractor does not remove such non-conforming Work within a reasonable time, fixed by written notice from Owner, Owner may remove it and store the material at the expense of Contractor. If Contractor does not promptly pay the expenses of such removal and storage, Owner may at its election, deduct such expenses from any payment due Contractor hereunder or bring such action as Owner may deem appropriate for the recovery of such expenses.

243 If Contractor does not replace and re-execute such non-conforming Work or cause it to be replaced and re-executed within a reasonable time, fixed by written notice from Owner, Owner may, without prejudice to any other remedy it may have, cause such Work to be replaced and re-executed at the expense of Contractor. If Contractor does not promptly pay the expense of such replacement and re-execution, Owner may at its election deduct such expenses from any payment due Contractor hereunder or bring such action as Owner may deem appropriate for the recovery of such expenses.

244 Contractor shall not stop the Work or any portion thereunder except as directly affected by removal of such condemned Work.

245 If any Work is covered contrary to the request of the Architect or Owner, it must, if required by Owner, be uncovered for his observation and replaced at Contractor's expense. If any other Work has been covered which the Architect or Owner has not specifically requested to observe prior to being covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such Work be found to be not in accordance with the Contract Documents, Contractor shall pay such costs.

246 Neither the issuance of the Certificate of Final Completion nor payment of the final payment shall relieve Contractor of responsibility for faulty or defective materials and workmanship, and he shall remedy all defects due thereto and pay for damage which may appear within any warranty period to other Work resulting therefrom, all in a satisfactory and acceptable manner. Owner shall give notice of observed defects with reasonable promptness.

247 In addition to corrections required because of faulty or defective Work, the related requirements of these General Conditions are extended to include maintenance of a continuing service character, where required under various technical sections of the Specifications.

25. Cutting and Patching

25.1 All trades shall perform and time their Work so as not to require unnecessary cutting. All Work shall be performed in accordance with information obtained from Drawings and Specifications, detail drawings or instructions from the various trades so as to avoid where possible, the necessity of cutting. Contractor or its subcontractors shall not endanger any Work by cutting, excavating or otherwise altering the Work and shall not cut or alter the Work of any other contractor without the consent of Owner.

252 All trades shall promptly install conduits, outlets, piping sleeves, boxes, inserts, anchors and other equipment into walls, floors and other construction to meet requirements of construction progress of all other trades. All subcontractors and trades shall cooperate freely under the coordinating direction of Contractor to the end that all parts of the Work may proceed advantageously and in complete harmony. If there is a need for cutting, then it and the resulting corrective patching shall be done at the expense of the trade requiring it. Any cost caused by defective or ill-timed Work shall be borne by the party responsible therefore, and not by Owner in any event. No indiscriminate cutting or patching shall be performed until Owner has been consulted for proper directions. Careless or avoidable cutting will not be tolerated.

253 Contractor shall do all cutting, fitting or patching of its Work that may be required to make its several parts fit together properly. In all cases, care shall be exercised in cutting operations. Contractor shall perform operations under supervision of competent mechanics skilled in applicable trades and shall cut openings as small as possible to avoid damage.

254 Wherever cutting, removal or alteration of existing Work is necessary to form connections with new Work, or otherwise meet the requirements of the Contract Documents, such Work shall be performed as necessary to avoid damaging the Work that is to remain in place, and patching and repairs shall be made in workmanlike manner, using materials, construction, details and finishes matching the existing Work.

26. Clean-Up

26.1 Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his or his subcontractors' operations. Materials to be used shall be kept in an orderly manner, neatly stacked or piled.

26.2 Upon completion of the Work of any subcontractor, such subcontractor shall remove his surplus materials and debris from job site. At the completion of all the Work, Contractor shall remove all waste materials and rubbish from and about the Project, as well as all tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and leave the Work "broom-clean" or its equivalent,

except as otherwise specified. Subject to exceptions specified, Contractor and all subcontractors shall use materials and methods for cleaning and polishing as recommended by the applicable manufacturers. Soaps and cleaners shall be of types not injurious to surfaces on which they are used. Use of acids is prohibited except as specified.

263 All Work shall be left clean and free of dirt, splatterings of paint, plaster, concrete, mortar, fingerprints and foreign matter. Contractor shall leave the building and premises clean and orderly, ready for the occupancy for which it is intended, and in accordance with, but not limited to, the following, in addition to "broom-cleaning:"

26.3.1 Remove all stains from glass; wash and polish same inside and out. Do not scratch glass or glazing compound.

26.3.2 Clean fixtures and equipment, floors, wall and ceiling surfaces, doors and other surfaces exposed to view.

26.3.3 Clean and polish metal surfaces, including doors and hardware.

27. Protection of the Work

27.1 Protection of Work shall be continuously maintained by Contractor in such suitable form as will protect the Work as a whole and in part, and adjacent property and improvements from accidents, injury or damages. Contractor shall properly protect the Work with lights, guard rails, temporary covers and barricades; provide excavations with proper enclosures; brace and secure all parts of the Work against storm and accident and provide such additional forms of protection as may be necessary in the prevailing circumstances.

272 Should construction, materials or equipment become damaged, destroyed or stolen through negligence on the part of Contractor or any subcontractor or the agents or employees of any of them while the Work remains under Contractor's jurisdiction, Contractor shall repair or replace same to the satisfaction of Owner, without cost to Owner.

273 Contractor and all subcontractors shall provide protection for their own materials, tools and equipment employed in the Work including the tools of workmen. Except where otherwise expressly stipulated, Owner shall not be held to have incurred any liability for loss of or damage to materials, tools and equipment of Contractor or of those persons employed by him, by subcontractors or otherwise.

274 Contractor shall be solely responsible for the safety and condition of his and the various subcontractors' materials and implements stored in or about the building and the site. Should it become necessary during the Project to remove such materials and implements to facilitate and maintain scheduled progress of the Work, Contractor shall remove materials and implements to some new location and such moving shall be done without additional charge. Should Contractor fail, refuse or neglect to commence the Work of removal of materials and implements within two (2) days after notifications or to prosecute the Work of removal with due diligence, Owner may cause the materials or implements to be moved and the cost thereof shall be deducted and paid by Owner out of monies which may be due or may become due to Contractor.

275 Contractor shall be responsible for the patching and replacing of all damaged Work. Patching and replacing of damaged Work shall be done in accordance with the Contract Documents, and the cost shall be an obligation of Contractor. At completion of the Project, damage to the Project shall be satisfactorily repaired or replaced by Contractor at its sole cost and expense.

276 Rain, surface or subsurface water and other fluid shall not be allowed to accumulate in excavations or under or about the structures. Should such conditions develop or be encountered, the water shall be kept constantly controlled and legally disposed of by temporary pumps, piping, ditches, dams or other methods.

277 Carts, hand trucks, wheelbarrows and similar wheeled conveyances used on or in any portion of the structure shall be equipped with pneumatic tires, except where otherwise expressly authorized.

28. Protection of Persons and Property

281 Contractor shall comply at all times with Federal OSHA and Local OSHA requirements. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

282 Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority including OSHA, having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent properties.

283 Such protective measures as may be required to adequately protect the public from hazards of construction work and to exclude unauthorized persons from the Work shall be provided and maintained by Contractor. When regulated by local building code or other authority, such requirements for protection shall be considered as minimum requirements and Contractor shall be responsible for such protection in excess of minimum requirements as may be required hereby.

28.3.1 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

28.3.2 All workmen and other employees of Contractor and subcontractors on the Project and all visitors and other persons who may be affected thereby;

28.3.3 All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, as long as it is under the care, custody or control of Contractor or any subcontractors or sub-subcontractors; and

28.3.4 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

284 No part of the Work shall be performed, nor shall any of the material, supplies, articles or equipment be manufactured or fabricated in any plant, factory, building or surroundings, or under working conditions which are unsanitary, hazardous or dangerous to the health and safety of employees engaged therein. Precautions shall be exercised for the protection of all persons and property.

285 Should the manufacturer of a specified material or product supply instructions, either by label on the container or by independently issued bulletin or instructions pertaining to the product, which refer to possible health and/or safety hazards in the use of the product, Contractor shall be responsible for the proper use and application of the product in conformity with such instructions, and shall be responsible for all damage or injury resulting from failure to comply with such instructions.

286 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, Contractor shall exercise the utmost care and shall conduct such activities under the supervision of properly qualified personnel.

287 Internal combustion engines and compressors shall be equipped with mufflers to reduce noise to a minimum and shall not be operated in enclosed areas without adequate ventilation.

288 Owner may provide such watchmen's service as he deems necessary to protect his interests during the progress of construction of the Project, but any protection so provided by Owner shall not in any way relieve Contractor of the responsibility for the safety and condition of the Work and material until the completion and acceptance thereof. Contractor shall employ such watchmen's service as he may deem necessary to properly protect and safeguard the Work and material. Owner shall not in any way be liable or responsible for damage or loss to the Work or material due to trespass or theft.

289 All damage or loss to any property referred to herein and caused in whole or in part by Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by Contractor at its sole cost and expense.

2810 In any emergency affecting the safety of persons or property, Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by Contractor on account of emergency Work shall be determined as provided in the Agreement for Changes in the Work.

29. Fire Precautions and Protection

291 Contractor shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to the Work, building materials, equipment, temporary field offices, storage sheds and public and private property. Contractor shall be responsible for providing, maintaining and enforcing the following conditions and requirements during the entire construction period:

29.1.1 Contractor's superintendent in charge shall inspect the entire Project at least once each week to make certain that the conditions and requirements of the Contract Documents and applicable law are being adhered to.

29.1.2 An adequate number of outlets and supply of fire hose of required size and length to protect the construction area shall be provided by Contractor as soon as water is available or when construction starts. Installation shall be in compliance with requirements of applicable codes and/or regulations established by public authorities having jurisdiction.

29.1.3 Contractor shall provide and maintain in working order during construction portable fire extinguishers, the number and locations of which shall be as required by applicable codes or the requirements of public authorities having jurisdiction. In the absence of such requirements, Contractor shall provide not less than four (4) fire extinguishers conveniently located for proper protection for each 25,000 sq. ft. of floor area. Fire extinguishers shall be either 2-1/2 gal. capacity water type gas cartridge expelled units or 5 gal. capacity pump type. Extinguishers shall have the approval of Fire Underwriter's Laboratory and shall be inspected at regular intervals and recharged as necessary. In areas of flammable liquids, asphalt or electrical hazards, extinguishers of the 15-lb. carbon dioxide type or 20-lb. dry chemical type shall be provided.

29.1.4 No open fires shall be permitted.

29.1.5 Only a reasonable working supply of flammable building material shall be located inside of, on the roof of, the building(s) of the Project.

29.1.6 Tarpaulins used during the course of construction shall be of a flameproof type and secured in-place against damage or flapping from winds.

29.1.7 Oil-soaked rags, papers and other highly combustible materials shall be removed from the Project at the close of each day's work, and more often where necessary, and placed in metal containers with tight-hinged lids.

29.1.8 Gasoline, benzene or similar combustible materials, as well as flammable or waste materials subject to spontaneous combustion, shall not be poured into sewers, manholes or traps, but shall be safely disposed. Contractor shall make appropriate arrangements for storing these materials outside of the Project.

29.2 When public authorities or codes impose regulations relating to fire prevention and control, such regulations shall be considered as minimum requirements and not requirements in lieu of those set forth above.

30. Environmental Control

30.1 All materials and work procedures used on the Project shall comply with all air pollution, water pollution and other environmental pollution control regulations in effect at the site of the Project. Contractor shall be responsible for obtaining all necessary approvals and certification as to compliance of material and procedures.

30.2 Throughout the entire construction period, Contractor shall effectively dust-palliate the working area, unpaved roads used in the operations and involved portions of the site. Such palliation shall include chemical treatment or intermittent watering and sprinkling of such frequency as will satisfactorily allay the dust at all times during construction.

31. Miscellaneous

31.1 All notices and demands of any kind or nature which either party hereto may be required or desires to serve upon the other party hereto under the terms of the Agreement shall be in writing and shall be served upon such other party by personal service or by mailing a copy thereof by certified or registered mail, postage prepaid, with return receipt requested, or sending by overnight express courier, addressed to the party so to be served as follows:

If to Owner: Dave & Buster's, Inc.
2481 Manana Drive
Dallas, TX 75220
Attn: Senior Vice President – Development

With a copy to: Dave & Buster's, Inc.
2481 Manana Drive
Dallas, TX 75220
Attn: Legal Department

If to Contractor: Garrard Construction
One Sugarloaf Centre
1960 Satellite Blvd.
Suite 2300
Attn: Tim Wright

In case of service by mail, notice shall be deemed given, unless it is sooner received, at the expiration of the third (3rd) business day after the date of mailing. If by overnight delivery, notice shall be deemed given one (1) business day after sending. If by personal service, notice shall be deemed given when delivered. The addresses to which and the persons to whom notice and demand shall be delivered may be changed from time to time by notice served as hereinabove provided.

312 Neither the rights nor the obligations of Contractor under the Agreement may be assigned or assumed by any other party except to the extent of duties assumed by subcontractors, and in any such case subject to the prior approval of Owner. In no event may Contractor assign any right to monies due or to become due to Contractor hereunder. The Agreement, and all warranties, guarantees and other obligations hereunder, may be assigned by Owner to any mortgagee, any affiliated entity, or any entity which now owns or hereafter may acquire the fee title to or leasehold interest in and to the property to which the Agreement relates. Except as hereinabove specifically provided, the Agreement shall be binding upon and shall inure the benefit of the respective successors and assigns of the parties hereto.

313 The Agreement and the other Contract Documents, as and when prepared and added hereto, shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof, and supersede all prior agreements and understandings, including all correspondence, between the parties hereto with respect to the subject matter hereof, both oral and written.

314 No provision of the Agreement may be waived, changed or modified, or the termination or

10/25/2016

Page 58 of 81

discharge thereof agreed to or acknowledged orally, but only by an agreement in writing signed by the

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - COMMON PLEAS - CASE#2017CP2603562

10/25/2016

Page 58 of 81

Defendants 000102

party against whom the enforcement of any such waiver, change, modification, termination or discharge is sought.

31.5 The headings of the several paragraphs hereof are included herein solely for convenience of reference and are not intended to aid in the construction of or to govern the terms and provisions of this Agreement.

31.6 The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

31.7 The Contractor hereby agrees to execute any and all documents which may be reasonably requested by a construction or permanent lender, including the assignment of the Contract, in whole or in part, and the Contractor shall be bound thereby.

31.8 Notwithstanding anything in the Contract Documents to the contrary, the Owner shall have, at all reasonable times, the right to enter the Project for the purpose of conducting marketing activities and inspecting the Work. The Contractor shall provide for such access.

31.9 The Agreement shall be governed and construed in accordance with the laws of the State of Missouri.

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Dave & Buster's
Broadway at the Beach
1322 Celebrity Square
Myrtle Beach, South Carolina

SPECIFICATIONS - ISSUED FOR BID/PERMIT - 09/14/16

DIVISION 0 - BIDDING REQUIREMENTS

Section	00400	Substitution Listing
Section	00650	Certificates of Insurance
Section	00700	General Conditions
Section	00800	Supplementary Conditions

DIVISION 1 - GENERAL REQUIREMENTS

Section	01000	General Requirements
Section	01010	Summary of Work
Section	01018	Owner Furnished Products
Section	01030	Alternates
Section	01036	Change Order Procedures
Section	01040	Coordination
Section	01045	Cutting & Patching
Section	01050	Field Engineering
Section	01095	Reference Standard & Definitions
Section	01200	Project Meetings
Section	01300	Submittals
Section	01400	Quality Control
Section	01410	Testing Laboratory Services
Section	01500	Construction Facilities & Temperature Controls
Section	01600	Materials & Equipment
Section	01631	Substitutions
Section	01700	Contract Closeout
Section	01730	Operation & Maintenance Data
Section	01740	Warranties

DIVISION 3 - CONCRETE

Section	03300	Cast-In-Place Concrete
Section	03335	Decorative Concrete
Section	03345	Concrete Finishing
Section	03347	Concrete Sealer
Section	03355	Concrete Floor Finishing and Curing
Section	03362	Chemically Stained Concrete

DIVISION 5 - METALS

Section	05120	Structural Steel Framing
Section	05400	Cold Formed Metal Framing
Section	05500	Miscellaneous Metals
Section	05700	Ornamental Metals
Section	05721	Steel Railings

DIVISION 6 - WOOD AND PLASTICS

Section	06100	Rough Carpentry
Section	06200	Finish Carpentry
Section	06400	Architectural Woodwork
Section	06600	Solid Surfacing Fabrications

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

Section	07210	Building Insulation
Section	07270	Firestopping
Section	07900	Joint Sealers

DIVISION 8 - DOORS AND WINDOWS

Section	08110	Steel Doors and Frames
Section	08305	Access Doors
Section	08410	Aluminum Entrances & Storefronts
Section	08710	Hardware
Section	08730	Weatherstripping & Seals
Section	08800	Glazing

DIVISION 9 - FINISHES

Section	09250	Gypsum Board
Section	09310	Ceramic Tile
Section	09511	Acoustical Tile Ceilings
Section	09540	Special Wall Surfaces
Section	09680	Carpeting
Section	09705	Seamless Urethane Flooring
Section	09771	Framed Decorative Panel Systems
Section	09900	Painting
Section	09950	Wall Covering

DIVISION 10 - SPECIALTIES

Section	10161	Toilet Compartments
Section	10400	Signage
Section	10522	Fire Extinguishers and Cabinets
Section	10650	Operable Panel Partitions
Section	10800	Toilet Accessories

DIVISION 11 - EQUIPMENT

Section	11400	Food Service Equipment and Fixtures

DIVISION 19 - COMMISSIONING

Section	019113	General Commissioning Requirements

DIVISION 20 - SEISMIC CONTROLS

Section	200548	Seismic Controls for MEP/F/T System

DIVISION 21 - FIRE SUPPRESSION

Section	210000	TOC Division 21 - Fire Suppression Specifications	
Section	210010	General Fire Suppression Requirements	
Section	210500	Common Work Results for Fire Suppression	
Section	210515	Basic Fire Suppression Piping Materials	(ADDENDUM #2)
Section	210548	Seismic Control for Fire Suppression Systems	
Section	210553	Identification for Fire Suppression Piping	
Section	211100	Fire Suppression Water Service Piping	
Section	211313	Water Based Fire Suppression Systems	(ADDENDUM #2)

DIVISION 22 - PLUMBING

Section	220000	Plumbing Specification Index
Section	220010	General Plumbing Requirements
Section	220015	Coordination
Section	220500	Common Work Results for Plumbing
Section	220515	Basic Piping Materials and Methods
Section	220519	Meters and Gauges for Plumbing Piping
Section	220523	General Duty Valves for Plumbing Piping
Section	220529	Hangers and Supports for Plumbing Piping
Section	220548	Seismic Controls for Plumbing Systems
Section	220550	Vibration Isolation for Plumbing and Piping
Section	220553	Identification for Plumbing Piping and Equipment
Section	220700	Plumbing Insulation
Section	220800	Commissioning Plumbing Systems
Section	221100	Water Distribution Piping and Specialties

Section	221300	Sanitary Drainage and Vent Piping
Section	223100	Water Softeners
Section	223400	Fuel-Fired Domestic Water Heaters
Section	224000	Plumbing Fixtures
Section	227000	Natural Gas Systems
Section	228000	Beverage Conduit Systems

DIVISION 23 - MECHANICAL

Section	230000	Table of Contents
Section	230010	General Mechanical Requirements
Section	230015	Electrical Coordination for Mechanical Equipment
Section	230500	Common Work Results for HVAC
Section	230510	Basic Piping Materials and Methods
Section	230513	Common Motor Requirements for HVAC
Section	230529	Hangers and Supports for HVAC Piping and Equipment
Section	230548	Seismic Controls for Mechanical Systems
Section	230553	Identification for HVAC Piping and Equipment
Section	230593	Testing, Adjusting and Balancing for HVAC
Section	230700	HVAC Insulation
Section	230800	Commissioning of HVAC Systems
Section	232300	Refrigerant Piping
Section	233113	Metal Ducts
Section	233300	Air Duct Accessories
Section	233416	Centrifugal HVAC Fans
Section	233423	HVAC Power Ventilators
Section	233433	Air Curtains
Section	233713	Diffusers Registers and Grilles
Section	233723	HVAC Gravity Ventilators
Section	237413	Outdoor Packaged Heating and Cooling Units
Section	238123	Computer Room Air Conditioners
Section	238500	Electric Heating Units

DIVISION 26 - ELECTRICAL

Section	260000	Electrical Specification Index
Section	260010	General Electrical Requirements
Section	260500	Common Work Results for Electrical
Section	260502	Equipment Wiring Systems
Section	260504	Provisions for Electrical Utility Service
Section	260519	Low Voltage Electrical Power Conductors
Section	260526	Grounding and Bonding for Electrical Systems
Section	260529	Hangers and Supports for Electrical Systems
Section	260533	Raceways and Boxes for Electrical Systems
Section	260548	Seismic Controls for Electrical Systems
Section	260553	Identification for Electrical Systems
Section	260800	Commissioning of Electrical Systems

Section	260923	Lighting Control Devices
Section	262200	Low Voltage Transformers
Section	262413	Switchboards
Section	262416	Panelboards
Section	262726	Wiring Devices
Section	262813	Fuses
Section	262816	Enclosed Switches and Circuit Breakers
Section	265100	Lighting

DIVISION 28 - ELECTRONIC SAFETY AND SECURITY SPECIFICATION INDEX

Section	280000	TOC Division 28 - Fire Alarm and Security Specifications
Section	281111	Digital, Addressable Fire Alarm System

<u>INDEX OF DRAWINGS ISSUED FOR BID/PERMIT - 03/23/15</u>		06/24/16	04/14/16	09/30/16
		FOR PERMIT	ADDENDUM #1	ADDENDUM #2
● ISSUED FOR APPROVAL / CONSTRUCTION				
○ ISSUED FOR REFERENCE ONLY				
T1.1	TITLE SHEET	●	●	●
AB1.1	ACCESSIBILITY DETAILS & ABBREVIATIONS	●		
SP1.1	ARCHITECTURAL SITE PLAN	●		
<u>ARCHITECTURAL</u>				
A0.1	RESPONSIBILITY SCHEDULE	●	●	●
A0.2	EGRESS AND OCCUPANCY PLAN	●	●	
A1.0a	CURB PLAN - SEGMENT 1	●	●	
A1.0b	CURB PLAN - SEGMENT 2	●	●	
A1.1a	FLOOR PLAN - SEGMENT 1	●	●	●
A1.1b	FLOOR PLAN - SEGMENT 2	●	●	
A1.2a	DIMENSION PLAN - SEGMENT 1	●	●	●
A1.2b	DIMENSION PLAN - SEGMENT 2	●	●	
A2.1a	REFLECTED CEILING PLAN - SEGMENT 1	●	●	●
A2.1b	REFLECTED CEILING PLAN - SEGMENT 2	●	●	
A2.2	ENLARGED REFLECTED CEILING PLANS	●	●	
A2.3	ENLARGED REFLECTED CEILING PLANS	●	●	
A2.4	ENLARGED REFLECTED CEILING PLANS	●		
A2.5	ENLARGED REFLECTED CEILING DIMENSION PLAN	●		
A2.6	LIGHT FIXTURE SCHEDULES	●	●	

A3.1a	ROOF PLAN - SEGMENT 1	●	●	●
A3.1b	ROOF PLAN - SEGMENT 2	●	●	●
A3.2	ROOF DETAILS	●		●
A4.1	BUILDING EXTERIOR ELEVATIONS	●	●	
A5.1	INTERIOR SECTION VIEWS	●		
A7.1	ENLARGED PLANS AND DETAILS	●	●	●
A7.2	ENLARGED PLAN DETAILS	●		
A7.3	ENLARGED PLAN DETAILS	●	●	
A7.4	ENLARGED PLAN DETAILS	●	●	
A8.1	ENLARGED TOILET ROOM PLANS	●	●	
A8.2	TOILET ROOM ELEVATIONS	●	●	
A8.3	TOILET ROOM DETAILS	●	●	
A9.1	DOOR & WINDOW SCHEDULES	●	●	
A9.2	FINISH SCHEDULE	●	●	●
A10.1	INTERIOR ELEVATIONS	●	●	
A10.2	INTERIOR ELEVATIONS	●	●	
A10.3	INTERIOR ELEVATIONS	●	●	
A10.4	INTERIOR ELEVATIONS	●	●	
A10.5	INTERIOR ELEVATIONS	●	●	
A10.6	INTERIOR ELEVATIONS	●	●	
A10.7	INTERIOR ELEVATIONS	●	●	
A10.8	INTERIOR ELEVATIONS	●		
A10.9	INTERIOR ELEVATIONS	●	●	
A11.1	WALL TYPES	●		
A11.2	BRACING DETAILS	●		
A11.3	DOOR AND STOREFRONT DETAILS	●		
A11.4	CEILING DETAILS	●	●	
A11.5	CEILING DETAILS	●		
A11.6	CEILING DETAILS	●		
A11.7	ENLARGED BAR PLAN AND ELEVATIONS	●	●	
A11.8	BAR SECTIONS AND DETAILS	●		
A11.9	MILLWORK DETAILS	●	●	
A11.10	BOOTH SECTIONS AND DETAILS	●		
A11.11	WALL SECTIONS AND DETAILS	●	●	
A11.12	POS MILLWORK DETAILS	●	●	
A11.13	ENLARGED WINI PLANS	●	●	
A11.14	WINI ELEVATIONS	●	●	
A11.15	WINI DETAILS	●	●	
A11.16	WINI DETAILS	●	●	
A11.17	MILLWORK DETAILS		●	
A12.1	WALL & FLOOR FINISH PLAN	●	●	
A12.2	SEATING PLAN AND FURNITURE LEGEND	●	●	
A12.3	STORAGE PLANS AND ELEVATIONS	●	●	
A12.4	FINISH FLOOR DETAILS	●		

STRUCTURAL

S1.0	GENERAL NOTES AND TYPICAL DETAILS			
S1.1a	SLAB / CURB PLAN 1	●		
S1.1b	SLAB / CURB PLAN 2	●		
S1.2a	ROOF PLAN 1	●		
S1.2b	ROOF PLAN 2	●		
S2.1	SECTIONS AND DETAILS	●		

FOOD SERVICE EQUIPMENT

K1	INDEX		●	
K2	KITCHEN PLAN		●	
K3	NOT USED			
K4	BAR PLAN & SCHEDULES		●	
K5	KITCHEN ELECTRICAL PLAN		●	
K6	NOT USED			
K7	BAR ELECTRICAL PLAN & SCHEDULES		●	●
K8	KITCHEN PLUMBING PLAN		●	●
K9	NOT USED			
K10	BAR PLUMBING PLAN & SCHEDULES		●	
K11	KITCHEN GAS PLAN		●	
K12	NOT USED			
K13	KITCHEN CRITICAL PLAN		●	
K14	NOT USED			
K15	BAR CRITICAL PLAN		●	
K16	KITCHEN P.O.S PLAN		●	
K17	BAR P.O.S PLAN & SCHEDULES		●	
K18	KITCHEN REFRIGERATION PLAN		●	
K19	NOT USED			
K20	KITCHEN VENTILATION PLAN		●	
K21	NOT USED			
K22	B & S LINES PLAN		●	
K23	KITCHEN ELEVATIONS		●	
K24	KITCHEN ELEVATIONS		●	
K25	BAR ELEVATIONS		●	
K26	KITCHEN ELECTRICAL & P.O.S. ELEVATIONS		●	●
K27	KITCHEN ELECTRICAL & P.O.S. ELEVATIONS		●	
K28	BAR ELECTRICAL P.O.S. ELEVATIONS		●	
K29	KITCHEN PLUMBING ELEVATIONS		●	
K30	KITCHEN PLUMBING & GAS ELEVATIONS		●	
K31	BAR PLUMBING ELEVATIONS		●	
K32B	BAR TEMPLATES		●	
K33	WALK-INS		●	
K34	WALK-INS		●	
K35	WALK-INS		●	
K36	NOT USED			

K37	REFRIGERATION RACK			
<u>MECHANICAL / PLUMBING / ELECTRICAL</u>				
MP0.1a	MECHANICAL / PLUMBING ROOF PLAN - SEGMENT 1			
MP0.1b	MECHANICAL / PLUMBING ROOF PLAN - SEGMENT 2			
M1.1a	MECHANICAL FLOOR PLAN - SEGMENT 1			
M1.1b	MECHANICAL FLOOR PLAN - SEGMENT 2			
M2.1	MECHANICAL DETAILS & NOTES			
M3.1	MECHANICAL SCHEDULES			
M3.2	MECHANICAL SCHEDULES			
M4.1	GREASE MASTER			
M4.2	GREASE MASTER			
M4.3	GREASE MASTER			
M4.4	GREASE MASTER			
M4.5	GREASE MASTER			
M4.6	GREASE MASTER			
M4.7	GREASE MASTER			
M4.8	GREASE MASTER			
M4.9	GREASE MASTER			
M4.10	GREASE MASTER			
M4.11	GREASE MASTER			
M4.12	GREASE MASTER			
M4.13	GREASE MASTER			
P1.1a	PLUMBING WASTE AND VENT PLAN - SEGMENT 1			
P1.1b	PLUMBING WASTE AND VENT PLAN - SEGMENT 2			
P2.1a	PLUMBING WATER AND GAS PLAN - SEGMENT 1			
P2.1b	PLUMBING WATER AND GAS PLAN - SEGMENT 2			
P3.1	PLUMBING WASTE AND VENT RISER DIAGRAM			
P4.1	PLUMBING LEGEND, NOTES AND SCHEDULES			
P4.2	PLUMBING DETAILS			
P4.3	PLUMBING DETAILS			
ESP1.0	ELECTRICAL SERVICE PLAN			
E0.1	ELECTRICAL SYMBOLS LEGENDS			
E1.0a	ELEC. ARCADE & UNDERFLOOR PLAN - SEGMENT 1			
E1.0b	ELEC. ARCADE & UNDERFLOOR PLAN - SEGMENT 2			
E1.1a	ELECTRICAL POWER PLAN - SEGMENT 1			
E1.1b	ELECTRICAL POWER PLAN - SEGMENT 2			
E1.2	ELECTRICAL ENLARGED POWER PLAN			
E1.3	ELECTRICAL ENLARGED POS ELECTRICAL PLAN			
E1.4a	ELECTRICAL ROOF PLAN - SEGMENT 1			
E1.4b	ELECTRICAL ROOF PLAN - SEGMENT 2			
E1.5a	ELEC. DATA & UNDERFLOOR PLAN - SEGMENT 1			
E1.5b	ELEC. DATA & UNDERFLOOR PLAN - SEGMENT 2			
E1.6a	ACCESS CONTROL PLAN - SEGMENT 1			
E1.6b	ACCESS CONTROL PLAN - SEGMENT 2			
E1.7a	SECURITY CAMERA PLAN - SEGMENT 1			

E1.7b	SECURITY CAMERA PLAN – SEGMENT 2	●	●	
E2.0a	ELECTRICAL LIGHTING PLAN – SEGMENT 1	●	●	●
E2.0b	ELECTRICAL LIGHTING PLAN – SEGMENT 2	●	●	
E3.0	ELECTRICAL DETAILS	●	●	●
E3.1	ELECTRICAL ONE-LINE DIAGRAM	●	●	●
E4.0	PANELBOARD SCHEDULES	●	●	●
E4.1	PANELBOARD SCHEDULES	●	●	●
E4.2	ELECTRICAL SCHEDULES	●		
E4.3	ENERGY CALCULATIONS	●	●	
<u>FIRE PROTECTION</u>				
F1.0	FIRE NOTES AND SYMBOLS	●		
F2.0a	FIRE ALARM FLOOR PLAN - SEGMENT 1	●	●	●
F2.0b	FIRE ALARM FLOOR PLAN - SEGMENT 2	●	●	
F3.0	FIRE PROTECTION DETAILS	●	●	●
F4.0	FM GLOBAL REQUIRED FORMS	●		
<u>A/V VENDOR</u>				
AV101	FLOOR PLAN		●	
AV102	LEGEND / NOTES		●	
AV103	RCP		●	
AV201	ELEVATIONS		●	
AV202	ELEVATIONS		●	
AV203	ELEVATIONS		●	
AV501	TYP MONITOR DETAIL		●	
AV503	CEILING MOUNT 75" DETAILS		●	

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

Exhibit "C"**Project: Dave & Buster's Broadway at the Beach**

Bidder: Tim Wright - Garrard
 Status: Submitted
 Submitted Date: 10/13/2016

Bid Package Name: GC Contract
 Contract Type: GC Contract Type

Qualifications and Exceptions:

We have included a project duration of 19 weeks.
 This proposal does not include the cost of Building Permits, Bonds or Builders Risk Insurance.
 This proposal does not include the cost of projector screens or AV equipment.
 We have included providing and installing toilet and urinal partitions.
 This proposal does not include any costs associated with material testing or third party inspections.
 This proposal does not include any schedule escalation costs.
 We assume temporary utilities will be paid for by the landlord and have not included any costs for this.
 Acoustical Wall Panels costs are in line item 08206 - Texture Interior Walls.
 We have not included costs associated with window film or logos.
 We have not included roller shades or window shades.
 We exclude any unsuitable soils etc
 We do not include any bike racks, trash receptacles or benches.
 We have not included seismic restraints for the fire sprinkler system.
 We include THHN Copper secondary feeders to the transformer. If Aluminum Feeders are allowed, please deduct \$17,000 from our Base Bid.
 We have included shop drawings for the light gauge metal framing.

<u>Line Item Number</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
DEVELOP -- 01000 GC General Conditions/Supervision Su	0	0.00	205,554.00
DEVELOP -- 01005 Mobilization	0	0.00	0.00
DEVELOP -- 01040 Field Engineering/Laying/Surveying	0	0.00	0.00
DEVELOP -- 01046 Legal Fees/ADA Inspections	0	0.00	0.00
DEVELOP -- 01060 Blue Printing Expenses	0	0.00	603.00
DEVELOP -- 01061 Overnight Shipping Expense	0	0.00	2,008.00
DEVELOP -- 01070 Drinking Water /Ice	0	0.00	126.00
DEVELOP -- 01085 Miscellaneous Office Supplies	0	0.00	377.00
DEVELOP -- 01090 Field Offices	0	0.00	0.00
DEVELOP -- 01100 Temporary Storage	0	0.00	3,113.00
DEVELOP -- 01105 Project Signs	0	0.00	301.00
DEVELOP -- 01110 Scaffolding/Ladders	0	0.00	1,366.00
DEVELOP -- 01155 Temporary Sanitation	0	0.00	3,234.00
DEVELOP -- 01156 Temporary Water	0	0.00	0.00
DEVELOP -- 01165 Temporary Generator	0	0.00	0.00
DEVELOP -- 01170 Temporary Electric	0	0.00	0.00
DEVELOP -- 01180 Temporary Telephone	0	0.00	938.00
DEVELOP -- 01195 Temporary Fencing	0	0.00	7,720.00
DEVELOP -- 01245 Dumpster/Hauling	0	0.00	12,156.00
DEVELOP -- 01250 In-Progress Clean Up	0	0.00	14,626.00
DEVELOP -- 01255 Final Clean-Up	0	0.00	14,199.00

DEVELOP -- 01340 Labor & Material Payment Bond	0	0.00	0.00
DEVELOP -- 01355 Miscellaneous Equipment Rentals	0	0.00	11,800.00
DEVELOP -- 01360 Miscellaneous Small Tools	0	0.00	4,037.00
DEVELOP -- 01370 Site Security	0	0.00	0.00
DEVELOP -- 01375 Builders Risk Insurance	0	0.00	0.00
DEVELOP -- 01385 Field Superintendent/Personnel	0	0.00	87,240.00
DEVELOP -- 01435 Project Management	0	0.00	29,519.00
DEVELOP -- 01440 General Liability Insurance	0	0.00	12,201.00
DEVELOP -- 02000 Sitework	0	0.00	4,118.00
DEVELOP -- 02010 Surveying	0	0.00	0.00
DEVELOP -- 02050 Demolition - Building/Asphalt	0	0.00	0.00
DEVELOP -- 02080 Fire Sprinkler Shut Down (where occurs)	0	0.00	0.00
DEVELOP -- 02090 Electrical Disconnect (See Temp Power Be	0	0.00	0.00
DEVELOP -- 02100 Sign Banner Frame	0	0.00	0.00
DEVELOP -- 02110 Clearing	0	0.00	0.00
DEVELOP -- 02220 Earthwork-Building Pad Export/Import (Wk	0	0.00	0.00
DEVELOP -- 02230 Building Pad Gravel	0	0.00	0.00
DEVELOP -- 02240 Site Grading - Sidewalks	0	0.00	0.00
DEVELOP -- 02250 Offhaul Spoils	0	0.00	0.00
DEVELOP -- 02260 Pretreat Building Slab	0	0.00	4,118.00
DEVELOP -- 02400 Bike Racks & Cigarette Urn	0	0.00	0.00
DEVELOP -- 02431 Erosion Control	0	0.00	0.00
DEVELOP -- 02444 Trash Gates	0	0.00	0.00
DEVELOP -- 02448 Trash Enclosure/Patio Masonry	0	0.00	0.00
DEVELOP -- 02449 Trash/Service Roof Steel/Decking	0	0.00	0.00
DEVELOP -- 02450 Trash/Service Roof Paint	0	0.00	0.00
DEVELOP -- 02451 Chain Link Screen	0	0.00	0.00
DEVELOP -- 02452 Handrails	0	0.00	0.00
DEVELOP -- 02456 Hand Grade Planters	0	0.00	0.00
DEVELOP -- 02458 Irrigation/Landscape	0	0.00	0.00
DEVELOP -- 02460 Patio Gate	0	0.00	0.00
DEVELOP -- 02480 Site Masonry	0	0.00	0.00
DEVELOP -- 02500 Asphalt Paving - Fine Grade/Baserock/As	0	0.00	0.00
DEVELOP -- 02505 Bollards	0	0.00	0.00
DEVELOP -- 02516 Concrete Entry	0	0.00	0.00
DEVELOP -- 02520 Curb & Gutter	0	0.00	0.00
DEVELOP -- 02524 Concrete Curbs	0	0.00	0.00
DEVELOP -- 02528 Site Concrete	0	0.00	0.00
DEVELOP -- 02529 Truncated Domes	0	0.00	0.00
DEVELOP -- 02530 Paving Marking/Bumpers	0	0.00	0.00
DEVELOP -- 02531 Handicap Signs	0	0.00	0.00
DEVELOP -- 02700 Patio Heaters	0	0.00	0.00
DEVELOP -- 02705 Offsite Water System	0	0.00	0.00
DEVELOP -- 02711 Gas System	0	0.00	0.00
DEVELOP -- 02713 Water System	0	0.00	0.00
DEVELOP -- 02717 Fire Water System	0	0.00	0.00
DEVELOP -- 02721 Storm Sewer System	0	0.00	0.00

DEVELOP -- 02722 Sanitary Sewerage System	0	0.00	0.00
DEVELOP -- 02724 Fire Hydrant	0	0.00	0.00
DEVELOP -- 02725 Offsite Storm Sewers	0	0.00	0.00
DEVELOP -- 02742 Grease Interceptor	0	0.00	0.00
DEVELOP -- 02803 Electric Service	0	0.00	0.00
DEVELOP -- 02840 Relocate Utilities	0	0.00	0.00
DEVELOP -- 02845 Site Lighting	0	0.00	0.00
DEVELOP -- 03000 Concrete	0	0.00	221,648.00
DEVELOP -- 03105 Concrete Materials	0	0.00	0.00
DEVELOP -- 03200 Concrete - Excavate Footings	0	0.00	0.00
DEVELOP -- 03210 Concrete Coring	0	0.00	0.00
DEVELOP -- 03345 Concret Finishing	0	0.00	221,648.00
DEVELOP -- 04000 Masonry	0	0.00	0.00
DEVELOP -- 04205 Masonry Labor	0	0.00	0.00
DEVELOP -- 04208 Masonry Material	0	0.00	0.00
DEVELOP -- 05000 Metals	0	0.00	56,448.00
DEVELOP -- 05100 Structural Steel	0	0.00	56,448.00
DEVELOP -- 05150 Cable Light Brackets	0	0.00	0.00
DEVELOP -- 05200 Metal Joists	0	0.00	0.00
DEVELOP -- 05512 Cornice Material	0	0.00	0.00
DEVELOP -- 05515 Cornice Labor	0	0.00	0.00
DEVELOP -- 05516 Ladders	0	0.00	0.00
DEVELOP -- 05520 Handrails & Railings (Interior)	0	0.00	0.00
DEVELOP -- 05805 Expansion Joint Covers	0	0.00	0.00
DEVELOP -- 06000 Wood & Plastic	0	0.00	496,010.00
DEVELOP -- 06100 Rough Carpentry/Material	0	0.00	43,698.00
DEVELOP -- 06101 Rough Carpentry Labor	0	0.00	0.00
DEVELOP -- 06105 Hardware	0	0.00	0.00
DEVELOP -- 06113 Sheathing	0	0.00	0.00
DEVELOP -- 06180 Glulams	0	0.00	0.00
DEVELOP -- 06190 Wood Trusses	0	0.00	0.00
DEVELOP -- 06200 Finish Carpentry	0	0.00	53,941.00
DEVELOP -- 06220 Millwork	0	0.00	398,371.00
DEVELOP -- 06300 Install Owners Artifacts	0	0.00	0.00
DEVELOP -- 07000 Thermal/Moisture Proofing	0	0.00	11,323.00
DEVELOP -- 07100 Waterproofing	0	0.00	0.00
DEVELOP -- 07170 Caulking & Sealing	0	0.00	1,029.00
DEVELOP -- 07200 Batt Insulation	0	0.00	0.00
DEVELOP -- 07300 Sound Insulation	0	0.00	0.00
DEVELOP -- 07320 Roof at Entrance Canopy	0	0.00	0.00
DEVELOP -- 07500 Membrane Roofing	0	0.00	10,294.00
DEVELOP -- 07610 Sheetmetal Roofing	0	0.00	0.00
DEVELOP -- 07620 Sheetmetal Flashing	0	0.00	0.00
DEVELOP -- 07800 Patio Fascia Sheetmetal	0	0.00	0.00
DEVELOP -- 07820 Boiler Sheetmetal Cap	0	0.00	0.00
DEVELOP -- 07830 Roof Hatch/Ladder-Up	0	0.00	0.00
DEVELOP -- 08000 Doors and Windows	0	0.00	84,663.00

DEVELOP -- 08100 Doors/Frames/Hardware	0	0.00	28,252.00
DEVELOP -- 08210 Modernfold Door	0	0.00	27,791.00
DEVELOP -- 08213 Roll-up Doors w/Hardware	0	0.00	0.00
DEVELOP -- 08300 Eliason Doors	0	0.00	2,309.00
DEVELOP -- 08302 Ceiling Access Panel	0	0.00	1,966.00
DEVELOP -- 08410 Aluminum Entrance & Storefront	0	0.00	23,985.00
DEVELOP -- 08520 Elevator	0	0.00	0.00
DEVELOP -- 08610 Tint Doors Glass	0	0.00	0.00
DEVELOP -- 08660 Revolving Door Install	0	0.00	0.00
DEVELOP -- 08670 Key Cabinet	0	0.00	360.00
DEVELOP -- 08711 Finish Hardware Install	0	0.00	0.00
DEVELOP -- 09000 Finishes	0	0.00	943,166.00
DEVELOP -- 09125 Acoustical Ceilings	0	0.00	54,418.00
DEVELOP -- 09130 Scaffolding	0	0.00	0.00
DEVELOP -- 09140 Lath & Plaster	0	0.00	0.00
DEVELOP -- Alternaste A9.1A Smooth Finish	0	0.00	0.00
DEVELOP -- 09150 Heal for Plaster (if needed)	0	0.00	0.00
DEVELOP -- 09200 Metal Stud/Drywall	0	0.00	445,597.00
DEVELOP -- 09206 Texture Interior Walls	0	0.00	60,082.00
DEVELOP -- 09250 Step Nosing	0	0.00	0.00
DEVELOP -- 09258 Tile	0	0.00	123,810.00
DEVELOP -- 09300 Midway Drapes	0	0.00	25,551.00
DEVELOP -- 09550 Carpet Flooring	0	0.00	0.00
DEVELOP -- 09650 Epoxy Flooring	0	0.00	74,354.00
DEVELOP -- 09900 Painting	0	0.00	119,208.00
DEVELOP -- 09950 Mural Installation	0	0.00	0.00
DEVELOP -- 09975 FRP Paneling	0	0.00	40,146.00
DEVELOP -- 10000 Specialties	0	0.00	100,402.00
DEVELOP -- 10165 Precast Concrete Sinks/Installation	0	0.00	0.00
DEVELOP -- 10260 Stainless Steel Trough Frames	0	0.00	2,447.00
DEVELOP -- 10300 Fiberglass Trough Grates	0	0.00	0.00
DEVELOP -- 10525 Fire Extinguishers	0	0.00	2,464.00
DEVELOP -- 10800 Toilet Accessories	0	0.00	33,913.00
DEVELOP -- 10805 Toilet Partitions	0	0.00	Incl
DEVELOP -- 10905 Partition Film	0	0.00	0.00
DEVELOP -- Corner Guards	0	0.00	866.00
DEVELOP -- Wire Mesh Partitions	0	0.00	59,795.00
DEVELOP -- 10950 Knox Box (1)	0	0.00	917.00
DEVELOP -- 11000 Equipment	0	0.00	0.00
DEVELOP -- 11400 Food Service Equipment	0	0.00	0.00
DEVELOP -- 12000 Furnishings	0	0.00	47,218.00
DEVELOP -- 12600 Recessed Mat	0	0.00	4,170.00
DEVELOP -- Install owner furnished furniture	0	0.00	43,048.00
DEVELOP -- 13000 Special Construction	0	0.00	0.00
DEVELOP -- 13099 Window Blinds	0	0.00	0.00
DEVELOP -- 13100 Signage	0	0.00	0.00
DEVELOP -- 13150 Chain Link Fence	0	0.00	0.00

10/25/2016

Page 73 of 81

DEVELOP -- 13200 Canvas Awnings	0	0.00	0.00
DEVELOP -- 14000 Conveying Systems	0	0.00	1,544.00
DEVELOP -- 14100 Re-Key Locks	0	0.00	1,544.00
DEVELOP -- 14200 Jet & Camera Sewer Lines	0	0.00	0.00
DEVELOP -- 15000 Mechanical	0	0.00	714,830.00
DEVELOP -- 15100 Heating & Cooling	0	0.00	278,804.00
DEVELOP -- 15400 Exhaust Fans/Curbs/MUA	0	0.00	0.00
DEVELOP -- 15450 Air Balance	0	0.00	0.00
DEVELOP -- 15500 Plumbing Systems - Includes Trenching/B	0	0.00	300,209.00
DEVELOP -- 15475 Grease Containment System	0	0.00	0.00
DEVELOP -- 15503 Fire Protection	0	0.00	100,817.00
DEVELOP -- 15504 Fire Alarm System	0	0.00	35,000.00
DEVELOP -- 15950 Kitchen Hoods/Fire Protection	0	0.00	0.00
DEVELOP -- 16000 Electrical	0	0.00	551,174.00
DEVELOP -- 16100 Electrical Subcontractor - Syrup/Beer Cha	0	0.00	551,174.00
DEVELOP -- 16150 Electrical Permit	0	0.00	0.00
DEVELOP -- 16170 Syrup/Beer Chases	0	0.00	0.00
DEVELOP -- 16200 SSD/ADT Conduit	0	0.00	0.00
DEVELOP -- 16600 LI & Power Package/Dimmer Panel	0	0.00	0.00
DEVELOP -- 16605 Sound & TV System	0	0.00	0.00
DEVELOP -- Overhead & Profit	0	0.00	181,439.00
DEVELOP -- Gross Sales Tax	0	0.00	9,249.00
TOTALS:	---	---	3,628,786.00

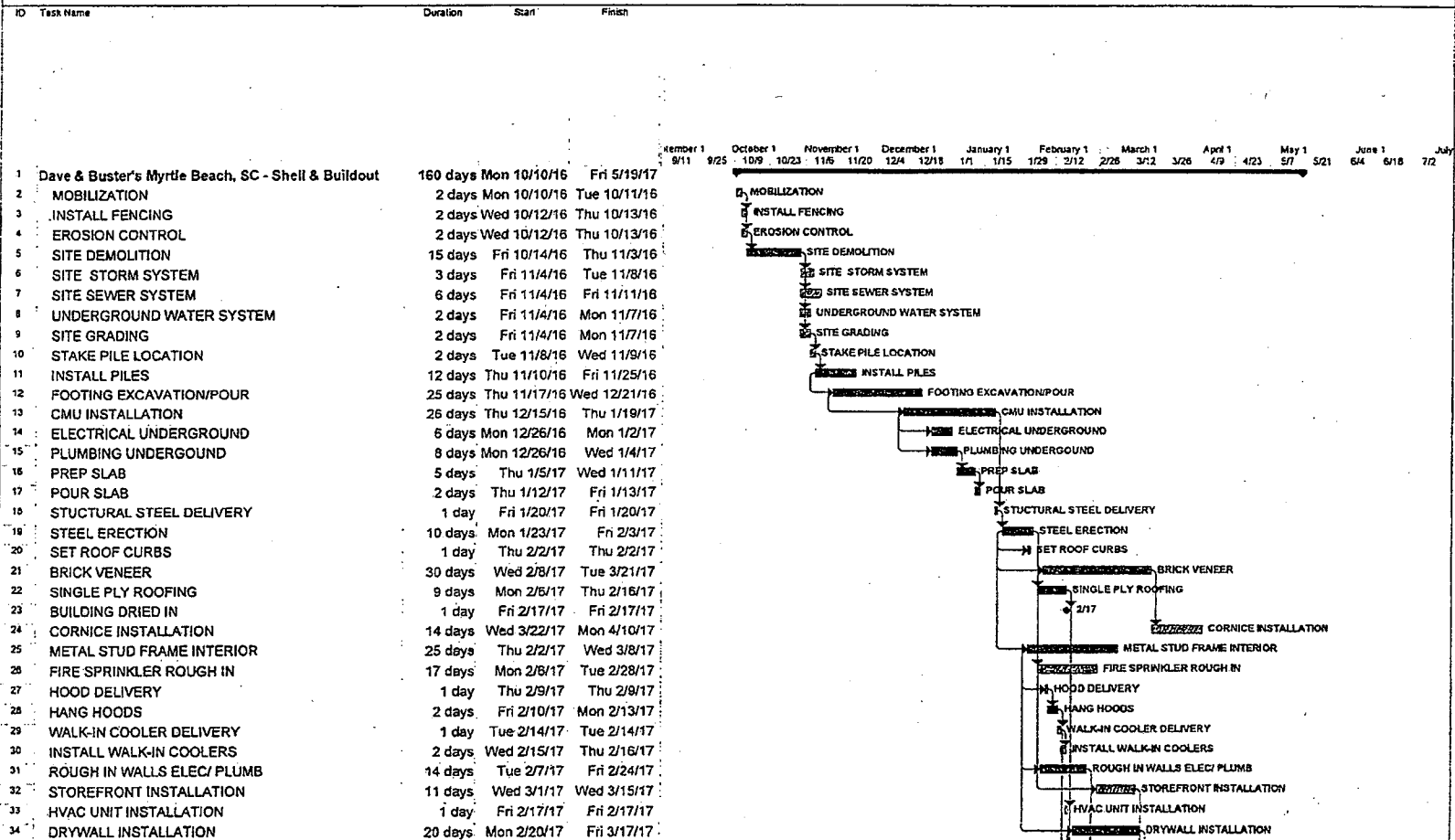
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10/25/2016

Page 73 of 81

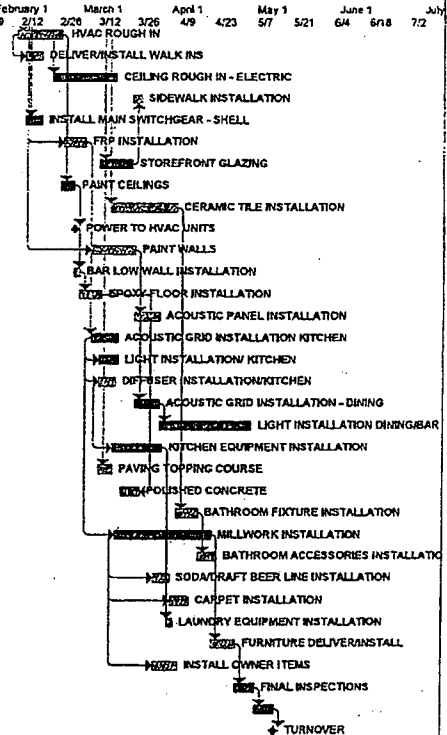
Defendant 000117

Dave & Buster's Myrtle Beach, SC - Shell & Buildout Combined



Dave & Buster's Myrtle Beach, SC - Shell & Buildout Combined

ID	Task Name	Duration	Start	Finish
35	HVAC ROUGH IN	12 days	Tue 2/14/17	Wed 3/1/17
36	DELIVER/INSTALL WALK INS	4 days	Fri 2/17/17	Wed 2/22/17
37	CEILING ROUGH IN - ELECTRIC	17 days	Mon 2/27/17	Tue 3/21/17
38	SIDEWALK INSTALLATION	3 days	Tue 3/28/17	Thu 3/30/17
39	INSTALL MAIN SWITCHGEAR - SHELL	4 days	Fri 2/17/17	Wed 2/22/17
40	FRP INSTALLATION	6 days	Fri 3/3/17	Fri 3/10/17
41	STOREFRONT GLAZING	8 days	Thu 3/16/17	Mon 3/27/17
42	PAINT CEILINGS	3 days	Thu 3/2/17	Mon 3/6/17
43	CERAMIC TILE INSTALLATION	18 days	Mon 3/20/17	Wed 4/12/17
44	POWER TO HVAC UNITS	1 day	Tue 3/7/17	Tue 3/7/17
45	PAINT WALLS	12 days	Mon 3/13/17	Tue 3/28/17
46	BAR LOW WALL INSTALLATION	2 days	Tue 3/7/17	Wed 3/8/17
47	EPOXY FLOOR INSTALLATION	6 days	Thu 3/9/17	Thu 3/16/17
48	ACOUSTIC PANEL INSTALLATION	7 days	Wed 3/29/17	Thu 4/6/17
49	ACOUSTIC GRID INSTALLATION KITCHEN	8 days	Mon 3/13/17	Wed 3/22/17
50	LIGHT INSTALLATION/ KITCHEN	5 days	Thu 3/16/17	Wed 3/22/17
51	DIFFUSER INSTALLATION/KITCHEN	4 days	Thu 3/16/17	Tue 3/21/17
52	ACOUSTIC GRID INSTALLATION - DINING	7 days	Wed 3/29/17	Thu 4/6/17
53	LIGHT INSTALLATION DINING/BAR	23 days	Fri 4/7/17	Tue 5/9/17
54	KITCHEN EQUIPMENT INSTALLATION	14 days	Tue 3/21/17	Fri 4/7/17
55	PAVING TOPPING COURSE	3 days	Thu 3/16/17	Mon 3/20/17
56	POLISHED CONCRETE	5 days	Fri 3/24/17	Thu 3/30/17
57	BATHROOM FIXTURE INSTALLATION	6 days	Thu 4/13/17	Thu 4/20/17
58	MILLWORK INSTALLATION	25 days	Wed 3/22/17	Tue 4/25/17
59	BATHROOM ACCESSORIES INSTALLATION	5 days	Fri 4/21/17	Thu 4/27/17
60	SODA/DRAFT BEER LINE INSTALLATION	4 days	Wed 4/5/17	Mon 4/10/17
61	CARPET INSTALLATION	5 days	Tue 4/11/17	Mon 4/17/17
62	LAUNDRY EQUIPMENT INSTALLATION	2 days	Mon 4/10/17	Tue 4/11/17
63	FURNITURE DELIVER/INSTALL	7 days	Wed 4/26/17	Thu 5/4/17
64	INSTALL OWNER ITEMS	7 days	Wed 4/5/17	Thu 4/13/17
65	FINAL INSPECTIONS	5 days	Fri 5/5/17	Tue 5/11/17
66	Punch List	5 days	Fri 5/12/17	Thu 5/18/17
67	TURNOVER	1 day	Fri 5/19/17	Fri 5/19/17



ADDENDUM TO

EXHIBIT A

**GENERAL CONDITIONS OF THE CONTRACT FOR
CONSTRUCTION**

**Rev. December, 2013
(DBGENCON – TX)**

Defendants 000120

Section 3.9.3

Add the highlighted language to this subsection:

~~Should Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle and resolve such dispute with such other contractor. If such separate contractor sues the Owner or initiates a dispute proceeding on account of any damage alleged to have been so sustained and caused by Contractor, Owner shall notify Contractor who shall defend such proceedings at Contractor's sole expense, and if any judgment or award against Owner arises from such proceedings, Contractor shall pay or satisfy it and shall reimburse Owner for all attorneys' fees and dispute resolution costs which Owner has incurred, unless and except the damages sustained by a separate contractor was not caused by Contractor or its subcontractor(s).~~

Section 3.10

This section to read (highlighted language is new and/or different):

In accordance with Section 12 herein, the Owner may, at its election, decide all claims, disputes and other matters in question between the Contractor and the Owner relating to the performance of the Work or the interpretation of the Contractor Documents. Such decision will be rendered in writing within a reasonable time. The Owner may refer any such claim or dispute to the Architect. The Owner's decision, or the Architect's, if referred by or from the Owner's Senior Vice President – Development, shall be final and binding on the parties, *subject to the provisions of Section 12 herein.*

Section 6.5(e)

Delete this subsection in its entirety.

Section 7.7

Add the following phrase to the end of the sentence: “, unless Owner has not paid Contractor sums which are undisputedly owed Contractor under the Agreement.”

Section 7.9

Add the following NEW subsection:

If Contractor fails to achieve Substantial Completion in accordance with Article 4 of the Agreement, Contractor shall be liable to Owner, as liquidated damages, for the following amounts: (a) for the first fifteen (15) days, no penalty; and (b) for any day of delay thereafter, One Thousand Dollars (\$1,000) per day. IN THE EVENT THE WORK FAILS TO BE SUBSTANTIALLY COMPLETED BY CONTRACTOR IN ACCORDANCE WITH ARTICLE 4 OF THE AGREEMENT, CONTRACTOR AGREES THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH OWNER MAY SUFFER. THEREFORE, CONSTRUCTION MANAGER AGREES THAT A REASONABLE ESTIMATE OF THE TOTAL DAMAGES THAT OWNER WOULD SUFFER IN SUCH EVENT IS AND SHALL BE, AS OWNER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH DELAY (WHETHER AT LAW OR IN EQUITY), THE RIGHT TO RECEIVE THE

Defendants 000121

LIQUIDATED DAMAGES SET FORTH IN THIS SECTION 7.9. THE PAYMENT AND PERFORMANCE OF THE ABOVE AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF APPLICABLE LAW. All amounts owed to Owner under this section shall be deducted by Owner from any amount otherwise due to Contractor or, if deductions are not sufficient to compensate Owner fully, shall be paid to Owner by Contractor upon written demand. Notwithstanding anything to the contrary herein, in light of Contractor's agreement to pay the liquidated damages set forth above, Owner hereby waives the right to recover any consequential or special damages of any nature whatsoever in addition to such liquidated damages including, without limitation, loss of anticipated income and lost profits, solely in connection with any delay in the completion of the Work.

Section 8.1

Add the following language to the end of the subsection, which language shall be in all caps and in boldface type:

NOTWITHSTANDING ANYTHING IN THIS SECTION OR THIS AGREEMENT TO THE CONTRARY, CONTRACTOR'S LIABILITY TO OWNER AND ALL OTHER INDEMNITIES SHALL BE LIMITED TO, AND SHALL NOT EXCEED, THE TOTAL SUM OF TEN MILLION DOLLARS (\$10,000,000.00). THE PARTIES FURTHER ACKNOWLEDGE THAT DAMAGES RELATED TO A DELAY IN THE DELIVERY OF THE PROJECT IN ACCORDANCE WITH ARTICLE 4 OF THE AGREEMENT SHALL BE EXCLUSIVELY CALCULATED UNDER SECTION 7.9 OF THESE GENERAL CONDITIONS.

Section 8.3

Add the following language to the beginning of this subsection: "EXCEPT AS OTHERWISE SET FORTH HEREIN, "

Section 8.13

Add the following to the end of the fifth sentence of this subsection:

"; provided, however, that Contractor's obligation to indemnify Owner and hold Owner harmless shall not be triggered hereunder if the claim being asserted is attributable to Owner's failure to pay Contractor for Work properly performed by the claimant."

Section 9.2

The parties recognize that the builder's risk and physical damage insurance described in this Subsection 9.2 shall be obtained by Owner and not Contractor. As such references to "Owner" shall be changed to, or read as, "Contractor; and references to "Contractor" shall be changed to, and read as, "Owner."

Section 10.2

This subsection shall be changed to read as follows:

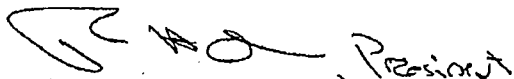
The Contractor hereby agrees to hold Owner and Owner's landlord harmless from any claims or damage of any type including consequential damages on account of loss of use, to any personal property belonging to the Contractor, its subcontractors, suppliers, employees or representatives **unless Owner or Owner's subcontractors are** deemed responsible in whole or in part for such damage and whether caused in whole or in part by Contractor's negligence.

Section 12.2

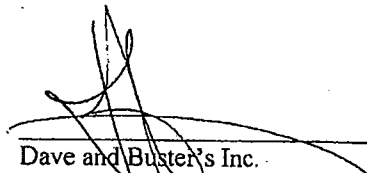
The last phrase in this subsection ("either the U.S. District Court for the Northern District of Texas, Dallas Division, or the District Courts of Dallas County, Texas.") shall be changed to the following: "the state courts of the county and state in which the Project is located."

Section 14.6

The first sentence shall be amended as follows: "Contractor shall arrange for connections ~~and pay~~ for water and electric service for power and light, including temporary connections used by subcontractors during the progress of the Work and until final acceptance."


Garrard Construction Group, Inc.

Date: 11-9-16


Dave and Buster's Inc.
Date: 11/16/16

ADDENDUM TO

Standard Form of Agreement Between

Dave & Buster's, Inc. and Contractor

***Cost of Work Plus Fee – Guaranteed Maximum Price**

Rev. September 20, 2013
(DBGMAX)

AGREEMENT made as of the **25th** day of **October, 2016**

BETWEEN the Owner: Dave & Busters, Inc.
2481 Manana Drive
Dallas, TX 75220

and the Contractor: Garrard Construction
1960 Satellite Blvd., Suite 2300
Duluth, GA 30097

The Project: Dave & Buster's – Broadway At The Beach Interior
1322 Celebrity Square
Myrtle Beach, SC 29577

The Architect: SBLM Architects
16910 Dallas Parkway, Suite 216
Dallas, TX 75248

Defendants 000124

Section 5.3

Change all percentages to "fifty" percent.

Section 6.2

For additive changes, the Contractor's Fee shall be ten percent (10%).

For deductive changes, the Contractor's Fee shall be five percent (5%).

Section 9.1.7

Delete the phrase "and adjusted pursuant to Article 7."

Section 9.1.8

Add the following phrase to the end of the sentence: ", except as noted in the Exhibits hereto."

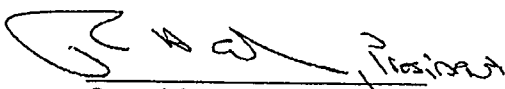
DAVE & BUSTER'S SUMMARY BREAKDOWN FOR COST OF WORK, FEES & GENERAL CONDITION ITEMS

Construction Utilities

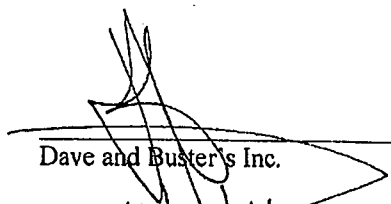
Change *Construction Electricity Charges* from General Conditions (G) to Reimbursement Cost of Work (C)

Change *Gas Fuel Monthly Charge* from General Conditions (G) to Reimbursement Cost of Work (C)

Change *Water Monthly Charges* from General Conditions (G) to Reimbursement Cost of Work (C)


Garrard Construction Group, Inc.

Date: 11-9-16


Dave and Buster's Inc.
Date: 11/11/16

Contract Approval Form

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - COMMON PLEAS - CASE#2017CP2603562

Date: _____

Comments:

Project Manager: _____

Comments:

Tim Wright: _____
(signature)

- Fee & GC amounts correct
- Schedule is based on owner's notice to proceed
- Changed Substantial Completion Date to 5-19-17 per contract Schedule
- Added 10 mill to Addendum Sec 8.1

Date: 10/26/16

Comments: Contract Amount + Exhibit B March Estimate.

Jay Wright: _____
(signature)

Date: _____

Comments:

Ron Garrard: _____
(signature)

Rec'd
11/10/16 EM.

Contract Written by: Dave and Buster's; Addendum by: Garrard

Once all signatures are on Contract Approval Form and changes if any are made. Contract can be processed for signatures.

Def@derats 000126

EXHIBIT 3



SUBCONTRACT

Contractor:

Garrard Construction Group, Inc.
1980 Satellite Blvd., Suite 2300
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-6028

Project Name: Dave & Buster's M Beach Shell

Date: 10/19/2018

Subcontractor:

Carolina Cool, Inc.
194 Surfside Industrial Park
Surfside Beach, SC 29575

Subcontract: 10-6028-09

Project Location: 1322 Celebrity Square

Myrtle Beach, SC 29577

This Agreement is made this 19 day of October, 2018 between Garrard Construction Group, Inc. ("Contractor") and Carolina Cool, Inc. ("Subcontractor")

ARTICLE 1 - Scope of the Work

1.1 Subcontractor, as an independent contractor employed by Contractor, agrees to provide and to furnish everything necessary, including, but not limited to, all labor, materials, supervision, scaffolding, equipment, hoisting equipment, systems, machinery, tools, apparatuses, transportation, shop drawing, samples and submittals, to provide, furnish and complete the work set forth in the attached Attachment "A" ("Work"), to be performed in connection with the Dave & Buster's M Beach Shell ("Project") for Burroughs & Chapin Co., Inc. ("Owner"). Owner shall include any of its authorized representatives such as its architects, engineers or construction managers.

Attachments are listed as follows	Attachment A	Scope of the Work / Breakdown
	Attachment B	The Schedule
	Attachment C	Drawing Enumeration
	Attachment D	GCG Pay Application
	Attachment E	GCG Lien Waivers: Interim, Final, Third Party
	Attachment F	Warranty Form
	Attachment G	Third Party Subcontractor & Vendor List

ARTICLE 2 - The Subcontract Amount

2.1. As full consideration for complete performance of the Work, Subcontractor shall be paid: \$ 35,680.00 (thirty-five thousand five hundred and xx / 100) ("Subcontract Amount").

2.2. The Subcontract Amount shall be the total sum paid to Subcontractor except for changes or modifications in accordance with the terms of this Agreement.

2.3 Any and all transportation tax, sales tax, use tax or any other tax that might accrue through the purchase of materials or amounts paid for labor by Subcontractor or occasioned by performance of this Agreement, shall be borne and paid for by Subcontractor, and are included in the Subcontract Amount.

ARTICLE 3 - The Terms of this Agreement

3.1 This Agreement consists of: (1) this Lump Sum Subcontract and any attachments hereto; and (2) the agreement between Owner and Contractor for the Project, including all conditions to that agreement (general supplementary and any other conditions), all drawings, specifications, schedule, and contract documents referenced in that agreement, along with all addenda and modifications to that agreement ("Prime Contract").

3.2 Subcontractor agrees to be bound to Contractor by all of the terms of the Prime Contract, and assumes toward Contractor all the obligations, duties and responsibilities that Contractor by the Prime Contract assumes toward Owner with the same force and effect as though every such obligation, duty and responsibility were set forth herein in full. Subcontractor agrees that Contractor shall have the same rights and remedies that Owner under the Prime Contract has against Contractor with the same force and effect as though every such right or remedy were set forth herein in full. Subcontractor further warrants and represents that prior to signing this Agreement it has reviewed and is familiar with the Prime Contract and agrees not to plead ignorance of any provision therein in any dispute between the parties.

3.3 The intent of this Agreement is to include all items necessary for the proper execution and completion of the Work by Subcontractor. The documents comprising this Agreement are complementary and what is required by one shall be as binding as if required by all.

3.4 All obligations, duties, responsibilities, rights and remedies set forth herein are in addition to those obligations, duties, responsibilities, rights and remedies set forth in the Prime Contract. In the event a provision of the Prime Contract is inconsistent with the provisions of this Lump Sum Subcontract, the provision more favorable to Contractor shall control.

3.5 Except as modified by this Agreement, the Work shall be performed and completed in strict accordance with the terms and requirements of the Prime Contract.

3.6 Subcontractor shall carefully study and compare the documents comprising the Prime Contract with each other and shall at once report to Contractor any error, inconsistency or omission discovered. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies, or omissions if it recognizes, or should have recognized, an error, inconsistency, or omission and fails to report it to Contractor before executing the Work. By performing any construction activity involving a recognized error, inconsistency, or omission in the Prime Contract, Subcontractor assumes the risk of such performance and

Page 1 of 7

1980 Satellite Blvd * Suite 2300 * Duluth * Georgia * 30097
Phone (770) 822-1944 * Fax (770) 822-4633

PLAINTIFF 159

Contractor:

Garrard Construction Group, Inc.
1950 Satellite Blvd., Suite 2300
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-5026
Project Name: Dave & Buster's M Beach Shell
Date: 10/19/2016

agrees to bear full responsibility for all costs of correction.

ARTICLE 4 - The Time of Performance

4.1 Subcontractor shall comply with any schedule requirements imposed upon Contractor in the Prime Contract. Contractor shall schedule the work required by the Prime Contract, including the Work. Contractor shall have the right to decide the time, order and priority that the various portions of the Work will be performed and other matters relative to the time and orderly conduct of the Work.

4.2 A Schedule for the Project and the Work is attached hereto as Attachment "B" (the "Schedule"). Subcontractor shall participate and cooperate with Contractor in scheduling the times and sequences required to perform the Work and agrees to perform the Work in accordance with the Schedule, including all amendments thereto. Subcontractor shall continuously monitor the Schedule and shall advise Contractor of the status of its performance on a regular basis including information on the status of shop drawings, sample submittals, materials or equipment that may be in the course of preparation or manufacture. Subcontractor shall immediately notify Contractor of any circumstances which may affect the times and sequences in the Schedule and shall make all requests for time extensions in writing to Contractor sufficiently in advance to allow Contractor to forward the request as required in the Contract Documents.

4.3 Time is of the essence of this Subcontract. Subcontractor shall commence the Work in accordance with the Schedule, or when directed by verbal or written notice from Contractor, and shall diligently and continuously prosecute such Work in an efficient fashion so as not to cause interruption, interference, inefficiency, suspension, hindrance or delay (collectively referred to as "Delay") in the progress of any portions of the Project. Subcontractor shall coordinate the Work with the other work being performed on the Project so that the Project shall not be Delayed due to any act or omission of Subcontractor. Subcontractor shall take all necessary action to assure the completion of the Project within the time specified in the Schedule and the Prime Contract.

4.4 Subcontractor shall be liable to Contractor for any and all loss to Contractor, or which Contractor may be liable, as a result of any Delay on the part of Subcontractor in the prosecution or completion of the Work according to the Schedule, or for any Delay to the completion of the Project attributable to Subcontractor. If the Agreement between Contractor and Owner imposes upon Contractor an obligation to pay Owner liquidated damages in the event Delays are encountered in completion of the Project, and to the extent such a Delay is caused in whole or in part by the acts or omissions of Subcontractor, Subcontractor shall be obligated to pay Contractor, in addition to any other damages sustained by Contractor as a result of the Delay, any liquidated damages Contractor is obligated to pay Owner.

4.5 In agreeing to complete the Work within the times and sequences herein mentioned, Subcontractor hereby represents that it has taken into consideration and made allowances for all Delays incident to the Work. No Delay in the commencement or progress of the Work for any cause whatsoever, including those for which Owner or Contractor may be responsible, in whole or in part, shall relieve Subcontractor of its duty to perform hereunder.

4.6 Subcontractor shall not be entitled to any time extension unless a notice of claim therefore is presented in writing to Contractor within the period of time required by the Prime Contract or within seventy-two (72) hours of the first occurrence of the Delay, whichever time period is shorter. Except as set forth in Article 11.2, Subcontractor agrees that an extension of time for completing the Work is its sole remedy for any and all other claims Subcontractor may have against Contractor on account of any Delay. Permitting Subcontractor to continue working after the time to complete the Work has expired, shall not be construed as a waiver by Contractor of any claims for loss or damage for breach by Subcontractor of one or more of the provisions of this Agreement.

4.7 Subcontractor shall at all times supply and promptly pay for adequate tools, appliances, equipment, a sufficient number of properly skilled workmen and a sufficient amount of material and supplies to efficiently and properly prosecute the Work in accordance with the Schedule, and any modifications thereto issued by Contractor, in order to achieve the Project completion date established by the Prime Contract.

ARTICLE 5 - Payments

5.1 Invoicing and payment of the Subcontract Amount shall be made in accordance with the terms of the Prime Contract. Subcontractor shall submit to Contractor a written application for payment, in a form approved by Contractor, showing the value of the Work performed and completed to date, along with all substantiating data and information as required by the Prime Contract, from which shall be deducted: (1) a retainage of 10% of such value; (2) all previous payments; (3) all charges for materials and services furnished by Contractor to Subcontractor; and (4) any other charges and deductions as provided for in this Agreement or in the Prime Contract. The balance of the Subcontractor's invoice, to the extent approved by Owner and Contractor, shall be payable to Subcontractor after the Contractor has received payment from the owner. After receipt of payment from the owner, the payment to the subcontractor shall be made on the Friday closest to the end of the month in which payment was received or 10 business days from the date received, whichever is later. Checks will be processed on the subsequent Friday as part of our normal Accounts Payable check run.

5.2 A condition precedent to Subcontractor receiving monthly payments after stating the Work is the delivery by Subcontractor to Contractor each month (regardless of whether any Work was performed) of waivers of liens and claims, in a form suitable to Contractor, from Subcontractor and all sub-subcontractors and suppliers who have furnished materials for use on the Project and for which payment has been received by Subcontractor.

5.3 Contractor's obligation to pay the Subcontract Amount is executory and conditional upon Subcontractor's compliance with this Agreement. It is further expressly agreed that payment by Owner to Contractor is an absolute condition precedent to payment by Contractor to Subcontractor of all or any portion of the Subcontract Amount.

5.4 The quantities of Work performed and materials furnished as established by the Prime Contract or Contractor and Owner shall constitute the basis for computation of the payment to Subcontractor. Payments made on account of materials not incorporated in the Work but delivered and suitably stored, shall be made, if at all, in accordance with the Prime Contract.

5.5 Final payment of the Subcontract Amount including retention ("Final Payment") shall be made to Subcontractor upon: (i) completion of the Work in accordance with the Prime Contract; (ii) acceptance of the Work by Contractor and Owner; (iii) the occurrence of any and all conditions precedent to Subcontractor's receipt of Final Payment, as provided in the Prime Contract; (iv) receipt of final payment under the Prime Contract by Contractor from Owner; (v) receipt of an affidavit from Subcontractor that all labor (including customary fringe benefits and payments due under collective bargaining agreements), sub-subcontractors, materialmen and suppliers have been paid in full and they, and Subcontractor, are waiving or have previously waived their lien rights upon the making of Final Payment; (vi) consent to Final Payment from Subcontractor's surety; (vii) a complete release of claims in a form acceptable to Contractor; and (viii) closed documents inclusive of Operations & Maintenance manual.

5.6 If at any time there is evidence of a lien or claim for which, if established, Contractor or Owner might become liable, and which is chargeable to Subcontractor, or if Subcontractor shall incur any liability to Contractor, or if Contractor shall have any claim or demand against Subcontractor of any kind or for any reason, whether or not reduced to judgment or award, Contractor shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between Contractor and Subcontractor, an amount sufficient to indemnify and fully satisfy Contractor and Owner against such lien, claim, liability or demand. Contractor shall also be entitled to retain all costs of defense or collection with respect thereto, including reasonable

Contractor:
Garrard Construction Group, Inc.
1960 Satellite Blvd., Suite 2300
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-5028
Project Name: Dave & Buster's M Beach Shell
Date: 10/18/2016

attorneys' fees. If any lien, claim, liability or demand develops after all payments are made hereunder, Subcontractor shall refund to Contractor within ten (10) days of demand therefore all amounts that the latter may be compelled to pay in discharging such lien, claim, liability or demand and all costs, including reasonable attorneys' fees incurred in collecting said amounts from Subcontractor.

5.7 No payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no payment shall be construed to be acceptance of defective Work or improper materials.

5.8 Acceptance of Final Payment by Subcontractor shall constitute a full waiver and release by Subcontractor of all claims against Contractor or Owner arising out of or relating to this Agreement.

5.9 Pay requests shall be submitted on the GCG pay request form.

ARTICLE 6 - Submittals

6.1 Subcontractor shall proceed at once to prepare all required shop drawings, product data samples and other submittals required by the Prime Contract and furnish same for approval in accordance with the Prime Contract. Submittal data shall be prompt and complete to ensure scheduled delivery of such equipment and/or materials, so as not to Delay the progress of either the Work or the Project. Subcontractor agrees to keep Contractor fully informed regarding its delivery schedule and shall immediately advise Contractor of any Delay or anticipated Delay.

6.2 Subcontractor shall comply with all scheduling and reporting requirements in the Prime Contract and shall furnish and supply Contractor such supplemental and additional information and reporting documentation as reasonably required by Contractor during the performance of the Work, including information on the status of materials and equipment that may be in the course of preparation or manufacture.

6.3 As-built documents and data shall be maintained and recorded by Subcontractor as applicable to the Work and shall be reviewed monthly by Contractor and in connection with Subcontractor's request for progress payments. Such review shall be a condition precedent to the issuance of payments under this Agreement.

6.4 Contractor's review of any as-built documents, submittals, shop drawings, data or drawings shall not relieve Subcontractor of any of its duties under the Prime Contract or its responsibility to perform the Work in the manner necessary to produce the results required and intended by the Prime Contract.

ARTICLE 7 - Superintendence and Subcontractor's Workforce

7.1 Subcontractor shall provide adequate, competent, and experienced full-time, on-site supervision during the performance of the Work. Such supervisory personnel shall have the authority to carry out directions from Contractor relating to this Agreement and the Work.

7.2 Subcontractor shall only employ workmen who will work in harmony with those employed by Contractor and other subcontractors. Subcontractor shall immediately replace any workmen objectionable to Contractor and if Contractor's request for replacement is not honored, Contractor shall be entitled and authorized to terminate this Agreement for cause.

7.3 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

7.4 In performing the Work, Subcontractor shall comply with Contractor's labor and affirmative action requirements under the Prime Contract. Subcontractor shall not discriminate against any employee or applicant because of race, creed, color, sex, age or national origin in the performance of the Work.

ARTICLE 8 - Material and Workmanship

8.1 All Work shall be done to the final approval of Contractor and Owner. Their decision as to the performance of the Work in accordance with the Prime Contract and the true constructive meaning of the Prime Contract shall be final, subject to any limitations stated in the Prime Contract.

8.2 Subcontractor shall provide safe and efficient facilities at all times for inspection of the Work by Contractor and Owner.

8.3 If Contractor or Owner condemns or disapproves of any portion of the Work, Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor of such condemnation or disapproval, proceed promptly to take down all rejected portions of the Work and remove from the Project all materials that are subject to that condemnation or disapproval and shall promptly make good all such Work and all other work damaged or destroyed in removing or making good said condemned or disapproved Work. All costs associated with replacing or repairing condemned Work shall be borne by Subcontractor without any increase in the Subcontract Amount.

8.4 Subcontractor shall conform to and abide by any additional specifications, drawings, or explanations required by the Prime Contract.

8.5 Contractor or Owner may elect to accept the Work, or any portion of it, which is not in accordance with the Prime Contract, rather than requiring its removal and correction. In such event, the Subcontract Amount shall be adjusted as necessary to equitably compensate Contractor and Owner for the consequences of Subcontractor's failure to comply with the Prime Contract.

ARTICLE 9 - Changes

9.1 Without invalidating this Agreement, and without notice to Subcontractor's surety, Contractor may order Subcontractor in writing to make changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement. In the event of such a change, the Subcontract Amount and time for performance of this Agreement shall be adjusted by way of change order ("Change Order"). Prior to the commencement of such changed or revised work, Subcontractor shall promptly submit to Contractor in writing any claim it seeks to assert for adjustment in the Subcontract Amount or time for performance consistent with the requirements of the Prime Contract.

9.2 Subcontractor shall be bound by all compilation and reporting requirements set forth in the Prime Contract with respect to Change Orders.

9.3 If Subcontractor is required by Contractor to perform additional work for which the amount of compensation is not set forth in the Prime Contract, the Subcontractor shall prepare and submit to Contractor a proposal describing the estimated quantities and the time and cost involved. The Subcontractor shall submit the proposal to Contractor within the appropriate time period established in the Prime Contract so as to permit the Contractor sufficient time to review the proposal and forward it to Owner for consideration. If no such time period is set forth in the Prime Contract, the Subcontractor shall submit its proposal to Contractor at least seven (7) calendar days before the additional work is required to be performed. Otherwise, Subcontractor shall accept the determination of Contractor as to the effect of the proposed Change Order.

9.4 Additions to, or changes in, this Agreement shall be made only upon written order, approved by Contractor. If the parties hereto are unable to agree as to the value of such work to be added or omitted, Subcontractor shall proceed under the written order of Contractor, from which order the stated value of the work shall be omitted. The dispute shall then be determined in accordance with Article 11.

9.5 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to

Contractor:
Gerrard Construction Group, Inc.
1960 Satellite Blvd., Suite 2300
Duluth, GA 30097
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proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

9.6 Contractor's receipt, or acknowledgment, of Subcontractor's Change Order request or any other alleged claim or any notice or report, including reports of cost and time, or any payments made on account thereof, shall not be construed as Contractor's acknowledgment, or acceptance, of the accuracy or validity of any portion thereof, until such time as final Change Order amounts are determined and a Change Order is signed by Contractor.

9.7 If the construction change order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- a. mutual acceptance of a lump sum properly itemized and supported by sufficient sustaining data to permit evaluation;
- b. unit prices stated in the Contract Documents or subsequently agreed upon;
- c. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- d. cost & fee with itemized accounting inclusive of cost of labor, cost of materials, supplies, and equipment; rental costs of machinery and equipment; cost for all bonds and insurance, permit fees; additional cost of supervision and field personnel; and overhead allowance of not more than 10% and fee of not more than 5%.

ARTICLE 10 - Default and Termination

10.1 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, upon twenty-four (24) hours written notice, direct Subcontractor to take such steps as Contractor deems necessary to remedy such failings, all without additional cost to Contractor. If Subcontractor fails to comply with these steps, in addition to any other right or remedy Contractor may have under this Agreement, Contractor may remedy such failings and deduct any loss or damage occasioned thereby from any money then due or thereafter to become due to Subcontractor.

10.2 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, at its option, and at any time after forty-eight (48) hours written notice of such default to Subcontractor, terminate Subcontractor's involvement in the Project by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take possession of the Work, materials, tools, appliances and equipment of Subcontractor at the Project, and through itself or others provide labor, equipment and materials to prosecute the Work. The cost thereof, including all charges, expenses, losses, costs, damages and attorneys' fees incurred as a result of Subcontractor's failure to perform, shall be deducted by Contractor from any money then due or thereafter to become due to Subcontractor. Subcontractor shall not be entitled to any further payments under this Agreement until the Work has been completed and fully accepted by Owner. In the event that the unpaid balance due exceeds Contractor's cost of completion, the difference shall be paid to Subcontractor. If such costs exceed the balance due, Subcontractor shall pay the difference to Contractor within ten (10) days of demand for payment of same.

10.3 Contractor shall have the right to terminate Subcontractor's involvement in the Project by written notice, without Subcontractor being at fault, for any cause or for its own or Owner's convenience, and require Subcontractor to immediately stop the Work. In such event, Contractor shall pay Subcontractor for that portion of the Work actually performed in an amount proportionate to the total Subcontract Amount. Contractor shall not be liable to Subcontractor for any other costs nor for prospective profits on the Work not performed; provided, however, that if termination is due to any default or action by Owner, or as a result of an order by a court or public authority, then Contractor shall not be liable to Subcontractor for any sum greater than that which Contractor receives from Owner with respect to Subcontractor's performance, less any costs incurred by Contractor in obtaining that amount from Owner. Any default termination of Subcontractor by Contractor subsequently determined to have been erroneous or wrongful, shall be deemed to be a termination under this Paragraph 10.3.

10.4 If Subcontractor's involvement in the Project is terminated, Subcontractor shall assign to Contractor any and all of Subcontractor's contracts with sub-subcontractors and/or suppliers designated by Contractor. The Subcontractor represents and warrants to Contractor that all of its contracts with sub-subcontractors and/or suppliers do or will include a provision that authorizes the foregoing right and obligation of assignment. Subcontractor agrees to indemnify and hold Contractor harmless and defend it against any and all claims and liabilities incurred by reason of the Subcontractor's breach of any term, condition, obligation or agreement under the assigned contracts.

10.5 The remedies provided Contractor in this Article 10 and in any part of the Prime Contract shall be cumulative, and not exclusive, of all other remedies which Contractor may have for breach of this Agreement by Subcontractor, or as a result of Subcontractor's failure to perform any of the requirements of this Agreement. In the event of a default termination, all losses, and expenses, including attorneys' fees, incurred in the prosecution or defense of any action, arbitration or suit, trial or appeal, enforcement of any judgment, bankruptcy or insolvency proceeding, or any subsequent proceeding or appeal from any order or judgment entered therein, incurred by or resulting to Contractor on the above account, shall be borne by and charged against Subcontractor and shall be damages for breach of this Agreement. Contractor may recover some from the Subcontractor's surety, and both Subcontractor and its surety agree to pay Contractor for such losses, damages, expenses and attorneys' fees. At Contractor's sole discretion and exclusive option, proceeds that are payable, or due to become payable under this Agreement, or any other agreements between Subcontractor and Contractor, may be withheld by Contractor and applied against said losses, costs or expenses.

ARTICLE 11 - Claims and Disputes

11.1 Any claim for which the Contractor is directly responsible ("Contractor Related Claim"), shall be made by Subcontractor in writing to Contractor within five (5) business days of the occurrence of the event giving rise to the claim. Contractor shall issue a decision on any Contractor Related Claim in writing and furnish a copy thereof to Subcontractor. The decision of Contractor shall be final and conclusive, unless within forty-eight (48) hours from the date of receipt of such decision, Subcontractor issues written notice to Contractor contesting same. If Subcontractor does not contest Contractor's final decision within the time period noted above, Subcontractor shall be deemed to have waived any right to contest that decision.

11.2 Any claim by Subcontractor that may affect or become part of a claim for which the Owner or another person or entity besides Contractor may be responsible ("Owner or Third Party Related Claim") shall be made by Subcontractor in sufficient time and in such manner so as to permit Contractor to satisfy the Contractor's requirements for making an Owner or Third Party Related Claim against the Owner or any third party in question. Subcontractor shall pursue all Owner or Third Party Related Claims against the Owner or any third party in question through Contractor in accordance with the applicable disputes process. Subcontractor agrees to bear full responsibility and the full cost of pursuing all Owner or Third Party Related Claims. Contractor shall be liable to Subcontractor only to the extent that Contractor actually recovers from the Owner or any third party for each Owner or Third Party Related Claim, less Contractor's costs associated with the Owner or Third Party Related Claim.

11.3 Any other dispute between Contractor or Subcontractor arising out of or relating to this Contract besides an Owner or Third Party Related Claim ("Other Dispute"), shall be decided by litigation unless Contractor shall advise Subcontractor within 30 days of receiving or giving notice of the Other Dispute, that Contractor elects to have the Other Dispute decided or resolved by arbitration. In the event Contractor elects to have the Other Dispute resolved by binding

Page 4 of 7

1960 Satellite Blvd • Suite 2300 • Duluth • Georgia • 30097
Phone (770) 822-1944 • Fax (770) 822-4633

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Contractor:
 Garrard Construction Group, Inc.
 1960 Satellite Blvd., Suite 2300
 Duluth, GA 30097
 Ph: (770)822-1944

Project #: 10-10-6028
 Project Name: Dave & Buster's M Beach Shell
 Date: 10/19/2016

arbitration, Subcontractor shall be bound by Contractor's decision. Any such arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules issued by the American Arbitration Association then in effect. Any such arbitration shall be held in Metro, Georgia, and judgment upon the award may be entered by any court having jurisdiction.

11.4 In connection with any such arbitration proceeding, Subcontractor agrees to afford Contractor liberal and informal discovery consistent with the discovery provisions of the Georgia Civil Practice Act, O.C.G.A. § 9-11-1 et seq., including the production of all documents related to the dispute and the availability for deposition at reasonable times of all persons under its control who have knowledge of facts pertaining to the matter in dispute.

11.5 To the extent Contractor does not select arbitration for the resolution of any Other Dispute, Contractor and Subcontractor each hereby agree that the United States District Court for the Northern District of Georgia, or, at the option of Contractor, the Superior Court of Gwinnett County, Georgia, shall have exclusive jurisdiction to hear and determine any Other Dispute. Subcontractor expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced in such courts and pertaining to any Other Dispute.

11.6 Any claim, dispute or other matter in question between Contractor and Subcontractor relating to this Agreement, or the Work shall be governed by the laws of the State of Georgia without regard to conflicts, or choice, of laws.

11.7 In the event Contractor is involved in any dispute resolution proceeding, including litigation, arbitration or administrative procedures, and that proceeding involves the Work, involves questions of law or fact common to the Work, or if complete relief cannot be afforded without Subcontractor's presence in that dispute resolution proceeding, Subcontractor hereby consents to consolidation or joinder in that proceeding.

11.8 Subcontractor shall carry on the Work and comply with its performance and scheduling obligations under this Agreement despite the existence of any dispute or legal proceedings unless otherwise agreed in writing by the parties hereto.

ARTICLE 12 - Regulatory Compliance

12.1 Subcontractor shall comply with all applicable laws, codes, regulations, orders and ordinances that apply to the Work and the Project, all in accordance with the Prime Contract. Subcontractor shall give all required notices and shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

12.2 Subcontractor shall take all reasonable safety precautions necessary with respect to the performance of the Work and shall comply with all safety measures and drug policies initiated by Contractor including OSHA and with all applicable laws, ordinances, rules, regulations and orders of public authorities pertaining to the safety of persons or property, all in accordance with the requirements of the Prime Contract.

12.3 Subcontractor shall comply with the requirements of all governmental authorities having jurisdiction over the Work.

12.4 Subcontractor shall comply with all applicable Social Security, Unemployment Compensation and Employer's or Worker's Compensation Acts.

12.5 If Subcontractor violates any of the above, Subcontractor shall bear all costs resulting from such violation and shall defend, indemnify and hold Contractor harmless from any damages (including attorneys' fees), claims, and causes of action arising from such violation.

ARTICLE 13 - Indemnity, Insurance and Bonding

13.1 Prior to commencing the Work, Subcontractor shall secure and pay for insurance of the type and limits set forth below and as required by the Prime Contract from an insurer, and in a form, acceptable to Contractor. The insurer shall be licensed to transact business in the location of the Project.

- a. Worker's Compensation with statutory limits but not less than \$500,000;
- b. Employer's Liability with limits of \$500,000 per occurrence;
- c. Comprehensive General Liability (occurrence form) with minimum limits of \$2,000,000;
- d. Comprehensive Automobile Liability Insurance with minimum limits of \$1,000,000.00 combined single limit with coverage for all owned, non-owned and hired automobiles;
- e. Excess Liability Insurance on a following form basis in limits not less than \$2,000,000.

All liability insurance coverage shall include Contractor and Owner as an additional insured and shall provide coverage for Contractor and Owner on a primary basis. All coverage shall include a waiver of the underwriter's rights of subrogation against Contractor and Owner. Subcontractor shall be solely responsible for any deductible or self-insurance retentions. Prior to commencement of operations, Subcontractor shall provide to Contractor and Owner certificates of insurance evidencing the required coverage and providing Contractor and Owner with thirty (30) days notice prior to cancellation of any coverage. In the event Subcontractor fails to obtain or maintain any insurance coverage required by this Agreement, or the Prime Contract, Contractor may at its option: (i) terminate Subcontractor; or (ii) purchase such coverage and charge the expense thereof to Subcontractor.

13.2 Subcontractor assumes full liability for any and all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and property arising out of or in any way connected with the Work and shall to the fullest extent permitted by law defend, indemnify and hold harmless Owner and Contractor, their respective officers, agents, employees and indemnities, from and against any and all claims, demands, losses, suits, damages and liabilities, legal or otherwise, arising out of or in any way connected with the Work, including, to the fullest extent permitted by law, irrespective of the negligence of any indemnitee hereunder provided that such negligence is not the sole proximate cause of such claim, demand, loss, suit, damage or liability. Subcontractor agrees that \$1,000 of the Subcontract Amount is consideration for Subcontractor agreeing to this indemnification. For purposes of fulfilling its duties to defend, indemnify and hold harmless the Contractor, Subcontractor waives the immunities, rights, or defenses that may be available under applicable Workers Compensation Laws. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due Subcontractor, or which thereafter becomes due, shall be held by Contractor to cover such claim or demand including all reasonable attorneys' fees.

13.3 Subcontractor may be required to provide performance and payment bonds each with a penal amount equal to 100% of the Subcontract Amount. The premium for these bonds shall be paid by Contractor to bonding company upon receipt of bond and invoice from the bonding company up to 1.5% of contracts. Any excess over 1.5% shall be deducted from subcontractors funds. All bonds issued pursuant to this Paragraph 13.3 shall be issued by a surety, and in a form, acceptable to Contractor and by a surety licensed to transact business in the location of the Project. All bonding companies shall be rated as triple A by U.S. Treasury Department's list of approved sureties.

ARTICLE 14 - Warranties and Guarantees

14.1 Subcontractor warrants that its Work shall be: (1) fit for the purposes intended; (2) free from defects in material and workmanship; (3) comply with the Prime Contract and all applicable codes and industry standards; (4) be free and clear of all claims, encumbrances and liens.

14.2 Subcontractor agrees to promptly make good, without cost to Contractor or Owner, any and all defects due to its failure to meet such warranties which may appear within the guarantee or warranty period(s) established in the Prime Contract, and if no such period(s) be stipulated in the Prime Contract, then such guarantee shall be for a period of one (1) year from the date of completion and acceptance of the Project by Owner. Subcontractor further agrees to execute any special guarantees as provided by the Prime Contract or required by law. Subcontractor shall require similar warranties from all vendors and lower tier subcontractors.

Contractor:

Garrard Construction Group, Inc.
1680 Satellite Blvd., Suite 2300
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-8028

Project Name: Dave & Buster's M Beach Shell

Date: 10/19/2018

14.3 Subcontractor shall pay for all changes to the Work or the Project resulting from defects in workmanship or materials, as well as all expenses necessary to replace or repair either the Work or the Project, including any damages caused by the replacements or repairs. Subcontractor shall further be obligated to pay for, and shall reimburse Contractor for, all costs associated with the impact of its defective workmanship or materials. This obligation is in addition to all other guarantees, warranties and rights contained in the Prime Contract.

ARTICLE 15 - Encumbrances

15.1 Subcontractor shall turn the Work over to Contractor in good condition and free and clear of all claims, encumbrances, or other liens and shall defend, indemnify and hold harmless Contractor and Owner from all claims, encumbrances or liens arising out of the performance of the Work. Subcontractor shall at its own cost and expense (including attorneys' fees), defend all suits to establish such claims, and pay any such claims or liens so established. If Subcontractor fails to comply with this requirement, Contractor may bond off any liens and all costs of such action shall be paid by Subcontractor.

15.2 If a subcontractor or supplier to Subcontractor shall file a lien against the Project, Subcontractor shall bond off the lien within ten (10) days of its receipt of a demand to do so by Contractor. Subcontractor's failure to do so shall constitute an event of default under Paragraph 10.2.

15.3 Subcontractor shall as often as requested by Owner or by Contractor, furnish a sworn statement identifying all parties in Subcontractor's chain of privity who have furnished, or who are furnishing, labor or materials for the Work with their names and addresses and amounts due, or to become due, each of them.

15.4 Subcontractor shall furnish Contractor, if requested, evidence of the payment of all bills, expenses or liabilities incurred by Subcontractor for labor, services, equipment and materials used by Subcontractor in the performance of the Work. If requested by Contractor, Subcontractor shall also furnish written releases, in a form acceptable to Contractor, from all persons, firms, or corporations that have furnished to Subcontractor any labor, services, equipment and materials whether on or for the Project, and written releases of lien, in a form acceptable to Contractor, from all persons, firms and corporations that may have in any way had any dealings or agreements in connection with the Work.

ARTICLE 16 - Coordination

16.1 Subcontractor acknowledges its obligation under this Agreement to coordinate and review the Work with materials and/or equipment to be furnished by others to ensure completed compatible systems. Accordingly, Subcontractor shall review all submittals, fabrication and shop drawings and all product data referring to items requiring integration and compatibility with the Work.

16.2 Subcontractor shall review the surfaces provided by others to which the Work is to be applied, and shall notify Contractor of any known defect or condition detrimental to proper procedures, prior to the commencement of the Work; otherwise, Subcontractor agrees to accept the condition of such surfaces and shall be liable for all consequences resulting therefrom.

16.3 Subcontractor shall cooperate with Contractor, other subcontractors and Owner's forces to the extent their work might interfere with the Work and Subcontractor shall prepare coordinated drawings in areas of congestion if necessary for the timely and proper completion of the Project. Subcontractor shall also advise Contractor of any potential conflicts between the Work and the work of Contractor, other subcontractors or Owner's forces.

16.4 Subcontractor shall take all necessary precautions to protect, and shall be liable for any damage, to adjacent surfaces caused by the Work, including damages resulting from Subcontractor's cleaning of such surfaces.

16.5 If Subcontractor performs the Work on or adjacent to work provided by others that Subcontractor knows, or should know, is defective or is in violation of any laws, codes, regulations, orders and ordinances that apply to the Work, Subcontractor shall be fully responsible and shall indemnify Contractor for all damages caused thereby, including the costs to remove and replace the Work and any work of other subcontractors, Contractor, or Owner's forces affected thereby.

16.6 Subcontractor shall provide and be responsible for all layouts, including the accuracy thereof, necessary for the performance of the Work.

16.7 Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting, and sealing of the Work that may be required to fit it to, receive, or be received by the work of others as shown, or reasonably implied by, the Prime Contract, or as required, or reasonably implied by the rules and regulations, codes, and requirements of any regulatory or governmental agency having jurisdiction over the Project; or as required or reasonably implied to achieve consistency and compatibility with the design elements being penetrated.

ARTICLE 17 - Miscellaneous

17.1 Subcontractor shall provide, maintain and remove from the Project site upon completion of the Work, all temporary offices, structures for the use of its employees, sheds and storage facilities complete with all related utilities, gas, telephone and water. Storage areas for the use of Subcontractor shall be designated by Contractor, and no materials or equipment shall be stored by Subcontractor except in areas approved by Contractor. Such storage areas shall be maintained in an orderly condition by Subcontractor.

17.2 Except as may be otherwise provided in the Prime Contract, Subcontractor shall pay Contractor the reasonable value of any of Contractor's equipment used by Subcontractor in performing the Work.

17.3 Subcontractor represents that it has investigated, examined, inspected and thoroughly familiarized itself with the Prime Contract, surface and subsurface conditions and the location where the Work is to be performed, and that it has thoroughly informed itself as to any difficulties in connection therewith. Subcontractor further warrants that Contractor has made no representation of any kind or nature with reference thereto and not contained in this Agreement. By entering this Agreement with Contractor, Subcontractor further warrants and represents that it has taken into account all surface, subsurface and climatic conditions, the availability and costs of labor and materials, tools and equipment, Owner's and Contractor's scheduling requirements, and potential Project congestion caused by the work of others proceeding simultaneously with Subcontractor.

17.4 The scope of the Work includes an obligation to completely clean the Work and remove all contributing debris from the Project site and to locations designated by Contractor as often as necessary. If Subcontractor fails, within twenty-four (24) hours of receipt of verbal notice, to correct a failure to properly clean-up and dispose of all trash and waste materials created by Subcontractor, Contractor shall have the right to terminate in accordance with Paragraph 11.2 or perform such clean-up for Subcontractor; and Subcontractor hereby agrees to indemnify and to pay Contractor all costs incurred by Contractor in performing the clean-up work. Clean-up of the Work and the daily removal of debris from the areas of the Work is mandatory. Each day, all trash and debris shall be removed from the Project. Fire exits, corridor ladders, doorways and exit paths in general shall be clear of debris and open to pedestrian and wheelchair traffic at all times, specifically including nights and weekends.

17.5 Subcontractor waives all claims and all rights of subrogation against Contractor and Owner for loss of, or damage to, the Work, tools, machinery, equipment, material or supplies.

17.6 Where testing agency standards are referenced in the Prime Contract, all materials shall be tested and certified by an approved, independent testing firm acceptable to Contractor.

17.7 If Subcontractor seeks to contract with a sub-subcontractor or supplier for any portion of the Work, prior written approval of Contractor must be obtained. All such contracts with sub-subcontractors and suppliers shall be pursuant to a contract that is assignable to Contractor in the event of Subcontractor's termination and specifically binds the sub-subcontractor or supplier to the terms of this Agreement.

Contractor:
Garrard Construction Group, Inc.
1980 Satellite Blvd., Suite 2300
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Project #: 10-10-8028
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Date: 10/19/2016

17.8 Subcontractor agrees that payments due from Contractor for the Work are not assignable and that no part of this Agreement or the Work hereunder, can be assigned, except by and with the written consent of Contractor. Contractor shall have the unconditional right to assign this Agreement, any party thereof, or any payments due hereunder.

17.9 Title to all materials supplied by Subcontractor shall pass to Contractor upon payment for the materials or upon delivery to the Project, whichever occurs first.

17.10 The headings provided in this Agreement are for ease of reference only. The headings form no part of the Agreement between this parties and shall be given no weight in the interpretation or construction of this Agreement.

17.11 If any provision of this Agreement is determined by a court to be unenforceable, such a determination shall not affect the validity and enforceability of any other section or part hereof.

17.12 The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of this Agreement or the Prime Contract shall not be construed to be and shall not be a waiver of any such provision or provisions and Contractor shall thereafter be entitled to enforce each and every such provision without any requirement that Contractor provide notification to Subcontractor of its intention to thereafter enforce said provision or provisions.

17.13 If either party employs an attorney to enforce any of the provisions of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs, charges and expenses.

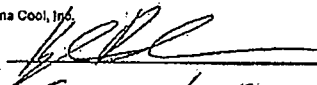
17.14 This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may only be amended or modified in a writing signed by both Subcontractor and Contractor.

IN WITNESS WHEREOF, Contractor and Subcontractor hereby executed this Agreement the day and year first written above.

Garrard Construction Group, Inc.

Carolina Cool, Inc.

By: _____

By:  _____

Title: Project Manager

Title: General Manager

Date: _____

Date: 10-20-16

Attachment "A"
Plumbing Scope of Work
Carolina Cool, Inc.
Dave & Buster's Shell - Myrtle Beach, SC
10-6028-09

General Scope Items:

1. All City, County, State & Federal laws, rules, regulations and policies shall apply to this project. Subcontractor, by execution of this Subcontract, states that he/she is familiar and compliant with all requirements. Subcontractor is responsible for meeting and maintaining requirements at all times. Subcontractor has reviewed the plans and specifications with knowledge of all governing codes and has included the cost of compliance, even if all of said governing code requirements have not been incorporated into the plans and specifications.
2. Subcontractor, by execution of this Subcontract, states that he/she has visited the job-site, has become familiar with the existing conditions under which the work will be performed, and has correlated those observations with the requirements of this agreement.
3. A copy of the Project Schedule is attached and made a part of this Subcontract. All agreed updates and revisions to the schedule will also be made a part of this Subcontract. Subcontractor shall provide such manpower, supervision, materials, facilities, equipment and shall work such hours (nights, weekends, overtime) as required to complete the work within the scheduled durations.
4. Subcontractor shall maintain and monitor an email account for the duration of the project. This account shall be checked a minimum of twice daily during the standard work week.
5. All submittals required by this scope of work must be transmitted to the Contractor within three (3) business days of execution of this Agreement.
6. All closeout documents required, including but not limited to, waivers, warranties, as-builts, O&M manuals, etc., will be transmitted to Contractor no later than 15 days after substantial completion of Subcontractor's scope of work.
7. Subcontractor will be responsible for completing and submitting a daily report to Contractor's Superintendent on a daily basis.
8. Mandatory safety meetings will be held as scheduled by the Superintendent. Attendance is mandatory by all persons performing work onsite. Abide by all current OSHA requirements and GCG Safety Policies at all times. Ensure all MSDS and Hazardous Material Data is on-file with the Superintendent. Subcontractor shall provide an OSHA 10 Hour Certified Employee (Competent Person) to the project at all times during this scope of work. The Competent Person must be provided with a cell phone as a means of emergency communications. The Superintendent shall provide one (1) verbal warning to Subcontractor if not adequately performing this contract requirement. After this warning, each safety violation will be assessed and back-charged at \$300 per occurrence.
9. Hard hats, long pants and work boots must be worn at all times, regardless of the work being performed. No exceptions will be made for anyone. Any person not complying with this policy will be instructed to leave the Project.
10. Mandatory Subcontractor Scheduling meetings will be held as scheduled by the Contractor. Attendance by an authorized representative of the Subcontractor is required when Subcontractor is working onsite and as requested by the Contractor.
11. Any temporary lighting, beyond the safety lighting required to be provided by the Electrical Subcontractor, will be provided by the Subcontractor. The Subcontractor will also be

Initials:
GCG/Subcontractor

- responsible for any additional temporary lighting required to meet project schedule requirements.
12. Subcontractor is responsible for the clean-up of all trash/debris associated with this scope of work. The debris/trash shall be placed in a dumpster provided by GCG. The Superintendent shall provide one (1) verbal warning to Subcontractor if not adequately performing this contract requirement. After this warning, Contractor shall provide clean-up services and deduct the cost from funds due or that may become due to Subcontractor.
 13. Provide all joint sealants, caulking, fire caulking, filler metals, etc. as required for this scope of work.
 14. Store and protect the work of this Subcontract during and after installation, until project substantial completion, to prevent damage.
 15. It is understood and agreed that the work of this Subcontract may not be performed in a continuous operation and Subcontractor includes the cost of multiple mobilizations, including travel time & expenses. Subcontractor shall respond to punch and warranty items within 24 hours, regardless of travel time.
 16. Protect all existing items designated to remain from work of this contract; including but not limited to: structures, light poles, sidewalks, curbs, paving, vegetation, finished products, etc.
 17. Subcontractor will not use and will not allow "1099 Labor" practices. Only valid Subcontractors and lower-tiered Subcontractors (as defined as independent contractors by the IRS) will be paid via 1099. All laborers are to be employees of the entity engaging them and their wages are to be reported to the IRS via W-2 forms.
 18. ORIGINAL PAY APPLICATIONS FOR THE WORK PERFORMED ARE DUE BY THE 20th OF THE MONTH FOR THE MONTH BEING BILLED. THE PAY APPLICATION SHOULD COVER THE WORK PERFORMED THROUGH THE 25th.
 19. Pay Applications shall include a list of all vendors and/or sub-subcontractors, with corresponding contact information, which performed work or provided materials to the Project during the Pay Application period. All vendors and sub-subcontractors shall produce current project accounting statements for the Project to be attached to Subcontractor's Pay Application. Subcontractor's monthly Pay Application shall not be approved without this back-up. Materialman/Supplier Lien Waivers shall be provided for all vendors and/or sub-subcontractors before payments are made. If General Contractor chooses not to bond Subcontractor, General Contractor reserves the right to "joint check" Subcontractor's vendors and sub-subcontractors.
 20. No change orders are to be submitted unless all cost associated with the change are broken down by unit cost, labor hours and cost, material cost, equipment cost, overhead & profit, etc. such that it can be properly evaluated. Change Orders shall be issued by GCG and fully executed before being included on Pay Applications. Failure to comply with this requirement will cause delay in payment.
 21. Ensure quality in all work placed. Perform all punch work necessary to meet the approval of the Owner, Design Team & Contractor.

Specific Scope Items:

22. This Agreement is "turn-key" and includes all costs associated with labor, fasteners, accessories, equipment, materials, material stocking & material conveyance. Provide traffic control and lane closures if required for material deliveries or installations.
23. Provide a full-time Foreman, dedicated only to this project, during the work of this agreement. This Foreman shall be qualified, English speaking and OSHA 10 certified.
24. Secure all necessary local permits as required for this work.

Initials: 1/18
GCG/Subcontractor

25. Provide a temporary water connection to the jobsite. Furnish and install a hose bib on the existing water service for temporary site water.
26. Provide all required layout for proper installation of this scope of work from the building corners established by others.
27. Furnish and install a complete plumbing system as indicated in the construction documents and required by governing codes. This work includes, but is not limited to;
 - i. Furnish and install PVC grease waste line stubbed to 5' outside the building.
 - ii. Furnish and install cast iron sanitary waste and terminate 5' outside the building.
 - iii. Furnish and install schedule 80 PVC water piping and terminate 5' outside the building.
 - iv. Furnish and install one pressure reducing backflow device on the main water main into building.
 - v. Furnish and install all gas piping and gas regulators to HVAC equipment as shown on the contract documents. Connection to all equipment is included.
 - vi. Furnish and install condensate drains on all roof top equipment as shown on the contract drawings.
 - vii. Furnish and install all pre-manufactured PVC roof blocks and related pipe clamps for all roof top gas piping and condensate drain piping.
 - viii. Furnish and install all cast iron piping and drains for the 2 roof drains as shown on the contract drawings. These drains are to terminate 5 foot outside the building.
 - ix. Furnish and install all mechanical sleeves for footing / foundation penetrations.
 - x. Furnish and install all PVC vent pipes through roof. (Flashing by Others)
28. Layout all systems to avoid conflict with the HVAC system, the electrical system, security system, etc. Denote discrepancies prior to commencement of work.
29. Ensure all piping, hanger mounting, and insulation is installed per the listed schedules in the contract documents. Install proper unions where dissimilar pipe is connected.
30. Ensure proper sleeves are provided in thru-wall penetrations. Properly stencil and label all piping and equipment.
31. Flush, test and certify all systems upon completion and ensure systems are functioning properly before demobilization.
32. Prior to mobilization, this subcontractor is to provide the GC's office or field superintendent with MSDS documentation for all materials used by this subcontractor as well as a site specific safety plan for this project.
33. Provide equipment operator's certificates as required by OSHA.

Total Subcontract: \$35,500.00

Initials: 
GCG/Subcontractor

Date: 10/17/2015
Contractor: Carolina Cool, Inc.
Contact: Allen Anderson
Project #: 10 10 6028

Provide labor, materials, equipment, tools, supplies and supervision for a complete Plumbing & Gas System.

[illegible]

GCG ~~Subcontractor~~

APPLICATION FOR PAYMENT BREAKDOWN SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT.
Containing SubContractor's signed Certification, is attached.
In tabulations below, amounts are stated to the nearest dollar.

Application #: _____
Date: _____
Period To: _____
Project # 10 10 6028
SUBC # 10-6028-

A ITEM NO.	B DESCRIPTION OF WORK	QTY	UNIT	C COST	D SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G divided by C)	I BALANCE TO FINISH (C - D)	J RETAINAGE (IF VARIABLE RATE)
						FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD					
15-400-S	Underslab / Foundation Water and Sewer Stubs	1	LS	\$10,500.00								
15-400-S	Gas Piping	1	LS	\$15,000.00								
15-400-S	Roof Drain System	1	LS	\$8,500.00								
15-400-S	Condensate Drains	1	LS	\$3,500.00								
CHANGE ORDERS:												
TOTALS FOR EACH COLUMN:				\$35,500.00								

ATTACHMENT "B" THE SCHEDULE DAVE & BUSTER'S SHELL - MYRTLE BEACH, SC				
ID	Task Name	Duration	Start	Finish
1	Dave and Buster's Shell Building - Myrtle Beach SC	148 days	Mon 10/10/16	Wed 5/3/17
2	Mobilization	2 days	Mon 10/10/16	Tue 10/11/16
3	Install Temp Barricades	2 days	Wed 10/12/16	Thu 10/13/16
4	Erosion Control	2 days	Wed 10/12/16	Thu 10/13/16
5	Building & Site Demolition	15 days	Fri 10/14/16	Thu 11/3/16
6	Site Utilities	6 days	Fri 11/4/16	Fri 11/11/16
7	Site Storm Sewer	3 days	Fri 11/4/16	Tue 11/8/16
8	Site Sewer & Grease Traps	6 days	Fri 11/4/16	Fri 11/11/16
9	Underground Water Service	2 days	Fri 11/4/16	Mon 11/7/16
10	Site Grading	2 days	Fri 11/4/16	Mon 11/7/16
11	Exterior Concrete & Paving	20 days	Wed 3/22/17	Tue 4/18/17
12	Sidewalks	17 days	Wed 3/22/17	Thu 4/13/17
13	Asphalt Paving	3 days	Fri 4/14/17	Tue 4/18/17
14	Foundations	32 days	Tue 11/8/16	Wed 12/21/16
15	Stake Pile Locations	2 days	Tue 11/8/16	Wed 11/9/16
16	Install Wood Piles	12 days	Thu 11/10/16	Fri 11/25/16
17	Footing Excavation & Pour	25 days	Thu 11/17/16	Wed 12/21/16
18	Electrical Stub into Building	6 days	Wed 11/9/16	Wed 11/16/16
19	Plumbing Stub into Building	8 days	Wed 11/9/16	Fri 11/18/16
20	Structural Steel	22 days	Fri 1/20/17	Mon 2/20/17
21	Structural Steel Delivery and Unload	1 day	Fri 1/20/17	Fri 1/20/17
22	Steel Erection	10 days	Mon 1/23/17	Fri 2/3/17
23	Set Roof Rurbs	1 day	Thu 2/2/17	Thu 2/2/17
24	Set RTU's	2 days	Fri 2/17/17	Mon 2/20/17
25	Masonry	69 days	Thu 12/15/16	Tue 3/21/17
26	CMU Installation	26 days	Thu 12/15/16	Thu 1/19/17
27	Brick Veneer	30 days	Wed 2/8/17	Tue 3/21/17
28	Roofing	23 days	Mon 2/6/17	Wed 3/8/17
29	Single Ply Roofing	9 days	Mon 2/6/17	Thu 2/16/17
30	Building Dry In	1 day	Fri 2/17/17	Fri 2/17/17
31	Parapet Metal Panels	10 days	Fri 2/17/17	Thu 3/2/17
32	Exterior Framing and Sheathing	15 days	Thu 2/16/17	Wed 3/8/17
33	Cornice Installation	49 days	Fri 1/27/17	Wed 4/5/17
34	Cornice Framing & Sheathing	12 days	Fri 1/27/17	Mon 2/13/17
35	EIFS	25 days	Tue 2/14/17	Mon 3/20/17
36	Deco Metal Panels	8 days	Tue 3/21/17	Thu 3/30/17
37	GFRG Accents	12 days	Tue 3/21/17	Wed 4/5/17
38	Storefront & Curtain Wall Installation	10 days	Wed 3/22/17	Tue 4/4/17
39	Install Overhead Door Elements	7 days	Wed 3/22/17	Thu 3/30/17
40	Completion	11 days	Wed 4/19/17	Wed 5/3/17
41	FINAL INSPECTIONS	5 days	Wed 4/19/17	Tue 4/25/17
42	Punch List	5 days	Wed 4/26/17	Tue 5/2/17
43	TURNOVER	1 day	Wed 5/3/17	Wed 5/3/17

Attachment "C" Drawing Enumeration					
DAVE B. GUSTERS					
BROADWAY AT THE BEACH					
1322 CELEBRITY CIRCLE					
MYRTLE BEACH, SC 29577					
Sheet	Title	Issue Date	Addendum 1	Addendum 2	BULLETIN #1 BULLETIN #2
G-000	COVER SHEET	7/6/2016			
G-001	PROJECT INFORMATION SHEET	7/6/2016			
G-002	GROUND FLOOR LIFE SAFETY PLAN	7/6/2016			
G-003	CONSTRUCTION SUBSYSTEMS	7/6/2016			
CIVIL					
C-1	COVER SHEET	7/5/2016			
C-2	GENERAL NOTES	7/5/2016			
C-3	DEMOLITION PLAN	7/5/2016			
C-4	EROSION CONTROL PLAN	7/5/2016			
C-5	LAYOUT	7/5/2016			
C-6	GRADING AND DRAINAGE	7/5/2016			
C-7	UTILITY LAYOUT	7/5/2016			
C-8	DETAIL #1	7/5/2016			
C-9	DETAIL #2	7/5/2016			
LANDSCAPE					
L-1	PLANTING PLAN	6/6/2016	6/24/2016		
STRUCTURAL					
S-001	CASE FORMS	7/6/2016			
S-002	CASE FORMS	7/6/2016			
S-100	GENERAL NOTES AND TYP. DETAILS	7/6/2016			
S-101	FOUNDATION PLAN	7/6/2016			
S-102	ROOF PLAN	7/6/2016			
S-121	ENLARGED PLAN - DISPLAY WINDOWS	7/6/2016			
S-122	ENLARGED PLAN - PLYON	7/6/2016			
S-123	ENLARGED PLAN - PATIO	7/6/2016			
S-124	ENLARGED PLAN - SOUTH ENTRY	7/6/2016			
S-201	ELEVATIONS	7/6/2016			
S-202	ELEVATIONS	7/6/2016			
S-351	WALL SECTIONS	7/6/2016			
S-352	WALL SECTIONS	7/6/2016			
S-353	TOP SIGNAGE ARMATURE	7/6/2016			
S-354	SIGNAGE ARMATURE	7/6/2016			
S-355	TV ARMATURE	7/6/2016			
S-400	FOUNDATION DETAILS	7/6/2016			
S-500	ROOF DETAILS	7/6/2016			
ARCHITECTURAL					
A-001	ARCHITECTURAL SITE PLAN	7/6/2016			
A-002	NOT USED	7/6/2016			
A-003	EXTERIOR PATIO #1	7/6/2016			
A-004	EXTERIOR PATIO #2	7/6/2016			
A-005	EXTERIOR PATIO DETAILS	7/6/2016			
A-006	SERVICE YARD SCREEN WALL	7/6/2016			
A-007	TV ARMATURE	7/6/2016			
A-008	SIGNAGE ARMATURE	7/6/2016			
A-009	CABLE SIGNAGE ARMATURE	7/6/2016			
A-010	MOCK UP PANEL	7/6/2016			
A-101	GROUND FLOOR PLAN	7/6/2016			
A-102	ROOF PLAN	7/6/2016			
A-121	ENLARGED FLOOR PLANS	7/6/2016			
A-122	ENLARGED FLOOR PLANS	7/6/2016			
A-123	ENLARGED FLOOR PLANS	7/6/2016			
A-201	EXTERIOR ELEVATIONS	7/6/2016			
A-202	EXTERIOR ELEVATIONS	7/6/2016			
A-203	EXTERIOR PERSPECTIVES	7/6/2016			
A-301	BUILDING SECTIONS	7/6/2016			
A-351	WALL SECTIONS	7/6/2016			
A-352	WALL SECTIONS	7/6/2016			
A-353	WALL SECTIONS	7/6/2016			
A-421	ENLARGED ELEVATIONS	7/6/2016			
A-422	SOUTH PYLON ELEVATION AND SECTIONS	7/6/2016			
A-423	SOUTH PYLON PLAN DETAILS	7/6/2016			
A-501	PLAN DETAILS	7/6/2016			
A-511	SECTION DETAILS	7/6/2016			
A-512	SECTION DETAILS	7/6/2016			
A-513	WINDOW BOX PLAN AND SECTION DETAILS	7/6/2016			
A-601	DOOR & STOREFRONT, TYPE AND FRAME TYPES	7/6/2016			
FIRE PROTECTION					
F-101	FIRE SPRINKLER SHELL PLAN	7/5/2016			
PLUMBING					
P-101	PLUMBING SHELL PLAN	7/5/2016			
Mechanical					
M-101	MECHANICAL ROOF PLAN	7/5/2016			
Electrical					
E-101	ELECTRICAL SHELL PLAN	7/5/2016			

SUBCONTRACTOR INITIALS: 

EXHIBIT 4

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562



1980 Satellite Blvd., Suite 2300
Duluth, GA 30097
Ph : (770)822-1944

Subcontract Change Order

Project: 10-10-6028 Dave & Buster's M Beach Shell
1322 Celebrity Square
Myrtle Beach, SC 29577

Subcontract: 10-6028-09
Change Order: 1
Date: 11/22/2016

To Contractor:
Carolina Cool, Inc.
194 Surfside Industrial Park
Surfside Beach, SC 29575

The Contract is changed as follows:

Phase	Change Request	Description	Amount
02-600		Furnish and install one 12" sleeve at the foundations for the 8" fire line and one 8" sleeve for the 4" FDC fire line at the foundation	\$950.00

The original Contract Amount was	\$35,500.00
Net change by previously authorized Change Orders	\$0.00
The Contract Amount prior to this Change Order was	\$35,500.00
The Contract will be increased by this Change Order in the amount of	\$950.00
The new Contract Amount including this Change Order will be	\$36,450.00
The Contract Time will be unchanged.	
The date of Substantial Completion as of the date of this Change Order therefore is	

NOT VALID UNTIL SIGNED BY THE SUBCONTRACTOR.

Garrard Construction Group, Inc.
CONTRACTOR
1960 Satellite Blvd., Suite 2300
Duluth, GA 30097

Carolina Cool, Inc.
SUBCONTRACTOR
194 Surfside Industrial Park
Surfside Beach, SC 29575

(Signature)

Shawn J. Gill

(Signature)

By
November 22, 2016

Date

By

Date

PLAINTIFF278

EXHIBIT 5

**GARRARD****SUBCONTRACT****ENTERED**

Contractor:
 Garrard Construction Group, Inc.
 1960 Satellite Blvd., Suite 2300
 Duluth, GA 30097
 Ph: (770) 822-1844

Subcontractor:
 Carolina Cool, Inc.
 184 Surfside Industrial Park
 Surfside Beach, SC 29575

Project #: 10-10-6030
 Project Name: Dave & Buster's M Beach Int
 Date: 11/18/2016

Subcontract: 10-8030-03
 Project Location: 1322 Celebrity Square
 Myrtle Beach, SC 29577

This Agreement is made this 18 day of November, 2016 between Garrard Construction Group, Inc. ("Contractor") and Carolina Cool, Inc. ("Subcontractor")

ARTICLE 1 - Scope of the Work

1.1 Subcontractor, as an independent contractor employed by Contractor, agrees to provide and to furnish everything necessary, including, but not limited to, all labor, materials, supervision, scaffolding, equipment, hoisting equipment, systems, machinery, tools, apparatuses, transportation, shop drawing, samples and submittals, to provide, furnish and complete the work set forth in the attached Attachment "A" ("Work"), to be performed in connection with the Dave & Buster's M Beach Int ("Project") for Dave & Buster's, Inc. ("Owner"). Owner shall include any of its authorized representatives such as its architects, engineers or construction managers.

Attachments are listed as follows:	Attachment A	Scope of the Work / Breakdown
	Attachment B	The Schedule
	Attachment C	Drawing Enumeration
	Attachment D	GCG Pay Application
	Attachment E	GCG Lien Waivers: Interim, Final, Third Party
	Attachment F	Warranty Form
	Attachment G	Third Party Subcontractor & Vendor List

ARTICLE 2 - The Subcontract Amount

2.1. As full consideration for complete performance of the Work, Subcontractor shall be paid: \$ 294,688.00 (two hundred ninety-four thousand six hundred eighty-eight and xx/100) ("Subcontract Amount").
 2.2. The Subcontract Amount shall be the total sum paid to Subcontractor except for changes or modifications in accordance with the terms of this Agreement.
 2.3 Any and all transportation tax, sales tax, use tax or any other tax that might accrue through the purchase of materials or amounts paid for labor by Subcontractor or occasioned by performance of this Agreement, shall be borne and paid for by Subcontractor, and are included in the Subcontract Amount.

ARTICLE 3 - The Terms of this Agreement

3.1 This Agreement consists of: (1) this Lump Sum Subcontract and any attachments hereto; and (2) the agreement between Owner and Contractor for the Project, including all conditions to that agreement (general supplementary and any other conditions), all drawings, specifications, schedule, and contract documents (referenced in that agreement, along with all addenda and modifications to that agreement ("Prime Contract").
 3.2 Subcontractor agrees to be bound to Contractor by all of the terms of the Prime Contract, and assumes toward Contractor all the obligations, duties and responsibilities that Contractor by the Prime Contract assumes toward Owner with the same force and effect as though every such obligation, duty and responsibility were set forth herein in full. Subcontractor agrees that Contractor shall have the same rights and remedies that Owner under the Prime Contract has against Contractor with the same force and effect as though every such right or remedy were set forth herein in full. Subcontractor further warrants and represents that prior to signing this Agreement it has reviewed and is familiar with the Prime Contract and agrees not to plead ignorance of any provision therein in any dispute between the parties.
 3.3 The intent of this Agreement is to include all items necessary for the proper execution and completion of the Work by Subcontractor. The documents comprising this Agreement are complementary and what is required by one shall be as binding as if required by all.
 3.4 All obligations, duties, responsibilities, rights and remedies set forth herein are in addition to those obligations, duties, responsibilities, rights and remedies set forth in the Prime Contract. In the event a provision of the Prime Contract is inconsistent with the provisions of this Lump Sum Subcontract, the provision more favorable to Contractor shall control.
 3.5 Except as modified by this Agreement, the Work shall be performed and completed in strict accordance with the terms and requirements of the Prime Contract.
 3.6 Subcontractor shall carefully study and compare the documents comprising the Prime Contract with each other and shall at once report to Contractor any error, inconsistency or omission discovered. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies, or omissions if it recognizes, or should have recognized, an error, inconsistency, or omission and fails to report it to Contractor before executing the Work. By performing any construction activity involving a recognized error, inconsistency, or omission in the Prime Contract, Subcontractor assumes the risk of such performance and

Page 1 of 7

1960 Satellite Blvd * Suite 2300 * Duluth * Georgia * 30087
 Phone (770) 822-1844 * Fax (770) 822-4653

PLAINTIFF 179

Contractor:
Garrard Construction Group, Inc.
1960 Satellite Blvd., Suite 2300
Duluth, GA 30097
PH: (770)822-1944

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 11/18/2016

agrees to bear full responsibility for all costs of correction.

ARTICLE 4 - The Time of Performance

4.1 Subcontractor shall comply with any schedule requirements imposed upon Contractor in the Prime Contract. Contractor shall schedule the work required by the Prime Contract, including the Work. Contractor shall have the right to decide the time, order and priority that the various portions of the Work will be performed and other matters relative to the time and orderly conduct of the Work.

4.2 A Schedule for the Project and the Work is attached hereto as Attachment "B" (the "Schedule"). Subcontractor shall participate and cooperate with Contractor in scheduling the times and sequences required to perform the Work and agrees to perform the Work in accordance with the Schedule, including all amendments thereto. Subcontractor shall continuously monitor the Schedule and shall advise Contractor of the status of the performance on a regular basis including information on the status of shop drawings, sample submittals, materials or equipment that may be in the course of preparation or manufacture. Subcontractor shall immediately notify Contractor of any circumstances which may affect the times and sequences in the Schedule and shall make all requests for time extensions in writing to Contractor sufficiently in advance to allow Contractor to forward the request as required in the Contract Documents.

4.3 Time is of the essence of this Subcontract. Subcontractor shall commence the Work in accordance with the Schedule, or when directed by verbal or written notice from Contractor, and shall diligently and continuously prosecute such Work in an efficient fashion so as not to cause interruption, interference, inefficiency, suspension, hindrance or delay (collectively referred to as "Delay") in the progress of any portions of the Project. Subcontractor shall coordinate the Work with the other work being performed on the Project so that the Project shall not be Delayed due to any act or omission of Subcontractor. Subcontractor shall take all necessary action to assure the completion of the Project within the time specified in the Schedule and the Prime Contract.

4.4 Subcontractor shall be liable to Contractor for any and all loss to Contractor, or which Contractor may be liable as a result of any Delay on the part of Subcontractor in the prosecution or completion of the Work according to the Schedule, or for any Delay to the completion of the Project attributable to Subcontractor. If the Agreement between Contractor and Owner imposes upon Contractor an obligation to pay Owner liquidated damages in the event Delays are encountered in completion of the Project, and to the extent such a Delay is caused in whole or in part by the acts or omissions of Subcontractor, Subcontractor shall be obligated to pay Contractor, in addition to any other damages sustained by Contractor as a result of the Delay, any liquidated damages Contractor is obligated to pay Owner.

4.5 In agreeing to complete the Work within the times and sequences herein mentioned, Subcontractor hereby represents that it has taken into consideration and made allowances for all Delays incident to the Work. No Delay in the commencement or progress of the Work for any cause whatsoever, including those for which Owner or Contractor may be responsible, in whole or in part, shall relieve Subcontractor of its duty to perform hereunder.

4.6 Subcontractor shall not be entitled to any time extension unless a notice of claim therefore is presented in writing to Contractor within the period of time required by the Prime Contract or within seventy-two (72) hours of the first occurrence of the Delay, whichever time period is shorter. Except as set forth in Article 11.2, Subcontractor agrees that an extension of time for completing the Work is its sole remedy for any and all other claims Subcontractor may have against Contractor on account of any Delay. Permitting Subcontractor to continue working after the time to complete the Work has expired, shall not be construed as a waiver by Contractor of any claims for loss or damage for breach by Subcontractor of one or more of the provisions of this Agreement.

4.7 Subcontractor shall at all times supply and promptly pay for adequate tools, appliances, equipment, a sufficient number of properly skilled workmen and a sufficient amount of material and supplies to efficiently and properly prosecute the Work in accordance with the Schedule, and any modifications thereto issued by Contractor, in order to achieve the Project completion date established by the Prime Contract.

ARTICLE 5 - Payments

5.1 Invoicing and payment of the Subcontract Amount shall be made in accordance with the terms of the Prime Contract. Subcontractor shall submit to Contractor a written application for payment, in a form approved by Contractor, showing the value of the Work performed and completed to date, along with all substantiating data and information as required by the Prime Contract, from which shall be deducted: (1) a retainage of 10% of such value; (2) all previous payments; (3) all charges for materials and services furnished by Contractor to Subcontractor; and (4) any other charges and deductions as provided for in this Agreement or in the Prime Contract. The balance of the Subcontractor's invoice, to the extent approved by Owner and Contractor, shall be payable to Subcontractor after the Contractor has received payment from the owner. After receipt of payment from the owner, the payment to the subcontractor shall be made on the Friday closest to the end of the month in which payment was received or 10 business days from the date received, whichever is later. Checks will be processed on the subsequent Friday as part of our normal Accounts Payable check run.

5.2 A condition precedent to Subcontractor receiving monthly payments after starting the Work is the delivery by Subcontractor to Contractor each month (regardless of whether any Work was performed) of waivers of liens and claims, in a form suitable to Contractor, from Subcontractor and all sub-subcontractors and suppliers who have furnished materials for use on the Project and for which payment has been received by Subcontractor.

5.3 Contractor's obligation to pay the Subcontract Amount is executory and conditional upon Subcontractor's compliance with this Agreement. It is further expressly agreed that payment by Owner to Contractor is an absolute condition precedent to payment by Contractor to Subcontractor of all or any portion of the Subcontract Amount.

5.4 The quantities of Work performed and materials furnished as established by the Prime Contract or Contractor and Owner shall constitute the basis for computation of the payment to Subcontractor. Payments made on account of materials not incorporated in the Work but delivered and suitably stored, shall be made, if at all, in accordance with the Prime Contract.

5.5 Final payment of the Subcontract Amount including retention ("Final Payment") shall be made to Subcontractor upon: (i) completion of the Work in accordance with the Prime Contract; (ii) acceptance of the Work by Contractor and Owner; (iii) the occurrence of any and all conditions precedent to Subcontractor's receipt of Final Payment, as provided in the Prime Contract; (iv) receipt of final payment under the Prime Contract by Contractor from Owner; (v) receipt of an affidavit from Subcontractor that all labor (including customary fringe benefits and payments due under collective bargaining agreements), sub-subcontractors, materialsmen and suppliers have been paid in full and they, and Subcontractor, are waiving or have previously waived their lien rights upon the making of Final Payment; (vi) consent to Final Payment from Subcontractor's surety; (vii) a complete release of claims in a form acceptable to Contractor; and (viii) closeout documents inclusive of Operations & Maintenance manual.

5.6 If at any time there is evidence of a lien or claim for which, if established, Contractor or Owner might become liable, and which is chargeable to Subcontractor, or if Subcontractor shall incur any liability to Contractor, or if Contractor shall have any claim or demand against Subcontractor of any kind or for any reason, whether or not reduced to judgment or award, Contractor shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between Contractor and Subcontractor, an amount sufficient to indemnify and fully satisfy Contractor and Owner against such lien, claim, liability or demand. Contractor shall also be entitled to retain all costs of defense or collection with respect thereto, including reasonable

Contractor:
 Garrard Construction Group, Inc.
 1960 Satellite Blvd., Suite 2300
 Duluth, GA 30097
 Ph: (770)822-1944

Project #: 10-10-6030
 Project Name: Dave & Buster's M Beech Int
 Date: 11/18/2018

attorneys' fees. If any lien, claim, liability or demand develops after all payments are made hereunder, Subcontractor shall refund to Contractor within ten (10) days of demand therefore all amounts that the latter may be compelled to pay in discharging such lien, claim, liability or demand and all costs, including reasonable attorneys' fees incurred in collecting said amounts from Subcontractor.

5.7 No payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no payment shall be construed to be acceptance of defective Work or improper materials.

5.8 Acceptance of Final Payment by Subcontractor shall constitute a full waiver and release by Subcontractor of all claims against Contractor or Owner arising out of or relating to this Agreement.

5.9 Pay requests shall be submitted on the GCG pay request form.

ARTICLE 6 - Submittals

6.1 Subcontractor shall proceed at once to prepare all required shop drawings, product data samples and other submittals required by the Prime Contract and furnish same for approval in accordance with the Prime Contract. Submittal data shall be prompt and complete to ensure scheduled delivery of such equipment and/or materials, so as not to delay the progress of either the Work or the Project. Subcontractor agrees to keep Contractor fully informed regarding its delivery schedule and shall immediately advise Contractor of any delay or anticipated delay.

6.2 Subcontractor shall comply with all scheduling and reporting requirements in the Prime Contract and shall furnish and supply Contractor such supplemental and additional information and reporting documentation as reasonably required by Contractor during the performance of the Work, including information on the status of materials and equipment that may be in the course of preparation or manufacture.

6.3 As-built documents and data shall be maintained and recorded by Subcontractor as applicable to the Work and shall be reviewed monthly by Contractor and in connection with Subcontractor's request for progress payments. Such review shall be a condition precedent to the issuance of payments under this Agreement.

6.4 Contractor's review of any as-built documents, submittals, shop drawings, data or drawings shall not relieve Subcontractor of any of its duties under the Prime Contract or its responsibility to perform the Work in the manner necessary to produce the results required and intended by the Prime Contract.

ARTICLE 7 - Superintendence and Subcontractor's Workforce

7.1 Subcontractor shall provide adequate, competent, and experienced full-time, on-site supervision during the performance of the Work. Such supervisory personnel shall have the authority to carry out directions from Contractor relating to this Agreement and the Work.

7.2 Subcontractor shall only employ workmen who will work in harmony with those employed by Contractor and other subcontractors. Subcontractor shall immediately replace any workmen objectionable to Contractor and if Contractor's request for replacement is not honored, Contractor shall be entitled and authorized to terminate this Agreement for cause.

7.3 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

7.4 In performing the Work, Subcontractor shall comply with Contractor's labor and affirmative action requirements under the Prime Contract. Subcontractor shall not discriminate against any employee or applicant because of race, creed, color, sex, age or national origin in the performance of the Work.

ARTICLE 8 - Material and Workmanship

8.1 All Work shall be done to the final approval of Contractor and Owner. Their decision as to the performance of the Work in accordance with the Prime Contract and the true constructive meaning of the Prime Contract shall be final, subject to any limitations stated in the Prime Contract.

8.2 Subcontractor shall provide safe and efficient facilities at all times for inspection of the Work by Contractor and Owner.

8.3 If Contractor or Owner condemns or disapproves of any portion of the Work, Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor of such condemnation or disapproval, proceed promptly to take down all rejected portions of the Work and remove from the Project all materials that are subject to that condemnation or disapproval and shall promptly make good all such Work and all other work damaged or destroyed in removing or making good said condemned or disapproved Work. All costs associated with replacing or repairing condemned Work shall be borne by Subcontractor without any increased in the Subcontract Amount.

8.4 Subcontractor shall conform to and abide by any additional specifications, drawings, or explanations required by the Prime Contract.

8.5 Contractor or Owner may elect to accept the Work or any portion of it, which is not in accordance with the Prime Contract, rather than requiring its removal and correction. In such event, the Subcontract Amount shall be adjusted as necessary to equitably compensate Contractor and Owner for the consequences of Subcontractor's failure to comply with the Prime Contract.

ARTICLE 9 - Changes

9.1 Without invalidating this Agreement, and without notice to Subcontractor's surety, Contractor may order Subcontractor in writing to make changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement. In the event of such a change, the Subcontract Amount and time for performance of this Agreement shall be adjusted by way of change order ("Change Order"). Prior to the commencement of such changed or revised work, Subcontractor shall promptly submit to Contractor in writing any claim it seeks to assert for adjustment in the Subcontract Amount or time for performance consistent with the requirements of the Prime Contract.

9.2 Subcontractor shall be bound by all computation and reporting requirements set forth in the Prime Contract with respect to Change Orders.

9.3 If Subcontractor is required by Contractor to perform additional work for which the amount of compensation is not set forth in the Prime Contract, the Subcontractor shall prepare and submit to Contractor a proposal describing the estimated quantities and the time and cost involved. The Subcontractor shall submit the proposal to Contractor within the appropriate time period established in the Prime Contract so as to permit the Contractor sufficient time to review the proposal and forward it to Owner for consideration. If no such time period is set forth in the Prime Contract, the Subcontractor shall submit its proposal to Contractor at least seven (7) calendar days before the additional work is required to be performed. Otherwise, Subcontractor shall accept the determination of Contractor as to the effect of the proposed Change Order.

9.4 Additions to, or changes in, this Agreement shall be made only upon written order, approved by Contractor. If the parties hereto are unable to agree as to the value of such work to be added or omitted, Subcontractor shall proceed under the written order of Contractor, from which order the stated value of the work shall be omitted. The dispute shall then be determined in accordance with Article 11.

9.5 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to

Page 3 of 7

1960 Satellite Blvd * Suite 2300 * Duluth * Georgia * 30097
 Phone (770) 822-1944 * Fax (770) 822-4633

Contractor:
Gerrard Construction Group, Inc.
1650 Satellite Blvd., Suite 2300
Duluth, GA 30097
Ph: (770) 822-1944

Project #: 10-10-6030
Project Name: Dave & Busto's M Beach Int
Date: 11/18/2019

proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

9.6 Contractor's receipt, or acknowledgment, of Subcontractor's Change Order request or any other alleged claim of cost and time, or any payments made on account thereof, shall not be construed as Contractor's acknowledgment, or any portion thereof, until such time as final Change Order amounts are determined and a Change Order is signed by Contractor.

9.7 If the construction change order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- a. mutual acceptance of a lump sum properly itemized and supported by sufficient sustaining data to permit evaluation;
- b. unit prices stated in the Contract Documents or subsequently agreed upon;
- c. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- d. cost & fee with itemized accounting inclusive of cost of labor, cost of materials, supplies, and equipment; rental costs of machinery and equipment; cost for all bonds and insurance, permit fees; additional cost of supervision and field personnel; and overhead allowance of not more than 10% and fee of not more than 5%.

ARTICLE 10 - Default and Termination

10.1 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, upon twenty-four (24) hours written notice, direct Subcontractor to take such steps as Contractor deems necessary to remedy such failings, all without additional cost to Contractor. If Subcontractor fails to comply with these steps, in addition to any other right or remedy Contractor may have under this Agreement, Contractor may remedy such failings and deduct any loss or damage occasioned thereby from any money then due or thereafter to become due to Subcontractor.

10.2 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, at its option, and at any time after forty-eight (48) hours written notice of such default to Subcontractor, terminate Subcontractor's involvement in the Project by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take possession of the Work, materials, tools, appliances and equipment of Subcontractor at the Project, and through itself or others provide labor, equipment and materials to prosecute the Work. The cost thereof, including all charges, expenses, losses, costs, damages and attorneys' fees incurred as a result of Subcontractor's failure to perform, shall be deducted by Contractor from any money then due or thereafter to become due to Subcontractor. Subcontractor shall not be entitled to any further payments under this Agreement until the Work has been completed and fully accepted by Owner. In the event that the unpaid balance due exceeds Contractor's cost of completion, the difference shall be paid to Subcontractor. If such costs exceed the balance due, Subcontractor shall pay the difference to Contractor within ten (10) days of demand for payment of same.

10.3 Contractor shall have the right to terminate Subcontractor's involvement in the Project by written notice, without Subcontractor being at fault, for any cause or for its own or Owner's convenience, and require Subcontractor to immediately stop the Work. In such event, Contractor shall pay Subcontractor for that portion of the Work actually performed in an amount proportionate to the total Subcontract Amount. Contractor shall not be liable to Subcontractor for any other costs nor for prospective profits on the Work not performed; provided, however, that if termination is due to any default or action by Owner, or as a result of an order by a court or public authority, then Contractor shall not be liable to Subcontractor for any sum greater than that which Contractor receives from Owner with respect to Subcontractor's performance, less any costs incurred by Contractor in obtaining that amount from Owner. Any default termination of Subcontractor by Contractor subsequently determined to have been erroneous or wrongful, shall be deemed to be a termination under this Paragraph 10.3.

10.4 If Subcontractor's involvement in the Project is terminated, Subcontractor shall assign to Contractor any and all of Subcontractor's contracts with sub-subcontractors and/or suppliers designated by Contractor. The Subcontractor represents and warrants to Contractor that all of its contracts with sub-subcontractors and/or suppliers do or will include a provision that authorizes the foregoing right and obligation of assignment. Subcontractor agrees to indemnify and hold Contractor harmless and defend it against any and all claims and liabilities incurred by reason of the Subcontractor's breach of any term, condition, obligation or agreement under the assigned contracts.

10.5 The remedies provided Contractor in this Article 10 and in any part of the Prime Contract shall be cumulative, and not exclusive, of all other remedies which Contractor may have for breach of this Agreement by Subcontractor, or as a result of Subcontractor's failure to perform any of the requirements of this Agreement. In the event of a default termination, all losses, and expenses, including attorneys' fees, incurred in the prosecution or defense of any action, arbitration or suit, trial or appeal, enforcement of any judgment, bankruptcy or insolvency proceeding, or any subsequent proceeding or appeal from any order or judgment entered therein, incurred by or resulting to Contractor on the above account, shall be borne by and charged against Subcontractor and shall be damages for breach of this Agreement. Contractor may recover some from the Subcontractor's surety, and both Subcontractor and its surety agree to pay Contractor for such losses, damages, expenses and attorneys' fees. At Contractor's sole discretion and exclusive option, proceeds that are payable, or due to become payable under this Agreement, or any other agreements between Subcontractor and Contractor, may be withheld by Contractor and applied against said losses, costs or expenses.

ARTICLE 11 - Claims and Disputes

11.1 Any claim for which the Contractor is directly responsible ("Contractor Related Claim"), shall be made by Subcontractor in writing to Contractor within five (5) business days of the occurrence of the event giving rise to the claim. Contractor shall issue a decision on any Contractor Related Claim in writing and furnish a copy thereof to Subcontractor. The decision of Contractor shall be final and conclusive, unless within forty-eight (48) hours from the date of receipt of such decision, Subcontractor issues written notice to Contractor contesting same. If Subcontractor does not contest Contractor's final decision within the time period noted above, Subcontractor shall be deemed to have waived any right to contest that decision.

11.2 Any claim by Subcontractor that may affect or become part of a claim for which the Owner or another person or entity besides Contractor may be responsible ("Owner or Third Party Related Claim") shall be made by Subcontractor in sufficient time and in such manner so as to permit Contractor to satisfy the Contractor's requirements for making an Owner or Third Party Related Claim against the Owner or any third party in question. Subcontractor shall pursue all Owner or Third Party Related Claims against the Owner or any third party in question through Contractor in accordance with the applicable disputes process. Subcontractor agrees to bear full responsibility and the full cost of pursuing all Owner or Third Party Related Claims. Contractor shall be liable to Subcontractor only to the extent that Contractor actually recovers from the Owner or any third party for each Owner or Third Party Related Claim, less Contractor's costs associated with the Owner or Third Party Related Claim.

11.3 Any other dispute between Contractor or Subcontractor arising out of or relating to this Contract besides an Owner or Third Party Related Claim ("Other Dispute"), shall be decided by litigation unless Contractor shall advise Subcontractor within 30 days of receiving or giving notice of the Other Dispute, that Contractor elects to have the Other Dispute decided or resolved by arbitration. In the event Contractor elects to have the Other Dispute resolved by binding

Page 4 of 7

1650 Satellite Blvd * Suite 2300 * Duluth * Georgia * 30097
Phone (770) 822-1944 * Fax (770) 822-4633

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Contractor:
Garrard Construction Group, Inc.
1980 Satellite Blvd., Suite 2300
Duluth, GA 30097
Ph: (770)822-1944

Project#: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 11/18/2016

arbitration, Subcontractor shall be bound by Contractor's decision. Any such arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules issued by the American Arbitration Association then in effect. Any such arbitration shall be held in Metro, Georgia, and judgment upon the award may be entered by any court having jurisdiction.

11.4 In connection with any such arbitration proceeding, Subcontractor agrees to afford Contractor liberal and informal discovery consistent with the discovery provisions of the Georgia Civil Practice Act, O.C.G.A. § 9-11-1 et seq., including the production of all documents related to the dispute and the availability for deposition at reasonable times of all persons under its control who have knowledge of facts pertaining to the matter in dispute.

11.5 To the extent Contractor does not select arbitration for the resolution of any Other Dispute, Contractor and Subcontractor each hereby agree that the United States District Court for the Northern District of Georgia, or, at the option of Contractor, the Superior Court of Gwinnett County, Georgia, shall have exclusive jurisdiction to hear and determine any Other Dispute. Subcontractor expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced in such courts and pertaining to any Other Dispute.

11.6 Any claim, dispute or other matter in question between Contractor and Subcontractor relating to this Agreement, or the Work shall be governed by the laws of the State of Georgia without regard to conflicts, or choice, of laws.

11.7 In the event Contractor is involved in any dispute resolution proceeding, including litigation, arbitration or administrative procedures, and that proceeding involves the Work, involves questions of law or fact common to the Work, or if complete relief cannot be afforded without Subcontractor's presence in that dispute resolution proceeding, Subcontractor hereby consents to consolidation or joinder in that proceeding.

11.8 Subcontractor shall carry on the Work and comply with its performance and scheduling obligations under this Agreement despite the existence of any dispute or legal proceedings unless otherwise agreed in writing by the parties hereto.

ARTICLE 12 - Regulatory Compliance

12.1 Subcontractor shall comply with all applicable laws, codes, regulations, orders and ordinances that apply to the Work and the Project, all in accordance with the Prime Contract. Subcontractor shall give all required notices and shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

12.2 Subcontractor shall take all reasonable safety precautions necessary with respect to the performance of the Work and shall comply with all safety measures and drug policies initiated by Contractor including OSHA and with all applicable laws, ordinances, rules, regulations and orders of public authorities pertaining to the safety of persons or property, all in accordance with the requirements of the Prime Contract.

12.3 Subcontractor shall comply with the requirements of all governmental authorities having jurisdiction over the Work.

12.4 Subcontractor shall comply with all applicable Social Security, Unemployment Compensation and Employer's or Worker's Compensation Acts.

12.5 If Subcontractor violates any of the above, Subcontractor shall bear all costs resulting from such violation and shall defend, indemnify and hold Contractor harmless from any damages (including attorneys' fees), claims, and causes of action arising from such violation.

ARTICLE 13 - Indemnity, Insurance and Bonding

13.1 Prior to commencing the Work, Subcontractor shall secure and pay for insurance of the type and limits set forth below and as required by the Prime Contract from an insurer, and in a form, acceptable to Contractor. The insurer shall be licensed to transact business in the location of the Project.

a. Worker's Compensation with statutory limits but not less than \$500,000;

b. Employer's Liability with limits of \$600,000 per occurrence;

c. Comprehensive General Liability (occurrence form) with minimum limits of \$2,000,000.

d. Comprehensive Automobile Liability Insurance with minimum limits of \$1,000,000.00 combined single limit with coverage for all owned, non-owned and hired automobiles.

e. Excess Liability Insurance on a following form basis in limits not less than \$2,000,000.

All liability insurance coverage shall include Contractor and Owner as an additional insured and shall provide coverage for Contractor and Owner on a primary basis. All coverage shall include a waiver of the underwriter's rights of subrogation against Contractor and Owner. Subcontractor shall be solely responsible for any deductible or self-insurance retentions. Prior to commencement of operations, Subcontractor shall provide to Contractor and Owner certificates of insurance evidencing the required coverage and providing Contractor and Owner with thirty (30) days notice prior to cancellation of any coverage. In the event Subcontractor fails to obtain or maintain any insurance coverage required by this Agreement, or the Prime Contract, Contractor may at its option: (i) terminate Subcontractor; or (ii) purchase such coverage and charge the expense thereof to Subcontractor.

13.2 Subcontractor assumes full liability for any and all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and property arising out of or in any way connected with the Work and shall to the fullest extent permitted by law defend, indemnify and hold harmless Owner and Contractor, their respective officers, agents, employees and indemnities, from and against any and all claims, demands, losses, suits, damages and liabilities, legal or otherwise, arising out of or in any way connected with the Work, including, to the fullest extent permitted by law, irrespective of the negligence of any indemnities hereunder provided that such negligence is not the sole proximate cause of such claim, demand, loss, suit, damage or liability. Subcontractor agrees that \$1,000 of the Subcontract Amount is consideration for Subcontractor agreeing to this indemnification. For purposes of fulfilling its duties to defend, indemnify and hold harmless the Contractor, Subcontractor waives the immunities, rights, or defenses that may be available under applicable Workers Compensation Laws. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due Subcontractor, or which thereafter becomes due, shall be held by Contractor to cover such claim or demand including all reasonable attorneys' fees.

13.3 Subcontractor may be required to provide performance and payment bonds each with a penal amount equal to 100% of the Subcontract Amount. The premium for these bonds shall be paid by Contractor to bonding company upon receipt of bond and invoice from the bonding company up to 1.5% of contracts. Any excess over 1.5% shall be deducted from subcontractors funds. All bonds issued pursuant to this Paragraph 13.3 shall be issued by a surety, and in a form, acceptable to Contractor and by a surety licensed to transact business in the location of the Project. All bonding companies shall be rated as triple A by U.S. Treasury Department's list of approved sureties.

ARTICLE 14 - Warranties and Guarantees

14.1 Subcontractor warrants that its Work shall be: (1) fit for the purposes intended; (2) free from defects in material and workmanship; (3) comply with the Prime Contract and all applicable codes and industry standards; (4) be free and clear of all claims, encumbrances and liens.

14.2 Subcontractor agrees to promptly make good, without cost to Contractor or Owner, any and all defects due to its failure to meet such warranties which may appear within the guarantee or warranty period(s) established in the Prime Contract, and if no such period(s) be stipulated in the Prime Contract, then such guarantee shall be for a period of one (1) year from the date of completion and acceptance of the Project by Owner. Subcontractor further agrees to execute any special guarantees as provided by the Prime Contract or required by law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

Page 5 of 7

1980 Satellite Blvd • Suite 2300 • Duluth • Georgia • 30097
Phone (770) 822-1044 • Fax (770) 822-4633

PLAINTIFF 183

Contractor:
 Garrard Construction Group, Inc.
 1960 Satellite Blvd., Suite 2300
 Duluth, GA 30097
 Ph: (770)822-1844

Project #: 10-10-603D
 Project Name: Dave & Buster's M Beach Int
 Date: 11/18/2016

14.3 Subcontractor shall pay for all changes to the Work or the Project resulting from defects in workmanship or materials, as well as all expenses necessary to replace or repair either the Work or the Project, including any damages caused by the replacements or repairs. Subcontractor shall further be obligated to pay for, and shall reimburse Contractor for, all costs associated with the impact of its defective workmanship or materials. This obligation is in addition to all other guarantees, warranties and rights contained in the Prime Contract.

ARTICLE 15 - Encumbrances

15.1 Subcontractor shall turn the Work over to Contractor in good condition and free and clear of all claims, encumbrances, or other liens and shall defend, indemnify and hold harmless Contractor and Owner from all claims, encumbrances or liens arising out of the performance of the Work. Subcontractor shall at its own cost and expense (including attorneys' fees), defend all suits to establish such claims, and pay any such claims or liens so established. If Subcontractor fails to comply with this requirement, Contractor may bond off any liens and all costs of such action shall be paid by Subcontractor.

15.2 If a subcontractor or supplier to Subcontractor shall file a lien against the Project, Subcontractor shall bond off the lien within ten (10) days of its receipt of a demand to do so by Contractor. Subcontractor's failure to do so shall constitute an event of default under Paragraph 10.2.

15.3 Subcontractor shall as often as requested by Owner or by Contractor, furnish a sworn statement identifying all parties in Subcontractor's chain of privity who have furnished, or who are furnishing, labor or materials for the Work with their names and addresses and amounts due, or to become due, each of them.

15.4 Subcontractor shall furnish Contractor, if requested, evidence of the payment of all bills, expenses or liabilities incurred by Subcontractor for labor, services, equipment and materials used by Subcontractor in the performance of the Work. If requested by Contractor, Subcontractor shall also furnish written releases, in a form acceptable to Contractor, from all persons, firms, or corporations that have furnished to Subcontractor any labor, services, equipment and materials whether on or for the Project, and written releases of lien, in a form acceptable to Contractor, from all persons, firms and corporations that may have in any way had any dealings or agreements in connection with the Work.

ARTICLE 16 - Coordination

16.1 Subcontractor acknowledges its obligation under this Agreement to coordinate and review the Work with materials and/or equipment to be furnished by others to ensure completed compatible systems. Accordingly, Subcontractor shall review all submittals, fabrication and shop drawings and all product data referring to items requiring integration and compatibility with the Work.

16.2 Subcontractor shall review the surfaces provided by others to which the Work is to be applied, and shall notify Contractor of any known defect or condition detrimental to proper procedures, prior to the commencement of the Work; otherwise, Subcontractor agrees to accept the condition of such surfaces and shall be liable for all consequences resulting therefrom.

16.3 Subcontractor shall cooperate with Contractor, other subcontractors and Owner's forces to the extent their work might interfere with the Work and Subcontractor shall prepare coordinated drawings in areas of congestion if necessary for the timely and proper completion of the Project. Subcontractor shall also advise Contractor of any potential conflicts between the Work and the work of Contractor, other subcontractors or Owner's forces.

16.4 Subcontractor shall take all necessary precautions to protect, and shall be liable for any damage, to adjacent surfaces caused by the Work, including damages resulting from Subcontractor's cleaning of such surfaces.

16.5 If Subcontractor performs the Work on or adjacent to work provided by others that Subcontractor knows, or should know, is defective or is in violation of any laws, codes, regulations, orders and ordinances that apply to the Work, Subcontractor shall be fully responsible and shall indemnify Contractor for all damages caused thereby, including the costs to remove and replace the Work and any work of other subcontractors, Contractor, or Owner's forces affected thereby.

16.6 Subcontractor shall provide and be responsible for all layouts, including the accuracy thereof, necessary for the performance of the Work.

16.7 Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting, and sealing of the Work that may be required to fit it to, receive, or be received by the work of others as shown, or reasonably implied by, the Prime Contract, or as required, or reasonably implied by the rules and regulations, codes, and requirements of any regulatory or governmental agency having jurisdiction over the Project; or as required or reasonably implied to achieve consistency and compatibility with the design elements being penetrated.

ARTICLE 17 - Miscellaneous

17.1 Subcontractor shall provide, maintain and remove from the Project site upon completion of the Work, all temporary offices, structures for the use of its employees, sheds and storage facilities complete with all related utilities, gas, telephone and water. Storage areas for the use of Subcontractor shall be designated by Contractor, and no materials or equipment shall be stored by Subcontractor except in areas approved by Contractor. Such storage areas shall be maintained in an orderly condition by Subcontractor.

17.2 Except as may be otherwise provided in the Prime Contract, Subcontractor shall pay Contractor the reasonable value of any of Contractor's equipment used by Subcontractor in performing the Work.

17.3 Subcontractor represents that it has investigated, examined, inspected and thoroughly familiarized itself with the Prime Contract, surface and subsurface conditions and the location where the Work is to be performed, and that it has thoroughly informed itself as to any difficulties in connection therewith. Subcontractor further warrants that Contractor has made no representation of any kind or nature with reference thereto and not contained in this Agreement. By entering this Agreement with Contractor, Subcontractor further warrants and represents that it has taken into account all surface, subsurface and climatic conditions, the availability and costs of labor and materials, tools and equipment, Owner's and Contractor's scheduling requirements, and potential Project congestion caused by the work of others proceeding simultaneously with Subcontractor.

17.4 The scope of the Work includes an obligation to completely clean the Work and remove all contributing debris from the Project site and to locations designated by Contractor as often as necessary. If Subcontractor fails, within twenty-four (24) hours of receipt of verbal notice, to correct a failure to properly clean-up and dispose of all trash and waste materials created by Subcontractor, Contractor shall have the right to terminate in accordance with Paragraph 11.2 or perform such clean-up for Subcontractor; and Subcontractor hereby agrees to indemnify and to pay Contractor all costs incurred by Contractor in performing the clean-up work. Clean-up of the Work and the daily removal of debris from the areas of the Work is mandatory. Each day, all trash and debris shall be removed from the Project. Fire exits, corridor ladders, doorways and exit paths in general shall be clear of debris and open to pedestrian and wheelchair traffic at all times, specifically including nights and weekends.

17.5 Subcontractor waives all claims and all rights of subrogation against Contractor and Owner for loss of, or damage to, the Work, tools, machinery, equipment, material or supplies.

17.6 Where testing agency standards are referenced in the Prime Contract, all materials shall be tested and certified by an approved, independent testing firm acceptable to Contractor.

17.7 If Subcontractor seeks to contract with a sub-subcontractor or supplier for any portion of the Work, prior written approval of Contractor must be obtained. All such contracts with sub-subcontractors and suppliers shall be pursuant to a contract that is assignable to Contractor in the event of Subcontractor's termination and specifically binds the sub-subcontractor or supplier to the terms of this Agreement.

Page 6 of 7

1960 Satellite Blvd • Suite 2300 • Duluth • Georgia • 30097
 Phone (770) 822-1844 • Fax (770) 822-4633

PLAINTIFF 184

Contractor:
Garrard Construction Group, Inc.
1960 Satellite Blvd., Suite 2300
Duluth, GA 30097
Ph : (770) 822-1944

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 11/18/2018

17.8 Subcontractor agrees that payments due from Contractor for the Work are not assignable and that no part of this Agreement or the Work hereunder, can be assigned, except by and with the written consent of Contractor. Contractor shall have the unconditional right to assign this Agreement, any party thereof, or any payments due hereunder.

17.9 Title to all materials supplied by Subcontractor shall pass to Contractor upon payment for the materials or upon delivery to the Project, whichever occurs first.

17.10 The headings provided in this Agreement are for ease of reference only. The headings form no part of the Agreement between this parties and shall be given no weight in the interpretation or construction of this Agreement.

17.11 If any provision of this Agreement is determined by a court to be unenforceable, such a determination shall not affect the validity and enforceability of any other section or part hereof.

17.12 The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of this Agreement or the Prime Contract shall not be construed to be and shall not be a waiver of any such provision or provisions and Contractor shall thereafter be entitled to enforce each and every such provision without any requirement that Contractor provide notification to Subcontractor of its intention to thereafter enforce said provision or provisions.

17.13 If either party employs an attorney to enforce any of the provisions of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs, charges and expenses.

17.14 This Agreement represents the entire and integrated agreement between the parties hereto and supercedes all prior negotiations, representations or agreements, either oral or written. This Agreement may only be amended or modified in a writing signed by both Subcontractor and Contractor.

IN WITNESS WHEREOF, Contractor and Subcontractor hereby executed this Agreement the day and year first written above.

Garrard Construction Group, Inc.

By: [Signature]
Title: Project Manager
Date: November 28, 2018

Carolina Cool, Inc.

By: [Signature]
Title: General Manager
Date: 11-18-18

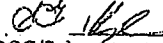
Attachment "A"
Plumbing Scope of Work
Carolina Cool, Inc.
Dave & Buster's - Myrtle Beach, SC Interior
10-6030-03

General Scope Items:

1. All City, County, State & Federal laws, rules, regulations and policies shall apply to this project. Subcontractor, by execution of this Subcontract, states that he/she is familiar and compliant with all requirements. Subcontractor is responsible for meeting and maintaining requirements at all times. Subcontractor has reviewed the plans and specifications with knowledge of all governing codes and has included the cost of compliance, even if all of said governing code requirements have not been incorporated into the plans and specifications.
2. Subcontractor, by execution of this Subcontract, states that he/she has visited the job-site, has become familiar with the existing conditions under which the work will be performed, and has correlated those observations with the requirements of this agreement.
3. A copy of the Project Schedule is attached and made a part of this Subcontract. All agreed updates and revisions to the schedule will also be made a part of this Subcontract. Subcontractor shall provide such manpower, supervision, materials, facilities, equipment and shall work such hours (nights, weekends, overtime) as required to complete the work within the scheduled durations.
4. Subcontractor shall maintain and monitor an email account for the duration of the project. This account shall be checked a minimum of twice daily during the standard work week.
5. All submittals required by this scope of work must be transmitted to the Contractor within three (3) business days of execution of this Agreement.
6. All closeout documents required, including but not limited to, waivers, warranties, as-builts, O&M manuals, etc., will be transmitted to Contractor no later than 15 days after substantial completion of Subcontractor's scope of work.
7. Subcontractor will be responsible for completing and submitting a daily report to Contractor's Superintendent on a daily basis.
8. Mandatory safety meetings will be held as scheduled by the Superintendent. Attendance is mandatory by all persons performing work onsite. Abide by all current OSHA requirements and GCG Safety Policies at all times. Ensure all MSDS and Hazardous Material Data is on-file with the Superintendent. Subcontractor shall provide an OSHA 10 Hour Certified Employee (Competent Person) to the project at all times during this scope of work. The Competent Person must be provided with a cell phone as a means of emergency communications. The Superintendent shall provide one (1) verbal warning to Subcontractor if not adequately performing this contract requirement. After this warning, each safety violation will be assessed and back-charged at \$300 per occurrence.

Initials: CC 1/12
GCG/Subcontractor

9. Hard hats, long pants and work boots must be worn at all times, regardless of the work being performed. No exceptions will be made for anyone. Any person not complying with this policy will be instructed to leave the Project.
10. Mandatory Subcontractor Scheduling meetings will be held as scheduled by the Contractor. Attendance by an authorized representative of the Subcontractor is required when Subcontractor is working onsite and as requested by the Contractor.
11. Any temporary lighting, beyond the safety lighting required to be provided by the Electrical Subcontractor, will be provided by the Subcontractor. The Subcontractor will also be responsible for any additional temporary lighting required to meet project schedule requirements.
12. Subcontractor is responsible for the clean-up of all trash/debris associated with this scope of work. The debris/trash shall be placed in a dumpster provided by GCG. The Superintendent shall provide one (1) verbal warning to Subcontractor if not adequately performing this contract requirement. After this warning, Contractor shall provide clean-up services and deduct the cost from funds due or that may become due to Subcontractor.
13. Provide all joint sealants, caulking, fire caulking, filler metals, etc. as required for this scope of work.
14. Store and protect the work of this Subcontract during and after installation, until project substantial completion, to prevent damage.
15. It is understood and agreed that the work of this Subcontract may not be performed in a continuous operation and Subcontractor includes the cost of multiple mobilizations, including travel time & expenses. Subcontractor shall respond to punch and warranty items within 24 hours, regardless of travel time.
16. Protect all existing items designated to remain from work of this contract; including but not limited to: structures, light poles, sidewalks, curbs, paving, vegetation, finished products, etc.
17. Subcontractor will not use and will not allow "1099 Labor" practices. Only valid Subcontractors and lower-tiered Subcontractors (as defined as independent contractors by the IRS) will be paid via 1099. All laborers are to be employees of the entity engaging them and their wages are to be reported to the IRS via W-2 forms.
18. ORIGINAL PAY APPLICATIONS FOR THE WORK PERFORMED ARE DUE BY THE 20th OF THE MONTH FOR THE MONTH BEING BILLED. THE PAY APPLICATION SHOULD COVER THE WORK PERFORMED THROUGH THE 25th.
19. Pay Applications shall include a list of all vendors and/or sub-subcontractors, with corresponding contact information, which performed work or provided materials to the Project during the Pay Application period. All vendors and sub-subcontractors shall produce current project accounting statements for the Project to be attached to Subcontractor's Pay Application. Subcontractor's monthly Pay Application shall not be approved without this back-up. Materialman/Supplier Lien Waivers shall be provided for all vendors and/or sub-subcontractors before payments are made. If General Contractor chooses not to bond Subcontractor, General Contractor reserves the right to "joint check" Subcontractor's vendors and sub-subcontractors.
20. No change orders are to be submitted unless all cost associated with the change are broken down by unit cost, labor hours and cost, material cost, equipment cost,

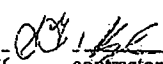
Initials: 
GCG/Subcontractor

overhead & profit, etc. such that it can be properly evaluated. Change Orders shall be issued by GCG and fully executed before being included on Pay Applications. Failure to comply with this requirement will cause delay in payment.

21. Ensure quality in all work placed. Perform all punch work necessary to meet the approval of the Owner, Design Team & Contractor.

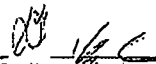
Specific Scope Items:

22. This Agreement is "turn-key" and includes all costs associated with labor, fasteners, accessories, equipment, materials, material stocking & material conveyance. Provide traffic control and lane closures if required for material deliveries or installations.
23. Provide a full-time Foreman, dedicated only to this project, during the work of this agreement. This Foreman shall be qualified, English speaking and OSHA 10 certified.
24. Secure all necessary plumbing permits as required for this work.
25. Provide a temporary water connection to the jobsite. Furnish and install a hose bib on the water service for temporary site water.
26. Provide all required layout for proper installation of this scope of work from the building corners established by others.
27. Furnish and install a complete plumbing system as indicated in the construction documents and required by governing codes. This work includes, but is not limited to; water piping, vent piping, sewer piping, grease waste piping, pipe insulation, PRV station, gas water heater(s), hose bibs, wall hydrants, floor drains, hub drains, floor sinks, mop sink, trench drains, clean-outs, lavatories, kitchen sinks, ice maker connections, urinals and water closets. Furnish and install all fixtures per the fixture schedule shown to be supplied by contractor.
28. Installation of the owner supplied CO2 bulk tank and related accessories. Plumbing subcontractor is to supply and install the beverage line raceway / conduit with long sweep 90's as reflected on the contract drawings.
29. Supply and install a complete domestic water riser system including, but not limited to the PRV, BFP, gauges, valves, strainers, etc. Plumbing subcontractor is to provide BFP testing and approvals upon completion of the installation.
30. Under-slab grease waste and standard waste line to be installed according to sizes reflected on the contract drawings and to be piping material type and schedule thickness as referenced in the project drawings and specifications. All floor drains, floor sinks, floor cleanouts shall be cast iron bodies as specified in the contract documents. Excavate, bed, backfill and compact all required trenches necessary to complete this scope of work.
31. All floor drains shown on drawings shall be equipped with a trap primer connected to the cold water supply.
32. Above grade waste and vent lines to be installed according to sizes reflected on the contract drawings and is understood that all waste and vent piping above the slab shall be type and sizes based on the contract drawings. All drain lines are to be trapped, supply all indirect waste line with a trap and an air gap at the floor receptacle. All indirect waste lines at kitchen equipment are to be copper as scheduled on the contract drawings and specifications.

Initials: 
GCG subcontractor

33. All above slab water lines and hot water recirculation lines to be installed according to sizes reflected on the contract drawings and to be Type "L" Copper.
34. Plumbing subcontractor to supply and install hammer arrestors and pressure reducing valves in line before all solenoid valves as shown on the contract drawings. i.e. Dish Machine, Disposer, Ice Maker, Steamer, Etc.
35. All overhead hot water lines and hot water circulation lines are to be insulated 100% from the water heater location(s) to the termination point at each piece of equipment.
36. Plumbing Contractor to make final connections to all food service equipment and coordinate connections with food service equipment vendor. Includes all plumbing connections, gas connections, water supplies, gas supplies, water valves, gas valves, stops and fittings for a complete installation. (Kitchen equipment is supplied by owner's Kitchen Equipment Supplier).
37. Furnish and install a complete hot water heater system in quantities and sizes shown on the contract drawings. This work shall include all expansion tanks, gauges, recirculation pumps and concentric vents through the roof.
38. Furnish and install all soda chases and beer chases as shown on the contract drawings and / or the kitchen equipment drawings.
39. Furnish and install all black iron grease recovery lines from the fryer locations to the grease recovery tank location Grease recovery quick connects supplied by others.
40. Furnish and install a complete natural gas piping system as indicated in the construction documents and required by governing codes. This work includes, but is not limited to:
 - a. Connection to meter banks. (meter by others)
 - b. All Connections to owner provided kitchen equipment.
 - c. Hot water heater connections.
 - d. Automatic shut off valve interlocked to ansul hood fire suppression system.
 - e. All interior and exterior HVAC and Kitchen equipment.
 - f. Furnish and install all required valves, appliance regulators, vents and accessories.
41. Installation of a complete compressed air system, piping shall be sized and type as shown on the contract drawings with origin and terminations as shown.
42. Layout all systems to avoid conflict with the HVAC system, the electrical system, security system, etc. Denote discrepancies prior to commencement of work.
43. Ensure all piping, hanger mounting, and insulation is installed per the listed schedules in the contract documents. Install proper unions where dissimilar pipe is connected.
44. Ensure proper sleeves are provided in thru-wall penetrations. Properly stencil and label all piping and equipment.
45. Flush, test and certify all systems upon completion and ensure systems are functioning properly before demobilization.
46. Prior to mobilization, this subcontractor is to provide the GC's office or field superintendent with MSDS documentation for all materials used by this subcontractor as well as a site specific safety plan for this project.
47. Provide equipment operator's certificates as required by OSHA.

Total Subcontract: \$294,688.00

Initials: 
GCG/Subcontractor

Date: 11/17/2018
Contractor: Carolina Cool, Inc.
Contact: Allen Anderson
Project #: 10 10 5030

Provide labor, materials, equipment, tools, supplies and supervision for a complete Plumbing & Gas System.

[illegible]

GCG

Subcontractor

APPLICATION FOR PAYMENT BREAKDOWN SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT,
Containing SubContractor's signed Certification, is attached.
In tabulations below, amounts are stated to the nearest dollar.

Application #: _____
Date: _____
Period To: _____
Project # 10 10 6030
SUBC # 10-6030-

A ITEM NO.	B DESCRIPTION OF WORK	QTY	UNIT	C COST	D SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G divided by C)	I BALANCE TO FINISH (C-D)	J RETAINAGE (IF VARIABLE RATE)
						FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD					
15-400-S	Underslab Rough In	1	LS	\$93,437.00								
15-400-S	Overhead Rough	1	LS	\$93,437.00								
15-400-S	Gas Piping	1	LS	\$64,687.00								
15-400-S	Fixture Trim Out	1	LS	\$35,939.00								
17-020-O	Performance & Payment Bond	1	LS	\$7,188.00								
	CHANGE ORDERS:											
	TOTALS FOR EACH COLUMN:			\$294,688.00								

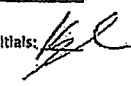
PLAINTIFF 191

247

ATTACHMENT "B"					
THE SCHEDULE					
DAVE & BUSTER'S MYRTLE BEACH, SC INTERIOR					
ID	Description	Duration	Start	Finish	Resource Name
1	Dave & Buster's Myrtle Beach SC - Shell & Buildout Completed	169 days	Mon 10/10/16	Fri 6/19/17	
2	MOBILIZATION	2 days	Mon 10/10/16	Tue 10/11/16	
3	INSTALL FENCING	2 days	Wed 10/12/16	Thu 10/13/16	
4	CRUSH CONTROLS	2 days	Wed 10/12/16	Thu 10/13/16	
5	SITE DEMOLITION	15 days	Fri 10/14/16	Thu 10/20/16	
6	SITE STORM SYSTEM	3 days	Fri 11/4/16	Tue 11/8/16	
7	SITE SEWER SYSTEM	0 days	Fri 11/4/16	Fri 11/11/16	
8	UNDERGROUND WATER SYSTEM	2 days	Fri 11/4/16	Mon 11/7/16	
9	SITE GRADING	2 days	Fri 11/4/16	Mon 11/7/16	
10	STAKE FILE LOCATION	2 days	Fri 11/4/16	Mon 11/7/16	
11	INSTALL PILES	12 days	Tue 11/8/16	Fri 11/25/16	
12	FOOTING EXCAVATION/POUR	25 days	Thu 11/17/16	Wed 12/23/16	
13	CMU INSTALLATION	26 days	Thu 11/17/16	Thu 12/15/16	
14	ELECTRICAL UNDERGROUND	6 days	Mon 12/19/16	Mon 12/19/16	
15	PLUMBING UNDERGROUND	8 days	Mon 12/19/16	Wed 12/21/16	
16	PREP SLAB	5 days	Thu 12/22/16	Wed 12/22/16	
17	POUR SLAB	1 day	Thu 12/22/16	Fri 12/23/16	
18	STRUCTURAL STEEL DELIVERY	1 day	Fri 12/23/16	Fri 12/23/16	
19	STEEL ERECTION	10 days	Mon 12/27/16	Fri 12/31/16	
20	SET ROOF CURBS	1 day	Thu 12/29/16	Thu 12/29/16	
21	BRICE VENER	30 days	Wed 12/29/16	Tue 1/17/17	
22	SINGLE PLY ROOFING	9 days	Mon 12/26/17	Tue 1/16/17	
23	BUILDING DRAKE IN	1 day	Fri 12/27/17	Fri 12/27/17	
24	CORNICHE INSTALLATION	14 days	Wed 12/27/17	Mon 1/22/17	
25	METAL STUD FRAMING INTERIOR	25 days	Thu 12/27/17	Wed 1/24/17	
26	FIRE SPRINKLER ROUGH IN	17 days	Mon 12/26/17	Tue 1/23/17	
27	HOOD DELIVERY	1 day	Thu 12/29/17	Thu 12/29/17	
28	HANG HOODS	2 days	Fri 12/29/17	Mon 1/2/17	
29	WALK-IN COOLER DELIVERY	1 day	Tue 12/29/17	Tue 12/29/17	
30	INSTALL WALK-IN COOLERS	2 days	Wed 12/29/17	Thu 12/29/17	
31	ROUGH IN WALLS/ELECTRICAL	14 days	Thu 12/29/17	Fri 1/26/17	
32	STONE ROOF INSTALLATION	11 days	Wed 12/29/17	Wed 1/23/17	
33	HVAC UNIT INSTALLATION	1 day	Fri 12/29/17	Fri 12/29/17	
34	DRYWALL INSTALLATION	20 days	Mon 12/29/17	Fri 1/26/17	
35	HVAC ROUGH IN	12 days	Tue 12/29/17	Wed 1/23/17	
36	DELIVER/INSTALL WALK-INS	4 days	Fri 12/29/17	Wed 1/23/17	
37	CEILING ROUGH IN - ELECTRIC	17 days	Mon 12/29/17	Tue 1/23/17	
38	SHOWWALK INSTALLATION	3 days	Tue 12/29/17	Thu 12/30/17	
39	INSTALL MAIN SWITCHGEAR - SHELL	4 days	Fri 12/29/17	Wed 1/23/17	
40	FRP INSTALLATION	6 days	Fri 12/29/17	Fri 12/29/17	
41	STONE/FLOOR GLAZING	8 days	Thu 12/29/17	Mon 1/23/17	
42	PAINT CEILING	3 days	Thu 12/29/17	Mon 1/23/17	
43	CERAMIC TILE INSTALLATION	18 days	Mon 12/29/17	Wed 1/23/17	
44	POWER TO HVAC UNITS	3 days	Tue 12/29/17	Tue 12/29/17	
45	PAINT WALLS	12 days	Mon 12/29/17	Tue 12/29/17	
46	BAR LOW WALL INSTALLATION	2 days	Tue 12/29/17	Wed 12/29/17	
47	EPOXY FLOOR INSTALLATION	6 days	Thu 12/29/17	Thu 12/29/17	
48	ACOUSTIC PANEL INSTALLATION	7 days	Wed 12/29/17	Thu 12/29/17	
49	ACOUSTIC GRAY INSTALLATION KITCHEN	8 days	Mon 12/29/17	Wed 12/29/17	
50	LIGHT INSTALLATION KITCHEN	5 days	Thu 12/29/17	Wed 12/29/17	
51	DIFFUSER INSTALLATION KITCHEN	4 days	Thu 12/29/17	Tue 12/29/17	
52	ACOUSTIC GRID INSTALLATION DINING	7 days	Wed 12/29/17	Thu 12/29/17	
53	LIGHT INSTALLATION DINING/BAH	23 days	Fri 12/29/17	Tue 12/29/17	
54	KITCHEN EQUIPMENT INSTALLATION	14 days	Tue 12/29/17	Fri 12/29/17	
55	PAVING TOPPING COURSE	3 days	Thu 12/29/17	Mon 12/29/17	
56	POLISHED CONCRETE	5 days	Fri 12/29/17	Thu 12/29/17	
57	BATHROOM FIXTURE INSTALLATION	6 days	Thu 12/29/17	Thu 12/29/17	
58	MILLWORK INSTALLATION	25 days	Wed 12/29/17	Tue 12/29/17	
59	BATHROOM ACCESSORIES INSTALLATION	5 days	Fri 12/29/17	Tue 12/29/17	
60	SODA/RAFT BEER LINE INSTALLATION	4 days	Wed 12/29/17	Mon 12/29/17	
61	CARPET INSTALLATION	5 days	Thu 12/29/17	Mon 12/29/17	
62	LAUNDRY EQUIPMENT INSTALLATION	1 day	Mon 12/29/17	Tue 12/29/17	
63	FURNITURE DELIVERY/INSTALL	7 days	Wed 12/29/17	Thu 12/29/17	
64	INSTALL OWNER ITEMS	7 days	Wed 12/29/17	Thu 12/29/17	
65	FINAL INSPECTIONS	5 days	Fri 12/29/17	Thu 12/29/17	
66	PUNCH LIST	5 days	Fri 12/29/17	Thu 12/29/17	
67	TURNOVER	1 day	Fri 12/29/17	Fri 12/29/17	

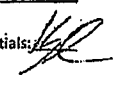
Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC
INTERIOR

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
T1.1	TITLE SHEET	6/24/2016	9/14/2016	9/30/2016
AB1.1	ACCESSIBILITY DETAILS & ABBREVIATION	6/24/2016		
SP1.1	ARCHITECTURAL SITE PLAN	6/24/2016		
	ARCHITECTURAL			
A0.1	RESPONSIBILITY SCHEDULE	6/24/2016	9/14/2016	9/30/2016
A0.2	EGRESS AND OCCUPANCY PLAN	6/24/2016	9/14/2016	
A1.0A	CURB PLAN - SEGMENT 1	6/24/2016	9/14/2016	
A1.0B	CURB PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A1.1A	FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A1.1B	FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A1.2A	DIMENSION PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A1.2B	DIMENSION PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A2.1A	REFLECTED CEILING PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A2.1B	REFLECTED CEILING PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A2.2	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.3	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.4	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.5	ENLARGED REFLECTED CEILING DEMENSION PLAN	6/24/2016		
A2.6	LIGHT FIXTURE SCHEDULE	6/24/2016	9/14/2016	
A3.1A	ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A3.1B	ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
A3.2	ROOF DETAILS	6/24/2016		9/30/2016
A4.1	EXTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A5.1	INTERIOR SECTION VIEWS	6/24/2016		
A7.1	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	9/30/2016
A7.2	ENLARGED PLANS AND DETAILS	6/24/2016		
A7.3	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	
A7.4	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	
A8.1	ENLARGED TOILET ROOM PLANS	6/24/2016	9/14/2016	
A8.2	TOILET ROOM ELEVATIONS	6/24/2016	9/14/2016	
A8.3	TOILET ROOM DETAILS	6/24/2016	9/14/2016	
A9.1	DOOR AND WINDOW SCHEDULES	6/24/2016	9/14/2016	
A9.2	FINISH SCHEDULE	6/24/2016	9/14/2016	9/30/2016
A10.1	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.2	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.3	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.4	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.5	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.6	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.7	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.8	INTERIOR ELEVATIONS	6/24/2016		
A10.9	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A11.1	WALL TYPES	6/24/2016		
A11.2	BRACING DETAILS	6/24/2016		
A11.3	DOOR AND STOREFRONT DETAILS	6/24/2016		
A11.4	CEILING DETAILS	6/24/2016	9/14/2016	

Subcontractor Initials: 

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
A11.5	CEILING DETAILS	6/24/2016		
A11.6	CEILING DETAILS	6/24/2016	9/14/2016	
A11.7	ENLARGED BAR PLANS AND ELEVATIONS	6/24/2016	9/14/2016	
A11.8	BAR SECTIONS AND DETAILS	6/24/2016		
A11.9	MILLWORK DETAILS	6/24/2016	9/14/2016	
A11.10	BOOTH SECTIONS AND DETAILS	6/24/2016		
A11.11	WALL SECTIONS AND DETAILS	6/24/2016	9/14/2016	
A11.12	P.O.S. MILLWORK DETAILS	6/24/2016	9/14/2016	
A11.13	ENLARGED WINI DETAILS	6/24/2016	9/14/2016	
A11.14	WINI ELEVATIONS	6/24/2016	9/14/2016	
A11.15	WINI DETAILS	6/24/2016	9/14/2016	
A11.16	WINI DETAILS	6/24/2016	9/14/2016	
A11.17	MILLWORK DETAILS	6/24/2016	9/14/2016	
A12.1	WALL & FLOOR FINISH PLAN	6/24/2016	9/14/2016	
A12.2	SEATING PLAN AND FURNITURE LEGEND	6/24/2016	9/14/2016	
A12.3	STORAGE PLANS AND ELEVATIONS	6/24/2016	9/14/2016	
A12.4	FINISH FLOOR DETAILS	6/24/2016		
STRUCTURAL				
S1.0	GENERAL NOTES AND TYPICAL DETAILS	6/24/2016		
S1.1A	SLAB/CURB PLAN 1	6/24/2016		
S1.1B	SLAB/CURB PLAN 2	6/24/2016		
S1.2A	ROOF PLAN 1	6/24/2016		
S1.2B	ROOF PLAN 2	6/24/2016		
S2.1	SECTIONS AND DETAILS	6/24/2016		
FOOD SERVICE EQUIPMENT				
K1	INDEX	6/24/2016		
K2	KITCHEN PLAN	6/24/2016		
K3	NOT USED	6/24/2016		
K4	BAR PLAN & SCHEDULES	6/24/2016		
K5	KITCHEN ELECTRICAL PLAN	6/24/2016		
K6	NOT USED	6/24/2016		
K7	BAR ELECTRICAL PLAN AND SCHEDULES	6/24/2016		9/30/2016
K8	KITCHEN PLUMBING PLAN	6/24/2016		9/30/2016
K9	NOT USED	6/24/2016		
K10	BAR PLUMBING & SCHEDULES	6/24/2016		
K11	KITCHEN GAS PLAN	6/24/2016		
K12	NOT USED	6/24/2016		
K13	KITCHEN CRITICAL PLAN	6/24/2016		
K14	NOT USED	6/24/2016		
K15	BAR CRITICAL PLAN	6/24/2016		
K16	KITCHEN P.O.S. PLAN	6/24/2016		
K17	BAR P.O.S. PLAN & SCHEDULES	6/24/2016		
K18	KITCHEN REFRIGERATION PLAN	6/24/2016		
K19	NOT USED	6/24/2016		
K20	KITCHEN VENTILATION PLAN	6/24/2016		
K21	NOT USED	6/24/2016		
K22	B&S LINES PLAN	6/24/2016		

Subcontractor Initials: 

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
K23	KITCHEN ELEVATIONS	6/24/2016		
K24	KITCHEN ELEVATIONS	6/24/2016		
K25	BAR ELEVATIONS	6/24/2016		
K26	KITCHEN ELECTRICAL & P.O.S. ELEVATIONS	6/24/2016		9/30/2016
K27	KITCHEN ELECTRICAL & P.O.S. ELEVATIONS	6/24/2016		
K28	BAR ELECTRICAL P.O.S. ELEVATIONS	6/24/2016		
K29	KITCHEN PLUMBING ELEVATIONS	6/24/2016		
K30	KITCHEN PLUMBING & GAS ELEVATIONS	6/24/2016		
K31	BAR PLUMBING ELEVATIONS	6/24/2016		
K32B	BAR TEMPLATES	6/24/2016		
K33	WALK-INS	6/24/2016		
K34	WALK-INS	6/24/2016		
K35	WALK-INS	6/24/2016		
K36	NOT USED	6/24/2016		
K37	REFRIGERATION RACK	6/24/2016		
MECHANICAL/PLUMBING/ELECTRICAL				
MP0.1A	MECHANICAL/PLUMBING ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
MP0.1B	MECHANICAL/PLUMBING ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	
M1.1A	MECHANICAL FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
M1.1B	MECHANICAL FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
M2.1	MECHANICAL DETAILS & NOTES	6/24/2016	9/14/2016	9/30/2016
M3.1	MECHANICAL SCHEDULES	6/24/2016	9/14/2016	9/30/2016
M3.2	MECHANICAL SCHEDULES	6/24/2016	9/14/2016	9/30/2016
M4.1	GREASE MASTER	6/24/2016		
M4.2	GREASE MASTER	6/24/2016		
M4.3	GREASE MASTER	6/24/2016		
M4.4	GREASE MASTER	6/24/2016		
M4.5	GREASE MASTER	6/24/2016		
M4.6	GREASE MASTER	6/24/2016		
M4.7	GREASE MASTER	6/24/2016		
M4.8	GREASE MASTER	6/24/2016		
M4.9	GREASE MASTER	6/24/2016		
M4.10	GREASE MASTER	6/24/2016		
M4.11	GREASE MASTER	6/24/2016		
P1.1A	PLUMBING WASTE AND VENT PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
P1.1B	PLUMBING WASTE AND VENT PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
P2.1A	PLUMBING WATER AND GAS PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
P2.1B	PLUMBING WATER AND GAS PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
P3.1	PLUMBING WASTE AND VENT RISER DIAGRAM	6/24/2016	9/14/2016	9/30/2016
P4.1	PLUMBING LEGEND NOTES AND SCHEDULES	6/24/2016	9/14/2016	9/30/2016
P4.2	PLUMBING DETAILS	6/24/2016	9/14/2016	9/30/2016
P4.3	PLUMBING DETAILS	6/24/2016		
ESP1	ELECTRICAL SERVICE PLAN	6/24/2016	9/14/2016	
E0.1	ELECTRICAL SYMBOLS LEGENDS	6/24/2016	9/14/2016	
E1.0A	ELECTRICAL ARCADE POWER & UNDERFLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.0B	ELECTRICAL ARCADE POWER & UNDERFLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.1A	ELECTRICAL POWER PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016

Subcontractor Initials: 

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
E1.1B	ELECTRICAL POWER PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
E1.2	ELECTRICAL ENLARGED POWER PLANS	6/24/2016	9/14/2016	9/30/2016
E1.3	ELECTRICAL ENLARGED POS PLANS	6/24/2016	9/14/2016	
E1.4A	ELECTRICAL ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
E1.4B	ELECTRICAL ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.5A	ELECTRICAL DATA & UNDERFLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.5B	ELECTRICAL DATA & UNDERFLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
E1.6A	ACCESS CONTROL PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.6B	ACCESS CONTROL PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.7A	SECURITY CAMERA PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.7B	SECURITY CAMERA PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E2.0A	ELECTRICAL LIGHTING PLAN - SEGMENT 1	6/24/2016		9/30/2016
E2.0B	ELECTRICAL LIGHTING PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E3.0	ELECTRICAL DETAILS	6/24/2016	9/14/2016	9/30/2016
E3.1	ELECTRICAL ONE-LINE DIAGRAM	6/24/2016	9/14/2016	9/30/2016
E4.0	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	9/30/2016
E4.1	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	9/30/2016
E4.2	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	
E4.3	ELECTRICAL SCHEDULES	6/24/2016	9/14/2016	
FIRE PROTECTION				
F1.0	FIRE NOTES & SYMBOLS	6/24/2016		
F2.0A	FIRE ALARM FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
F2.0B	FIRE ALARM FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
F3.0	FIRE PROTECTION DETAILS	6/24/2016	9/14/2016	9/30/2016
F4.0	FM GLOBAL REQUIRED FORMS	6/24/2016		
AUDIO/VIDEO VENDOR				
AV101	FLOOR PLAN	6/24/2016		
AV102	LEGEND/NOTES	6/24/2016		
AV103	RCP	6/24/2016		
AV201	ELEVATIONS	6/24/2016		
AV202	ELEVATIONS	6/24/2016		
AV203	ELEVATIONS	6/24/2016		
AV501	TYPICAL MONITOR DETAIL	6/24/2016		
AV503	BACK-TO-BACK 75" DETAIL	6/24/2016		

Subcontractor Initials

PLAINTIFF 196

[illegible]


Subcontractor

EXHIBIT 6

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

NEILL LAW FIRM

MARK D. NEILL
PHONE: (843) 651-8580
FACSIMILE: (843) 651-8586
MNEILL@NEILLLAWFIRM.COM

WWW.NEILLLAWFIRM.COM

671 JAMESTOWNE DRIVE
SUITE 207
POST OFFICE BOX 2810
MURRELLS INLET, SC 29576

October 3, 2017

VIA Electronic Mail and Regular Mail

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
awc@countrymanlawfirm.com

Re: *Carolina Cool, Inc. vs. Garrard Construction Group, Inc., et al.*
Case No: 2017-CP-26-3562

Dear Andrew:

Please find enclosed Carolina Cool Inc.'s Interrogatories and Requests for Production of Documents to Defendants along with a certificate of service.

With kindest regards, I am

Sincerely,



Mark Neill

cc Robert T. Lyles, Jr., Attorney for RLI Insurance Company

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - COMMON PLEAS - CASE#2017CP2603562

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)

Defendants.)

Garrard Construction Group, Inc.,)

Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)

Third-Party Defendant.)

TO: Andrew W. Countryman, Attorney for Defendants

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Carolina Cool Inc.'s
Interrogatories to Defendants

I hereby serve upon you the following written Interrogatories under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure. You are required to answer these Interrogatories separately and fully in writing under oath and to serve a copy of your answers on me within thirty (30) days after service hereof.

NOTE A: These Interrogatories shall be deemed continuing so as to require supplemental answers pursuant to Rule 26(e) and Rule 33(b) of the South Carolina Rules of Civil Procedure.

DEFINITIONS

(a) When used in these Interrogatories the words "you" or "Defendants", or any synonyms thereof, are intended to and shall embrace and include, in addition to the Defendants, said Defendants' attorneys and all officers, agents, servants, employees, representatives, investigators, independent contractors, and others who may have obtained information for or on behalf of said Defendants.

(b) "Document" or "record" shall mean any and all written, printed, typed, recorded, graphic or photographic material of any kind or character in your possession, custody or control, including without limitation, letters, correspondence, telegrams, memoranda, records, minutes, contracts, agreements, records or notations of conversations or conferences, interoffice communications, desk pads and desk calendars, note pads, telephone call slips or memos, telephone bills, microfilm, bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, purchase orders, invoices, computerized records or computer printouts, tape recordings and worksheets. Where originals are not available, authentic copies of such documents may be produced.

(c) "Identify" in connection with natural persons means to state their full name, title and job description, if applicable, and their present business and residence addresses.

(d) "Identify", in connection with documents or records means that the following information with respect to each document is requested:

1. the date appearing on such document, and if it has no date, the answer shall so state, and shall give the dates or approximate dates such document was prepared;
2. the identifying or descriptive code number, file number, title or label of such document;
3. the general nature or description of such documents including particular, express or implied, provisions of such documents, if any;
4. the name of the person who signed such document, and if it was not signed, the answer shall so state;
5. the name of the person or persons who prepared such documents;
6. the name of the person to whom such document was addressed and the name of such persons other than the addresses to whom the document or copy of such document was given or sent;
7. the name of the person having present possession, control and custody of such document; and
8. whether or not any draft, copy or reproduction of such document contains any postscript, notation, change or addendum not appearing on the document itself, and if so, the answer shall give the description of each such draft, copy or reproduction.

1. Give the names, addresses and phone numbers of all persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff that relate to the claim or defense in the case.

3. Set forth the names and addresses of all insurance companies which have liability coverage relating to the claim and set forth the number or numbers of the policies involved, the policy numbers, policy periods, and amount of coverage provided by each policy.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

5. Please state the name, address and telephone number of each person who you expect to call as an expert witness at the trial of this case, and for each such person give the subject matter on which he or she is expected to testify, the substance of the facts and opinions to which he or she is expected to testify and a summary of the grounds for each such opinion.

6. Identify by specific amount, all damages you are claiming in this case.

7. Identify all exhibits and demonstrative exhibits you plan to introduce at trial.

8. Identify and provide the name, address and telephone number of the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

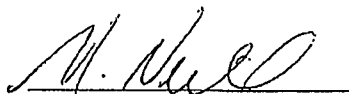
9. Identify the specific contract term or terms of which Plaintiff's work was NOT performed in accordance as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

10. Identify the specific industry standards Plaintiff's work violated as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

11. With regards to contract in the amount of \$294,688.00, describe in detail the "agreed upon schedule" referenced in paragraph 47 Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint, and set forth the date Plaintiff was to begin performing its work pursuant to the schedule and set forth the date Plaintiff's work was supposed to be completed pursuant to the schedule.

12. With regards to contract in the amount of \$35,500.00, describe in detail the "agreed upon schedule" referenced in paragraph 47 Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint, and set forth the date Plaintiff was to begin performing its work pursuant to the schedule and set forth the date Plaintiff's work was supposed to be completed pursuant to the schedule.

NEILL LAW FIRM, PA



Mark D. Neill, Esq.
S.C. Bar No: 14273
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Carolina Cool, Inc.

October 3, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Carolina Cool, Inc.,)
Plaintiff,)

vs.)

Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)
Defendants.)

Garrard Construction Group, Inc.,)
Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)
Third-Party Defendant.)

TO: Andrew W. Countryman, Attorney for Defendants

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Carolina Cool Inc.'s Requests for
Production of Documents

You are hereby requested under the provisions of Rule 34 of the South Carolina Rules of Civil Procedure to produce and permit the Plaintiff, or persons acting on Plaintiff's behalf, to inspect, measure, photograph and copy the documents and tangible things designated hereafter. Unless otherwise noted, or agreed to between counsel, the production, inspection, copying and all acts necessarily related thereto shall take place at the office of the undersigned counsel for the Plaintiff commencing thirty (30) days from the date of service of these requests, and continue from day to day thereafter until such inspection, copying and related acts are completed by Defendant.

NOTE A: These Requests shall be deemed continuing so as to require supplemental answers pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure.

DEFINITIONS

For the purposes of these Requests, the following words shall be defined as indicated below:

(a) When used in these Requests the words "you" or "Plaintiff/Defendants" or any synonyms thereof, are intended to and shall embrace and include, in addition to the party, said attorneys and all officers, agents, servants, employees, representatives, investigators and all others who may have obtained information for or on behalf of said Defendants.

(b) "Document" or "record" shall mean any and all written, printed, typed, recorded, graphic or photographic material of any kind or character or any tangible thing in your possession, custody or control, including without limitation, letters, correspondence, telegrams, memoranda, records, minutes, contracts, agreements, records or notations of conversations or conferences, inter-office communications, desk pads and desk calendars, note pads, telephone call slips or memos, telephone bills, microfilm, bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, purchase orders, invoices, computerized records or computer printouts, tape recordings and worksheets. Where originals are not available, authentic copies of such documents may be produced.

RESPONSES TO REQUESTS FOR PRODUCTION

1. Produce all material received in response to all subpoenas, records requests and the like you have issued related to this claim.
2. Produce all contracts/policies of insurance providing coverage for claims arising out of the Project.
3. Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the claims and defenses asserted in the above captioned lawsuit.
4. Any and all documents, exhibits, including prepared documents or models, or other demonstrative evidence prepared in connection with or relating to the matters in the suit.
5. Any and all documents provided to any expert witness consulted by Defendant(s) or named as a witness.
6. All reports, records, notes, photographs or opinions prepared or issued by any expert witnesses or investigators relating to the matters in the suit.

7. Any and all correspondence to or from any party or third-party regarding or relating to the claims and defenses that have been asserted in the above captioned lawsuit.

8. Any and all documents used or identified in answering these Interrogatories to the Defendants.

9. Any and all documents you intend to introduced at trial of this action, whether for purposes of evidence or impeachment.

10. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between the Plaintiff and Defendants.

11. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between the Defendants and Third-Party Defendant.

12. Any and all estimates and contracts evidencing the hiring of subcontractors "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

13. Any and all invoices or other documentation evidencing requests for payment received from the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

14. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between one or more of the Defendants and the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

15. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by the Defendant Garrard to Plaintiff.

16. Any and all checks, receipts, account statements, or other documentation evidencing any payments to the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

17. Any and all documentation which supports Defendants' allegation Plaintiff's work was NOT performed in accordance with the contract(s) as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

18. Any and all documentation which supports Defendants' allegation Plaintiff's work violated industry standards as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

19. With regards to contract in the amount of \$294,688.00, any and all documentation regarding the "agreed upon schedule" Plaintiff allegedly breached as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

20. With regards to contract in the amount of \$35,500.00, any and all documentation regarding the "agreed upon schedule" Plaintiff allegedly breached as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

NEILL LAW FIRM, PA



Mark D. Neill, Esq.
S.C. Bar No: 14273
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Carolina Cool, Inc.

October 3 2017

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)

Defendants.)

Garrard Construction Group, Inc.,)

Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Certificate of Service of Plaintiff's
Discovery Requests to Defendants

I, Mary Anna Neill, hereby certify that I caused a true and accurate copy of the Plaintiff's Interrogatories and Requests for Production of Documents to Defendants to be served via electronic mail and by United States Mail, postage prepaid, addressed as follows to opposing counsel:

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
awc@countrymanlawfirm.com

Robert T. Lyles
342 East Bay Street
Charleston, S.C. 29401
rtl@lylesfirm.com

NEILL LAW FIRM PA

Mary Anna Neill, Esq.

S.C. Bar No: 15740

P.O. Box 2810

Murrells Inlet, SC 29576

(843) 651-8580

Attorneys for Carolina Cool, Inc.

October 3, 2017

EXHIBIT 7

COUNTRYMAN LAW FIRM

LITIGATION ♦ MEDIATION

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843.253.4477 office
844.644.3165 fax

November 28, 2017

Via Email

Mark D. Neill, Esq.
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576
mneill@neilllawfirm.com

Re: *Carolina Cool, Inc. v. Garrard Construction Group, Inc., Dave & Buster's of South Carolina, Inc. and Broadway at the Beach, Inc.*; C/A 2017-CP-26-03562
CLF File: 000018 -- 000024

Dear Mark:

I hope you are doing well. I attach the Defendants' responses to Plaintiff's initial Interrogatories and Requests for Production. You can access the documents here:

<https://www.dropbox.com/s/oay4uoq4thwag3/Defendants%201%20-%20586.pdf?dl=0>.

Please let me know if you need a hard copy of any of this or have issues accessing the material. Thanks for the extension, and please give me a call when you can to discuss where this claim is going. I look forward to hearing from you.

Yours,



Andrew W. Countryman

AWC/sgc
Attachments
cc: Robert Lyles and Joe Cunningham (via email w/enclosures).

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff,

v.

GARRARD CONSTRUCTION GROUP, INC.,
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC. AND BROADWAY AT THE BEACH, INC.,

Defendants.

GARRARD CONSTRUCTION GROUP, INC.,

Third-Party Plaintiff,

v.

RLI INSURANCE COMPANY,

Third-Party Defendant.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A NO.: 2017-CP-26-03562

)
) DEFENDANTS' ANSWERS TO
) PLAINTIFF'S FIRST
) INTERROGATORIES AND REQUESTS
) FOR PRODUCTION (OF 9/28/17)

TO: MARK D. NEILL, PLAINTIFF, ATTORNEY FOR PLAINTIFF:

Defendants Garrard Construction Group, Inc., Dave & Buster's of South Carolina, Inc. and Broadway at the Beach, Inc., reserving the right to supplement and/or amend, and pursuant to SCRCP 33, respond to Plaintiff's initial Discovery Requests as follows:

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Shawn Gill

C/o Countryman Law Firm

Mr. Gill was the Project Manager for Garrard and will testify as to his knowledge of the facts and circumstances described in the pleadings and damages Garrard has sustained.

Pat Watson

C/o Countryman Law Firm

Mr. Watson was a shell Project superintendent for Garrard and will testify as to his knowledge of the facts and circumstances described in the pleadings and damages Garrard has sustained.

Bill Bromley

C/o Countryman Law Firm

Mr. Bromley was a the interior superintendent for Garrard at the Project and will testify as to his knowledge of the facts and circumstances described in the pleadings and damages Garrard has sustained.

Scott Gasque

Billy's Plumbing Co.

P.O. Box 1051

Conway, SC 29528

843-234-0123

Mr. Gasque was the plumbing project manager and is expected to testify as to his knowledge of the facts and circumstances described in the Complaint.

Seth McCoy

C/o Countryman Law Firm

Mr. McCoy was the landlord owner representative for Burroughs and Chapin and is expected to testify as to his knowledge of the facts and circumstances described in the Complaint.

Defendants incorporate by reference all witnesses the other parties identify.

Defendants are not aware of any statements responsive to this Interrogatory but expects depositions to take place in this case.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER:

a) Defendants 000001 – 000586

b) Project photos taken by Garrard available:

<https://www.dropbox.com/sh/1c52mp22mtfo2rl/AACjlsgoqzIdZUo7vP-rkNqa?dl=0>

c) Material produced by other parties to this action.

3. Set forth the names and addresses of all insurance companies which have liability coverage relating to the claim and set forth the number or numbers of the policies involved, the policy numbers, policy periods, and amount of coverage provided by each policy.

ANSWER: None.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Int. No. 1.

5. Please state the name, address and telephone number of each person who you expect to call as an expert witness at the trial of this case, and for each such person give the subject matter on which he or she is expected to testify, the substance of the facts and opinions to which he or she is expected to testify and a summary of the grounds for each such opinion.

ANSWER: Garrard has not retained an expert witness at this point but reserves the right to do so. If and when it does, Defendants will identify said expert(s) as appropriate. Defendants further reserve the right to elicit expert testimony from fact witnesses within the scope of their knowledge and expertise.

6. Identify by specific amount, all damages you are claiming in this case.

ANSWER:

- (a) \$102,091.78, which is the cost difference to hire Billy's plumbing to perform the work that Carolina Cool contracted to perform on the interior portion of the project. Comprised of:
 - a. \$71,553.03 and the cost to complete the under-slab plumbing work and corrections to the under-slab plumbing work that Carolina Cool installed incorrectly.
 - b. \$8,856.25 Garrard was forced to pay ASE (steel erectors) to erect the steel with a large crane resulting from Carolina Cool's inability to complete the under-slab plumbing rough-ins per schedule.
 - c. \$21,682.50 in General Conditions costs resulting from Carolina Cool's non-performance.
- (b) Consequential damages
- (c) Lost profits
- (d) Attorney's fees TBD
- (e) Punitive damages

7. Identify all exhibits and demonstrative exhibits you plan to introduce at trial.

ANSWER: Defendants do not at this point know what they will use at trial but reserve the right to use any material identified in these discovery responses.

8. Identify and provide the name, address and telephone number of the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

ANSWER: Billy's Plumbing, P.O. Box 1051, Conway, SC 29528.

9. Identify the specific contract term or terms of which Plaintiff's work was NOT performed in accordance as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

ANSWER: Carolina Cool breached its contracts with Garrard in multiple manners including failing to maintain schedule, failing to have adequate manpower on the project to maintain the schedule, and failure to have manpower on site that could read and interpret the contract drawings and other project documents in order to layout and install the under-slab plumbing rough-in correctly.

10. Identify the specific industry standards Plaintiff's work violated as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

ANSWER: Carolina Cool failed to maintain schedule, have adequate manpower on the project to maintain the schedule, have manpower on site that could read and interpret the contract drawings and other project documents in order to layout and install the under-slab plumbing rough-in correctly, as well as other items that will be shown through discovery and at trial.

11. With regards to contract in the amount of \$294,688.00, describe in detail the "agreed upon schedule" referenced in paragraph 47 Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint, and set forth the date Plaintiff was to begin performing its work pursuant to the schedule and set forth the date Plaintiff's work was supposed to be completed pursuant to the schedule.

ANSWER: Schedule updates governing the project are included in Garrard's production. "Exhibit B, the Schedule" attached to the subcontract reflects the under-slab plumbing rough-into start on 12/29/16 and end on 1/10/17. On 12/26/16, Bill Bromley met with Steve of Carolina Cool and informed it that due to some weather delays and the holidays, the under-slab rough-in would be pushed to start on 1/2/17 with eight days to complete. Carolina Cool never met the schedule and failed to complete its work according to the schedule or in a timely manner at all.

12. With regard to contract in the amount of \$35,500.00, describe in detail the "agreed upon schedule" referenced in paragraph 47 Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint, and set forth the date Plaintiff was to begin performing its work pursuant to the schedule and set forth the date Plaintiff's work was supposed to be completed pursuant to the schedule.

ANSWER: See Answer to Int. No. 11.

RESPONSES TO REQUESTS FOR PRODUCTION

1. Produce all material received in response to all subpoenas, records requests and the like you have issued related to this claim.

RESPONSE: None to date but we will send this material to you if/when we get serve records requests.

2. Produce all contracts/policies of insurance providing coverage for claims arising out of the Project.

RESPONSE: None other than the Bond.

3. Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the claims and defenses asserted in the above captioned lawsuit.

RESPONSE: None other than transcripts of depositions that may be taken in the case.

4. Any and all documents, exhibits, including prepared documents or models, or other demonstrative evidence prepared in connection with or relating to the matters in the suit.

RESPONSE: Defendants object to this as vague, unclear and to the extent it seeks privileged material and/or work product. Subject to this objection, and to the extent Defendants understand the requests, Defendants refer to the material identifies in these responses.

5. Any and all documents provided to any expert witness consulted by Defendant(s) or named as a witness.

RESPONSE: Defendants object to this as outside the scope of SCRCP 26(b)(4). Subject to this objection, Defendants have not yet retained an expert to testify at trial.

6. All reports, records, notes, photographs or opinions prepared or issued by any expert witnesses or investigators relating to the matters in the suit.

RESPONSE: Defendants object to this as outside the scope of SCRCP 26(b)(4). Subject to this objection, Defendant has not yet retained an expert to testify at trial.

7. Any and all correspondence to or from any party or third-party regarding or relating to the claims and defenses that have been asserted in the above captioned lawsuit.

RESPONSE: Defendants object to this to the extent it seeks privileged material and/or work product. Subject to this objection, responsive material is included in Defendants' production with these responses.

8. Any and all documents used or identified in answering these Interrogatories to the Defendants.

RESPONSE: Defendants object to this to the extent it seeks privileged material and/or work product. Subject to this objection, responsive material is included in Defendants' production with these responses.

9. Any and all documents you intend to introduce at trial of this action, whether for purposes of evidence or impeachment.

RESPONSE: Defendants do not yet know what they will use at trial but will identify such material at the appropriate time.

10. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between the Plaintiff and Defendants.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

11. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between the Defendants and Third-Party Defendant.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

12. Any and all estimates and contracts evidencing the hiring of subcontractors "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

13. Any and all invoices or other documentation evidencing requests for payment received from the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

14. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between one or more of the Defendants and the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

15. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by the Defendant Garrard to Plaintiff.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

16. Any and all checks, receipts, account statements, or other documentation evidencing any payments to the subcontractors allegedly hired by Garrard Construction Group, Inc. "to correct and complete Plaintiff's incorrect and incomplete work at the project" as alleged in paragraph 43 of Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

17. Any and all documentation which supports Defendants' allegation Plaintiff's work was NOT performed in accordance with the contract(s) as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material in Defendants' possession/control is included in its production with these responses.

18. Any and all documentation which supports Defendants' allegation Plaintiff's work violated industry standards as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material currently in Defendants' possession/control is included in its production with these responses.

19. With regards to contract in the amount of \$294,688.00, any and all documentation regarding the "agreed upon schedule" Plaintiff allegedly breached as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

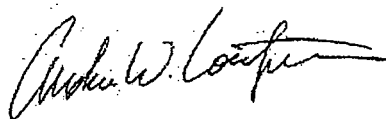
RESPONSE: All responsive material currently in Defendants' possession/control is included in its production with these responses.

20. With regards to contract in the amount of \$35,500.00, any and all documentation regarding the "agreed upon schedule" Plaintiff allegedly breached as alleged in Defendants' Answer and Garrard's Counterclaim and Third-Party Complaint.

RESPONSE: All responsive material currently in Defendants' possession/control is included in its production with these responses.

[signature page to follow]

Respectfully submitted,



By:

ANDREW W. COUNTRYMAN
State Bar No.: 72700
321 Wingo Way, Suite 102
Mt. Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com
sgc@countrymanlawfirm.com

Lawyer for the Defendants/Third-
Party Plaintiff

I hereby certify that I have this day served a copy of Defendants' Answers to Plaintiff's

Interrogatories and Requests for Production on all parties to this matter via email as follows:

Mark D. Neill mneill@neilllawfirm.com Neill Law Firm, PA P.O. Box 2810 Murrells Inlet, SC 29576 843-651-8580 <i>Counsel for Plaintiff Carolina Cool, Inc.</i>	Robert T. Lyles Joe K. Cunningham Lyles & Associates, LLC 342 East Bay Street Charleston, SC 29401 cm@lylesfirm.com rtl@lylesfirm.com jkc@lylesfirm.com <i>Counsel for RLI Insurance Co., Inc.</i>

[signature page to follow]

This 28th day of November, 2017

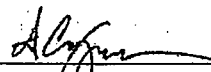

Suzannah G. Countryman

EXHIBIT 8

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - Common Pleas - Case#2017CP2603562



SUBCONTRACT

ENTERED

Contractor:
Garrard Construction Group, Inc.
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph (770)822-1944

Subcontractor:
Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 2/1/2017

Subcontract: 10-6030-15
Project Location: 1322 Celebrity Square
Myrtle Beach, SC 29577

This Agreement is made this 1 day of February, 2017 between Garrard Construction Group, Inc. ("Contractor") and Billy's Plumbing Company, LLC ("Subcontractor")

ARTICLE 1 - Scope of the Work

1.1 Subcontractor, as an independent contractor employed by Contractor, agrees to provide and to furnish everything necessary, including, but not limited to, all labor, materials, supervision, scaffolding, equipment, hoisting equipment, systems, machinery, tools, apparatuses, transportation, shop drawing, samples and submittals, to provide, furnish and complete the work set forth in the attached Attachment "A" ("Work"), to be performed in connection with the Dave & Buster's M Beach Int ("Project") for Dave & Busters, Inc. ("Owner"). Owner shall include any of its authorized representatives such as its architects, engineers or construction managers

Attachments are listed as follows	Attachment A	Scope of the Work \ Breakdown
	Attachment B	The Schedule
	Attachment C	Drawing Enumeration
	Attachment D	GCG Pay Application
	Attachment E	GCG Lien Waivers: Interim, Final, Third Party
	Attachment F	Warranty Form
	Attachment G	Third Party Subcontractor & Vendor List

ARTICLE 2 - The Subcontract Amount

2.1 As full consideration for complete performance of the Work, Subcontractor shall be paid: \$ 360,197.33 (three hundred fifty thousand one hundred ninety-seven and 33/100) ("Subcontract Amount").

2.2 The Subcontract Amount shall be the total sum paid to Subcontractor except for changes or modifications in accordance with the terms of this Agreement

2.3 Any and all transportation tax, sales tax, use tax or any other tax that might accrue through the purchase of materials or amounts paid for labor by Subcontractor or occasioned by performance of this Agreement, shall be borne and paid for by Subcontractor, and are included in the Subcontract Amount.

ARTICLE 3 - The Terms of this Agreement

3.1 This Agreement consists of (1) this Lump Sum Subcontract and any attachments hereto; and (2) the agreement between Owner and Contractor for the Project, including all conditions to that agreement (general supplementary and any other conditions), all drawings, specifications, schedule, and contract documents referenced in that agreement, along with all addenda and modifications to that agreement ("Prime Contract").

3.2 Subcontractor agrees to be bound to Contractor by all of the terms of the Prime Contract, and assumes toward Contractor all the obligations, duties and responsibilities that Contractor by the Prime Contract assumes toward Owner with the same force and effect as though every such obligation, duty and responsibility were set forth herein in full. Subcontractor agrees that Contractor shall have the same rights and remedies that Owner under the Prime Contract has against Contractor with the same force and effect as though every such right or remedy were set forth herein in full. Subcontractor further warrants and represents that prior to signing this Agreement it has reviewed and is familiar with the Prime Contract and agrees not to plead ignorance of any provision therein in any dispute between the parties.

3.3 The intent of this Agreement is to include all items necessary for the proper execution and completion of the Work by Subcontractor. The documents comprising this Agreement are complementary and what is required by one shall be as binding as if required by all.

3.4 All obligations, duties, responsibilities, rights and remedies set forth herein are in addition to those obligations, duties, responsibilities, rights and remedies set forth in the Prime Contract. In the event a provision of the Prime Contract is inconsistent with the provisions of this Lump Sum Subcontract, the provision more favorable to Contractor shall control.

3.5 Except as modified by this Agreement, the Work shall be performed and completed in strict accordance with the terms and requirements of the Prime Contract.

3.6 Subcontractor shall carefully study and compare the documents comprising the Prime Contract with each other and shall at once report to Contractor any error, inconsistency or omission discovered. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies, or omissions if it recognizes, or should have recognized, an error, inconsistency, or omission and fails to report it to Contractor before executing the Work. By performing any construction activity involving a recognized error, inconsistency, or omission in the Prime Contract, Subcontractor assumes the risk of such performance and

Page 1 of 7

1960 Satellite Blvd * Suite 2300 * Duluth * Georgia * 30097
Phone (770) 822-1944 * Fax (770) 822-4633

Defendant 000434

Contractor:
Garrard Construction Group, Inc
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 2/1/2017

agrees to bear full responsibility for all costs of correction.

ARTICLE 4 - The Time of Performance

4.1 Subcontractor shall comply with any schedule requirements imposed upon Contractor in the Prime Contract. Contractor shall schedule the work required by the Prime Contract, including the Work. Contractor shall have the right to decide the time, order and priority that the various portions of the Work will be performed and other matters relative to the time and orderly conduct of the Work.

4.2 A Schedule for the Project and the Work is attached hereto as Attachment "B" (the "Schedule"). Subcontractor shall participate and cooperate with Contractor in scheduling the times and sequences required to perform the Work and agrees to perform the Work in accordance with the Schedule, including all amendments thereto. Subcontractor shall continuously monitor the Schedule and shall advise Contractor of the status of its performance on a regular basis including information on the status of shop drawings, sample submittals, materials or equipment that may be in the course of preparation or manufacture. Subcontractor shall immediately notify Contractor of any circumstances which may affect the times and sequences in the Schedule and shall make all requests for time extensions in writing to Contractor sufficiently in advance to allow Contractor to forward the request as required in the Contract Documents.

4.3 Time is of the essence of this Subcontract. Subcontractor shall commence the Work in accordance with the Schedule, or when directed by verbal or written notice from Contractor, and shall diligently and continuously prosecute such Work in an efficient fashion so as not to cause interruption, interference, inefficiency, suspension, hindrance or delay (collectively referred to as "Delay") in the progress of any portions of the Project. Subcontractor shall coordinate the Work with the other work being performed on the Project so that the Project shall not be Delayed due to any act or omission of Subcontractor. Subcontractor shall take all necessary action to assure the completion of the Project within the time specified in the Schedule and the Prime Contract.

4.4 Subcontractor shall be liable to Contractor for any and all loss to Contractor, or which Contractor may be liable, as a result of any Delay on the part of Subcontractor in the prosecution or completion of the Work according to the Schedule, or for any Delay to the completion of the Project attributable to Subcontractor. If the Agreement between Contractor and Owner imposes upon Contractor an obligation to pay Owner liquidated damages in the event Delays are encountered in completion of the Project, and to the extent such a Delay is caused in whole or in part by the acts or omissions of Subcontractor, Subcontractor shall be obligated to pay Contractor, in addition to any other damages sustained by Contractor as a result of the Delay, any liquidated damages Contractor is obligated to pay Owner.

4.5 In agreeing to complete the Work within the times and sequences herein mentioned, Subcontractor hereby represents that it has taken into consideration and made allowances for all Delays incident to the Work. No Delay in the commencement or progress of the Work for any cause whatsoever, including those for which Owner or Contractor may be responsible, in whole or in part, shall relieve Subcontractor of its duty to perform hereunder.

4.6 Subcontractor shall not be entitled to any time extension unless a notice of claim therefore is presented in writing to Contractor within the period of time required by the Prime Contract or within seventy-two (72) hours of the first occurrence of the Delay, whichever time period is shorter. Except as set forth in Article 11.2, Subcontractor agrees that an extension of time for completing the Work is its sole remedy for any and all other claims Subcontractor may have against Contractor on account of any Delay. Permitting Subcontractor to continue working after the time to complete the Work has expired, shall not be construed as a waiver by Contractor of any claims for loss or damage for breach by Subcontractor of one or more of the provisions of this Agreement.

4.7 Subcontractor shall at all times supply and promptly pay for adequate tools, appliances, equipment, a sufficient number of properly skilled workmen and a sufficient amount of material and supplies to efficiently and properly prosecute the Work in accordance with the Schedule, and any modifications thereto issued by Contractor, in order to achieve the Project completion date established by the Prime Contract.

ARTICLE 5 - Payments

5.1 Invoicing and payment of the Subcontract Amount shall be made in accordance with the terms of the Prime Contract. Subcontractor shall submit to Contractor a written application for payment, in a form approved by Contractor, showing the value of the Work performed and completed to date, along with all substantiating data and information as required by the Prime Contract, from which shall be deducted: (1) a retainage of 10% of such value; (2) all previous payments, (3) all charges for materials and services furnished by Contractor to Subcontractor; and (4) any other charges and deductions as provided for in this Agreement or in the Prime Contract. The balance of the Subcontractor's invoice, to the extent approved by Owner and Contractor, shall be payable to Subcontractor after the Contractor has received payment from the owner. After receipt of payment from the owner, the payment to the subcontractor shall be made on the Friday closest to the end of the month in which payment was received or 10 business days from the date received, whichever is later. Checks will be processed on the subsequent Friday as part of our normal Accounts Payable check run.

5.2 A condition precedent to Subcontractor receiving monthly payments after starting the Work is the delivery by Subcontractor to Contractor each month (regardless of whether any Work was performed) of waivers of liens and claims, in a form suitable to Contractor, from Subcontractor and all sub-subcontractors and suppliers who have furnished materials for use on the Project and for which payment has been received by Subcontractor.

5.3 Contractor's obligation to pay the Subcontract Amount is executory and conditional upon Subcontractor's compliance with this Agreement. It is further expressly agreed that payment by Owner to Contractor is an absolute condition precedent to payment by Contractor to Subcontractor of all or any portion of the Subcontract Amount.

5.4 The quantities of Work performed and materials furnished as established by the Prime Contract or Contractor and Owner shall constitute the basis for computation of the payment to Subcontractor. Payments made on account of materials not incorporated in the Work but delivered and suitably stored, shall be made, if at all, in accordance with the Prime Contract.

5.5 Final payment of the Subcontract Amount including retention ("Final Payment") shall be made to Subcontractor upon: (i) completion of the Work in accordance with the Prime Contract; (ii) acceptance of the Work by Contractor and Owner; (iii) the occurrence of any and all conditions precedent to Subcontractor's receipt of Final Payment, as provided in the Prime Contract; (iv) receipt of final payment under the Prime Contract by Contractor from Owner; (v) receipt of an affidavit from Subcontractor that all labor (including customary fringe benefits and payments due under collective bargaining agreements), sub-subcontractors, materialmen and suppliers have been paid in full and they, and Subcontractor, are waiving or have previously waived their lien rights upon the making of Final Payment; (vi) consent to Final Payment from Subcontractor's surety; (vii) a complete release of claims in a form acceptable to Contractor, and (viii) closeout documents inclusive of Operations & Maintenance manual.

5.6 If at any time there is evidence of a lien or claim for which, if established, Contractor or Owner might become liable, and which is chargeable to Subcontractor, or if Subcontractor shall incur any liability to Contractor, or if Contractor shall have any claim or demand against Subcontractor of any kind or for any reason, whether or not reduced to judgment or award, Contractor shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between Contractor and Subcontractor, an amount sufficient to indemnify and fully satisfy Contractor and Owner against such lien, claim, liability or demand. Contractor shall also be entitled to retain all costs of defense or collection with respect thereto, including reasonable

Contractor:
 Garrard Construction Group, Inc
 2055 Sugarloaf Circle, Suite 400
 Duluth, GA 30097
 Ph (770)822-1944

Project #: 10-10-6030
 Project Name: Dave & Busler's M Beach Int
 Date: 2/1/2017

attorneys' fees. If any lien, claim, liability or demand develops after all payments are made hereunder, Subcontractor shall refund to Contractor within ten (10) days of demand therefore all amounts that the latter may be compelled to pay in discharging such lien, claim, liability or demand and all costs, including reasonable attorneys' fees incurred in collecting said amounts from Subcontractor.

5.7 No payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no payment shall be construed to be acceptance of defective Work or improper materials.

5.8 Acceptance of Final Payment by Subcontractor shall constitute a full waiver and release by Subcontractor of all claims against Contractor or Owner arising out of or relating to this Agreement.

5.9 Pay requests shall be submitted on the GCG pay request form.

ARTICLE 6 - Submittals

6.1 Subcontractor shall proceed at once to prepare all required shop drawings, product data samples and other submittals required by the Prime Contract and furnish same for approval in accordance with the Prime Contract. Submittal data shall be prompt and complete to ensure scheduled delivery of such equipment and/or materials, so as not to Delay the progress of either the Work or the Project. Subcontractor agrees to keep Contractor fully informed regarding its delivery schedule and shall immediately advise Contractor of any Delay or anticipated Delay.

6.2 Subcontractor shall comply with all scheduling and reporting requirements in the Prime Contract and shall furnish and supply Contractor such supplemental and additional information and reporting documentation as reasonably required by Contractor during the performance of the Work, including information on the status of materials and equipment that may be in the course of preparation or manufacture.

6.3 As-built documents and data shall be maintained and recorded by Subcontractor as applicable to the Work and shall be reviewed monthly by Contractor and in connection with Subcontractor's request for progress payments. Such review shall be a condition precedent to the issuance of payments under this Agreement.

6.4 Contractor's review of any as-built documents, submittals, shop drawings, data or drawings shall not relieve Subcontractor of any of its duties under the Prime Contract or its responsibility to perform the Work in the manner necessary to produce the results required and intended by the Prime Contract.

ARTICLE 7 - Superintendence and Subcontractor's Workforce

7.1 Subcontractor shall provide adequate, competent, and experienced full-time, on-site supervision during the performance of the Work. Such supervisory personnel shall have the authority to carry out directions from Contractor relating to this Agreement and the Work.

7.2 Subcontractor shall only employ workmen who will work in harmony with those employed by Contractor and other subcontractors. Subcontractor shall immediately replace any workmen objectionable to Contractor and if Contractor's request for replacement is not honored, Contractor shall be entitled and authorized to terminate this Agreement for cause.

7.3 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

7.4 In performing the Work, Subcontractor shall comply with Contractor's labor and affirmative action requirements under the Prime Contract. Subcontractor shall not discriminate against any employee or applicant because of race, creed, color, sex, age or national origin in the performance of the Work.

ARTICLE 8 - Material and Workmanship

8.1 All Work shall be done to the final approval of Contractor and Owner. Their decision as to the performance of the Work in accordance with the Prime Contract and the true constructive meaning of the Prime Contract shall be final, subject to any limitations stated in the Prime Contract.

8.2 Subcontractor shall provide safe and efficient facilities at all times for inspection of the Work by Contractor and Owner.

8.3 If Contractor or Owner condemns or disapproves of any portion of the Work, Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor of such condemnation or disapproval, proceed promptly to take down all rejected portions of the Work and remove from the Project all materials that are subject to that condemnation or disapproval and shall promptly make good all such Work and all other work damaged or destroyed in removing or making good said condemned or disapproved Work. All costs associated with replacing or repainting condemned Work shall be borne by Subcontractor without any increase in the Subcontract Amount.

8.4 Subcontractor shall conform to and abide by any additional specifications, drawings, or explanations required by the Prime Contract.

8.5 Contractor or Owner may elect to accept the Work, or any portion of it, which is not in accordance with the Prime Contract, rather than requiring its removal and correction. In such event, the Subcontract Amount shall be adjusted as necessary to equitably compensate Contractor and Owner for the consequences of Subcontractor's failure to comply with the Prime Contract.

ARTICLE 9 - Changes

9.1 Without invalidating this Agreement, and without notice to Subcontractor's surety, Contractor may order Subcontractor in writing to make changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement. In the event of such a change, the Subcontract Amount and time for performance of this Agreement shall be adjusted by way of change order ("Change Order"). Prior to the commencement of such changed or revised work, Subcontractor shall promptly submit to Contractor in writing any claim it seeks to assert for adjustment in the Subcontract Amount or time for performance consistent with the requirements of the Prime Contract.

9.2 Subcontractor shall be bound by all computation and reporting requirements set forth in the Prime Contract with respect to Change Orders.

9.3 If Subcontractor is required by Contractor to perform additional work for which the amount of compensation is not set forth in the Prime Contract, the Subcontractor shall prepare and submit to Contractor a proposal describing the estimated quantities and the time and cost involved. The Subcontractor shall submit the proposal to Contractor within the appropriate time period established in the Prime Contract so as to permit the Contractor sufficient time to review the proposal and forward it to Owner for consideration. If no such time period is set forth in the Prime Contract, the Subcontractor shall submit its proposal to Contractor at least seven (7) calendar days before the additional work is required to be performed. Otherwise, Subcontractor shall accept the determination of Contractor as to the effect of the proposed Change Order.

9.4 Additions to, or changes in, this Agreement shall be made only upon written order, approved by Contractor. If the parties hereto are unable to agree as to the value of such work to be added or omitted, Subcontractor shall proceed under the written order of Contractor, from which order the stated value of the work shall be omitted. The dispute shall then be determined in accordance with Article 11.

9.5 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to

Contractor:

Gerrard Construction Group, Inc
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph. (770) 822-1944

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 2/1/2017

proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

9.6 Contractor's receipt, or acknowledgment, of Subcontractor's Change Order request or any other alleged claim or any notice or report, including reports of cost and time, or any payments made on account thereof, shall not be construed as Contractor's acknowledgment, or acceptance, of the accuracy or validity of any portion thereof, until such time as final Change Order amounts are determined and a Change Order is signed by Contractor.

9.7 If the construction change order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- a. mutual acceptance of a lump sum properly itemized and supported by sufficient sustaining data to permit evaluation;
- b. unit prices stated in the Contract Documents or subsequently agreed upon;
- c. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, or
- d. cost & fee with itemized accounting inclusive of cost of labor; cost of materials, supplies, and equipment; rental costs of machinery and equipment; cost for all bonds and insurance, permit fees; additional cost of supervision and field personnel; and overhead allowance of not more than 10% and fee of not more than 5%.

ARTICLE 10 - Default and Termination

10.1 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action of omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, upon twenty-four (24) hours written notice, direct Subcontractor to take such steps as Contractor deems necessary to remedy such failings, all without additional cost to Contractor. If Subcontractor fails to comply with these steps, in addition to any other right or remedy Contractor may have under this Agreement, Contractor may remedy such failings and deduct any loss or damage occasioned thereby from any money then due or thereafter to become due to Subcontractor.

10.2 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action of omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, at its option, and at any time after forty-eight (48) hours written notice of such default to Subcontractor, terminate Subcontractor's involvement in the Project by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take possession of the Work, materials, tools, appliances and equipment of Subcontractor at the Project, and through itself or others provide labor, equipment and materials to prosecute the Work. The cost thereof, including all charges, expenses, losses, costs, damages and attorneys' fees incurred as a result of Subcontractor's failure to perform, shall be deducted by Contractor from any money then due or thereafter to become due to Subcontractor. Subcontractor shall not be entitled to any further payments under this Agreement until the Work has been completed and fully accepted by Owner. In the event that the unpaid balance due exceeds Contractor's cost of completion, the difference shall be paid to Subcontractor. If such costs exceed the balance due, Subcontractor shall pay the difference to Contractor within ten (10) days of demand for payment of same.

10.3 Contractor shall have the right to terminate Subcontractor's involvement in the Project by written notice, without Subcontractor being at fault, for any cause or for its own or Owner's convenience, and require Subcontractor to immediately stop the Work. In such event, Contractor shall pay Subcontractor for that portion of the Work actually performed in an amount proportionate to the total Subcontract Amount. Contractor shall not be liable to Subcontractor for any other costs nor for prospective profits on the Work not performed; provided, however, that if termination is due to any default or action by Owner, or as a result of an order by a court or public authority, then Contractor shall not be liable to Subcontractor for any sum greater than that which Contractor receives from Owner with respect to Subcontractor's performance, less any costs incurred by Contractor in obtaining that amount from Owner. Any default termination of Subcontractor by Contractor subsequently determined to have been erroneous or wrongful, shall be deemed to be a termination under this Paragraph 10.3.

10.4 If Subcontractor's involvement in the Project is terminated, Subcontractor shall assign to Contractor any and all of Subcontractor's contracts with sub-subcontractors and/or suppliers designated by Contractor. The Subcontractor represents and warrants to Contractor that all of its contracts with sub-subcontractors and/or suppliers do or will include a provision that authorizes the foregoing right and obligation of assignment. Subcontractor agrees to indemnify and hold Contractor harmless and defend it against any and all claims and liabilities incurred by reason of the Subcontractor's breach of any term, condition, obligation or agreement under the assigned contracts.

10.5 The remedies provided Contractor in this Article 10 and in any part of the Prime Contract shall be cumulative, and not exclusive, of all other remedies which Contractor may have for breach of this Agreement by Subcontractor, or as a result of Subcontractor's failure to perform any of the requirements of this Agreement. In the event of a default termination, all losses, and expenses, including attorneys' fees, incurred in the prosecution or defense of any action, arbitration or suit, trial or appeal, enforcement of any judgment, bankruptcy or insolvency proceeding, or any subsequent proceeding or appeal from any order or judgment entered therein, incurred by or resulting to Contractor on the above account, shall be borne by and charged against Subcontractor and shall be damages for breach of this Agreement. Contractor may recover same from the Subcontractor's surety, and both Subcontractor and its surety agree to pay Contractor for such losses, damages, expenses and attorneys' fees. At Contractor's sole discretion and exclusive option, proceeds that are payable, or due to become payable under this Agreement, or any other agreements between Subcontractor and Contractor, may be withheld by Contractor and applied against said losses, costs or expenses.

ARTICLE 11 - Claims and Disputes

11.1 Any claim for which the Contractor is directly responsible ("Contractor Related Claim"), shall be made by Subcontractor in writing to Contractor within five (5) business days of the occurrence of the event giving rise to the claim. Contractor shall issue a decision on any Contractor Related Claim in writing and furnish a copy thereof to Subcontractor. The decision of Contractor shall be final and conclusive, unless within forty-eight (48) hours from the date of receipt of such decision, Subcontractor issues written notice to Contractor contesting same. If Subcontractor does not contest Contractor's final decision within the time period noted above, Subcontractor shall be deemed to have waived any right to contest that decision.

11.2 Any claim by Subcontractor that may affect or become part of a claim for which the Owner or another person or entity besides Contractor may be responsible ("Owner or Third Party Related Claim") shall be made by Subcontractor in sufficient time and in such manner so as to permit Contractor to satisfy the Contractor's requirements for making an Owner or Third Party Related Claim against the Owner or any third party in question. Subcontractor shall pursue all Owner or Third Party Related Claims against the Owner or any third party in question through Contractor in accordance with the applicable disputes process. Subcontractor agrees to bear full responsibility and the full cost of pursuing all Owner or Third Party Related Claims. Contractor shall be liable to Subcontractor only to the extent that Contractor actually recovers from the Owner or any third party for each Owner or Third Party Related Claim, less Contractor's costs associated with the Owner or Third Party Related Claim.

11.3 Any other dispute between Contractor or Subcontractor arising out of or relating to this Contract besides an Owner or Third Party Related Claim ("Other Dispute"), shall be decided by litigation unless Contractor shall advise Subcontractor within 30 days of receiving or giving notice of the Other Dispute, that Contractor elects to have the Other Dispute decided or resolved by arbitration. In the event Contractor elects to have the Other Dispute resolved by binding

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arbitration, Subcontractor shall be bound by Contractor's decision. Any such arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules issued by the American Arbitration Association then in effect. Any such arbitration shall be held in Metro, Georgia, and judgment upon the award may be entered by any court having jurisdiction.

11.4 In connection with any such arbitration proceeding, Subcontractor agrees to afford Contractor liberal and informal discovery consistent with the discovery provisions of the Georgia Civil Practice Act, O.C.G.A. § 9-11-1 et seq., including the production of all documents related to the dispute and the availability for deposition at reasonable times of all persons under its control who have knowledge of facts pertaining to the matter in dispute.

11.5 To the extent Contractor does not select arbitration for the resolution of any Other Dispute, Contractor and Subcontractor each hereby agree that the United States District Court for the Northern District of Georgia, or, at the option of Contractor, the Superior Court of Coweta County, Georgia, shall have exclusive jurisdiction to hear and determine any Other Dispute. Subcontractor expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced in such courts and pertaining to any Other Dispute.

11.6 Any claim, dispute or other matter in question between Contractor and Subcontractor relating to this Agreement, or the Work shall be governed by the laws of the State of Georgia without regard to conflicts, or choice, of laws.

11.7 In the event Contractor is involved in any dispute resolution proceeding, including litigation, arbitration or administrative procedures, and that proceeding involves the Work, involves questions of law or fact common to the Work, or if complete relief cannot be afforded without Subcontractor's presence in that dispute resolution proceeding, Subcontractor hereby consents to consolidation or joinder in that proceeding.

11.8 Subcontractor shall carry on the Work and comply with its performance and scheduling obligations under this Agreement despite the existence of any dispute or legal proceedings unless otherwise agreed in writing by the parties hereto.

ARTICLE 12 - Regulatory Compliance

12.1 Subcontractor shall comply with all applicable laws, codes, regulations, orders and ordinances that apply to the Work and the Project, all in accordance with the Prime Contract. Subcontractor shall give all required notices and shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

12.2 Subcontractor shall take all reasonable safety precautions necessary with respect to the performance of the Work and shall comply with all safety measures and drug policies initiated by Contractor including OSHA and with all applicable laws, ordinances, rules, regulations and orders of public authorities pertaining to the safety of persons or property, all in accordance with the requirements of the Prime Contract.

12.3 Subcontractor shall comply with the requirements of all governmental authorities having jurisdiction over the Work.

12.4 Subcontractor shall comply with all applicable Social Security, Unemployment Compensation and Employer's or Worker's Compensation Acts.

12.5 If Subcontractor violates any of the above, Subcontractor shall bear all costs resulting from such violation and shall defend, indemnify and hold Contractor harmless from any damages (including attorneys' fees), claims, and causes of action arising from such violation.

ARTICLE 13 - Indemnity, Insurance and Bonding

13.1 Prior to commencing the Work, Subcontractor shall secure and pay for insurance of the type and limits set forth below and as required by the Prime Contract from an insurer, and in a form, acceptable to Contractor. The insurer shall be licensed to transact business in the location of the Project.

- a Worker's Compensation with statutory limits but not less than \$500,000;
- b Employer's Liability with limits of \$500,000 per occurrence;
- c Comprehensive General Liability (occurrence form) with minimum limits of \$2,000,000.
- d Comprehensive Automobile Liability Insurance with minimum limits of \$1,000,000.00 combined single limit with coverage for all owned, non-owned and hired automobiles
- e Excess Liability Insurance on a following form basis in limits not less than \$2,000,000

All liability insurance coverage shall include Contractor and Owner as an additional insured and shall provide coverage for Contractor and Owner on a primary basis. All coverage shall include a waiver of the underwriter's rights of subrogation against Contractor and Owner. Subcontractor shall be solely responsible for any deductible or self-insurance retentions. Prior to commencement of operations, Subcontractor shall provide to Contractor and Owner certificates of insurance evidencing the required coverage and providing Contractor and Owner with thirty (30) days notice prior to cancellation of any coverage. In the event Subcontractor fails to obtain or maintain any insurance coverage required by this Agreement, or the Prime Contract, Contractor may at its option (i) terminate Subcontractor; or (ii) purchase such coverage and charge the expense thereof to Subcontractor.

13.2 Subcontractor assumes full liability for any and all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and property arising out of or in any way connected with the Work and shall to the fullest extent permitted by law defend, indemnify and hold harmless Owner and Contractor, their respective officers, agents, employees and indemnities, from and against any and all claims, demands, losses, suits, damages and liabilities, legal or otherwise, arising out of or in any way connected with the Work, including, to the fullest extent permitted by law, irrespective of the negligence of any indemnitee hereunder provided that such negligence is not the sole proximate cause of such claim, demand, loss, suit, damage or liability. Subcontractor agrees that \$1,000 of the Subcontract Amount is consideration for Subcontractor agreeing to this indemnification. For purposes of fulfilling its duties to defend, indemnify and hold harmless the Contractor, Subcontractor waives the immunities, rights, or defenses that may be available under applicable Workers Compensation Laws. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due Subcontractor, or which thereafter becomes due, shall be held by Contractor to cover such claim or demand including all reasonable attorneys' fees.

13.3 Subcontractor may be required to provide performance and payment bonds each with a penal amount equal to 100% of the Subcontract Amount. The premium for these bonds shall be paid by Contractor to bonding company upon receipt of bond and invoice from the bonding company up to 1.5% of contracts. Any excess over 1.5% shall be deducted from subcontractors funds. All bonds issued pursuant to this Paragraph 13.3 shall be issued by a surety, and in a form, acceptable to Contractor and by a surety licensed to transact business in the location of the Project. All bonding companies shall be rated as Triple A by U.S. Treasury Department's list of approved sureties.

ARTICLE 14 - Warranties and Guarantees

14.1 Subcontractor warrants that its Work shall be: (1) fit for the purposes intended; (2) free from defects in material and workmanship; (3) comply with the Prime Contract and all applicable codes and industry standards; (4) be free and clear of all claims, encumbrances and liens.

14.2 Subcontractor agrees to promptly make good, without cost to Contractor or Owner, any and all defects due to its failure to meet such warranties which may appear within the guarantee or warranty period(s) established in the Prime Contract, and if no such period(s) be stipulated in the Prime Contract, then such guarantee shall be for a period of one (1) year from the date of completion and acceptance of the Project by Owner. Subcontractor further agrees to execute any special guarantees as provided by the Prime Contract or required by law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

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14.3 Subcontractor shall pay for all changes to the Work or the Project resulting from defects in workmanship or materials, as well as all expenses necessary to replace or repair either the Work or the Project, including any damages caused by the replacements or repairs. Subcontractor shall further be obligated to pay for, and shall reimburse Contractor for, all costs associated with the impact of its defective workmanship or materials. This obligation is in addition to all other guarantees, warranties and rights contained in the Prime Contract.

ARTICLE 15 - Encumbrances

15.1 Subcontractor shall turn the Work over to Contractor in good condition and free and clear of all claims, encumbrances, or other liens and shall defend, indemnify and hold harmless Contractor and Owner from all claims, encumbrances or liens arising out of the performance of the Work. Subcontractor shall at its own cost and expense (including attorneys' fees), defend all suits to establish such claims, and pay any such claims or liens so established if Subcontractor fails to comply with this requirement, Contractor may bond off any liens and all costs of such action shall be paid by Subcontractor.

15.2 If a subcontractor or supplier to Subcontractor shall file a lien against the Project, Subcontractor shall bond off the lien within ten (10) days of its receipt of a demand to do so by Contractor. Subcontractor's failure to do so shall constitute an event of default under Paragraph 10.2.

15.3 Subcontractor shall as often as requested by Owner or by Contractor, furnish a sworn statement identifying all parties in Subcontractor's chain of privity who have furnished, or who are furnishing, labor or materials for the Work with their names and addresses and amounts due, or to become due, each of them.

15.4 Subcontractor shall furnish Contractor, if requested, evidence of the payment of all bills, expenses or liabilities incurred by Subcontractor for labor, services, equipment and materials used by Subcontractor in the performance of the Work. If requested by Contractor, Subcontractor shall also furnish written releases, in a form acceptable to Contractor, from all persons, firms, or corporations that have furnished to Subcontractor any labor, services, equipment and materials whether on or for the Project, and written releases of lien, in a form acceptable to Contractor, from all persons, firms and corporations that may have in any way had any dealings or agreements in connection with the Work.

ARTICLE 16 - Coordination

16.1 Subcontractor acknowledges its obligation under this Agreement to coordinate and review the Work with materials and/or equipment to be furnished by others to ensure completed compatible systems. Accordingly, Subcontractor shall review all submittals, fabrication and shop drawings and all product data referring to items requiring integration and compatibility with the Work.

16.2 Subcontractor shall review the surfaces provided by others to which the Work is to be applied, and shall notify Contractor of any known defect or condition detrimental to proper procedures, prior to the commencement of the Work; otherwise, Subcontractor agrees to accept the condition of such surfaces and shall be liable for all consequences resulting therefrom.

16.3 Subcontractor shall cooperate with Contractor, other subcontractors and Owner's forces to the extent their work might interfere with the Work and Subcontractor shall prepare coordinated drawings in areas of congestion if necessary for the timely and proper completion of the Project. Subcontractor shall also advise Contractor of any potential conflicts between the Work and the work of Contractor, other subcontractors or Owner's forces.

16.4 Subcontractor shall take all necessary precautions to protect, and shall be liable for any damage, to adjacent surfaces caused by the Work, including damages resulting from Subcontractor's cleaning of such surfaces.

16.5 If Subcontractor performs the Work on or adjacent to work provided by others that Subcontractor knows, or should know, is defective or is in violation of any laws, codes, regulations, orders and ordinances that apply to the Work, Subcontractor shall be fully responsible and shall indemnify Contractor for all damages caused thereby, including the costs to remove and replace the Work and any work of other subcontractors, Contractor, or Owner's forces affected thereby.

16.6 Subcontractor shall provide and be responsible for all layouts, including the accuracy thereof, necessary for the performance of the Work.

16.7 Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting, and sealing of the Work that may be required to fit it to, receive, or be received by the work of others as shown, or reasonably implied by, the Prime Contract, or as required, or reasonably implied by the rules and regulations, codes, and requirements of any regulatory or governmental agency having jurisdiction over the Project; or as required or reasonably implied to achieve consistency and compatibility with the design elements being penetrated.

ARTICLE 17 - Miscellaneous

17.1 Subcontractor shall provide, maintain and remove from the Project site upon completion of the Work, all temporary offices, structures for the use of its employees, sheds and storage facilities complete with all related utilities, gas, telephone and water. Storage areas for the use of Subcontractor shall be designated by Contractor, and no materials or equipment shall be stored by Subcontractor except in areas approved by Contractor. Such storage areas shall be maintained in an orderly condition by Subcontractor.

17.2 Except as may be otherwise provided in the Prime Contract, Subcontractor shall pay Contractor the reasonable value of any of Contractor's equipment used by Subcontractor in performing the Work.

17.3 Subcontractor represents that it has investigated, examined, inspected and thoroughly familiarized itself with the Prime Contract, surface and subsurface conditions and the location where the Work is to be performed, and that it has thoroughly informed itself as to any difficulties in connection therewith. Subcontractor further warrants that Contractor has made no representation of any kind or nature with reference thereto and not contained in this Agreement. By entering this Agreement with Contractor, Subcontractor further warrants and represents that it has taken into account all surface, subsurface and climatic conditions, the availability and costs of labor and materials, tools and equipment, Owner's and Contractor's scheduling requirements, and potential Project congestion caused by the work of others proceeding simultaneously with Subcontractor.

17.4 The scope of the Work includes an obligation to completely clean the Work and remove all contributing debris from the Project site and to locations designated by Contractor as often as necessary. If Subcontractor fails, within twenty-four (24) hours of receipt of written notice, to correct a failure to properly clean-up and dispose of all trash and waste materials created by Subcontractor, Contractor shall have the right to terminate in accordance with Paragraph 11.2 or perform such clean-up for Subcontractor; and Subcontractor hereby agrees to indemnify and to pay Contractor all costs incurred by Contractor in performing the clean-up work. Clean-up of the Work and the daily removal of debris from the areas of the Work is mandatory. Each day, all trash and debris shall be removed from the Project. Fire exits, corridor ladderways, doorways and exit paths in general shall be clear of debris and open to pedestrian and wheelchair traffic at all times, specifically including nights and weekends.

17.5 Subcontractor waives all claims and all rights of subrogation against Contractor and Owner for loss of, or damage to, the Work, tools, machinery, equipment, material or supplies.

17.6 Where testing agency standards are referenced in the Prime Contract, all materials shall be tested and certified by an approved, independent testing firm acceptable to Contractor. *N/A*

17.7 If Subcontractor seeks to contract with a sub-subcontractor or supplier for any portion of the Work, prior written approval of Contractor must be obtained. All such contracts with sub-subcontractors and suppliers shall be pursuant to a contract that is assignable to Contractor in the event of Subcontractor's termination and specifically binds the sub-subcontractor or supplier to the terms of this Agreement.

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Date: 2/1/2017

17.8 Subcontractor agrees that payments due from Contractor for the Work are not assignable and that no part of this Agreement or the Work hereunder, can be assigned, except by and with the written consent of Contractor. ~~Contractor shall have the unconditional right to assign this Agreement, any party thereof, or any payments due hereunder.~~

17.9 Title to all materials supplied by Subcontractor shall pass to Contractor upon payment for the materials or upon delivery to the Project, whichever occurs first.

17.10 The headings provided in this Agreement are for ease of reference only. The headings form no part of the Agreement between this parties and shall be given no weight in the interpretation or construction of this Agreement.

17.11 If any provision of this Agreement is determined by a court to be unenforceable, such a determination shall not affect the validity and enforceability of any other section or part hereof.

17.12 The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of this Agreement or the Prime Contract shall not be construed to be and shall not be a waiver of any such provision or provisions and Contractor shall thereafter be entitled to enforce each and every such provision without any requirement that Contractor provide notification to Subcontractor of its intention to thereafter enforce said provision or provisions.

17.13 If either party employs an attorney to enforce any of the provisions of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs, charges and expenses.

17.14 This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may only be amended or modified in a writing signed by both Subcontractor and Contractor.

IN WITNESS WHEREOF, Contractor and Subcontractor hereby executed this Agreement the day and year first written above.

Garrard Construction Group, Inc.

By: _____

Title: Project Manager

Date: February 13, 2017

Billy's Plumbing Company, LLC

By: _____

Title: OM

Date: 2/1/17

Attachment "A"
Plumbing Scope of Work
Billy's Plumbing Co., LLC
Dave & Buster's - Myrtle Beach, SC Interior
10-6030-

General Scope Items:

1. All City, County, State & Federal laws, rules, regulations and policies shall apply to this project. Subcontractor, by execution of this Subcontract, states that he/she is familiar and compliant with all requirements. Subcontractor is responsible for meeting and maintaining requirements at all times. Subcontractor has reviewed the plans and specifications with knowledge of all governing codes and has included the cost of compliance, even if all of said governing code requirements have not been incorporated into the plans and specifications.
2. Subcontractor, by execution of this Subcontract, states that he/she has visited the job-site, has become familiar with the existing conditions under which the work will be performed, and has correlated those observations with the requirements of this agreement. **Not responsible for existing U/G work of Carolina Pool.*
3. A copy of the Project Schedule is attached and made a part of this Subcontract. All agreed updates and revisions to the schedule will also be made a part of this Subcontract. Subcontractor shall provide such manpower, supervision, materials, facilities, equipment and shall work such hours (nights, weekends, overtime) as required to complete the work within the scheduled durations.
4. Subcontractor shall maintain and monitor an email account for the duration of the project. This account shall be checked a minimum of twice daily during the standard work week.
5. All submittals required by this scope of work must be transmitted to the Contractor within three (3) business days of execution of this Agreement.
6. All closeout documents required, including but not limited to, waivers, warranties, as-builts, O&M manuals, etc., will be transmitted to Contractor no later than 15 days after substantial completion of Subcontractor's scope of work.
7. Subcontractor will be responsible for completing and submitting a daily report to Contractor's Superintendent on a daily basis.
8. Mandatory safety meetings will be held as scheduled by the Superintendent. Attendance is mandatory by all persons performing work onsite. Abide by all current OSHA requirements and GCG Safety Policies at all times. Ensure all MSDS and Hazardous Material Data is on-file with the Superintendent. Subcontractor shall provide an OSHA 10 Hour Certified Employee (Competent Person) to the project at all times during this scope of work. The Competent Person must be provided with a cell phone as a means of emergency communications. The Superintendent shall provide one (1) ^{written} ~~verbal~~ warning to Subcontractor if not adequately performing this contract requirement. After this warning, each safety violation will be assessed and back-charged at ~~\$500 per occurrence.~~

Initials: *JS*
GCG/Subcontractor

JS

Defendant 000441

9. Hard hats, long pants and work boots must be worn at all times, regardless of the work being performed. No exceptions will be made for anyone. Any person not complying with this policy will be instructed to leave the Project.
10. Mandatory Subcontractor Scheduling meetings will be held as scheduled by the Contractor. Attendance by an authorized representative of the Subcontractor is required when Subcontractor is working onsite and as requested by the Contractor.
11. Any temporary lighting, beyond the safety lighting required to be provided by the Electrical Subcontractor, will be provided by the Subcontractor. The Subcontractor will also be responsible for any additional temporary lighting required to meet project schedule requirements.
12. Subcontractor is responsible for the clean-up of all trash/debris associated with this scope of work. The debris/trash shall be placed in a dumpster provided by GCG. The Superintendent shall provide one (1) ^{Written} ~~verbal~~ warning to Subcontractor if not adequately performing this contract requirement. After this warning, Contractor shall provide clean-up services and deduct the cost from funds due or that may become due to Subcontractor. ~~* Amount charged per hour; to be disclosed in~~ ^{written warning.}
13. Provide all joint sealants, caulking, fire caulking, filler metals, etc. as required for this scope of work.
14. Store and protect the work of this Subcontract during and after installation, until project substantial completion, to prevent damage.
15. It is understood and agreed that the work of this Subcontract may not be performed in a continuous operation and Subcontractor includes the cost of multiple mobilizations, including travel time & expenses. Subcontractor shall respond to punch and warranty items within 24 hours, regardless of travel time.
16. Protect all existing items designated to remain from work of this contract; including but not limited to: structures, light poles, sidewalks, curbs, paving, vegetation, finished products, etc.
17. Subcontractor will not use and will not allow "1099 Labor" practices. Only valid Subcontractors and lower-tiered Subcontractors (as defined as independent contractors by the IRS) will be paid via 1099. All laborers are to be employees of the entity engaging them and their wages are to be reported to the IRS via W-2 forms.
18. ORIGINAL PAY APPLICATIONS FOR THE WORK PERFORMED ARE DUE BY THE 20th OF THE MONTH FOR THE MONTH BEING BILLED. THE PAY APPLICATION SHOULD COVER THE WORK PERFORMED THROUGH THE 25th.
19. Pay Applications shall include a list of all vendors and/or sub-subcontractors, with corresponding contact information, which performed work or provided materials to the Project during the Pay Application period. ~~All vendors and sub-subcontractors shall produce current project accounting statements for the Project to be attached to Subcontractor's Pay Application. Subcontractor's monthly Pay Application shall not be approved without this back-up. Materialman/Supplier Lien Waivers shall be provided for all vendors and/or sub-subcontractors before payments are made. If General Contractor chooses not to bond Subcontractor, General Contractor reserves the right to "joint check" Subcontractor's vendors and sub-subcontractors.~~
20. No change orders are to be submitted unless all cost associated with the change are broken down by unit cost, labor hours and cost material cost, equipment cost,

Initials:
GCG/Subcontractor

Def@detrtsl 000442

overhead & profit, etc. such that it can be properly evaluated. Change Orders shall be issued by GCG and fully executed before being included on Pay Applications. Failure to comply with this requirement will cause delay in payment.

21. Ensure quality in all work placed. Perform all punch work necessary to meet the approval of the Owner, Design Team & Contractor.

Specific Scope Items:

22. This Agreement is "turn-key" and includes all costs associated with labor, fasteners, accessories, equipment, materials, material stocking & material conveyance. Provide traffic control and lane closures if required for material deliveries or installations.
23. Provide a full-time Foreman, dedicated only to this project, during the work of this agreement. This Foreman shall be qualified, English speaking and OSHA 10 certified.
24. Secure all necessary plumbing permits as required for this work.
25. Provide a temporary water connection to the jobsite. Furnish and install a hose bib on the water service for temporary site water.
26. Provide all required layout for proper installation of this scope of work from the building corners established by others.
27. Furnish and install a complete plumbing system as indicated in the construction documents and required by governing codes. This work includes, but is not limited to; water piping, vent piping, sewer piping, grease waste piping, pipe insulation, PRV station, gas water heater(s), hose bibs, wall hydrants, floor drains, hub drains, floor sinks, mop sink, trench drains, clean-outs, lavatories, kitchen sinks, ice maker connections, urinals and water closets. Furnish and install all fixtures per the fixture schedule shown to be supplied by contractor.
28. **NOTE: It is understood that the under slab rough in that remains is being completed on a time and material basis under another agreement.** Under-slab grease waste and standard waste line to be installed according to sizes reflected on the contract drawings and to be piping material type and schedule thickness as referenced in the project drawings and specifications. All floor drains, floor sinks, floor cleanouts shall be cast iron bodies as specified in the contract documents. Excavate, bed, backfill and compact all required trenches necessary to complete this scope of work. **not responsible for existing Carolina Cool work.*
29. All floor drains shown on drawings shall be equipped with a trap primer connected to the cold water supply.
30. Plumbing subcontractor is to supply and install the beverage line raceway / conduit with long sweep 90's as reflected on the contract drawings from C02 tank location to the exterior wall location of C02 line termination. Includes penetration of exterior wall at termination point.
31. Supply and install a complete domestic water riser system including, but not limited to the PRV, BFP, gauges, valves, strainers, etc. Plumbing subcontractor is to provide BFP testing and approvals upon completion of the installation.
32. Above grade waste and vent lines to be installed according to sizes reflected on the contract drawings and is understood that all waste and vent piping above the slab shall be type and sizes based on the contract drawings. (Based on RFI Response from the engineer, all above slab DWV piping shall be PVC. All drain lines are to be

Initials:
GCG/Subcontractor

Defendant 000443

trapped, supply all indirect waste line with a trap and an air gap at the floor receptacle. All indirect waste lines at kitchen equipment are to be copper as scheduled on the contract drawings and specifications.

33. All above slab water lines and hot water recirculation lines to be installed according to sizes reflected on the contract drawings and to be Type "L" Copper.
34. Plumbing subcontractor to supply and install hammer arrestors and pressure reducing valves in line before all solenoid valves as shown on the contract drawings. i.e. Dish Machine, Disposer, Ice Maker, Steamer, Etc.
35. All overhead hot water lines and hot water circulation lines are to be insulated 100% from the water heater location(s) to the termination point at each piece of equipment.
36. Plumbing Contractor to make final connections to all food service equipment and coordinate connections with food service equipment vendor. Includes all plumbing connections, gas connections, water supplies, gas supplies, water valves, gas valves, stops and fittings for a complete installation. (Kitchen equipment is supplied by owner's Kitchen Equipment Supplier).
37. Furnish and install a complete hot water heater system in quantities and sizes shown on the contract drawings. This work shall include all expansion tanks, gauges, recirculation pumps and concentric vents through the roof.
38. Furnish and install any above slab soda chases and beer chases as shown on the contract drawings and / or the kitchen equipment drawings. **NOTE: All under slab beer / soda chases are existing and were installed by others.**
39. Furnish, install and connect all black iron grease recovery lines from the fryer locations to the grease recovery tank location Grease recovery quick connects supplied by others. **piping only; tank and specialty parts by others*
40. Furnish and install a complete interior / under deck natural gas piping system as indicated in the construction documents and required by governing codes. This work includes, but is not limited to:
 - a. Connection to meter banks. (meter by others)
 - b. All Connections to owner provided kitchen equipment.
 - c. Hot water heater connections.
 - d. Automatic shut off valve interlocked to ansul hood fire suppression system. (Ansul Valve provided by others)
 - e. All interior HVAC and Kitchen equipment.
 - f. Furnish and install all required valves, appliance regulators, vents and accessories.
41. ~~Installation of a complete compressed air system, piping shall be sized and type as shown on the contract drawings with origin and terminations as shown. N/A~~
42. Layout all systems to avoid conflict with the HVAC system, the electrical system, security system, etc. Denote discrepancies prior to commencement of work.
43. Ensure all piping, hanger mounting, and insulation is installed per the listed schedules in the contract documents. Install proper unions where dissimilar pipe is connected.
44. Ensure proper sleeves are provided in thru-wall penetrations. Properly stencil and label all piping and equipment.
45. Flush, test and certify all systems upon completion and ensure systems are functioning properly before demobilization.

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GCG/Subcontractor

 DL
Defendant 000444

46. Prior to mobilization, this subcontractor is to provide the GC's office or field superintendent with MSDS documentation for all materials used by this subcontractor as well as a site specific safety plan for this project.
47. Provide equipment operator's certificates as required by OSHA.
48. A performance and a payment bond each in the amount of 100% of the Subcontract Amount shall be furnished by this Subcontractor. The cost of these bonds is to be paid by Subcontractor and is included in the Subcontract Amount at the bond rate given to the GC at the onsite meeting, 1.5%.

Total Subcontract: \$350,197.33

Initials:
GCG/Subcontractor

Defendant 000445

Date 1/31/2017
Contractor Billy's Plumbing
Contact Scott Gasque 843-241-4988
Project # 10 10 6030

Provide labor, materials, equipment, tools, supplies and supervision for a complete Plumbing & Gas System

[illegible]

GCG Subcontractor
Initials

APPLICATION FOR PAYMENT BREAKDOWN SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT,
Containing SubContractor's signed Certification, is attached.
In tabulations below, amounts are stated to the nearest dollar.

Application #: _____
Date: _____
Period To: _____
Project # 10 10 6030
SUBC # 10-6030-

A ITEM NO.	B DESCRIPTION OF WORK	QTY	UNIT	COST	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - D)	I RETAINAGE (IF VARIABLE RATE)
						FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G divided by C)		
15-400-S	Above Slab DWV Rough In	1	LS	\$60,700.00								
15-400-S	Above Slab Waterr Rough In	1	LS	\$75,500.00								
15-400-S	Insulation	1	LS	\$38,000.00								
15-400-S	Plumbing Fixtures	1	LS	\$132,022.00								
15-400-S	Trim Labor	1	LS	\$24,000.00								
15-400-S	Equipment Connections	1	LS	\$2,000.00								
15-400-S	Gas Piping	1	LS	\$12,800.00								
17-020-O	Performance & Payment Bond	1	LS	\$5,175.33								
	CHANGE ORDERS:											
	TOTALS FOR EACH COLUMN:			\$350,197.33								

293

Defendant 000447

ATTACHMENT "B"
THE SCHEDULE
DAVE & BUSTER'S MYRTLE BEACH, SC

ID	Task Name	Duration	Start	Finish
1	Dave & Buster's Myrtle Beach SC - Shell & Buildout Combined	165 days	Mon 10/10/16	Wed 5/24/17
2	MOBILIZATION	2 days	Mon 10/10/16	Tue 10/11/16
3	INSTALL FENCING	2 days	Wed 10/12/16	Thu 10/13/16
4	EROSION CONTROL	2 days	Wed 10/12/16	Thu 10/13/16
5	SITE DEMOLITION	15 days	Fri 10/14/16	Thu 11/3/16
6	SITE STORM SYSTEM	3 days	Wed 3/1/17	Fri 3/3/17
7	SITE SEWER SYSTEM	6 days	Wed 3/1/17	Wed 3/8/17
8	UNDERGROUND WATER SYSTEM - Domestic to Building	2 days	Wed 3/1/17	Thu 3/2/17
9	SITE GRADING	2 days	Fri 11/4/16	Mon 11/7/16
10	STAKE PILE LOCATION	2 days	Tue 11/8/16	Wed 11/9/16
11	INSTALL PILES	12 days	Thu 11/10/16	Fri 11/25/16
12	FOOTING EXCAVATION/POUR	35 days	Thu 11/17/16	Wed 1/4/17
13	CMU INSTALLATION	20 days	Thu 12/15/16	Wed 1/11/17
14	ELECTRICAL UNDERGROUND	17 days	Mon 1/2/17	Tue 1/24/17
15	PLUMBING UNDERGROUND	16 days	Mon 1/2/17	Mon 1/23/17
16	PREP FIRST HALF SLAB	3 days	Sat 1/28/17	Tue 1/31/17
17	POUR FIRST HALF SLAB	1 day	Wed 2/1/17	Wed 2/1/17
18	PREP SECOND HALF SLAB	3 days	Thu 2/9/17	Sat 2/11/17
19	POUR SECOND HALF SLAB	1 day	Mon 2/13/17	Mon 2/13/17
20	STRUCTURAL STEEL DELIVERY	1 day	Mon 1/23/17	Mon 1/23/17
21	STEEL ERECTION	14 days	Tue 1/24/17	Thu 2/9/17
22	SET ROOF CURBS	1 day	Thu 2/2/17	Thu 2/2/17
23	BRICK VENEER	30 days	Thu 1/12/17	Mon 2/20/17
24	SINGLE PLY ROOFING	9 days	Fri 2/10/17	Tue 2/21/17
25	BUILDING DRIED IN	1 day	Wed 2/22/17	Wed 2/22/17
26	CORNICE INSTALLATION	14 days	Tue 2/21/17	Fri 3/10/17
27	METAL STUD FRAME INTERIOR	25 days	Wed 2/8/17	Mon 3/13/17
28	FIRE SPRINKLER ROUGH IN	17 days	Fri 2/10/17	Fri 3/3/17
29	HOOD DELIVERY	1 day	Tue 2/14/17	Tue 2/14/17
30	HANG HOODS	2 days	Wed 2/15/17	Thu 2/16/17
31	WALK-IN COOLER DELIVERY	1 day	Fri 2/17/17	Fri 2/17/17
32	INSTALL WALK-IN COOLERS	2 days	Mon 2/20/17	Tue 2/21/17
33	ROUGH IN WALLS ELEC/ PLUMB	14 days	Sat 2/11/17	Wed 3/1/17
34	STOREFRONT INSTALLATION	11 days	Wed 2/1/17	Tue 2/14/17
35	HVAC UNIT INSTALLATION	1 day	Wed 2/22/17	Wed 2/22/17
36	DRYWALL INSTALLATION	20 days	Thu 2/23/17	Wed 3/22/17
37	HVAC ROUGH IN	12 days	Fri 2/17/17	Mon 3/6/17
38	DELIVER/INSTALL WALK INS	4 days	Wed 2/22/17	Mon 2/27/17
39	CEILING ROUGH IN - ELECTRIC	17 days	Thu 3/2/17	Fri 3/24/17
40	SIDEWALK INSTALLATION	3 days	Mon 2/27/17	Wed 3/1/17
41	INSTALL MAIN SWITCHGEAR - SHELL	4 days	Wed 2/22/17	Mon 2/27/17
42	FRP INSTALLATION	6 days	Wed 3/8/17	Wed 3/15/17
43	STOREFRONT GLAZING	8 days	Wed 2/15/17	Fri 2/24/17
44	PAINT CEILINGS	3 days	Tue 3/7/17	Thu 3/9/17
45	CERAMIC TILE INSTALLATION	18 days	Thu 3/23/17	Mon 4/17/17
46	POWER TO HVAC UNITS	1 day	Fri 3/10/17	Fri 3/10/17
47	PAINT WALLS	12 days	Thu 3/16/17	Fri 3/31/17
48	BAR LOW WALL INSTALLATION	2 days	Fri 3/10/17	Mon 3/13/17
49	EPOXY FLOOR INSTALLATION	6 days	Tue 3/14/17	Tue 3/21/17
50	ACOUSTIC PANEL INSTALLATION	7 days	Mon 4/3/17	Tue 4/11/17

Page 1

Defendants 000448

ATTACHMENT "B"
THE SCHEDULE
DAVE & BUSTER'S MYRTLE BEACH, SC

ID	Task Name	Duration	Start	Finish	PI
1	Dave & Buster's Myrtle Beach SC - Shell & Buildout Combined	165 days	Mon 10/10/16	Wed 5/24/17	
2	MOBILIZATION	2 days	Mon 10/10/16	Tue 10/11/16	
3	INSTALL FENCING	2 days	Wed 10/12/16	Thu 10/13/16	2
4	EROSION CONTROL	2 days	Wed 10/12/16	Thu 10/13/16	2
5	SITE DEMOLITION	15 days	Fri 10/14/16	Thu 11/3/16	4
6	SITE STORM SYSTEM	3 days	Wed 3/1/17	Fri 3/3/17	
7	SITE SEWER SYSTEM	6 days	Wed 3/1/17	Wed 3/8/17	
8	UNDERGROUND WATER SYSTEM - Domestic to Building	2 days	Wed 3/1/17	Thu 3/2/17	
9	SITE GRADING	2 days	Fri 11/4/16	Mon 11/7/16	5
10	STAKE PILE LOCATION	2 days	Tue 11/8/16	Wed 11/9/16	9
11	INSTALL PILES	12 days	Thu 11/10/16	Fri 11/25/16	1
12	FOOTING EXCAVATION/POUR	35 days	Thu 11/17/16	Wed 1/4/17	1
13	CMU INSTALLATION	20 days	Thu 12/15/16	Wed 1/11/17	1
14	ELECTRICAL UNDERGROUND	17 days	Mon 1/2/17	Tue 1/24/17	
15	PLUMBING UNDERGROUND	16 days	Mon 1/2/17	Mon 1/23/17	
16	PREP FIRST HALF SLAB	3 days	Sat 1/28/17	Tue 1/31/17	2
17	POUR FIRST HALF SLAB	1 day	Wed 2/1/17	Wed 2/1/17	1
18	PREP SECOND HALF SLAB	3 days	Thu 2/9/17	Sat 2/11/17	2
19	POUR SECOND HALF SLAB	1 day	Mon 2/13/17	Mon 2/13/17	1
20	STRUCTURAL STEEL DELIVERY	1 day	Mon 1/23/17	Mon 1/23/17	
21	STEEL ERECTION	14 days	Tue 1/24/17	Thu 2/9/17	2
22	SET ROOF CURBS	1 day	Thu 2/2/17	Thu 2/2/17	2
23	BRICK VENEER	30 days	Thu 1/12/17	Mon 2/20/17	1
24	SINGLE PLY ROOFING	9 days	Fri 2/10/17	Tue 2/21/17	2
25	BUILDING DRIED IN	1 day	Wed 2/22/17	Wed 2/22/17	2
26	CORNICE INSTALLATION	14 days	Tue 2/21/17	Fri 3/10/17	2
27	METAL STUD FRAME INTERIOR	25 days	Wed 2/8/17	Mon 3/13/17	1
28	FIRE SPRINKLER ROUGH IN	17 days	Fri 2/10/17	Fri 3/3/17	2
29	HOOD DELIVERY	1 day	Tue 2/14/17	Tue 2/14/17	2
30	HANG HOODS	2 days	Wed 2/15/17	Thu 2/16/17	2
31	WALK-IN COOLER DELIVERY	1 day	Fri 2/17/17	Fri 2/17/17	3
32	INSTALL WALK-IN COOLERS	2 days	Mon 2/20/17	Tue 2/21/17	3
33	ROUGH IN WALLS ELEC/ PLUMB	14 days	Sat 2/11/17	Wed 3/1/17	2
34	STOREFRONT INSTALLATION	11 days	Wed 2/1/17	Tue 2/14/17	2
35	HVAC UNIT INSTALLATION	1 day	Wed 2/22/17	Wed 2/22/17	2
36	DRYWALL INSTALLATION	20 days	Thu 2/23/17	Wed 3/22/17	2
37	HVAC ROUGH IN	12 days	Fri 2/17/17	Mon 3/6/17	3
38	DELIVER/INSTALL WALK INS	4 days	Wed 2/22/17	Mon 2/27/17	3
39	CEILING ROUGH IN - ELECTRIC	17 days	Thu 3/2/17	Fri 3/24/17	3
40	SIDEWALK INSTALLATION	3 days	Mon 2/27/17	Wed 3/1/17	4
41	INSTALL MAIN SWITCHGEAR - SHELL	4 days	Wed 2/22/17	Mon 2/27/17	2
42	FRP INSTALLATION	6 days	Wed 3/8/17	Wed 3/15/17	3
43	STOREFRONT GLAZING	8 days	Wed 2/15/17	Fri 2/24/17	3
44	PAINT CEILINGS	3 days	Tue 3/7/17	Thu 3/9/17	3
45	CERAMIC TILE INSTALLATION	18 days	Thu 3/23/17	Mon 4/17/17	3
46	POWER TO HVAC UNITS	1 day	Fri 3/10/17	Fri 3/10/17	4
47	PAINT WALLS	12 days	Thu 3/16/17	Fri 3/31/17	3
48	BAR LOW WALL INSTALLATION	2 days	Fri 3/10/17	Mon 3/13/17	4
49	EPOXY FLOOR INSTALLATION	6 days	Tue 3/14/17	Tue 3/21/17	4
50	ACOUSTIC PANEL INSTALLATION	7 days	Mon 4/3/17	Tue 4/11/17	4

Page 1

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Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC
INTERIOR

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
T1.1	TITLE SHEET	6/24/2016	9/14/2016	9/30/2016
AB1.1	ACCESSIBILITY DETAILS & ABBREVIATION	6/24/2016		
SP1.1	ARCHITECTURAL SITE PLAN	6/24/2016		
	ARCHITECTURAL			
A0.1	RESPONSIBILITY SCHEDULE	6/24/2016	9/14/2016	9/30/2016
A0.2	EGRESS AND OCCUPANCY PLAN	6/24/2016	9/14/2016	
A1.0A	CURB PLAN - SEGMENT 1	6/24/2016	9/14/2016	
A1.0B	CURB PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A1.1A	FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A1.1B	FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A1.2A	DIMENSION PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A1.2B	DIMENSION PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A2.1A	REFLECTED CEILING PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A2.1B	REFLECTED CEILING PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A2.2	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.3	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.4	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.5	ENLARGED REFLECTED CEILING DEMENSION PLAN	6/24/2016		
A2.6	LIGHT FIXTURE SCHEDULE	6/24/2016	9/14/2016	
A3.1A	ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A3.1B	ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
A3.2	ROOF DETAILS	6/24/2016		9/30/2016
A4.1	EXTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A5.1	INTERIOR SECTION VIEWS	6/24/2016		
A7.1	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	9/30/2016
A7.2	ENLARGED PLANS AND DETAILS	6/24/2016		
A7.3	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	
A7.4	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	
A8.1	ENLARGED TOILET ROOM PLANS	6/24/2016	9/14/2016	
A8.2	TOILET ROOM ELEVATIONS	6/24/2016	9/14/2016	
A8.3	TOILET ROOM DETAILS	6/24/2016	9/14/2016	
A9.1	DOOR AND WINDOW SCHEDULES	6/24/2016	9/14/2016	
A9.2	FINISH SCHEDULE	6/24/2016	9/14/2016	9/30/2016
A10.1	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.2	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.3	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.4	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.5	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.6	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.7	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.8	INTERIOR ELEVATIONS	6/24/2016		
A10.9	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A11.1	WALL TYPES	6/24/2016		
A11.2	BRACING DETAILS	6/24/2016		
A11.3	DOOR AND STOREFRONT DETAILS	6/24/2016		
A11.4	CEILING DETAILS	6/24/2016	9/14/2016	

Subcontractor Initials: _____
Drawing Number: 000450

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
A11.5	CEILING DETAILS	6/24/2016		
A11.6	CEILING DETAILS	6/24/2016	9/14/2016	
A11.7	ENLARGED BAR PLANS AND ELEVATIONS	6/24/2016	9/14/2016	
A11.8	BAR SECTIONS AND DETAILS	6/24/2016		
A11.9	MILLWORK DETAILS	6/24/2016	9/14/2016	
A11.10	BOOTH SECTIONS AND DETAILS	6/24/2016		
A11.11	WALL SECTIONS AND DETAILS	6/24/2016	9/14/2016	
A11.12	P.O.S. MILLWORK DETAILS	6/24/2016	9/14/2016	
A11.13	ENLARGED WINI DETAILS	6/24/2016	9/14/2016	
A11.14	WINI ELEVATIONS	6/24/2016	9/14/2016	
A11.15	WINI DETAILS	6/24/2016	9/14/2016	
A11.16	WINI DETAILS	6/24/2016	9/14/2016	
A11.17	MILLWORK DETAILS	6/24/2016	9/14/2016	
A12.1	WALL & FLOOR FINISH PLAN	6/24/2016	9/14/2016	
A12.2	SEATING PLAN AND FURNITURE LEGEND	6/24/2016	9/14/2016	
A12.3	STORAGE PLANS AND ELEVATIONS	6/24/2016	9/14/2016	
A12.4	FINISH FLOOR DETAILS	6/24/2016		
STRUCTURAL				
S1.0	GENERAL NOTES AND TYPICAL DETAILS	6/24/2016		
S1.1A	SLAB/CURB PLAN 1	6/24/2016		
S1.1B	SLAB/CURB PLAN 2	6/24/2016		
S1.2A	ROOF PLAN 1	6/24/2016		
S1.2B	ROOF PLAN 2	6/24/2016		
S2.1	SECTIONS AND DETAILS	6/24/2016		
FOOD SERVICE EQUIPMENT				
K1	INDEX	6/24/2016		
K2	KITCHEN PLAN	6/24/2016		
K3	NOT USED	6/24/2016		
K4	BAR PLAN & SCHEDULES	6/24/2016		
K5	KITCHEN ELECTRICAL PLAN	6/24/2016		
K6	NOT USED	6/24/2016		
K7	BAR ELECTRICAL PLAN AND SCHEDULES	6/24/2016		9/30/2016
K8	KITCHEN PLUMBING PLAN	6/24/2016		9/30/2016
K9	NOT USED	6/24/2016		
K10	BAR PLUMBING & SCHEDULES	6/24/2016		
K11	KITCHEN GAS PLAN	6/24/2016		
K12	NOT USED	6/24/2016		
K13	KITCHEN CRITICAL PLAN	6/24/2016		
K14	NOT USED	6/24/2016		
K15	BAR CRITICAL PLAN	6/24/2016		
K16	KITCHEN P.O.S. PLAN	6/24/2016		
K17	BAR P.O.S. PLAN & SCHEDULES	6/24/2016		
K18	KITCHEN REFRIGERATION PLAN	6/24/2016		
K19	NOT USED	6/24/2016		
K20	KITCHEN VENTILATION PLAN	6/24/2016		
K21	NOT USED	6/24/2016		
K22	B&S LINES PLAN	6/24/2016		

Subcontractor Initials: 000451

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
K23	KITCHEN ELEVATIONS	6/24/2016		
K24	KITCHEN ELEVATIONS	6/24/2016		
K25	BAR ELEVATIONS	6/24/2016		
K26	KITCHEN ELECTRICAL & P.O.S. ELEVATIONS	6/24/2016		9/30/2016
K27	KITCHEN ELECTRICAL & P.O.S. ELEVATIONS	6/24/2016		
K28	BAR ELECTRICAL P.O.S. ELEVATIONS	6/24/2016		
K29	KITCHEN PLUMBING ELEVATIONS	6/24/2016		
K30	KITCHEN PLUMBING & GAS ELEVATIONS	6/24/2016		
K31	BAR PLUMBING ELEVATIONS	6/24/2016		
K32B	BAR TEMPLATES	6/24/2016		
K33	WALK-INS	6/24/2016		
K34	WALK-INS	6/24/2016		
K35	WALK-INS	6/24/2016		
K36	NOT USED	6/24/2016		
K37	REFRIGERATION RACK	6/24/2016		
MECHANICAL/PLUMBING/ELECTRICAL				
MP0.1A	MECHANICAL/PLUMBING ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
MP0.1B	MECHANICAL/PLUMBING ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	
M1.1A	MECHANICAL FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
M1.1B	MECHANICAL FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
M2.1	MECHANICAL DETAILS & NOTES	6/24/2016	9/14/2016	9/30/2016
M3.1	MECHANICAL SCHEDULES	6/24/2016	9/14/2016	9/30/2016
M3.2	MECHANICAL SCHEDULES	6/24/2016	9/14/2016	9/30/2016
M4.1	GREASE MASTER	6/24/2016		
M4.2	GREASE MASTER	6/24/2016		
M4.3	GREASE MASTER	6/24/2016		
M4.4	GREASE MASTER	6/24/2016		
M4.5	GREASE MASTER	6/24/2016		
M4.6	GREASE MASTER	6/24/2016		
M4.7	GREASE MASTER	6/24/2016		
M4.8	GREASE MASTER	6/24/2016		
M4.9	GREASE MASTER	6/24/2016		
M4.10	GREASE MASTER	6/24/2016		
M4.11	GREASE MASTER	6/24/2016		
P1.1A	PLUMBING WASTE AND VENT PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
P1.1B	PLUMBING WASTE AND VENT PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
P2.1A	PLUMBING WATER AND GAS PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
P2.1B	PLUMBING WATER AND GAS PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
P3.1	PLUMBING WASTE AND VENT RISER DIAGRAM	6/24/2016	9/14/2016	9/30/2016
P4.1	PLUMBING LEGEND NOTES AND SCHEDULES	6/24/2016	9/14/2016	9/30/2016
P4.2	PLUMBING DETAILS	6/24/2016	9/14/2016	9/30/2016
P4.3	PLUMBING DETAILS	6/24/2016		
ESP1	ELECTRICAL SERVICE PLAN	6/24/2016	9/14/2016	
E0.1	ELECTRICAL SYMBOLS LEGENDS	6/24/2016	9/14/2016	
E1.0A	ELECTRICAL ARCADE POWER & UNDERFLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.0B	ELECTRICAL ARCADE POWER & UNDERFLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.1A	ELECTRICAL POWER PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016

Subcontractor Information 000452

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
E1.1B	ELECTRICAL POWER PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
E1.2	ELECTRICAL ENLARGED POWER PLANS	6/24/2016	9/14/2016	9/30/2016
E1.3	ELECTRICAL ENLARGED POS PLANS	6/24/2016	9/14/2016	
E1.4A	ELECTRICAL ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
E1.4B	ELECTRICAL ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.5A	ELECTRICAL DATA & UNDERFLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.5B	ELECTRICAL DATA & UNDERFLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
E1.6A	ACCESS CONTROL PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.6B	ACCESS CONTROL PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.7A	SECURITY CAMERA PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.7B	SECURITY CAMERA PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E2.0A	ELECTRICAL LIGHTING PLAN - SEGMENT 1	6/24/2016		9/30/2016
E2.0B	ELECTRICAL LIGHTING PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E3.0	ELECTRICAL DETAILS	6/24/2016	9/14/2016	9/30/2016
E3.1	ELECTRICAL ONE-LINE DIAGRAM	6/24/2016	9/14/2016	9/30/2016
E4.0	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	9/30/2016
E4.1	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	9/30/2016
E4.2	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	
E4.3	ELECTRICAL SCHEDULES	6/24/2016	9/14/2016	
FIRE PROTECTION				
F1.0	FIRE NOTES & SYMBOLS	6/24/2016		
F2.0A	FIRE ALARM FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
F2.0B	FIRE ALARM FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
F3.0	FIRE PROTECTION DETAILS	6/24/2016	9/14/2016	9/30/2016
F4.0	FM GLOBAL REQUIRED FORMS	6/24/2016		
AUDIO/VIDEO VENDOR				
AV101	FLOOR PLAN	6/24/2016		
AV102	LEGEND/NOTES	6/24/2016		
AV103	RCP	6/24/2016		
AV201	ELEVATIONS	6/24/2016		
AV202	ELEVATIONS	6/24/2016		
AV203	ELEVATIONS	6/24/2016		
AV501	TYPICAL MONITOR DETAIL	6/24/2016		
AV503	BACK-TO-BACK 75" DETAIL	6/24/2016		

Subcontractor Initials: 000453

**Job Name:**[illegible]

Subcontractor

300



GARRARD

EXHIBIT D

APPLICATION FOR PAYMENT

TO: Garrard Construction Group, Inc. ("Contractor")

FROM: **BILLY'S PLUMBING CO.** ("Subcontractor")

Subcontract #: **10-6030-15** (the "Subcontract")

PROJECT DESCRIPTION: **DAVE & BUSTERS - MYRTLE BEACH-INT**

APPLICATION FOR PAYMENT #: _____ PERIOD _____, 20____ TO _____, 20____.

STATEMENT OF SUBCONTRACT:

1. Original Subcontract Amount	\$ 350,197.33
2. Approved Contract Revision Numbers _____ (As per attached breakdown)	\$ _____
3. Adjusted Subcontract Amount	\$ _____
4. Value of Work Completed to Date (As per attached breakdown)	\$ _____
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ _____
6. Materials Stored on Site (As per attached breakdown)	\$ _____
7. Total to Date	\$ _____
8. Less Amount Retained (10 %)	\$ _____
9. Total Less Retainage	\$ _____
10. Total Previously Certified (Deduct)	\$ _____
11. AMOUNT DUE THIS REQUEST	\$ *

* USE THIS \$ AMOUNT ON LIEN WAIVER

CERTIFICATE OF SUBCONTRACTOR AND PARTIAL WAIVER OF LIEN:

I, as authorized representative of Subcontractor, hereby certify that the work performed and the materials supplied by Subcontractor to date, as shown above, represent the actual value of the accomplishments under the terms of the Subcontract (and all authorized changes thereto) between Subcontractor and Contractor relating to the above referenced Project and, further, that Subcontractor has no basis in events occurring before the date of this Application for claims for additions to the Subcontract Amount except for such claims with respect to which Subcontractor has previously given Contractor written notice, and identified as follows: (leave blank if none)

Further, Subcontractor, upon payment of the sum requested in this Application, hereby waives all of its lien rights, if any, with respect to work for which payment is claimed in this or any preceding Applications for Payment, except as to retainage currently being withheld by Contractor.

I also certify that payments, less applicable retention, have been made through the period covered by previous payments received from Contractor (1) to all of Subcontractor's subcontractors and (2) for all materials and labor used in, or in connection with, the performance of the Subcontract. I further certify that Subcontractor has complied with federal, state and local tax laws, including Social Security law, Unemployment Compensation laws and Worker's Compensation laws insofar as applicable to the performance of the Subcontract.

SUBCONTRACTOR:

By: _____

Title: _____

Date: _____

Witness _____

THE STATE OF _____
COUNTY OF _____

BEFORE ME, the undersigned authority, on this day, personally appeared _____, known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

NOTARY PUBLIC

MY TERM EXPIRES

This field for office use ONLY

1960 SATELLITE BLVD • SUITE 2300 • DUBLIN • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF _____
THE UNDERSIGNED BILLY'S PLUMBING CO. (SUBCONTRACTOR) HAS BEEN
EMPLOYED BY GARRARD CONSTRUCTION GROUP (NAME OF CONTRACTOR) TO
FURNISH PLUMBING FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
DAVE & BUSTERS WHICH IS LOCATED IN THE CITY OF MYRTLE BEACH, SC AND
IS OWNED BY SETH MCCOY - BROADWAY AT THE BEACH AND MORE
PARTICULARLY DESCRIBED AS:

BROADWAY AT THE BEACH
1322 CELEBRITY CIRCLE
MYRTLE BEACH, SC 29577

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY
USING EITHER METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT,
BOOK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)
UPON RECEIPT OF THE SUM OF \$ _____ BEING THE PROGRESS
PAYMENT DUE ON ACCOUNT OF ITS SUBCONTRACT NO. 10-6030-15 (THE
SUBCONTRACT) WITH THE CONTRACTOR DATED 2/1/17 THE SUBCONTRACTOR
BILLY'S PLUMBING CO. WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS
OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS
AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF
_____(DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE
MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON
ACCOUNT OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON
ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

SUBCONTRACTOR

BY: _____

TITLE: _____

DATE: _____

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PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

STATE OF _____

COUNTY OF _____

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY, PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 20____.

SEAL

NOTARY PUBLIC

MY TERM EXPIRES _____

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

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PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

FINAL WAIVER AND RELEASE UPON PAYMENT

STATE OF _____
THE UNDERSIGNED BILLY'S PLUMBING CO. (SUBCONTRACTOR) HAS BEEN
EMPLOYED BY GARRARD CONSTRUCTION GROUP (NAME OF CONTRACTOR) TO
FURNISH PLUMBING FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
DAVE & BUSTERS-INT WHICH IS LOCATED IN THE CITY OF MYRTLE BEACH, SC
AND IS OWNED BY SETH MCCOY - BROADWAY AT THE BEACH AND MORE
PARTICULARLY DESCRIBED AS:

BROADWAY AT THE BEACH
1322 CELEBRITY CIRCLE
MYRTLE BEACH, SC 29577

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY
USING EITHER METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT,
BOOK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)
UPON RECEIPT OF THE SUM OF \$ _____ BEING THE PROGRESS
PAYMENT DUE ON ACCOUNT OF ITS SUBCONTRACT NO. 10-6030-15 (THE
SUBCONTRACT) WITH THE CONTRACTOR DATED 2/1/17 THE SUBCONTRACTOR
BILLY'S PLUMBING CO. WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS
OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS
AGAINST ANY LABOR AND/OR MATERIAL BOND.

SUBCONTRACTOR

BY: _____

TITLE: _____

DATE: _____



GARRARD

STATE OF _____

COUNTY OF _____

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY, PERSONALLY APPEARED
_____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND
CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____
20_____.

SEAL

NOTARY PUBLIC

MY TERM EXPIRES

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE
CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED
ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS
AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF
NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY
PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE
FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER
AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

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Page 5 of 10

Defendants' 000459

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EXHIBIT F

WARRANTY OF CONSTRUCTION

Pursuant to the Contract between Garrard Construction Group, Inc. ("Contractor") and SETH MCCOY - BROADWAY AT THE BEACH, for the construction of DAVE & BUSTERS, and the Subcontract No. 10-6030-15 (the "Subcontract") between BILLY'S PLUMBING CO. ("Subcontractor") and Contractor dated 2/1/17.

Subcontractor hereby guarantees all work performed under the Subcontract and shall remedy at its own expense any failure of the work (including equipment) to conform to the contract plans and specifications and any defect of material and/or workmanship in the work for a period of one year after final acceptance by Owner. Where guarantees or warranties are written in the Contract Documents (as defined in the Subcontract Agreement) for a period of more than one year, such longer terms shall apply. Date of final acceptance is established as _____.

All manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein are hereby assigned by Subcontractor jointly to Contractor and Owner. This Warranty of Construction shall supplement, and not supersede, warranties and guarantees given by Subcontractor under the terms of the Contract Documents.

_____ WITNESS STATE OF _____ COUNTY OF _____ BEFORE ME, the undersigned authority, on this day, personally appeared _____, known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____. _____ SEAL Person to contact in case of emergency: Name _____ Phone No. _____	_____ SUBCONTRACTOR By: _____ Title: _____ Date: _____ _____ NOTARY PUBLIC _____ MY TERM EXPIRES

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PHONE: 770-822-1944 • FAX: 770-822-4633



INTERIM WAIVER AND RELEASE UPON PAYMENT
MATERIALMAN/ SUPPLIER WAIVER

STATE OF GEORGIA
COUNTY OF: _____

FROM: _____
(NAME OF SUPPLIER OR EQUIPMENT LESSOR (3RD PARTY))

THE UNDERSIGNED MATERIALMAN HAS BEEN EMPLOYED BY
_____ (NAME OF SUBCONTRACTOR) TO FURNISH
MATERIALS ON BEHALF OF GARRARD CONSTRUCTION GROUP, INC., GENERAL
CONTRACTOR, FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
_____ WHICH IS LOCATED IN THE CITY OF _____,
COUNTY OF _____ AND IS OWNED BY _____ AND
MORE PARTICULARLY DESCRIBED AS:

UPON THE RECEIPT OF THE SUM OF \$ _____, THE MATERIALMAN WAIVES
AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE
FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR
MATERIAL BOND THROUGH THE DATE OF _____ (DATE) AND
EXCEPTING THOSE RIGHTS AND LIENS THAT THE MATERIALMAN MIGHT HAVE IN
ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH
FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR
FOR SAID BUILDING OR PREMISES.

(NAME OF SUPPLIER OR EQUIPMENT LESSOR)

SIGNATURE _____ TITLE: _____

GIVEN HAND AND SEAL THIS _____ DAY OF _____, _____.

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PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

NOTARY INFORMATION

STATE OF _____

COUNTY OF _____

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED

KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND BEING DULY SWORN, ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND DECLARED TO ME THAT THE STATEMENTS CONTAINED THEREIN ARE TRUE.

SWORN AND SUBSCRIBED TO ME BEFORE THIS _____ DAY OF _____ 20__.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

SEAL

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

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GARRARD

FINAL WAIVER AND RELEASE UPON PAYMENT
MATERIALMAN/ SUPPLIER WAIVER

STATE OF GEORGIA
COUNTY OF: _____

FROM: _____
(NAME OF SUPPLIER OR EQUIPMENT LESSOR (3RD PARTY))

THE UNDERSIGNED MATERIALMAN HAS BEEN EMPLOYED BY
_____ (NAME OF SUBCONTRACTOR) TO FURNISH
MATERIALS ON BEHALF OF GARRARD CONSTRUCTION GROUP, INC., GENERAL
CONTRACTOR, FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
_____ WHICH IS LOCATED IN THE CITY OF _____,
COUNTY OF _____ AND IS OWNED BY _____ AND
MORE PARTICULARLY DESCRIBED AS:

UPON THE RECEIPT OF THE SUM OF \$ _____, THE MATERIALMAN WAIVES
AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE
FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR
MATERIAL BOND.

(NAME OF SUPPLIER OR EQUIPMENT LESSOR)

SIGNATURE _____ TITLE: _____

GIVEN HAND AND SEAL THIS _____ DAY OF _____, _____.



GARRARD

NOTARY INFORMATION

STATE OF _____

COUNTY OF _____

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED

KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND BEING DULY SWORN, ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND DECLARED TO ME THAT THE STATEMENTS CONTAINED THEREIN ARE TRUE.

SWORN AND SUBSCRIBED TO ME BEFORE THIS _____ DAY OF _____ 20__.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

SEAL

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

EXHIBIT 8

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - Common Pleas - Case#2017CP2603562



SUBCONTRACT

ENTERED

Contractor:

Garrard Construction Group, Inc.
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph (770)822-1944

Subcontractor:

Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 2/1/2017

Subcontract: 10-6030-15
Project Location: 1322 Celebrity Square

Myrtle Beach, SC 29577

This Agreement is made this 1 day of February, 2017 between Garrard Construction Group, Inc. ("Contractor") and Billy's Plumbing Company, LLC ("Subcontractor")

ARTICLE 1 - Scope of the Work

1.1 Subcontractor, as an independent contractor employed by Contractor, agrees to provide and to furnish everything necessary, including, but not limited to, all labor, materials, supervision, scaffolding, equipment, hoisting equipment, systems, machinery, tools, apparatuses, transportation, shop drawing, samples and submittals, to provide, furnish and complete the work set forth in the attached Attachment "A" ("Work"), to be performed in connection with the Dave & Buster's M Beach Int ("Project") for Dave & Busters, Inc. ("Owner"). Owner shall include any of its authorized representatives such as its architects, engineers or construction managers

Attachments are listed as follows	Attachment A	Scope of the Work \ Breakdown
	Attachment B	The Schedule
	Attachment C	Drawing Enumeration
	Attachment D	GCG Pay Application
	Attachment E	GCG Lien Waivers: Interim, Final, Third Party
	Attachment F	Warranty Form
	Attachment G	Third Party Subcontractor & Vendor List

ARTICLE 2 - The Subcontract Amount

2.1 As full consideration for complete performance of the Work, Subcontractor shall be paid: \$ 350,197.33 (three hundred fifty thousand one hundred ninety-seven and 33/100) ("Subcontract Amount").
2.2 The Subcontract Amount shall be the total sum paid to Subcontractor except for changes or modifications in accordance with the terms of this Agreement
2.3 Any and all transportation tax, sales tax, use tax or any other tax that might accrue through the purchase of materials or amounts paid for labor by Subcontractor or occasioned by performance of this Agreement, shall be borne and paid for by Subcontractor, and are included in the Subcontract Amount.

ARTICLE 3 - The Terms of this Agreement

3.1 This Agreement consists of (1) this Lump Sum Subcontract and any attachments hereto; and (2) the agreement between Owner and Contractor for the Project, including all conditions to that agreement (general supplementary and any other conditions), all drawings, specifications, schedule, and contract documents referenced in that agreement, along with all addenda and modifications to that agreement ("Prime Contract").
3.2 Subcontractor agrees to be bound to Contractor by all of the terms of the Prime Contract, and assumes toward Contractor all the obligations, duties and responsibilities that Contractor by the Prime Contract assumes toward Owner with the same force and effect as though every such obligation, duty and responsibility were set forth herein in full. Subcontractor agrees that Contractor shall have the same rights and remedies that Owner under the Prime Contract has against Contractor with the same force and effect as though every such right or remedy were set forth herein in full. Subcontractor further warrants and represents that prior to signing this Agreement it has reviewed and is familiar with the Prime Contract and agrees not to plead ignorance of any provision therein in any dispute between the parties.
3.3 The intent of this Agreement is to include all items necessary for the proper execution and completion of the Work by Subcontractor. The documents comprising this Agreement are complementary and what is required by one shall be as binding as if required by all.
3.4 All obligations, duties, responsibilities, rights and remedies set forth herein are in addition to those obligations, duties, responsibilities, rights and remedies set forth in the Prime Contract. In the event a provision of the Prime Contract is inconsistent with the provisions of this Lump Sum Subcontract, the provision more favorable to Contractor shall control.
3.5 Except as modified by this Agreement, the Work shall be performed and completed in strict accordance with the terms and requirements of the Prime Contract.
3.6 Subcontractor shall carefully study and compare the documents comprising the Prime Contract with each other and shall at once report to Contractor any error, inconsistency or omission discovered. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies, or omissions if it recognizes, or should have recognized, an error, inconsistency, or omission and fails to report it to Contractor before executing the Work. By performing any construction activity involving a recognized error, inconsistency, or omission in the Prime Contract, Subcontractor assumes the risk of such performance and

Page 1 of 7

1980 Satellite Blvd * Suite 2300 * Duluth * Georgia * 30097
Phone (770) 822-1944 * Fax (770) 822-4633

Defendant 000434

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HERRY - COMMON PLEAS - CASE#2017CP2603562

Contractor:
Garrard Construction Group, Inc
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 2/1/2017

agrees to bear full responsibility for all costs of correction.

ARTICLE 4 - The Time of Performance

4.1 Subcontractor shall comply with any schedule requirements imposed upon Contractor in the Prime Contract. Contractor shall schedule the work required by the Prime Contract, including the Work. Contractor shall have the right to decide the time, order and priority that the various portions of the Work will be performed and other matters relative to the time and orderly conduct of the Work.

4.2 A Schedule for the Project and the Work is attached hereto as Attachment "B" (the "Schedule"). Subcontractor shall participate and cooperate with Contractor in scheduling the times and sequences required to perform the Work and agree to perform the Work in accordance with the Schedule, including all amendments thereto. Subcontractor shall continuously monitor the Schedule and shall advise Contractor of the status of its performance on a regular basis including information on the status of shop drawings, sample submittals, materials or equipment that may be in the course of preparation or manufacture. Subcontractor shall immediately notify Contractor of any circumstances which may affect the times and sequences in the Schedule and shall make all requests for time extensions in writing to Contractor sufficiently in advance to allow Contractor to forward the request as required in the Contract Documents.

4.3 Time is of the essence of this Subcontract. Subcontractor shall commence the Work in accordance with the Schedule, or when directed by verbal or written notice from Contractor, and shall diligently and continuously prosecute such Work in an efficient fashion so as not to cause interruption, interference, inefficiency, suspension, hindrance or delay (collectively referred to as "Delay") in the progress of any portions of the Project. Subcontractor shall coordinate the Work with the other work being performed on the Project so that the Project shall not be Delayed due to any act or omission of Subcontractor. Subcontractor shall take all necessary action to assure the completion of the Project within the time specified in the Schedule and the Prime Contract.

4.4 Subcontractor shall be liable to Contractor for any and all loss to Contractor, or which Contractor may be liable, as a result of any Delay on the part of Subcontractor in the prosecution or completion of the Work according to the Schedule, or for any Delay to the completion of the Project attributable to Subcontractor. If the Agreement between Contractor and Owner imposes upon Contractor an obligation to pay Owner liquidated damages in the event Delays are encountered in completion of the Project, and to the extent such a Delay is caused in whole or in part by the acts or omissions of Subcontractor, Subcontractor shall be obligated to pay Contractor, in addition to any other damages sustained by Contractor as a result of the Delay, any liquidated damages Contractor is obligated to pay Owner.

4.5 In agreeing to complete the Work within the times and sequences herein mentioned, Subcontractor hereby represents that it has taken into consideration and made allowances for all Delays incident to the Work. No Delay in the commencement or progress of the Work for any cause whatsoever, including those for which Owner or Contractor may be responsible, in whole or in part, shall relieve Subcontractor of its duty to perform hereunder.

4.6 Subcontractor shall not be entitled to any time extension unless a notice of claim therefore is presented in writing to Contractor within the period of time required by the Prime Contract or within seventy-two (72) hours of the first occurrence of the Delay, whichever time period is shorter. Except as set forth in Article 11.2, Subcontractor agrees that an extension of time for completing the Work is its sole remedy for any and all other claims Subcontractor may have against Contractor on account of any Delay. Permitting Subcontractor to continue working after the time to complete the Work has expired, shall not be construed as a waiver by Contractor of any claims for loss or damage for breach by Subcontractor of one or more of the provisions of this Agreement.

4.7 Subcontractor shall at all times supply and promptly pay for adequate tools, appliances, equipment, a sufficient number of properly skilled workmen and a sufficient amount of material and supplies to efficiently and properly prosecute the Work in accordance with the Schedule, and any modifications thereto issued by Contractor, in order to achieve the Project completion date established by the Prime Contract.

ARTICLE 5 - Payments

5.1 Invoicing and payment of the Subcontract Amount shall be made in accordance with the terms of the Prime Contract. Subcontractor shall submit to Contractor a written application for payment, in a form approved by Contractor, showing the value of the Work performed and completed to date, along with all substantiating data and information as required by the Prime Contract, from which shall be deducted: (1) a retainage of 10% of such value; (2) all previous payments, (3) all charges for materials and services furnished by Contractor to Subcontractor; Agreement or in the Prime Contract. The balance of the Subcontractor's invoice, to the extent approved by Owner and Contractor, shall be payable to Subcontractor after the Contractor has received payment from the owner. After receipt of payment from the owner, the payment to the subcontractor shall be made on the Friday closest to the end of the month in which payment was received or 10 business days from the date received, whichever is later. Checks will be processed on the subsequent Friday as part of our normal Accounts Payable check run.

5.2 A condition precedent to Subcontractor receiving monthly payments after starting the Work is the delivery by Subcontractor to Contractor each month (regardless of whether any Work was performed) of waivers of liens and claims, in a form suitable to Contractor, from Subcontractor and all sub-subcontractors and suppliers who have furnished materials for use on the Project and for which payment has been received by Subcontractor.

5.3 Contractor's obligation to pay the Subcontract Amount is executory and conditional upon Subcontractor's compliance with this Agreement. It is further expressly agreed that payment by Owner to Contractor is an absolute condition precedent to payment by Contractor to Subcontractor of all or any portion of the Subcontract Amount.

5.4 The quantities of Work performed and materials furnished as established by the Prime Contract or Contractor and Owner shall constitute the basis for computation of the payment to Subcontractor. Payments made on account of materials not incorporated in the Work but delivered and suitably stored, shall be made, if at all, in accordance with the Prime Contract.

5.5 Final payment of the Subcontract Amount including retention ("Final Payment") shall be made to Subcontractor upon: (i) completion of the Work in accordance with the Prime Contract; (ii) acceptance of the Work by Contractor and Owner; (iii) the occurrence of any and all conditions precedent to Subcontractor's receipt of Final Payment, as provided in the Prime Contract; (iv) receipt of final payment under the Prime Contract by Contractor from Owner; (v) receipt of an affidavit from Subcontractor that all labor (including customary fringe benefits and payments due under collective bargaining agreements), sub-subcontractors, materialmen and suppliers have been paid in full and they, and Subcontractor, are waiving or have previously waived their lien rights upon the making of Final Payment; (vi) consent to Final Payment from Subcontractor's surety; (vii) a complete release of claims in a form acceptable to Contractor, and (viii) closeout documents inclusive of Operations & Maintenance manual.

5.6 If at any time there is evidence of a lien or claim for which, if established, Contractor or Owner might become liable, and which is chargeable to Subcontractor, or if Subcontractor shall incur any liability to Contractor, or if Contractor shall have any claim or demand against Subcontractor of any kind or for any reason, whether or not reduced to judgment or award, Contractor shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between Contractor and Subcontractor, an amount sufficient to indemnify and fully satisfy Contractor and Owner against such lien, claim, liability or demand. Contractor shall also be entitled to retain all costs of defense or collection with respect thereto, including reasonable

Contractor:

Garrard Construction Group, Inc
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph (770)822-1944

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 2/1/2017

attorneys' fees. If any lien, claim, liability or demand develops after all payments are made hereunder, Subcontractor shall refund to Contractor within ten (10) days of demand therefore all amounts that the latter may be compelled to pay in discharging such lien, claim, liability or demand and all costs, including reasonable attorneys' fees incurred in collecting said amounts from Subcontractor.

5.7 No payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no payment shall be construed to be acceptance of defective Work or improper materials.

5.8 Acceptance of Final Payment by Subcontractor shall constitute a full waiver and release by Subcontractor of all claims against Contractor or Owner arising out of or relating to this Agreement.

5.9 Pay requests shall be submitted on the GCG pay request form.

ARTICLE 6 - Submittals

6.1 Subcontractor shall proceed at once to prepare all required shop drawings, product data samples and other submittals required by the Prime Contract and furnish same for approval in accordance with the Prime Contract. Submittal data shall be prompt and complete to ensure scheduled delivery of such equipment and/or materials, so as not to Delay the progress of either the Work or the Project. Subcontractor agrees to keep Contractor fully informed regarding its delivery schedule and shall immediately advise Contractor of any Delay or anticipated Delay.

6.2 Subcontractor shall comply with all scheduling and reporting requirements in the Prime Contract and shall furnish and supply Contractor such supplemental and additional information and reporting documentation as reasonably required by Contractor during the performance of the Work, including information on the status of materials and equipment that may be in the course of preparation or manufacture.

6.3 As-built documents and data shall be maintained and recorded by Subcontractor as applicable to the Work and shall be reviewed monthly by Contractor and in connection with Subcontractor's request for progress payments. Such review shall be a condition precedent to the issuance of payments under this Agreement.

6.4 Contractor's review of any as-built documents, submittals, shop drawings, data or drawings shall not relieve Subcontractor of any of its duties under the Prime Contract or its responsibility to perform the Work in the manner necessary to produce the results required and intended by the Prime Contract.

ARTICLE 7 - Superintendence and Subcontractor's Workforce

7.1 Subcontractor shall provide adequate, competent, and experienced full-time, on-site supervision during the performance of the Work. Such supervisory personnel shall have the authority to carry out directions from Contractor relating to this Agreement and the Work.

7.2 Subcontractor shall only employ workmen who will work in harmony with those employed by Contractor and other subcontractors. Subcontractor shall immediately replace any workmen objectionable to Contractor and if Contractor's request for replacement is not honored, Contractor shall be entitled and authorized to terminate this Agreement for cause.

7.3 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

7.4 In performing the Work, Subcontractor shall comply with Contractor's labor and affirmative action requirements under the Prime Contract. Subcontractor shall not discriminate against any employee or applicant because of race, creed, color, sex, age or national origin in the performance of the Work.

ARTICLE 8 - Material and Workmanship

8.1 All Work shall be done to the final approval of Contractor and Owner. Their decision as to the performance of the Work in accordance with the Prime Contract and the true constructive meaning of the Prime Contract shall be final, subject to any limitations stated in the Prime Contract.

8.2 Subcontractor shall provide safe and efficient facilities at all times for inspection of the Work by Contractor and Owner.

8.3 If Contractor or Owner condemns or disapproves of any portion of the Work, Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor of such condemnation or disapproval, proceed promptly to take down all rejected portions of the Work and remove from the Project all materials that are subject to that condemnation or disapproval and shall promptly make good all such Work and all other work damaged or destroyed in removing or making good said condemned or disapproved Work. All costs associated with replacing or repairing condemned Work shall be borne by Subcontractor without any increased in the Subcontract Amount.

8.4 Subcontractor shall conform to and abide by any additional specifications, drawings, or explanations required by the Prime Contract.

8.5 Contractor or Owner may elect to accept the Work, or any portion of it, which is not in accordance with the Prime Contract, rather than requiring its removal and correction. In such event, the Subcontract Amount shall be adjusted as necessary to equitably compensate Contractor and Owner for the consequences of Subcontractor's failure to comply with the Prime Contract.

ARTICLE 9 - Changes

9.1 Without invalidating this Agreement, and without notice to Subcontractor's surety, Contractor may order Subcontractor in writing to make changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement. In the event of such a change, the Subcontract Amount and time for performance of this Agreement shall be adjusted by way of change order ("Change Order"). Prior to the commencement of such changed or revised work, Subcontractor shall promptly submit to Contractor in writing any claim it seeks to assert for adjustment in the Subcontract Amount or time for performance consistent with the requirements of the Prime Contract.

9.2 Subcontractor shall be bound by all computation and reporting requirements set forth in the Prime Contract with respect to Change Orders.

9.3 If Subcontractor is required by Contractor to perform additional work for which the amount of compensation is not set forth in the Prime Contract, the Subcontractor shall prepare and submit to Contractor a proposal describing the estimated quantities and the time and cost involved. The Subcontractor shall submit the proposal to Contractor within the appropriate time period established in the Prime Contract so as to permit the Contractor sufficient time to review the proposal and forward it to Owner for consideration. If no such time period is set forth in the Prime Contract, the Subcontractor shall submit its proposal to Contractor at least seven (7) calendar days before the additional work is required to be performed. Otherwise, Subcontractor shall accept the determination of Contractor as to the effect of the proposed Change Order.

9.4 Additions to, or changes in, this Agreement shall be made only upon written order, approved by Contractor. If the parties hereto are unable to agree as to the value of such work to be added or omitted, Subcontractor shall proceed under the written order of Contractor, from which order the stated value of the work shall be omitted. The dispute shall then be determined in accordance with Article 11.

9.5 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to

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Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 2/1/2017

proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

9.6 Contractor's receipt, or acknowledgment, of Subcontractor's Change Order request or any other alleged claim or any notice or report, including reports of cost and time, or any payments made on account thereof, shall not be construed as Contractor's acknowledgment, or acceptance, of the accuracy or validity of any portion thereof, until such time as final Change Order amounts are determined and a Change Order is signed by Contractor.

9.7 If the construction change order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- a. mutual acceptance of a lump sum properly itemized and supported by sufficient sustaining data to permit evaluation;
- b. unit prices stated in the Contract Documents or subsequently agreed upon;
- c. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, or
- d. cost & fee with itemized accounting inclusive of cost of labor; cost of materials, supplies, and equipment; rental costs of machinery and equipment, cost for all bonds and insurance, permit fees; additional cost of supervision and field personnel; and overhead allowance of not more than 10% and fee of not more than 5%.

ARTICLE 10 - Default and Termination

10.1 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, upon twenty-four (24) hours written notice, direct Subcontractor to take such steps as Contractor deems necessary to remedy such failings, all without additional cost to Contractor. If Subcontractor fails to comply with these steps, in addition to any other right or remedy Contractor may have under this Agreement, Contractor may remedy such failings and deduct any loss or damage occasioned thereby from any money then due or thereafter to become due to Subcontractor.

10.2 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, at its option, and at any time after forty-eight (48) hours written notice of such default to Subcontractor, terminate Subcontractor's involvement in the Project by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take possession of the Work, materials, tools, appliances and equipment of Subcontractor at the Project, and through itself or others provide labor, equipment and materials to prosecute the Work. The cost thereof, including all charges, expenses, losses, costs, damages and attorneys' fees incurred as a result of Subcontractor's failure to perform, shall be deducted by Contractor from any money then due or thereafter to become due to Subcontractor. Subcontractor shall not be entitled to any further payments under this Agreement until the Work has been completed and fully accepted by Owner. In the event that the unpaid balance due exceeds Contractor's cost of completion, the difference shall be paid to Subcontractor. If such costs exceed the balance due, Subcontractor shall pay the difference to Contractor within ten (10) days of demand for payment of same.

10.3 Contractor shall have the right to terminate Subcontractor's involvement in the Project by written notice, without Subcontractor being at fault, for any cause or for its own or Owner's convenience, and require Subcontractor to immediately stop the Work. In such event, Contractor shall pay Subcontractor for that portion of the Work actually performed in an amount proportionate to the total Subcontract Amount. Contractor shall not be liable to Subcontractor for any other costs nor for prospective profits on the Work not performed; provided, however, that if termination is due to any default or action by Owner, or as a result of an order by a court or public authority, then Contractor shall not be liable to Subcontractor for any sum greater than that which Contractor receives from Owner with respect to Subcontractor's performance, less any costs incurred by Contractor in obtaining that amount from Owner. Any default termination of Subcontractor by Contractor subsequently determined to have been erroneous or wrongful, shall be deemed to be a termination under this Paragraph 10.3.

10.4 If Subcontractor's involvement in the Project is terminated, Subcontractor shall assign to Contractor any and all of Subcontractor's contracts with sub-subcontractors and/or suppliers designated by Contractor. The Subcontractor represents and warrants to Contractor that all of its contracts with sub-subcontractors and/or suppliers do or will include a provision that authorizes the foregoing right and obligation of assignment. Subcontractor agrees to indemnify and hold Contractor harmless and defend it against any and all claims and liabilities incurred by reason of the Subcontractor's breach of any term, condition, obligation or agreement under the assigned contracts.

10.5 The remedies provided Contractor in this Article 10 and in any part of the Prime Contract shall be cumulative, and not exclusive, of all other remedies which Contractor may have for breach of this Agreement by Subcontractor, or as a result of Subcontractor's failure to perform any of the requirements of this Agreement. In the event of a default termination, all losses, and expenses, including attorneys' fees, incurred in the prosecution or defense of any action, arbitration or suit, trial or appeal, enforcement of any judgment, bankruptcy or insolvency proceeding, or any subsequent proceeding or appeal from any order or judgment entered therein, incurred by or resulting to Contractor on the above account, shall be borne by and charged against Subcontractor and shall be damages for breach of this Agreement. Contractor may recover same from the Subcontractor's surety, and both Subcontractor and its surety agree to pay Contractor for such losses, damages, expenses and attorneys' fees. At Contractor's sole discretion and exclusive option, proceeds that are payable, or due to become payable under this Agreement, or any other agreements between Subcontractor and Contractor, may be withheld by Contractor and applied against said losses, costs or expenses.

ARTICLE 11 - Claims and Disputes

11.1 Any claim for which the Contractor is directly responsible ("Contractor Related Claim"), shall be made by Subcontractor in writing to Contractor within five (5) business days of the occurrence of the event giving rise to the claim. Contractor shall issue a decision on any Contractor Related Claim in writing and furnish a copy thereof to Subcontractor. The decision of Contractor shall be final and conclusive, unless within forty-eight (48) hours from the date of receipt of such decision, Subcontractor issues written notice to Contractor contesting same. If Subcontractor does not contest Contractor's final decision within the time period noted above, Subcontractor shall be deemed to have waived any right to contest that decision.

11.2 Any claim by Subcontractor that may affect or become part of a claim for which the Owner or another person or entity besides Contractor may be responsible ("Owner or Third Party Related Claim") shall be made by Subcontractor in sufficient time and in such manner so as to permit Contractor to satisfy the Contractor's requirements for making an Owner or Third Party Related Claim against the Owner or any third party in question. Subcontractor shall pursue all Owner or Third Party Related Claims against the Owner or any third party in question through Contractor in accordance with the applicable disputes process. Subcontractor agrees to bear full responsibility and the full cost of pursuing all Owner or Third Party Related Claims. Contractor shall be liable to Subcontractor only to the extent that Contractor actually recovers from the Owner or any third party for each Owner or Third Party Related Claim, less Contractor's costs associated with the Owner or Third Party Related Claim.

11.3 Any other dispute between Contractor or Subcontractor arising out of or relating to this Contract besides an Owner or Third Party Related Claim ("Other Dispute"), shall be decided by litigation unless Contractor shall advise Subcontractor within 30 days of receiving or giving notice of the Other Dispute, that Contractor elects to have the Other Dispute decided or resolved by arbitration. In the event Contractor elects to have the Other Dispute resolved by binding

Contractor:
Garrard Construction Group, Inc.
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph (770)822-1944

Project #: 10-10-6030
Project Name: Dave & Buster's M Beach Int
Date: 2/1/2017

arbitration, Subcontractor shall be bound by Contractor's decision. Any such arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules issued by the American Arbitration Association then in effect. Any such arbitration shall be held in Metro, Georgia, and judgment upon the award may be entered by any court having jurisdiction.

11.4 In connection with any such arbitration proceeding, Subcontractor agrees to afford Contractor liberal and informal discovery consistent with the discovery provisions of the Georgia Civil Practice Act, O.C.G.A. § 9-11-1 et seq., including the production of all documents related to the dispute and the availability for deposition at reasonable times of all persons under its control who have knowledge of facts pertaining to the matter in dispute.

11.5 To the extent Contractor does not select arbitration for the resolution of any Other Dispute, Contractor and Subcontractor each hereby agree that the United States District Court for the Northern District of Georgia, or, at the option of Contractor, the Superior Court of Chatham County, Georgia, shall have exclusive jurisdiction to hear and determine any Other Dispute. Subcontractor expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced in such courts and pertaining to any Other Dispute.

11.6 Any claim, dispute, or other matter in question between Contractor and Subcontractor relating to this Agreement, or the Work shall be governed by the laws of the State of Georgia without regard to conflicts, or choice, of laws.

11.7 In the event Contractor is involved in any dispute resolution proceeding, including litigation, arbitration or administrative procedures, and that proceeding involves the Work, involves questions of law or fact common to the Work, or if complete relief cannot be afforded without Subcontractor's presence in that dispute resolution proceeding, Subcontractor hereby consents to consolidation or joinder in that proceeding.

11.8 Subcontractor shall carry on the Work and comply with its performance and scheduling obligations under this Agreement despite the existence of any dispute or legal proceedings unless otherwise agreed in writing by the parties hereto.

ARTICLE 12 - Regulatory Compliance

12.1 Subcontractor shall comply with all applicable laws, codes, regulations, orders and ordinances that apply to the Work and the Project, all in accordance with the Prime Contract. Subcontractor shall give all required notices and shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

12.2 Subcontractor shall take all reasonable safety precautions necessary with respect to the performance of the Work and shall comply with all safety measures and drug policies initiated by Contractor including OSHA and with all applicable laws, ordinances, rules, regulations and orders of public authorities pertaining to the safety of persons or property, all in accordance with the requirements of the Prime Contract.

12.3 Subcontractor shall comply with the requirements of all governmental authorities having jurisdiction over the Work.

12.4 Subcontractor shall comply with all applicable Social Security, Unemployment Compensation and Employer's or Worker's Compensation Acts.

12.5 If Subcontractor violates any of the above, Subcontractor shall bear all costs resulting from such violation and shall defend, indemnify and hold Contractor harmless from any damages (including attorneys' fees), claims, and causes of action arising from such violation.

ARTICLE 13 - Indemnity, Insurance and Bonding

13.1 Prior to commencing the Work, Subcontractor shall secure and pay for insurance of the type and limits set forth below and as required by the Prime Contract from an insurer, and in a form, acceptable to Contractor. The insurer shall be licensed to transact business in the location of the Project.

- a Worker's Compensation with statutory limits but not less than \$500,000;
- b Employer's Liability with limits of \$500,000 per occurrence;
- c Comprehensive General Liability (occurrence form) with minimum limits of \$2,000,000.
- d Comprehensive Automobile Liability Insurance with minimum limits of \$1,000,000.00 combined single limit with coverage for all owned, non-owned and hired automobiles
- e Excess Liability Insurance on a following form basis in limits not less than \$2,000,000

All liability insurance coverage shall include Contractor and Owner as an additional insured and shall provide coverage for Contractor and Owner on a primary basis. All coverage shall include a waiver of the underwriter's rights of subrogation against Contractor and Owner. Subcontractor shall be solely responsible for any deductible or self-insurance retentions. Prior to commencement of operations, Subcontractor shall provide to Contractor and Owner certificates of insurance evidencing the required coverage and providing Contractor and Owner with thirty (30) days notice prior to cancellation of any coverage. In the event Subcontractor fails to obtain or maintain any insurance coverage required by this Agreement, or the Prime Contract, Contractor may at its option (i) terminate Subcontractor; or (ii) purchase such coverage and charge the expense thereof to Subcontractor.

13.2 Subcontractor assumes full liability for any and all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and property arising out of or in any way connected with the Work and shall to the fullest extent permitted by law defend, indemnify and hold harmless Owner and Contractor, their respective officers, agents, employees and indemnitees, from and against any and all claims, demands, losses, suits, damages and liabilities, legal or otherwise, arising out of or in any way connected with the Work, including, to the fullest extent permitted by law, irrespective of the negligence of any indemnitee hereunder provided that such negligence is not the sole proximate cause of such claim, demand, loss, suit, damage or liability. Subcontractor agrees that \$1,000 of the Subcontract Amount is consideration for Subcontractor agreeing to this indemnification. For purposes of fulfilling its duties to defend, indemnify and hold harmless the Contractor, Subcontractor waives the immunities, rights, or defenses that may be available under applicable Workers' Compensation Laws. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due Subcontractor, or which thereafter becomes due, shall be held by Contractor to cover such claim or demand including all reasonable attorneys' fees.

13.3 Subcontractor may be required to provide performance and payment bonds each with a penal amount equal to 100% of the Subcontract Amount. The premium for these bonds shall be paid by Contractor to bonding company upon receipt of bond and invoice from the bonding company up to 1.5% of contracts. Any excess over 1.5% shall be deducted from subcontractors funds. All bonds issued pursuant to this Paragraph 13.3 shall be issued by a surety, and in a form, acceptable to Contractor and by a surety licensed to transact business in the location of the Project. All bonding companies shall be rated as triple A by U.S. Treasury Department's list of approved sureties.

ARTICLE 14 - Warranties and Guarantees

14.1 Subcontractor warrants that its Work shall be: (1) fit for the purposes intended; (2) free from defects in material and workmanship; (3) comply with the Prime Contract and all applicable codes and industry standards; (4) be free and clear of all claims, encumbrances and liens.

14.2 Subcontractor agrees to promptly make good, without cost to Contractor or Owner, any and all defects due to its failure to meet such warranties which may appear within the guarantee or warranty period(s) established in the Prime Contract, and if no such period(s) be stipulated in the Prime Contract, then such guarantee shall be for a period of one (1) year from the date of completion and acceptance of the Project by Owner. Subcontractor further agrees to execute any special guarantees as provided by the Prime Contract or required by law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

Contractor:
 Garrard Construction Group, Inc.
 2055 Sugarloaf Circle, Suite 400
 Duluth, GA 30097
 Ph: (770)822-1844

Project #: 10-10-6030
 Project Name: Dave & Buster's M Beach Int
 Date: 2/1/2017

14.3 Subcontractor shall pay for all changes to the Work or the Project resulting from defects in workmanship or materials, as well as all expenses necessary to replace or repair either the Work or the Project, including any damages caused by the replacements or repairs. Subcontractor shall further be obligated to pay for, and shall reimburse Contractor for, all costs associated with the impact of its defective workmanship or materials. This obligation is in addition to all other guarantees, warranties and rights contained in the Prime Contract.

ARTICLE 15 - Encumbrances

15.1 Subcontractor shall turn the Work over to Contractor in good condition and free and clear of all claims, encumbrances, or other liens and shall defend, indemnify and hold harmless Contractor and Owner from all claims, encumbrances or liens arising out of the performance of the Work. Subcontractor shall at its own cost and expense (including attorneys' fees), defend all suits to establish such claims, and pay any such claims or liens so established. If Subcontractor fails to comply with this requirement, Contractor may bond off any liens and all costs of such action shall be paid by Subcontractor.

15.2 If a subcontractor or supplier to Subcontractor shall file a lien against the Project, Subcontractor shall bond off the lien within ten (10) days of its receipt of a demand to do so by Contractor. Subcontractor's failure to do so shall constitute an event of default under Paragraph 10.2.

15.3 Subcontractor shall as often as requested by Owner or by Contractor, furnish a sworn statement identifying all parties in Subcontractor's chain of privity who have furnished, or who are furnishing, labor or materials for the Work with their names and addresses and amounts due, or to become due, each of them.

15.4 Subcontractor shall furnish Contractor, if requested, evidence of the payment of all bills, expenses or liabilities incurred by Subcontractor for labor, services, equipment and materials used by Subcontractor in the performance of the Work. If requested by Contractor, Subcontractor shall also furnish written releases, in a form acceptable to Contractor, from all persons, firms, or corporations that have furnished to Subcontractor any labor, services, equipment and materials whether on or for the Project, and written releases of lien, in a form acceptable to Contractor, from all persons, firms and corporations that may have in any way had any dealings or agreements in connection with the Work.

ARTICLE 16 - Coordination

16.1 Subcontractor acknowledges its obligation under this Agreement to coordinate and review the Work with materials and/or equipment to be furnished by others to ensure completed compatible systems. Accordingly, Subcontractor shall review all submittals, fabrication and shop drawings and all product data referring to items requiring integration and compatibility with the Work.

16.2 Subcontractor shall review the surfaces provided by others to which the Work is to be applied, and shall notify Contractor of any known defect or condition detrimental to proper procedures, prior to the commencement of the Work; otherwise, Subcontractor agrees to accept the condition of such surfaces and shall be liable for all consequences resulting therefrom.

16.3 Subcontractor shall cooperate with Contractor, other subcontractors and Owner's forces to the extent their work might interfere with the Work and Subcontractor shall prepare coordinated drawings in areas of congestion if necessary for the timely and proper completion of the Project. Subcontractor shall also advise Contractor of any potential conflicts between the Work and the work of Contractor, other subcontractors or Owner's forces.

16.4 Subcontractor shall take all necessary precautions to protect, and shall be liable for any damage, to adjacent surfaces caused by the Work, including damages resulting from Subcontractor's cleaning of such surfaces.

16.5 If Subcontractor performs the Work on or adjacent to work provided by others that Subcontractor knows, or should know, is defective or is in violation of any laws, codes, regulations, orders and ordinances that apply to the Work, Subcontractor shall be fully responsible and shall indemnify Contractor for all damages caused thereby, including the costs to remove and replace the Work and any work of other subcontractors, Contractor, or Owner's forces affected thereby.

16.6 Subcontractor shall provide and be responsible for all layouts, including the accuracy thereof, necessary for the performance of the Work.

16.7 Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting, and sealing of the Work that may be required to fit it to, receive, or be received by the work of others as shown, or reasonably implied by, the Prime Contract, or as required, or reasonably implied by the rules and regulations, codes, and requirements of any regulatory or governmental agency having jurisdiction over the Project; or as required or reasonably implied to achieve consistency and compatibility with the design elements being penetrated.

ARTICLE 17 - Miscellaneous

17.1 Subcontractor shall provide, maintain and remove from the Project site upon completion of the Work, all temporary offices, structures for the use of its employees, sheds and storage facilities complete with all related utilities, gas, telephone and water. Storage areas for the use of Subcontractor shall be designated by Contractor, and no materials or equipment shall be stored by Subcontractor except in areas approved by Contractor. Such storage areas shall be maintained in an orderly condition by Subcontractor.

17.2 Except as may be otherwise provided in the Prime Contract, Subcontractor shall pay Contractor the reasonable value of any of Contractor's equipment used by Subcontractor in performing the Work.

17.3 Subcontractor represents that it has investigated, examined, inspected and thoroughly familiarized itself with the Prime Contract, surface and subsurface conditions and the location where the Work is to be performed, and that it has thoroughly informed itself as to any difficulties in connection therewith. Subcontractor further warrants that Contractor has made no representation of any kind or nature with reference thereto and not contained in this Agreement. By entering this Agreement with Contractor, Subcontractor further warrants and represents that it has taken into account all surface, subsurface and climatic conditions, the availability and costs of labor and materials, tools and equipment, Owner's and Contractor's scheduling requirements, and potential Project congestion caused by the work of others proceeding simultaneously with Subcontractor.

17.4 The scope of the Work includes an obligation to completely clean the Work and remove all contributing debris from the Project site and to locations designated by Contractor as often as necessary. If Subcontractor fails, within twenty-four (24) hours of receipt of written notice, to correct a failure to properly clean-up and dispose of all trash and waste materials created by Subcontractor, Contractor shall have the right to terminate in accordance with Paragraph 11.2 or perform such clean-up for Subcontractor; and Subcontractor hereby agrees to indemnify and to pay Contractor all costs incurred by Contractor in performing the clean-up work. Clean-up of the Work and the daily removal of debris from the areas of the Work is mandatory. Each day, all trash and debris shall be removed from the Project. Fire exits, corridor ladders, doorways and exit paths in general shall be clear of debris and open to pedestrian and wheelchair traffic at all times, specifically including nights and weekends.

17.5 Subcontractor waives all claims and all rights of subrogation against Contractor and Owner for loss of, or damage to, the Work, tools, machinery, equipment, material or supplies.

17.6 Where testing agency standards are referenced in the Prime Contract, all materials shall be tested and certified by an approved, independent testing firm acceptable to Contractor. *N/A*

17.7 If Subcontractor seeks to contract with a sub-subcontractor or supplier for any portion of the Work, prior written approval of Contractor must be obtained. All such contracts with sub-subcontractors and suppliers shall be pursuant to a contract that is assignable to Contractor in the event of Subcontractor's termination and specifically binds the sub-subcontractor or supplier to the terms of this Agreement.

Contractor:

Garrard Construction Group, Inc.
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph (770)822-1944

Project #: 10-10-6030

Project Name: Dave & Buster's M Beach Int

Date: 2/1/2017

17.8 Subcontractor agrees that payments due from Contractor for the Work are not assignable and that no part of this Agreement or the Work hereunder, can be assigned, except by and with the written consent of Contractor. ~~Contractor shall have the unconditional right to assign this Agreement, any party thereof, or any payments due hereunder.~~

17.9 Title to all materials supplied by Subcontractor shall pass to Contractor upon payment for the materials or upon delivery to the Project, whichever occurs first.

17.10 The headings provided in this Agreement are for ease of reference only. The headings form no part of the Agreement between this parties and shall be given no weight in the interpretation or construction of this Agreement.

17.11 If any provision of this Agreement is determined by a court to be unenforceable, such a determination shall not effect the validity and enforceability of any other section or part hereof.

17.12 The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of this Agreement or the Prime Contract shall not be construed to be and shall not be a waiver of any such provision or provisions, and Contractor shall thereafter be entitled to enforce each and every such provision without any requirement that Contractor provide notification to Subcontractor of its intention to thereafter enforce said provision or provisions.

17.13 If either party employs an attorney to enforce any of the provisions of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs, charges and expenses.

17.14 This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may only be amended or modified in a writing signed by both Subcontractor and Contractor.

IN WITNESS WHEREOF, Contractor and Subcontractor hereby executed this Agreement the day and year first written above.

Garrard Construction Group, Inc.

By: _____

Title: Project Manager

Date: February 13, 2017

Billy's Plumbing Company, LLC

By: _____

Title: OM

Date: 2/1/17

Attachment "A"
Plumbing Scope of Work
Billy's Plumbing Co., LLC
Dave & Buster's - Myrtle Beach, SC Interior
10-6030-

General Scope Items:

1. All City, County, State & Federal laws, rules, regulations and policies shall apply to this project. Subcontractor, by execution of this Subcontract, states that he/she is familiar and compliant with all requirements. Subcontractor is responsible for meeting and maintaining requirements at all times. Subcontractor has reviewed the plans and specifications with knowledge of all governing codes and has included the cost of compliance, even if all of said governing code requirements have not been incorporated into the plans and specifications.
2. Subcontractor, by execution of this Subcontract, states that he/she has visited the job-site, has become familiar with the existing conditions under which the work will be performed, and has correlated those observations with the requirements of this agreement. **Not responsible for existing U/G work of Carolina Pool.*
3. A copy of the Project Schedule is attached and made a part of this Subcontract. All agreed updates and revisions to the schedule will also be made a part of this Subcontract. Subcontractor shall provide such manpower, supervision, materials, facilities, equipment and shall work such hours (nights, weekends, overtime) as required to complete the work within the scheduled durations.
4. Subcontractor shall maintain and monitor an email account for the duration of the project. This account shall be checked a minimum of twice daily during the standard work week.
5. All submittals required by this scope of work must be transmitted to the Contractor within three (3) business days of execution of this Agreement.
6. All closeout documents required, including but not limited to, waivers, warranties, as-builts, O&M manuals, etc., will be transmitted to Contractor no later than 15 days after substantial completion of Subcontractor's scope of work.
7. Subcontractor will be responsible for completing and submitting a daily report to Contractor's Superintendent on a daily basis.
8. Mandatory safety meetings will be held as scheduled by the Superintendent. Attendance is mandatory by all persons performing work onsite. Abide by all current OSHA requirements and GCG Safety Policies at all times. Ensure all MSDS and Hazardous Material Data is on-file with the Superintendent. Subcontractor shall provide an OSHA 10 Hour Certified Employee (Competent Person) to the project at all times during this scope of work. The Competent Person must be provided with a cell phone as a means of emergency communications. The Superintendent shall provide one (1) ^{verbal} ~~written~~ warning to Subcontractor if not adequately performing this contract requirement. After this warning, each safety violation will be assessed and back-charged at ~~\$300 per occurrence.~~

Initials: *JS*
 GCG/Subcontractor

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9. Hard hats, long pants and work boots must be worn at all times, regardless of the work being performed. No exceptions will be made for anyone. Any person not complying with this policy will be instructed to leave the Project.
10. Mandatory Subcontractor Scheduling meetings will be held as scheduled by the Contractor. Attendance by an authorized representative of the Subcontractor is required when Subcontractor is working onsite and as requested by the Contractor.
11. Any temporary lighting, beyond the safety lighting required to be provided by the Electrical Subcontractor, will be provided by the Subcontractor. The Subcontractor will also be responsible for any additional temporary lighting required to meet project schedule requirements.
12. Subcontractor is responsible for the clean-up of all trash/debris associated with this scope of work. The debris/trash shall be placed in a dumpster provided by GCG. The Superintendent shall provide one (1) ^{Written} verbal warning to Subcontractor if not adequately performing this contract requirement. After this warning, Contractor shall provide clean-up services and deduct the cost from funds due or that may become due to Subcontractor. ~~* Amount charged per hour; to be disclosed in~~ ^{written warning.}
13. Provide all joint sealants, caulking, fire caulking, filler metals, etc. as required for this scope of work.
14. Store and protect the work of this Subcontract during and after installation, until project substantial completion, to prevent damage.
15. It is understood and agreed that the work of this Subcontract may not be performed in a continuous operation and Subcontractor includes the cost of multiple mobilizations, including travel time & expenses. Subcontractor shall respond to punch and warranty items within 24 hours, regardless of travel time.
16. Protect all existing items designated to remain from work of this contract; including but not limited to: structures, light poles, sidewalks, curbs, paving, vegetation, finished products, etc.
17. Subcontractor will not use and will not allow "1099 Labor" practices. Only valid Subcontractors and lower-tiered Subcontractors (as defined as independent contractors by the IRS) will be paid via 1099. All laborers are to be employees of the entity engaging them and their wages are to be reported to the IRS via W-2 forms.
18. ORIGINAL PAY APPLICATIONS FOR THE WORK PERFORMED ARE DUE BY THE 20th OF THE MONTH FOR THE MONTH BEING BILLED. THE PAY APPLICATION SHOULD COVER THE WORK PERFORMED THROUGH THE 25th.
19. Pay Applications shall include a list of all vendors and/or sub-subcontractors, with corresponding contact information, which performed work or provided materials to the Project during the Pay Application period. ~~All vendors and sub-subcontractors shall produce current project accounting statements for the Project to be attached to Subcontractor's Pay Application. Subcontractor's monthly Pay Application shall not be approved without this back-up.~~ Materialman/Supplier Lien Waivers shall be provided for all vendors and/or sub-subcontractors before payments are made. If General Contractor chooses not to bond Subcontractor, General Contractor reserves the right to "joint check" Subcontractor's vendors and sub-subcontractors.
20. No change orders are to be submitted unless all cost associated with the change are broken down by unit cost, labor hours and cost, material cost, equipment cost,

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GCG/Subcontractor

[Signature]

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overhead & profit, etc. such that it can be properly evaluated. Change Orders shall be issued by GCG and fully executed before being included on Pay Applications. Failure to comply with this requirement will cause delay in payment.

21. Ensure quality in all work placed. Perform all punch work necessary to meet the approval of the Owner, Design Team & Contractor.

Specific Scope Items:

22. This Agreement is "turn-key" and includes all costs associated with labor, fasteners, accessories, equipment, materials, material stocking & material conveyance. Provide traffic control and lane closures if required for material deliveries or installations.
23. Provide a full-time Foreman, dedicated only to this project, during the work of this agreement. This Foreman shall be qualified, English speaking and OSHA 10 certified.
24. Secure all necessary plumbing permits as required for this work.
25. Provide a temporary water connection to the jobsite. Furnish and install a hose bib on the water service for temporary site water.
26. Provide all required layout for proper installation of this scope of work from the building corners established by others.
27. Furnish and install a complete plumbing system as indicated in the construction documents and required by governing codes. This work includes, but is not limited to; water piping, vent piping, sewer piping, grease waste piping, pipe insulation, PRV station, gas water heater(s), hose bibs, wall hydrants, floor drains, hub drains, floor sinks, mop sink, trench drains, clean-outs, lavatories, kitchen sinks, ice maker connections, urinals and water closets. Furnish and install all fixtures per the fixture schedule shown to be supplied by contractor.
28. **NOTE: It is understood that the under slab rough in that remains is being completed on a time and material basis under another agreement.** Under-slab grease waste and standard waste line to be installed according to sizes reflected on the contract drawings and to be piping material type and schedule thickness as referenced in the project drawings and specifications. All floor drains, floor sinks, floor cleanouts shall be cast iron bodies as specified in the contract documents. Excavate, bed, backfill and compact all required trenches necessary to complete this scope of work. **not responsible for existing Carolina Cool work.*
29. All floor drains shown on drawings shall be equipped with a trap primer connected to the cold water supply.
30. Plumbing subcontractor is to supply and install the beverage line raceway / conduit with long sweep 90's as reflected on the contract drawings from C02 tank location to the exterior wall location of C02 line termination. Includes penetration of exterior wall at termination point.
31. Supply and install a complete domestic water riser system including, but not limited to the PRV, BFP, gauges, valves, strainers, etc. Plumbing subcontractor is to provide BFP testing and approvals upon completion of the installation.
32. Above grade waste and vent lines to be installed according to sizes reflected on the contract drawings and is understood that all waste and vent piping above the slab shall be type and sizes based on the contract drawings. (Based on RFI Response from the engineer, all above slab DWV piping shall be PVC. All drain lines are to be

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- trapped, supply all indirect waste line with a trap and an air gap at the floor receptacle. All indirect waste lines at kitchen equipment are to be copper as scheduled on the contract drawings and specifications.
33. All above slab water lines and hot water recirculation lines to be installed according to sizes reflected on the contract drawings and to be Type "L" Copper.
 34. Plumbing subcontractor to supply and install hammer arrestors and pressure reducing valves in line before all solenoid valves as shown on the contract drawings. i.e. Dish Machine, Disposer, Ice Maker, Steamer, Etc.
 35. All overhead hot water lines and hot water circulation lines are to be insulated 100% from the water heater location(s) to the termination point at each piece of equipment.
 36. Plumbing Contractor to make final connections to all food service equipment and coordinate connections with food service equipment vendor. Includes all plumbing connections, gas connections, water supplies, gas supplies, water valves, gas valves, stops and fittings for a complete installation. (Kitchen equipment is supplied by owner's Kitchen Equipment Supplier).
 37. Furnish and install a complete hot water heater system in quantities and sizes shown on the contract drawings. This work shall include all expansion tanks, gauges, recirculation pumps and concentric vents through the roof.
 38. Furnish and install any above slab soda chases and beer chases as shown on the contract drawings and / or the kitchen equipment drawings. **NOTE: All under slab beer / soda chases are existing and were installed by others.**
 39. Furnish, install and connect all black iron grease recovery lines from the fryer locations to the grease recovery tank location Grease recovery quick connects supplied by others. ** piping only; tank and specialty parts by others*
 40. Furnish and install a complete interior / under deck natural gas piping system as indicated in the construction documents and required by governing codes. This work includes, but is not limited to:
 - a. Connection to meter banks. (meter by others)
 - b. All Connections to owner provided kitchen equipment.
 - c. Hot water heater connections.
 - d. Automatic shut off valve interlocked to ansul hood fire suppression system. (Ansul Valve provided by others)
 - e. All interior HVAC and Kitchen equipment.
 - f. Furnish and install all required valves, appliance regulators, vents and accessories.
 41. ~~Installation of a complete compressed air system, piping shall be sized and type as shown on the contract drawings with origin and terminations as shown.~~ *N/A*
 42. Layout all systems to avoid conflict with the HVAC system, the electrical system, security system, etc. Denote discrepancies prior to commencement of work.
 43. Ensure all piping, hanger mounting, and insulation is installed per the listed schedules in the contract documents. Install proper unions where dissimilar pipe is connected.
 44. Ensure proper sleeves are provided in thru-wall penetrations. Properly stencil and label all piping and equipment.
 45. Flush, test and certify all systems upon completion and ensure systems are functioning properly before demobilization.

Initials:
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46. Prior to mobilization, this subcontractor is to provide the GC's office or field superintendent with MSDS documentation for all materials used by this subcontractor as well as a site specific safety plan for this project.
47. Provide equipment operator's certificates as required by OSHA.
48. A performance and a payment bond each in the amount of 100% of the Subcontract Amount shall be furnished by this Subcontractor. The cost of these bonds is to be paid by Subcontractor and is included in the Subcontract Amount at the bond rate given to the GC at the onsite meeting, 1.5%.

Total Subcontract: \$350,197.33

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GCG/Subcontractor

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ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

Provide labor, materials, equipment, tools, supplies and supervision for a complete Plumbing & Gas System

GC Subcontractor
Initials

APPLICATION FOR PAYMENT BREAKDOWN SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT,
Containing SubContractor's signed Certification, is attached.
In tabulations below, amounts are stated to the nearest dollar.

Application #: _____
Date: _____
Period To: _____
Project # 10 10 6030
SUBC # 10-6030-

A ITEM NO.	B DESCRIPTION OF WORK	QTY	UNIT	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C - D)	I RETAINAGE (IF VARIABLE RATE)
					FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD				
15-400-S	Above Slab DWV Rough In	1	LS	\$60,700.00						
15-400-S	Above Slab Waterr Rough In	1	LS	\$75,500.00						
15-400-S	Insulation	1	LS	\$38,000.00						
15-400-S	Plumbing Fixtures	1	LS	\$132,022.00						
15-400-S	Trim Labor	1	LS	\$24,000.00						
15-400-S	Equipment Connections	1	LS	\$2,000.00						
15-400-S	Gas Piping	1	LS	\$12,800.00						
17-020-O	Performance & Payment Bond	1	LS	\$5,175.33						
	CHANGE ORDERS:									
	TOTALS FOR EACH COLUMN:			\$350,187.33						

325

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ATTACHMENT "B"
THE SCHEDULE
DAVE & BUSTER'S MYRTLE BEACH, SC

ID	Task Name	Duration	Start	Finish	PI
1	Dave & Buster's Myrtle Beach SC - Shell & Buildout Combined	165 days	Mon 10/10/16	Wed 5/24/17	
2	MOBILIZATION	2 days	Mon 10/10/16	Tue 10/11/16	
3	INSTALL FENCING	2 days	Wed 10/12/16	Thu 10/13/16	2
4	EROSION CONTROL	2 days	Wed 10/12/16	Thu 10/13/16	2
5	SITE DEMOLITION	15 days	Fri 10/14/16	Thu 11/3/16	4
6	SITE STORM SYSTEM	3 days	Wed 3/1/17	Fri 3/3/17	
7	SITE SEWER SYSTEM	6 days	Wed 3/1/17	Wed 3/8/17	
8	UNDERGROUND WATER SYSTEM - Domestic to Building	2 days	Wed 3/1/17	Thu 3/2/17	
9	SITE GRADING	2 days	Fri 11/4/16	Mon 11/7/16	5
10	STAKE PILE LOCATION	2 days	Tue 11/8/16	Wed 11/9/16	9
11	INSTALL PILES	12 days	Thu 11/10/16	Fri 11/25/16	1
12	FOOTING EXCAVATION/POUR	35 days	Thu 11/17/16	Wed 1/4/17	1
13	CMU INSTALLATION	20 days	Thu 12/15/16	Wed 1/11/17	1
14	ELECTRICAL UNDERGROUND	17 days	Mon 1/2/17	Tue 1/24/17	
15	PLUMBING UNDERGROUND	16 days	Mon 1/2/17	Mon 1/23/17	
16	PREP FIRST HALF SLAB	3 days	Sat 1/28/17	Tue 1/31/17	2
17	POUR FIRST HALF SLAB	1 day	Wed 2/1/17	Wed 2/1/17	1
18	PREP SECOND HALF SLAB	3 days	Thu 2/9/17	Sat 2/11/17	2
19	POUR SECOND HALF SLAB	1 day	Mon 2/13/17	Mon 2/13/17	1
20	STRUCTURAL STEEL DELIVERY	1 day	Mon 1/23/17	Mon 1/23/17	
21	STEEL ERECTION	14 days	Tue 1/24/17	Thu 2/9/17	2
22	SET ROOF CURBS	1 day	Thu 2/2/17	Thu 2/2/17	2
23	BRICK VENEER	30 days	Thu 1/12/17	Mon 2/20/17	1
24	SINGLE PLY ROOFING	9 days	Fri 2/10/17	Tue 2/21/17	2
25	BUILDING DRIED IN	1 day	Wed 2/22/17	Wed 2/22/17	2
26	CORNICE INSTALLATION	14 days	Tue 2/21/17	Fri 3/10/17	2
27	METAL STUD FRAME INTERIOR	25 days	Wed 2/8/17	Mon 3/13/17	1
28	FIRE SPRINKLER ROUGH IN	17 days	Fri 2/10/17	Fri 3/3/17	2
29	HOOD DELIVERY	1 day	Tue 2/14/17	Tue 2/14/17	2
30	HANG HOODS	2 days	Wed 2/15/17	Thu 2/16/17	2
31	WALK-IN COOLER DELIVERY	1 day	Fri 2/17/17	Fri 2/17/17	3
32	INSTALL WALK-IN COOLERS	2 days	Mon 2/20/17	Tue 2/21/17	3
33	ROUGH IN WALLS ELEC/ PLUMB	14 days	Sat 2/11/17	Wed 3/1/17	2
34	STOREFRONT INSTALLATION	11 days	Wed 2/1/17	Tue 2/14/17	2
35	HVAC UNIT INSTALLATION	1 day	Wed 2/22/17	Wed 2/22/17	2
36	DRYWALL INSTALLATION	20 days	Thu 2/23/17	Wed 3/22/17	2
37	HVAC ROUGH IN	12 days	Fri 2/17/17	Mon 3/6/17	3
38	DELIVER/INSTALL WALK INS	4 days	Wed 2/22/17	Mon 2/27/17	3
39	CEILING ROUGH IN - ELECTRIC	17 days	Thu 3/2/17	Fri 3/24/17	3
40	SIDEWALK INSTALLATION	3 days	Mon 2/27/17	Wed 3/1/17	4
41	INSTALL MAIN SWITCHGEAR - SHELL	4 days	Wed 2/22/17	Mon 2/27/17	2
42	FRP INSTALLATION	6 days	Wed 3/8/17	Wed 3/15/17	3
43	STOREFRONT GLAZING	8 days	Wed 2/15/17	Fri 2/24/17	3
44	PAINT CEILINGS	3 days	Tue 3/7/17	Thu 3/9/17	3
45	CERAMIC TILE INSTALLATION	18 days	Thu 3/23/17	Mon 4/17/17	3
46	POWER TO HVAC UNITS	1 day	Fri 3/10/17	Fri 3/10/17	4
47	PAINT WALLS	12 days	Thu 3/16/17	Fri 3/31/17	3
48	BAR LOW WALL INSTALLATION	2 days	Fri 3/10/17	Mon 3/13/17	4
49	EPOXY FLOOR INSTALLATION	6 days	Tue 3/14/17	Tue 3/21/17	4
50	ACOUSTIC PANEL INSTALLATION	7 days	Mon 4/3/17	Tue 4/11/17	4

Page 1

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ATTACHMENT "B"
THE SCHEDULE
DAVE & BUSTER'S MYRTLE BEACH, SC

ID	Task Name	Duration	Start	Finish	PI
1	Dave & Buster's Myrtle Beach SC - Shell & Buildout Combined	165 days	Mon 10/10/16	Wed 5/24/17	
2	MOBILIZATION	2 days	Mon 10/10/16	Tue 10/11/16	
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10	STAKE PILE LOCATION	2 days	Tue 11/8/16	Wed 11/9/16	9
11	INSTALL PILES	12 days	Thu 11/10/16	Fri 11/25/16	1
12	FOOTING EXCAVATION/POUR	35 days	Thu 11/17/16	Wed 1/4/17	1
13	CMU INSTALLATION	20 days	Thu 12/15/16	Wed 1/11/17	1
14	ELECTRICAL UNDERGROUND	17 days	Mon 1/2/17	Tue 1/24/17	
15	PLUMBING UNDERGROUND	16 days	Mon 1/2/17	Mon 1/23/17	
16	PREP FIRST HALF SLAB	3 days	Sat 1/28/17	Tue 1/31/17	2
17	POUR FIRST HALF SLAB	1 day	Wed 2/1/17	Wed 2/1/17	1
18	PREP SECOND HALF SLAB	3 days	Thu 2/9/17	Sat 2/11/17	2
19	POUR SECOND HALF SLAB	1 day	Mon 2/13/17	Mon 2/13/17	1
20	STRUCTURAL STEEL DELIVERY	1 day	Mon 1/23/17	Mon 1/23/17	
21	STEEL ERECTION	14 days	Tue 1/24/17	Thu 2/9/17	2
22	SET ROOF CURBS	1 day	Thu 2/2/17	Thu 2/2/17	2
23	BRICK VENEER	30 days	Thu 1/12/17	Mon 2/20/17	1
24	SINGLE PLY ROOFING	9 days	Fri 2/10/17	Tue 2/21/17	2
25	BUILDING DRIED IN	1 day	Wed 2/22/17	Wed 2/22/17	2
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28	FIRE SPRINKLER ROUGH IN	17 days	Fri 2/10/17	Fri 3/3/17	2
29	HOOD DELIVERY	1 day	Tue 2/14/17	Tue 2/14/17	2
30	HANG HOODS	2 days	Wed 2/15/17	Thu 2/16/17	2
31	WALK-IN COOLER DELIVERY	1 day	Fri 2/17/17	Fri 2/17/17	3
32	INSTALL WALK-IN COOLERS	2 days	Mon 2/20/17	Tue 2/21/17	3
33	ROUGH IN WALLS ELEC/ PLUMB	14 days	Sat 2/11/17	Wed 3/1/17	2
34	STOREFRONT INSTALLATION	11 days	Wed 2/1/17	Tue 2/14/17	2
35	HVAC UNIT INSTALLATION	1 day	Wed 2/22/17	Wed 2/22/17	2
36	DRYWALL INSTALLATION	20 days	Thu 2/23/17	Wed 3/22/17	2
37	HVAC ROUGH IN	12 days	Fri 2/17/17	Mon 3/6/17	3
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43	STOREFRONT GLAZING	8 days	Wed 2/15/17	Fri 2/24/17	3
44	PAINT CEILINGS	3 days	Tue 3/7/17	Thu 3/9/17	3
45	CERAMIC TILE INSTALLATION	18 days	Thu 3/23/17	Mon 4/17/17	3
46	POWER TO HVAC UNITS	1 day	Fri 3/10/17	Fri 3/10/17	4
47	PAINT WALLS	12 days	Thu 3/16/17	Fri 3/31/17	3
48	BAR LOW WALL INSTALLATION	2 days	Fri 3/10/17	Mon 3/13/17	4
49	EPOXY FLOOR INSTALLATION	6 days	Tue 3/14/17	Tue 3/21/17	4
50	ACOUSTIC PANEL INSTALLATION	7 days	Mon 4/3/17	Tue 4/11/17	4

Page 1

Defendants 000449

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC
INTERIOR

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
T1.1	TITLE SHEET	6/24/2016	9/14/2016	9/30/2016
AB1.1	ACCESSIBILITY DETAILS & ABBREVIATION	6/24/2016		
SP1.1	ARCHITECTURAL SITE PLAN	6/24/2016		
	ARCHITECTURAL			
A0.1	RESPONSIBILITY SCHEDULE	6/24/2016	9/14/2016	9/30/2016
A0.2	EGRESS AND OCCUPANCY PLAN	6/24/2016	9/14/2016	
A1.0A	CURB PLAN - SEGMENT 1	6/24/2016	9/14/2016	
A1.0B	CURB PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A1.1A	FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A1.1B	FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A1.2A	DIMENSION PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A1.2B	DIMENSION PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A2.1A	REFLECTED CEILING PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A2.1B	REFLECTED CEILING PLAN - SEGMENT 2	6/24/2016	9/14/2016	
A2.2	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.3	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.4	ENLARGED REFLECTED CEILING PLANS	6/24/2016		
A2.5	ENLARGED REFLECTED CEILING DEMENSION PLAN	6/24/2016		
A2.6	LIGHT FIXTURE SCHEDULE	6/24/2016	9/14/2016	
A3.1A	ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
A3.1B	ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
A3.2	ROOF DETAILS	6/24/2016		9/30/2016
A4.1	EXTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A5.1	INTERIOR SECTION VIEWS	6/24/2016		
A7.1	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	9/30/2016
A7.2	ENLARGED PLANS AND DETAILS	6/24/2016		
A7.3	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	
A7.4	ENLARGED PLANS AND DETAILS	6/24/2016	9/14/2016	
A8.1	ENLARGED TOILET ROOM PLANS	6/24/2016	9/14/2016	
A8.2	TOILET ROOM ELEVATIONS	6/24/2016	9/14/2016	
A8.3	TOILET ROOM DETAILS	6/24/2016	9/14/2016	
A9.1	DOOR AND WINDOW SCHEDULES	6/24/2016	9/14/2016	
A9.2	FINISH SCHEDULE	6/24/2016	9/14/2016	9/30/2016
A10.1	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.2	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.3	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.4	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.5	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.6	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.7	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A10.8	INTERIOR ELEVATIONS	6/24/2016		
A10.9	INTERIOR ELEVATIONS	6/24/2016	9/14/2016	
A11.1	WALL TYPES	6/24/2016		
A11.2	BRACING DETAILS	6/24/2016		
A11.3	DOOR AND STOREFRONT DETAILS	6/24/2016		
A11.4	CEILING DETAILS	6/24/2016	9/14/2016	

Subcontractor Initials: _____
Drawings: 000450

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
A11.5	CEILING DETAILS	6/24/2016		
A11.6	CEILING DETAILS	6/24/2016	9/14/2016	
A11.7	ENLARGED BAR PLANS AND ELEVATIONS	6/24/2016	9/14/2016	
A11.8	BAR SECTIONS AND DETAILS	6/24/2016		
A11.9	MILLWORK DETAILS	6/24/2016	9/14/2016	
A11.10	BOOTH SECTIONS AND DETAILS	6/24/2016		
A11.11	WALL SECTIONS AND DETAILS	6/24/2016	9/14/2016	
A11.12	P.O.S. MILLWORK DETAILS	6/24/2016	9/14/2016	
A11.13	ENLARGED WINI DETAILS	6/24/2016	9/14/2016	
A11.14	WINI ELEVATIONS	6/24/2016	9/14/2016	
A11.15	WINI DETAILS	6/24/2016	9/14/2016	
A11.16	WINI DETAILS	6/24/2016	9/14/2016	
A11.17	MILLWORK DETAILS	6/24/2016	9/14/2016	
A12.1	WALL & FLOOR FINISH PLAN	6/24/2016	9/14/2016	
A12.2	SEATING PLAN AND FURNITURE LEGEND	6/24/2016	9/14/2016	
A12.3	STORAGE PLANS AND ELEVATIONS	6/24/2016	9/14/2016	
A12.4	FINISH FLOOR DETAILS	6/24/2016		
STRUCTURAL				
S1.0	GENERAL NOTES AND TYPICAL DETAILS	6/24/2016		
S1.1A	SLAB/CURB PLAN 1	6/24/2016		
S1.1B	SLAB/CURB PLAN 2	6/24/2016		
S1.2A	ROOF PLAN 1	6/24/2016		
S1.2B	ROOF PLAN 2	6/24/2016		
S2.1	SECTIONS AND DETAILS	6/24/2016		
FOOD SERVICE EQUIPMENT				
K1	INDEX	6/24/2016		
K2	KITCHEN PLAN	6/24/2016		
K3	NOT USED	6/24/2016		
K4	BAR PLAN & SCHEDULES	6/24/2016		
K5	KITCHEN ELECTRICAL PLAN	6/24/2016		
K6	NOT USED	6/24/2016		
K7	BAR ELECTRICAL PLAN AND SCHEDULES	6/24/2016		9/30/2016
K8	KITCHEN PLUMBING PLAN	6/24/2016		9/30/2016
K9	NOT USED	6/24/2016		
K10	BAR PLUMBING & SCHEDULES	6/24/2016		
K11	KITCHEN GAS PLAN	6/24/2016		
K12	NOT USED	6/24/2016		
K13	KITCHEN CRITICAL PLAN	6/24/2016		
K14	NOT USED	6/24/2016		
K15	BAR CRITICAL PLAN	6/24/2016		
K16	KITCHEN P.O.S. PLAN	6/24/2016		
K17	BAR P.O.S. PLAN & SCHEDULES	6/24/2016		
K18	KITCHEN REFRIGERATION PLAN	6/24/2016		
K19	NOT USED	6/24/2016		
K20	KITCHEN VENTILATION PLAN	6/24/2016		
K21	NOT USED	6/24/2016		
K22	B&S LINES PLAN	6/24/2016		

Subcontractor Initials: 000451

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
K23	KITCHEN ELEVATIONS	6/24/2016		
K24	KITCHEN ELEVATIONS	6/24/2016		
K25	BAR ELEVATIONS	6/24/2016		
K26	KITCHEN ELECTRICAL & P.O.S. ELEVATIONS	6/24/2016		9/30/2016
K27	KITCHEN ELECTRICAL & P.O.S. ELEVATIONS	6/24/2016		
K28	BAR ELECTRICAL P.O.S. ELEVATIONS	6/24/2016		
K29	KITCHEN PLUMBING ELEVATIONS	6/24/2016		
K30	KITCHEN PLUMBING & GAS ELEVATIONS	6/24/2016		
K31	BAR PLUMBING ELEVATIONS	6/24/2016		
K32B	BAR TEMPLATES	6/24/2016		
K33	WALK-INS	6/24/2016		
K34	WALK-INS	6/24/2016		
K35	WALK-INS	6/24/2016		
K36	NOT USED	6/24/2016		
K37	REFRIGERATION RACK	6/24/2016		
MECHANICAL/PLUMBING/ELECTRICAL				
MP0.1A	MECHANICAL/PLUMBING ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
MP0.1B	MECHANICAL/PLUMBING ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	
M1.1A	MECHANICAL FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
M1.1B	MECHANICAL FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
M2.1	MECHANICAL DETAILS & NOTES	6/24/2016	9/14/2016	9/30/2016
M3.1	MECHANICAL SCHEDULES	6/24/2016	9/14/2016	9/30/2016
M3.2	MECHANICAL SCHEDULES	6/24/2016	9/14/2016	9/30/2016
M4.1	GREASE MASTER	6/24/2016		
M4.2	GREASE MASTER	6/24/2016		
M4.3	GREASE MASTER	6/24/2016		
M4.4	GREASE MASTER	6/24/2016		
M4.5	GREASE MASTER	6/24/2016		
M4.6	GREASE MASTER	6/24/2016		
M4.7	GREASE MASTER	6/24/2016		
M4.8	GREASE MASTER	6/24/2016		
M4.9	GREASE MASTER	6/24/2016		
M4.10	GREASE MASTER	6/24/2016		
M4.11	GREASE MASTER	6/24/2016		
P1.1A	PLUMBING WASTE AND VENT PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
P1.1B	PLUMBING WASTE AND VENT PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
P2.1A	PLUMBING WATER AND GAS PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
P2.1B	PLUMBING WATER AND GAS PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
P3.1	PLUMBING WASTE AND VENT RISER DIAGRAM	6/24/2016	9/14/2016	9/30/2016
P4.1	PLUMBING LEGEND NOTES AND SCHEDULES	6/24/2016	9/14/2016	9/30/2016
P4.2	PLUMBING DETAILS	6/24/2016	9/14/2016	9/30/2016
P4.3	PLUMBING DETAILS	6/24/2016		
ESP1	ELECTRICAL SERVICE PLAN	6/24/2016	9/14/2016	
E0.1	ELECTRICAL SYMBOLS LEGENDS	6/24/2016	9/14/2016	
E1.0A	ELECTRICAL ARCADE POWER & UNDERFLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.0B	ELECTRICAL ARCADE POWER & UNDERFLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.1A	ELECTRICAL POWER PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016

Subcontractor Information 000452

Attachment "C"
Drawing EnumerationDave Busters -
Myrtle Beach, SC

Sheet	Title	Issued Date	BULLETIN #1	BULLETIN #2
E1.1B	ELECTRICAL POWER PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
E1.2	ELECTRICAL ENLARGED POWER PLANS	6/24/2016	9/14/2016	9/30/2016
E1.3	ELECTRICAL ENLARGED POS PLANS	6/24/2016	9/14/2016	
E1.4A	ELECTRICAL ROOF PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
E1.4B	ELECTRICAL ROOF PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.5A	ELECTRICAL DATA & UNDERFLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.5B	ELECTRICAL DATA & UNDERFLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	9/30/2016
E1.6A	ACCESS CONTROL PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.6B	ACCESS CONTROL PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E1.7A	SECURITY CAMERA PLAN - SEGMENT 1	6/24/2016	9/14/2016	
E1.7B	SECURITY CAMERA PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E2.0A	ELECTRICAL LIGHTING PLAN - SEGMENT 1	6/24/2016		9/30/2016
E2.0B	ELECTRICAL LIGHTING PLAN - SEGMENT 2	6/24/2016	9/14/2016	
E3.0	ELECTRICAL DETAILS	6/24/2016	9/14/2016	9/30/2016
E3.1	ELECTRICAL ONE-LINE DIAGRAM	6/24/2016	9/14/2016	9/30/2016
E4.0	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	9/30/2016
E4.1	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	9/30/2016
E4.2	PANELBOARD SCHEDULES	6/24/2016	9/14/2016	
E4.3	ELECTRICAL SCHEDULES	6/24/2016	9/14/2016	
FIRE PROTECTION				
F1.0	FIRE NOTES & SYMBOLS	6/24/2016		
F2.0A	FIRE ALARM FLOOR PLAN - SEGMENT 1	6/24/2016	9/14/2016	9/30/2016
F2.0B	FIRE ALARM FLOOR PLAN - SEGMENT 2	6/24/2016	9/14/2016	
F3.0	FIRE PROTECTION DETAILS	6/24/2016	9/14/2016	9/30/2016
F4.0	FM GLOBAL REQUIRED FORMS	6/24/2016		
AUDIO/VIDEO VENDOR				
AV101	FLOOR PLAN	6/24/2016		
AV102	LEGEND/NOTES	6/24/2016		
AV103	RCP	6/24/2016		
AV201	ELEVATIONS	6/24/2016		
AV202	ELEVATIONS	6/24/2016		
AV203	ELEVATIONS	6/24/2016		
AV501	TYPICAL MONITOR DETAIL	6/24/2016		
AV503	BACK-TO-BACK 75" DETAIL	6/24/2016		

Subcontractor Initials
000453

**Job Name:**[illegible]

Subcontractor

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**GARRARD**

EXHIBIT D

APPLICATION FOR PAYMENTTO: Garrard Construction Group, Inc. ("Contractor")FROM: BILLY'S PLUMBING CO. ("Subcontractor")Subcontract #: 10-6030-15 (the "Subcontract")PROJECT DESCRIPTION: DAVE & BUSTERS - MYRTLE BEACH-INT

APPLICATION FOR PAYMENT #: _____ PERIOD _____, 20____, TO _____, 20____.

STATEMENT OF SUBCONTRACT:

1. Original Subcontract Amount	\$ <u>350,197.33</u>
2. Approved Contract Revision Numbers _____ (As per attached breakdown)	\$ _____
3. Adjusted Subcontract Amount	\$ _____
4. Value of Work Completed to Date (As per attached breakdown)	\$ _____
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ _____
6. Materials Stored on Site (As per attached breakdown)	\$ _____
7. Total to Date	\$ _____
8. Less Amount Retained (<u>10</u> %)	\$ _____
9. Total Less Retainage	\$ _____
10. Total Previously Certified (Deduct)	\$ _____
11. AMOUNT DUE THIS REQUEST	\$ *

* USE THIS \$ AMOUNT ON LIEN WAIVER

CERTIFICATE OF SUBCONTRACTOR AND PARTIAL WAIVER OF LIEN:

I, as authorized representative of Subcontractor, hereby certify that the work performed and the materials supplied by Subcontractor to date, as shown above, represent the actual value of the accomplishments under the terms of the Subcontract (and all authorized changes thereto) between Subcontractor and Contractor relating to the above referenced Project and, further, that Subcontractor has no basis in events occurring before the date of this Application for claims for additions to the Subcontract Amount except for such claims with respect to which Subcontractor has previously given Contractor written notice, and identified as follows: (leave blank if none)

Further, Subcontractor, upon payment of the sum requested in this Application, hereby waives all of its lien rights, if any, with respect to work for which payment is claimed in this or any preceding Applications for Payment, except as to retainage currently being withheld by Contractor.

I also certify that payments, less applicable retention, have been made through the period covered by previous payments received from Contractor (1) to all of Subcontractor's subcontractors and (2) for all materials and labor used in, or in connection with, the performance of the Subcontract. I further certify that Subcontractor has complied with federal, state and local tax laws, including Social Security law, Unemployment Compensation laws and Worker's Compensation laws insofar as applicable to the performance of the Subcontract.

SUBCONTRACTOR:

By: _____

Title: _____

Date: _____

Witness _____

THE STATE OF _____
COUNTY OF _____

BEFORE ME, the undersigned authority, on this day, personally appeared _____ known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

NOTARY PUBLIC

MY TERM EXPIRES _____

This field for office use ONLY

1960 SATELLITE BLVD • SUITE 2300 • DUBLUIT • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF _____
THE UNDERSIGNED BILLY'S PLUMBING CO. (SUBCONTRACTOR) HAS BEEN
EMPLOYED BY GARRARD CONSTRUCTION GROUP (NAME OF CONTRACTOR) TO
FURNISH PLUMBING FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
DAVE & BUSTERS WHICH IS LOCATED IN THE CITY OF MYRTLE BEACH, SC AND
IS OWNED BY SETH MCCOY - BROADWAY AT THE BEACH AND MORE
PARTICULARLY DESCRIBED AS:

BROADWAY AT THE BEACH
1322 CELEBRITY CIRCLE
MYRTLE BEACH, SC 29577

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY
USING EITHER METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT,
BOOK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)
UPON RECEIPT OF THE SUM OF \$ _____ BEING THE PROGRESS
PAYMENT DUE ON ACCOUNT OF ITS SUBCONTRACT NO. 10-6030-15 (THE
SUBCONTRACT) WITH THE CONTRACTOR DATED 2/1/17 THE SUBCONTRACTOR
BILLY'S PLUMBING CO. WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS
OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS
AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF
_____(DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE
MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON
ACCOUNT OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON
ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

SUBCONTRACTOR

BY: _____

TITLE: _____

DATE: _____

1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

STATE OF _____

COUNTY OF _____

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY, PERSONALLY APPEARED
_____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND
CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____
20_____.

SEAL

NOTARY PUBLIC

MY TERM EXPIRES

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE
CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED
ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS
AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF
NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY
PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE
FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER
AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

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PHONE: 770-822-1944 • FAX: 770-822-4633

Page 3 of 10

Defe@dmats 000457

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GARRARD

FINAL WAIVER AND RELEASE UPON PAYMENT

STATE OF _____
THE UNDERSIGNED **BILLY'S PLUMBING CO. (SUBCONTRACTOR)** HAS BEEN
EMPLOYED BY **GARRARD CONSTRUCTION GROUP (NAME OF CONTRACTOR)** TO
FURNISH **PLUMBING** FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
DAVE & BUSTERS-INT WHICH IS LOCATED IN THE CITY OF **MYRTLE BEACH, SC**
AND IS OWNED BY **SETH MCCOY - BROADWAY AT THE BEACH** AND MORE
PARTICULARLY DESCRIBED AS:

BROADWAY AT THE BEACH
1322 CELEBRITY CIRCLE
MYRTLE BEACH, SC 29577

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY
USING EITHER METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT,
BOOK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)
UPON RECEIPT OF THE SUM OF \$ _____ BEING THE PROGRESS
PAYMENT DUE ON ACCOUNT OF ITS SUBCONTRACT NO. **10-6030-15** (THE
SUBCONTRACT) WITH THE CONTRACTOR DATED **2/1/17** THE SUBCONTRACTOR
BILLY'S PLUMBING CO. WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS
OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS
AGAINST ANY LABOR AND/OR MATERIAL BOND.

SUBCONTRACTOR

BY: _____

TITLE: _____

DATE: _____

1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

STATE OF _____

COUNTY OF _____

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY, PERSONALLY APPEARED
_____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND
CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____
20_____.

SEAL

NOTARY PUBLIC

MY TERM EXPIRES _____

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE
CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED
ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS
AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF
NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY
PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE
FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER
AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

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PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

EXHIBIT F

WARRANTY OF CONSTRUCTION

Pursuant to the Contract between Garrard Construction Group, Inc. ("Contractor") and SETH MCCOY - BROADWAY AT THE BEACH, for the construction of DAVE & BUSTERS, and the Subcontract No. 10-6030-15 (the "Subcontract") between BILLY'S PLUMBING CO. ("Subcontractor") and Contractor dated 2/1/17.

Subcontractor hereby guarantees all work performed under the Subcontract and shall remedy at its own expense any failure of the work (including equipment) to conform to the contract plans and specifications and any defect of material and/or workmanship in the work for a period of one year after final acceptance by Owner. Where guarantees or warranties are written in the Contract Documents (as defined in the Subcontract Agreement) for a period of more than one year, such longer terms shall apply. Date of final acceptance is established as _____

All manufacturers' and suppliers' warranties and guaranties, express or implied, respecting any part of the work and any materials used therein are hereby assigned by Subcontractor jointly to Contractor and Owner. This Warranty of Construction shall supplement, and not supersede, warranties and guaranties given by Subcontractor under the terms of the Contract Documents.

WITNESS

SUBCONTRACTOR

By: _____
Title: _____
Date: _____

STATE OF _____
COUNTY OF _____

BEFORE ME, the undersigned authority, on this day, personally appeared _____, known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

SEAL

NOTARY PUBLIC

MY TERM EXPIRES

Person to contact in case of emergency:
Name _____ Phone No. _____

1960 SATELLITE BLVD • SUITE 2300 • DUBLIN • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



INTERIM WAIVER AND RELEASE UPON PAYMENT
MATERIALMAN/ SUPPLIER WAIVER

STATE OF GEORGIA
COUNTY OF: _____

FROM: _____
(NAME OF SUPPLIER OR EQUIPMENT LESSOR (3RD PARTY))

THE UNDERSIGNED MATERIALMAN HAS BEEN EMPLOYED BY
_____ (NAME OF SUBCONTRACTOR) TO FURNISH
MATERIALS ON BEHALF OF GARRARD CONSTRUCTION GROUP, INC., GENERAL
CONTRACTOR, FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
_____ WHICH IS LOCATED IN THE CITY OF _____,
COUNTY OF _____ AND IS OWNED BY _____ AND
MORE PARTICULARLY DESCRIBED AS:

UPON THE RECEIPT OF THE SUM OF \$ _____, THE MATERIALMAN WAIVES
AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE
FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR
MATERIAL BOND THROUGH THE DATE OF _____ (DATE) AND
EXCEPTING THOSE RIGHTS AND LIENS THAT THE MATERIALMAN MIGHT HAVE IN
ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH
FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR
FOR SAID BUILDING OR PREMISES.

(NAME OF SUPPLIER OR EQUIPMENT LESSOR)

SIGNATURE _____ TITLE: _____

GIVEN HAND AND SEAL THIS _____ DAY OF _____, _____.

1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

NOTARY INFORMATION

STATE OF _____

COUNTY OF _____

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED

KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND BEING DULY SWORN, ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND DECLARED TO ME THAT THE STATEMENTS CONTAINED THEREIN ARE TRUE.

SWORN AND SUBSCRIBED TO ME BEFORE THIS _____ DAY OF _____ 20__

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

SEAL

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

FINAL WAIVER AND RELEASE UPON PAYMENT MATERIALMAN/ SUPPLIER WAIVER

STATE OF GEORGIA
COUNTY OF: _____

FROM: _____
(NAME OF SUPPLIER OR EQUIPMENT LESSOR (3RD PARTY))

THE UNDERSIGNED MATERIALMAN HAS BEEN EMPLOYED BY
_____ (NAME OF SUBCONTRACTOR) TO FURNISH
MATERIALS ON BEHALF OF GARRARD CONSTRUCTION GROUP, INC., GENERAL
CONTRACTOR, FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
_____ WHICH IS LOCATED IN THE CITY OF _____,
COUNTY OF _____ AND IS OWNED BY _____ AND
MORE PARTICULARLY DESCRIBED AS:

UPON THE RECEIPT OF THE SUM OF \$ _____, THE MATERIALMAN WAIVES
AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE
FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR
MATERIAL BOND.

(NAME OF SUPPLIER OR EQUIPMENT LESSOR)

SIGNATURE _____ TITLE: _____

GIVEN HAND AND SEAL THIS _____ DAY OF _____, _____.

1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

NOTARY INFORMATION

STATE OF _____

COUNTY OF _____

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED

KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND BEING DULY SWORN, ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND DECLARED TO ME THAT THE STATEMENTS CONTAINED THEREIN ARE TRUE.

SWORN AND SUBSCRIBED TO ME BEFORE THIS _____ DAY OF _____ 20__.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

SEAL.

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

Page 10 of 10

Def@Garrard 000464

EXHIBIT 9

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ENTERED

2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097
Ph : (770)822-1844

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Subcontract Change Order

Project: 10-10-6030 Dave & Buster's M Beach Int
1322 Celebrity Square
Myrtle Beach, SC 29577

Subcontract: 10-6030-15
Change Order: 1
Date: 4/13/2017

To Contractor:
Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

The Contract is changed as follows:

Phase	Change Request	Description	Amount
15-400		1. Concrete X-Ray to locate 2 floor cleanouts covered by excessive concrete poured too high	\$738.29
15-400		2. Replace five broken F-S-1 Floor Sinks damaged by other trade lifts	\$3,556.10
Total:			\$4,294.39

The original Contract Amount was	\$350,197.33
Net change by previously authorized Change Orders	\$0.00
The Contract Amount prior to this Change Order was	\$350,197.33
The Contract will be increased by this Change Order in the amount of	\$4,294.39
The new Contract Amount including this Change Order will be	\$354,491.72
The Contract Time will be unchanged.	
The date of Substantial Completion as of the date of this Change Order therefore is	

NOT VALID UNTIL SIGNED BY THE SUBCONTRACTOR.

Garrard Construction Group, Inc.
CONTRACTOR
2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097

Billy's Plumbing Company, LLC
SUBCONTRACTOR
P.O. Box 1051
Conway, SC 29528

(Signature)

Shawn J. Gill

By

April 13, 2017

Date

(Signature)

By

Date

Defect# 000431

EXHIBIT 10

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562



2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097
Ph : (770)822-1944

ENTERED

Subcontract Change Order

Project:
10-10-6030 Dave & Buster's M Beach Int
1322 Celebrity Square
Myrtle Beach, SC 29577

Subcontract: 10-6030-15
Change Order: 2
Date: 5/12/2017

To Contractor:
Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

The Contract is changed as follows:

Phase	Change Request	Description	Amount
15-400		1. Change FS1 to FS3 at Pasta Cooker per Bulletin #1 revisions	\$526.99
15-400		2. Add heat tape a canopy sprinkler lines per Bulletin #1 revisions	\$1,491.20
15-400		3. T&M invoice for correcting and completing underground sanitary and grease waste rough in that was installed by previous plumbing subcontractor	\$21,219.03
Total:			\$23,237.22

The original Contract Amount was	\$350,197.33
Net change by previously authorized Change Orders	\$4,294.39
The Contract Amount prior to this Change Order was	\$354,491.72
The Contract will be increased by this Change Order in the amount of	\$23,237.22
The new Contract Amount including this Change Order will be	\$377,728.94
The Contract Time will be unchanged.	
The date of Substantial Completion as of the date of this Change Order therefore is	

NOT VALID UNTIL SIGNED BY THE SUBCONTRACTOR.

Garrard Construction Group, Inc.
CONTRACTOR
2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097

Billy's Plumbing Company, LLC
SUBCONTRACTOR
P.O. Box 1051
Conway, SC 29528

(Signature)

Shawn J. Gill

By
May 12, 2017

Date

(Signature)

Scott Gasque

By
5/17/18

Date

Defect@Garrard 000432

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EXHIBIT 11



ENTERED

2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097
Ph : (770)822-1944

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Subcontract Change Order

Project:
10-10-6030 Dave & Buster's M Beach Int
1322 Celebrity Square
Myrtle Beach, SC 29577

Subcontract: 10-6030-15
Change Order: 3
Date: 5/31/2017

To Contractor:
Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

The Contract is changed as follows:

Phase	Change Request	Description	Amount
09-700		1. Remove and replace bar floor drain and p-trap in bar area that was filled with epoxy by epoxy floor contractor	\$839.76
09-700		2. Remove and replace kitchen floor drain and p-trap in kitchen area that was filled with epoxy by epoxy floor contractor	\$839.76
Total:			\$1,679.52

The original Contract Amount was	\$350,197.33
Net change by previously authorized Change Orders	\$27,531.61
The Contract Amount prior to this Change Order was	\$377,728.94
The Contract will be increased by this Change Order in the amount of	\$1,679.52
The new Contract Amount including this Change Order will be	\$379,408.46
The Contract Time will be unchanged.	
The date of Substantial Completion as of the date of this Change Order therefore is	

NOT VALID UNTIL SIGNED BY THE SUBCONTRACTOR.

Garrard Construction Group, Inc.
CONTRACTOR
2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097

Billy's Plumbing Company, LLC
SUBCONTRACTOR
P.O. Box 1051
Conway, SC 29528

(Signature)

Shawn J. Gill

By
May 31, 2017

Date

(Signature)

Scott Gasque

By
5/31/17

Date

Defendants 000433

EXHIBIT 12

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SUBCONTRACT

ENTERED

Contractor:

Garrard Construction Group, Inc.
2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097
Ph : (770)822-1944

Subcontractor:

Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

Project #: 10-10-6028
Project Name: Dave & Buster's M Beach Shell
Date: 2/28/2017

Subcontract: 10-6028-23
Project Location: 1322 Celebrity Square

Myrtle Beach, SC 29577

This Agreement is made this 28 day of February, 2017 between Garrard Construction Group, Inc. ("Contractor") and Billy's Plumbing Company, LLC ("Subcontractor")

ARTICLE 1 - Scope of the Work

1.1 Subcontractor, as an independent contractor employed by Contractor, agrees to provide and to furnish everything necessary, including, but not limited to, all labor, materials, supervision, scaffolding, equipment, hoisting equipment, systems, machinery, tools, apparatuses, transportation, shop drawing, samples and submittals, to provide, furnish and complete the work set forth in the attached Attachment "A" ("Work"), to be performed in connection with the Dave & Buster's M Beach Shell ("Project") for Burroughs & Chapin Co., Inc. ("Owner"). Owner shall include any of its authorized representatives such as its architects, engineers or construction managers.

Attachments are listed as follows	Attachment A	Scope of the Work \ Breakdown
	Attachment B	The Schedule
	Attachment C	Drawing Enumeration
	Attachment D	GCG Pay Application
	Attachment E	GCG Lien Waivers: Interim, Final, Third Party
	Attachment F	Warranty Form
	Attachment G	Third Party Subcontractor & Vendor List

ARTICLE 2 - The Subcontract Amount

2.1. As full consideration for complete performance of the Work, Subcontractor shall be paid: \$ 36,884.00 (thirty-six thousand eight hundred eighty-four and xx / 100) ("Subcontract Amount").
2.2. The Subcontract Amount shall be the total sum paid to Subcontractor except for changes or modifications in accordance with the terms of this Agreement.
2.3 Any and all transportation tax, sales tax, use tax or any other tax that might accrue through the purchase of materials or amounts paid for labor by Subcontractor or occasioned by performance of this Agreement, shall be borne and paid for by Subcontractor, and are included in the Subcontract Amount.

ARTICLE 3 - The Terms of this Agreement

3.1 This Agreement consists of: (1) this Lump Sum Subcontract and any attachments hereto; and (2) the agreement between Owner and Contractor for the Project, including all conditions to that agreement (general supplementary and any other conditions), all drawings, specifications, schedule, and contract documents referenced in that agreement, along with all addenda and modifications to that agreement ("Prime Contract").
3.2 Subcontractor agrees to be bound to Contractor by all of the terms of the Prime Contract, and assumes toward Contractor all the obligations, duties and responsibilities that Contractor by the Prime Contract assumes toward Owner with the same force and effect as though every such obligation, duty and responsibility were set forth herein in full. Subcontractor agrees that Contractor shall have the same rights and remedies that Owner under the Prime Contract has against Contractor with the same force and effect as though every such right or remedy were set forth herein in full. Subcontractor further warrants and represents that prior to signing this Agreement it has reviewed and is familiar with the Prime Contract and agrees not to plead ignorance of any provision therein in any dispute between the parties.
3.3 The intent of this Agreement is to include all items necessary for the proper execution and completion of the Work by Subcontractor. The documents comprising this Agreement are complementary and what is required by one shall be as binding as if required by all.
3.4 All obligations, duties, responsibilities, rights and remedies set forth herein are in addition to those obligations, duties, responsibilities, rights and remedies set forth in the Prime Contract. In the event a provision of the Prime Contract is inconsistent with the provisions of this Lump Sum Subcontract, the provision more favorable to Contractor shall control.
3.5 Except as modified by this Agreement, the Work shall be performed and completed in strict accordance with the terms and requirements of the Prime Contract.
3.6 Subcontractor shall carefully study and compare the documents comprising the Prime Contract with each other and shall at once report to Contractor any error, inconsistency or omission discovered. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies, or omissions if it recognizes, or should have recognized, an error, inconsistency, or omission and fails to report it to Contractor before executing the Work. By performing any construction activity involving a recognized error, inconsistency, or omission in the Prime Contract, Subcontractor assumes the risk of such performance and

Contractor:
Garrard Construction Group, Inc.
2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097
Ph : (770)822-1944

Project #: 10-10-6028
Project Name: Dave & Buster's M Beach Shell
Date: 2/28/2017

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agrees to bear full responsibility for all costs of correction.

ARTICLE 4 - The Time of Performance

4.1 Subcontractor shall comply with any schedule requirements imposed upon Contractor in the Prime Contract. Contractor shall schedule the work required by the Prime Contract, including the Work. Contractor shall have the right to decide the time, order and priority that the various portions of the Work will be performed and other matters relative to the time and orderly conduct of the Work.

4.2 A Schedule for the Project and the Work is attached hereto as Attachment "B" (the "Schedule"). Subcontractor shall participate and cooperate with Contractor in scheduling the times and sequences required to perform the Work and agrees to perform the Work in accordance with the Schedule, including all amendments thereto. Subcontractor shall continuously monitor the Schedule and shall advise Contractor of the status of its performance on a regular basis including information on the status of shop drawings, sample submittals, materials or equipment that may be in the course of preparation or manufacture. Subcontractor shall immediately notify Contractor of any circumstances which may affect the times and sequences in the Schedule and shall make all requests for time extensions in writing to Contractor sufficiently in advance to allow Contractor to forward the request as required in the Contract Documents.

4.3 Time is of the essence of this Subcontract. Subcontractor shall commence the Work in accordance with the Schedule, or when directed by verbal or written notice from Contractor, and shall diligently and continuously prosecute such Work in an efficient fashion so as not to cause interruption, interference, inefficiency, suspension, hindrance or delay (collectively referred to as "Delay") in the progress of any portions of the Project. Subcontractor shall coordinate the Work with the other work being performed on the Project so that the Project shall not be Delayed due to any act or omission of Subcontractor. Subcontractor shall take all necessary action to assure the completion of the Project within the time specified in the Schedule and the Prime Contract.

4.4 Subcontractor shall be liable to Contractor for any and all loss to Contractor, or which Contractor may be liable, as a result of any Delay on the part of Subcontractor in the prosecution or completion of the Work according to the Schedule, or for any Delay to the completion of the Project attributable to Subcontractor. If the Agreement between Contractor and Owner imposes upon Contractor an obligation to pay Owner liquidated damages in the event Delays are encountered in completion of the Project, and to the extent such a Delay is caused in whole or in part by the acts or omissions of Subcontractor, Subcontractor shall be obligated to pay Contractor, in addition to any other damages sustained by Contractor as a result of the Delay, any liquidated damages Contractor is obligated to pay Owner.

4.5 In agreeing to complete the Work within the times and sequences herein mentioned, Subcontractor hereby represents that it has taken into consideration and made allowances for all Delays incident to the Work. No Delay in the commencement or progress of the Work for any cause whatsoever, including those for which Owner or Contractor may be responsible, in whole or in part, shall relieve Subcontractor of its duty to perform hereunder.

4.6 Subcontractor shall not be entitled to any time extension unless a notice of claim therefore is presented in writing to Contractor within the period of time required by the Prime Contract or within seventy-two (72) hours of the first occurrence of the Delay, whichever time period is shorter. Except as set forth in Article 11.2, Subcontractor agrees that an extension of time for completing the Work is its sole remedy for any and all other claims Subcontractor may have against Contractor on account of any Delay. Permitting Subcontractor to continue working after the time to complete the Work has expired, shall not be construed as a waiver by Contractor of any claims for loss or damage for breach by Subcontractor of one or more of the provisions of this Agreement.

4.7 Subcontractor shall at all times supply and promptly pay for adequate tools, appliances, equipment, a sufficient number of properly skilled workmen and a sufficient amount of material and supplies to efficiently and properly prosecute the Work in accordance with the Schedule, and any modifications thereto issued by Contractor, in order to achieve the Project completion date established by the Prime Contract.

ARTICLE 5 - Payments

5.1 Invoicing and payment of the Subcontract Amount shall be made in accordance with the terms of the Prime Contract. Subcontractor shall submit to Contractor a written application for payment, in a form approved by Contractor, showing the value of the Work performed and completed to date, along with all substantiating data and information as required by the Prime Contract, from which shall be deducted: (1) a retainage of 10% of such value; (2) all previous payments; (3) all charges for materials and services furnished by Contractor to Subcontractor; and (4) any other charges and deductions as provided for in this Agreement or in the Prime Contract. The balance of the Subcontractor's invoice, to the extent approved by Owner and Contractor, shall be payable to Subcontractor after the Contractor has received payment from the owner. After receipt of payment from the owner, the payment to the subcontractor shall be made on the Friday closest to the end of the month in which payment was received or 10 business days from the date received, whichever is later. Checks will be processed on the subsequent Friday as part of our normal Accounts Payable check run.

5.2 A condition precedent to Subcontractor receiving monthly payments after starting the Work is the delivery by Subcontractor to Contractor each month (regardless of whether any Work was performed) of waivers of liens and claims, in a form suitable to Contractor, from Subcontractor and all sub-subcontractors and suppliers who have furnished materials for use on the Project and for which payment has been received by Subcontractor.

5.3 Contractor's obligation to pay the Subcontract Amount is executory and conditional upon Subcontractor's compliance with this Agreement. It is further expressly agreed that payment by Owner to Contractor is an absolute condition precedent to payment by Contractor to Subcontractor of all or any portion of the Subcontract Amount.

5.4 The quantities of Work performed and materials furnished as established by the Prime Contract or Contractor and Owner shall constitute the basis for computation of the payment to Subcontractor. Payments made on account of materials not incorporated in the Work but delivered and suitably stored, shall be made, if at all, in accordance with the Prime Contract.

5.5 Final payment of the Subcontract Amount including retention ("Final Payment") shall be made to Subcontractor upon: (i) completion of the Work in accordance with the Prime Contract; (ii) acceptance of the Work by Contractor and Owner; (iii) the occurrence of any and all conditions precedent to Subcontractor's receipt of Final Payment, as provided in the Prime Contract; (iv) receipt of final payment under the Prime Contract by Contractor from Owner; (v) receipt of an affidavit from Subcontractor that all labor (including customary fringe benefits and payments due under collective bargaining agreements), sub-subcontractors, materialmen and suppliers have been paid in full and they, and Subcontractor, are waiving or have previously waived their lien rights upon the making of Final Payment; (vi) consent to Final Payment from Subcontractor's surety; (vii) a complete release of claims in a form acceptable to Contractor; and (viii) closeout documents inclusive of Operations & Maintenance manual.

5.6 If at any time there is evidence of a lien or claim for which, if established, Contractor or Owner might become liable, and which is chargeable to Subcontractor, or if Subcontractor shall incur any liability to Contractor, or if Contractor shall have any claim or demand against Subcontractor of any kind or for any reason, whether or not reduced to judgment or award, Contractor shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between Contractor and Subcontractor, an amount sufficient to indemnify and fully satisfy Contractor and Owner against such lien, claim, liability or demand. Contractor shall also be entitled to retain all costs of defense or collection with respect thereto, including reasonable

Contractor:

Garrard Construction Group, Inc.
2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-6028
Project Name: Dave & Buster's M Beach Shell
Date: 2/28/2017

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attorneys' fees. If any lien, claim, liability or demand develops after all payments are made hereunder, Subcontractor shall refund to Contractor within ten (10) days of demand therefore all amounts that the latter may be compelled to pay in discharging such lien, claim, liability or demand and all costs, including reasonable attorneys' fees incurred in collecting said amounts from Subcontractor.

5.7 No payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no payment shall be construed to be acceptance of defective Work or improper materials.

5.8 Acceptance of Final Payment by Subcontractor shall constitute a full waiver and release by Subcontractor of all claims against Contractor or Owner arising out of or relating to this Agreement.

5.9 Pay requests shall be submitted on the GCG pay request form.

ARTICLE 6 - Submittals

6.1 Subcontractor shall proceed at once to prepare all required shop drawings, product data samples and other submittals required by the Prime Contract and furnish same for approval in accordance with the Prime Contract. Submittal data shall be prompt and complete to ensure scheduled delivery of such equipment and/or materials, so as not to Delay the progress of either the Work or the Project. Subcontractor agrees to keep Contractor fully informed regarding its delivery schedule and shall immediately advise Contractor of any Delay or anticipated Delay.

6.2 Subcontractor shall comply with all scheduling and reporting requirements in the Prime Contract and shall furnish and supply Contractor such supplemental and additional information and reporting documentation as reasonably required by Contractor during the performance of the Work, including information on the status of materials and equipment that may be in the course of preparation or manufacture.

6.3 As-built documents and data shall be maintained and recorded by Subcontractor as applicable to the Work and shall be reviewed monthly by Contractor and in connection with Subcontractor's request for progress payments. Such review shall be a condition precedent to the issuance of payments under this Agreement.

6.4 Contractor's review of any as-built documents, submittals, shop drawings, data or drawings shall not relieve Subcontractor of any of its duties under the Prime Contract or its responsibility to perform the Work in the manner necessary to produce the results required and intended by the Prime Contract.

ARTICLE 7 - Superintendence and Subcontractor's Workforce

7.1 Subcontractor shall provide adequate, competent, and experienced full-time, on-site supervision during the performance of the Work. Such supervisory personnel shall have the authority to carry out directions from Contractor relating to this Agreement and the Work.

7.2 Subcontractor shall only employ workmen who will work in harmony with those employed by Contractor and other subcontractors. Subcontractor shall immediately replace any workmen objectionable to Contractor and if Contractor's request for replacement is not honored, Contractor shall be entitled and authorized to terminate this Agreement for cause.

7.3 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

7.4 In performing the Work, Subcontractor shall comply with Contractor's labor and affirmative action requirements under the Prime Contract. Subcontractor shall not discriminate against any employee or applicant because of race, creed, color, sex, age or national origin in the performance of the Work.

ARTICLE 8 - Material and Workmanship

8.1 All Work shall be done to the final approval of Contractor and Owner. Their decision as to the performance of the Work in accordance with the Prime Contract and the true constructive meaning of the Prime Contract shall be final, subject to any limitations stated in the Prime Contract.

8.2 Subcontractor shall provide safe and efficient facilities at all times for inspection of the Work by Contractor and Owner.

8.3 If Contractor or Owner condemns or disapproves of any portion of the Work, Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor of such condemnation or disapproval, proceed promptly to take down all rejected portions of the Work and remove from the Project all materials that are subject to that condemnation or disapproval and shall promptly make good all such Work and all other work damaged or destroyed in removing or making good said condemned or disapproved Work. All costs associated with replacing or repairing condemned Work shall be borne by Subcontractor without any increase in the Subcontract Amount.

8.4 Subcontractor shall conform to and abide by any additional specifications, drawings, or explanations required by the Prime Contract.

8.5 Contractor or Owner may elect to accept the Work, or any portion of it, which is not in accordance with the Prime Contract, rather than requiring its removal and correction. In such event, the Subcontract Amount shall be adjusted as necessary to equitably compensate Contractor and Owner for the consequences of Subcontractor's failure to comply with the Prime Contract.

ARTICLE 9 - Changes

9.1 Without invalidating this Agreement, and without notice to Subcontractor's surety, Contractor may order Subcontractor in writing to make changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement. In the event of such a change, the Subcontract Amount and time for performance of this Agreement shall be adjusted by way of change order ("Change Order"). Prior to the commencement of such changed or revised work, Subcontractor shall promptly submit to Contractor in writing, any claim it seeks to assert for adjustment in the Subcontract Amount or time for performance consistent with the requirements of the Prime Contract.

9.2 Subcontractor shall be bound by all computation and reporting requirements set forth in the Prime Contract with respect to Change Orders.

9.3 If Subcontractor is required by Contractor to perform additional work for which the amount of compensation is not set forth in the Prime Contract, the Subcontractor shall prepare and submit to Contractor a proposal describing the estimated quantities and the time and cost involved. The Subcontractor shall submit the proposal to Contractor within the appropriate time period established in the Prime Contract so as to permit the Contractor sufficient time to review the proposal and forward it to Owner for consideration. If no such time period is set forth in the Prime Contract, the Subcontractor shall submit its proposal to Contractor at least seven (7) calendar days before the additional work is required to be performed. Otherwise, Subcontractor shall accept the determination of Contractor as to the effect of the proposed Change Order.

9.4 Additions to, or changes in, this Agreement shall be made only upon written order, approved by Contractor. If the parties hereto are unable to agree as to the value of such work to be added or omitted, Subcontractor shall proceed under the written order of Contractor, from which order the stated value of the work shall be omitted. The dispute shall then be determined in accordance with Article 11.

9.5 Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, Contractor shall have the right to

Contractor:
Garrard Construction Group, Inc.
2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-6028
Project Name: Dave & Buster's M Beach Shell
Date: 2/28/2017

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proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the Work and charging the cost of so completing the Work to Subcontractor.

9.6 Contractor's receipt, or acknowledgment, of Subcontractor's Change Order request or any other alleged claim or any notice or report, including reports of cost and time, or any payments made on account thereof, shall not be construed as Contractor's acknowledgment, or acceptance, of the accuracy or validity of any portion thereof, until such time as final Change Order amounts are determined and a Change Order is signed by Contractor.

9.7 If the construction change order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- a. mutual acceptance of a lump sum properly itemized and supported by sufficient sustaining data to permit evaluation;
- b. unit prices stated in the Contract Documents or subsequently agreed upon;
- c. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- d. cost & fee with itemized accounting inclusive of cost of labor; cost of materials, supplies, and equipment; rental costs of machinery and equipment; cost for all bonds and insurance, permit fees; additional cost of supervision and field personnel; and overhead allowance of not more than 10% and fee of not more than 5%.

ARTICLE 10 - Default and Termination

10.1 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, upon twenty-four (24) hours written notice, direct Subcontractor to take such steps as Contractor deems necessary to remedy such failings, all without additional cost to Contractor. If Subcontractor fails to comply with these steps, in addition to any other right or remedy Contractor may have under this Agreement, Contractor may remedy such failings and deduct any loss or damage occasioned thereby from any money then due or thereafter to become due to Subcontractor.

10.2 If Subcontractor refuses or neglects to supply sufficient and properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Project, or fail in the performance of any of the requirements of this Agreement, or be unable to meet its debts as they mature, Contractor may, at its option, and at any time after forty-eight (48) hours written notice of such default to Subcontractor, terminate Subcontractor's involvement in the Project by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take possession of the Work, materials, tools, appliances and equipment of Subcontractor at the Project, and through itself or others provide labor, equipment and materials to prosecute the Work. The cost thereof, including all charges, expenses, losses, costs, damages and attorneys' fees incurred as a result of Subcontractor's failure to perform, shall be deducted by Contractor from any money then due or thereafter to become due to Subcontractor. Subcontractor shall not be entitled to any further payments under this Agreement until the Work has been completed and fully accepted by Owner. In the event that the unpaid balance due exceeds Contractor's cost of completion, the difference shall be paid to Subcontractor. If such costs exceed the balance due, Subcontractor shall pay the difference to Contractor within ten (10) days of demand for payment of same.

10.3 Contractor shall have the right to terminate Subcontractor's involvement in the Project by written notice, without Subcontractor being at fault, for any cause or for its own or Owner's convenience, and require Subcontractor to immediately stop the Work. In such event, Contractor shall pay Subcontractor for that portion of the Work actually performed in an amount proportionate to the total Subcontract Amount. Contractor shall not be liable to Subcontractor for any other costs nor for prospective profits on the Work not performed; provided, however, that if termination is due to any default or action by Owner, or as a result of an order by a court or public authority, then Contractor shall not be liable to Subcontractor for any sum greater than that which Contractor receives from Owner with respect to Subcontractor's performance, less any costs incurred by Contractor in obtaining that amount from Owner. Any default termination of Subcontractor by Contractor subsequently determined to have been erroneous or wrongful, shall be deemed to be a termination under this Paragraph 10.3.

10.4 If Subcontractor's involvement in the Project is terminated, Subcontractor shall assign to Contractor any and all of Subcontractor's contracts with sub-subcontractors and/or suppliers designated by Contractor. The Subcontractor represents and warrants to Contractor that all of its contracts with sub-subcontractors and/or suppliers do or will include a provision that authorizes the foregoing right and obligation of assignment. Subcontractor agrees to indemnify and hold Contractor harmless and defend it against any and all claims and liabilities incurred by reason of the Subcontractor's breach of any term, condition, obligation or agreement under the assigned contracts.

10.5 The remedies provided Contractor in this Article 10 and in any part of the Prime Contract shall be cumulative, and not exclusive, of all other remedies which Contractor may have for breach of this Agreement by Subcontractor, or as a result of Subcontractor's failure to perform any of the requirements of this Agreement. In the event of a default termination, all losses, and expenses, including attorneys' fees, incurred in the prosecution or defense of any action, arbitration or suit, trial or appeal, enforcement of any judgment, bankruptcy or insolvency proceeding, or any subsequent proceeding or appeal from any order or judgment entered therein, incurred by or resulting to Contractor on the above account, shall be borne by and charged against Subcontractor and shall be damages for breach of this Agreement. Contractor may recover same from the Subcontractor's surety, and both Subcontractor and its surety agree to pay Contractor for such losses, damages, expenses and attorneys' fees. At Contractor's sole discretion and exclusive option, proceeds that are payable, or due to become payable under this Agreement, or any other agreements between Subcontractor and Contractor, may be withheld by Contractor and applied against said losses, costs or expenses.

ARTICLE 11 - Claims and Disputes

11.1 Any claim for which the Contractor is directly responsible ("Contractor Related Claim"), shall be made by Subcontractor in writing to Contractor within five (5) business days of the occurrence of the event giving rise to the claim. Contractor shall issue a decision on any Contractor Related Claim in writing and furnish a copy thereof to Subcontractor. The decision of Contractor shall be final and conclusive, unless within forty-eight (48) hours from the date of receipt of such decision, Subcontractor issues written notice to Contractor contesting same. If Subcontractor does not contest Contractor's final decision within the time period noted above, Subcontractor shall be deemed to have waived any right to contest that decision.

11.2 Any claim by Subcontractor that may affect or become part of a claim for which the Owner or another person or entity besides Contractor may be responsible ("Owner or Third Party Related Claim") shall be made by Subcontractor in sufficient time and in such manner so as to permit Contractor to satisfy the Contractor's requirements for making an Owner or Third Party Related Claim against the Owner or any third party in question. Subcontractor shall pursue all Owner or Third Party Related Claims against the Owner or any third party in question through Contractor in accordance with the applicable disputes process. Subcontractor agrees to bear full responsibility and the full cost of pursuing all Owner or Third Party Related Claims. Contractor shall be liable to Subcontractor only to the extent that Contractor actually recovers from the Owner or any third party for each Owner or Third Party Related Claim, less Contractor's costs associated with the Owner or Third Party Related Claim.

11.3 Any other dispute between Contractor or Subcontractor arising out of or relating to this Contract besides an Owner or Third Party Related Claim ("Other Dispute"), shall be decided by litigation unless Contractor shall advise Subcontractor within 30 days of receiving or giving notice of the Other Dispute, that Contractor elects to have the Other Dispute decided or resolved by arbitration. In the event Contractor elects to have the Other Dispute resolved by binding

Contractor:

Garrard Construction Group, Inc.
2055 Sugarloaf Circle., Suite 400
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-6028
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Date: 2/28/2017

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arbitration, Subcontractor shall be bound by Contractor's decision. Any such arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules issued by the American Arbitration Association then in effect. Any such arbitration shall be held in Myrtle Beach, SC and judgment upon the award may be entered by any court having jurisdiction.

11.4 In connection with any such arbitration proceeding, Subcontractor agrees to afford Contractor liberal and informal discovery consistent with the discovery provisions of the Georgia Civil Practice Act, O.C.G.A. § 9-11-1 et seq., including the production of all documents related to the dispute and the availability for deposition at reasonable times of all persons under its control who have knowledge of facts pertaining to the matter in dispute.

11.5 To the extent Contractor does not select arbitration for the resolution of any Other Dispute, Contractor and Subcontractor each hereby agree that the United States District Court for the Northern District of Georgia, or, at the option of Contractor, the Superior Court of Gwinnett County, Georgia, shall have exclusive jurisdiction to hear and determine any Other Dispute. Subcontractor expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced in such courts and pertaining to any Other Dispute. Myrtle Beach, SC

11.6 Any claim, dispute or other matter in question between Contractor and Subcontractor relating to this Agreement, or the Work shall be governed by the laws of the State of Georgia without regard to conflicts, or choice, of laws. SC

11.7 In the event Contractor is involved in any dispute resolution proceeding, including litigation, arbitration or administrative procedures, and that proceeding involves the Work, involves questions of law or fact common to the Work, or if complete relief cannot be afforded without Subcontractor's presence in that dispute resolution proceeding, Subcontractor hereby consents to consolidation or joinder in that proceeding.

11.8 Subcontractor shall carry on the Work and comply with its performance and scheduling obligations under this Agreement despite the existence of any dispute or legal proceedings unless otherwise agreed in writing by the parties hereto.

ARTICLE 12 - Regulatory Compliance

12.1 Subcontractor shall comply with all applicable laws, codes, regulations, orders and ordinances that apply to the Work and the Project, all in accordance with the Prime Contract. Subcontractor shall give all required notices and shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

12.2 Subcontractor shall take all reasonable safety precautions necessary with respect to the performance of the Work and shall comply with all safety measures and drug policies initiated by Contractor including OSHA and with all applicable laws, ordinances, rules, regulations and orders of public authorities pertaining to the safety of persons or property, all in accordance with the requirements of the Prime Contract.

12.3 Subcontractor shall comply with the requirements of all governmental authorities having jurisdiction over the Work.

12.4 Subcontractor shall comply with all applicable Social Security, Unemployment Compensation and Employer's or Worker's Compensation Acts.

12.5 If Subcontractor violates any of the above, Subcontractor shall bear all costs resulting from such violation and shall defend, indemnify and hold Contractor harmless from any damages (including attorneys' fees), claims, and causes of action arising from such violation.

ARTICLE 13 - Indemnity, Insurance and Bonding

13.1 Prior to commencing the Work, Subcontractor shall secure and pay for insurance of the type and limits set forth below and as required by the Prime Contract from an insurer, and in a form, acceptable to Contractor. The insurer shall be licensed to transact business in the location of the Project.

- a. Worker's Compensation with statutory limits but not less than \$500,000;
- b. Employer's Liability with limits of \$500,000 per occurrence;
- c. Comprehensive General Liability (occurrence form) with minimum limits of \$2,000,000.
- d. Comprehensive Automobile Liability Insurance with minimum limits of \$1,000,000.00 combined single limit with coverage for all owned, non-owned and hired automobiles.
- e. Excess Liability Insurance on a following form basis in limits not less than \$2,000,000.

All liability insurance coverage shall include Contractor and Owner as an additional insured and shall provide coverage for Contractor and Owner on a primary basis. All coverage shall include a waiver of the underwriter's rights of subrogation against Contractor and Owner. Subcontractor shall be solely responsible for any deductible or self-insurance retentions. Prior to commencement of operations, Subcontractor shall provide to Contractor and Owner certificates of insurance evidencing the required coverage and providing Contractor and Owner with thirty (30) days notice prior to cancellation of any coverage. In the event Subcontractor fails to obtain or maintain any insurance coverage required by this Agreement, or the Prime Contract, Contractor may at its option: (i) terminate Subcontractor; or (ii) purchase such coverage and charge the expense thereof to Subcontractor.

13.2 Subcontractor assumes full liability for any and all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and property arising out of or in any way connected with the Work and shall to the fullest extent permitted by law defend, indemnify and hold harmless Owner and Contractor, their respective officers, agents, employees and indemnities, from and against any and all claims, demands, losses, suits, damages and liabilities, legal or otherwise, arising out of or in any way connected with the Work, including, to the fullest extent permitted by law, irrespective of the negligence of any indemnitee hereunder provided that such negligence is not the sole proximate cause of such claim, demand, loss, suit, damage or liability. Subcontractor agrees that \$1,000 of the Subcontract Amount is consideration for Subcontractor agreeing to this indemnification. For purposes of fulfilling its duties to defend, indemnify and hold harmless the Contractor, Subcontractor waives the immunities, rights, or defenses that may be available under applicable Workers' Compensation Laws. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due Subcontractor, or which thereafter becomes due, shall be held by Contractor to cover such claim or demand including all reasonable attorneys' fees.

13.3 Subcontractor may be required to provide performance and payment bonds each with a penal amount equal to 100% of the Subcontract Amount. The premium for these bonds shall be paid by Contractor to bonding company upon receipt of bond and invoice from the bonding company up to .15% of contracts. Any excess over .15% shall be deducted from subcontractors funds. All bonds issued pursuant to this Paragraph 13.3 shall be issued by a surety, and in a form, acceptable to Contractor and by a surety licensed to transact business in the location of the Project. All bonding companies shall be rated as triple A by U.S. Treasury Departments list of approved sureties.

ARTICLE 14 - Warranties and Guarantees

14.1 Subcontractor warrants that its Work shall be: (1) fit for the purposes intended; (2) free from defects in material and workmanship; (3) comply with the Prime Contract and all applicable codes and industry standards; (4) be free and clear of all claims, encumbrances and liens.

14.2 Subcontractor agrees to promptly make good, without cost to Contractor or Owner, any and all defects due to its failure to meet such warranties which may appear within the guarantee or warranty period(s) established in the Prime Contract, and if no such period(s) be stipulated in the Prime Contract, then such guarantee shall be for a period of one (1) year from the date of completion and acceptance of the Project by Owner. Subcontractor further agrees to execute any special guarantees as provided by the Prime Contract or required by law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

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Ph: (770)822-1944

Project #: 10-10-6028
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Date: 2/28/2017

14.3 Subcontractor shall pay for all changes to the Work or the Project resulting from defects in workmanship or materials, as well as all expenses necessary to replace or repair either the Work or the Project, including any damages caused by the replacements or repairs. Subcontractor shall further be obligated to pay for, and shall reimburse Contractor for, all costs associated with the impact of its defective workmanship or materials. This obligation is in addition to all other guarantees, warranties and rights contained in the Prime Contract.

ARTICLE 15 - Encumbrances

15.1 Subcontractor shall turn the Work over to Contractor in good condition and free and clear of all claims, encumbrances, or other liens and shall defend, indemnify and hold harmless Contractor and Owner from all claims, encumbrances or liens arising out of the performance of the Work. Subcontractor shall at its own cost and expense (including attorneys' fees), defend all suits to establish such claims, and pay any such claims or liens so established. If Subcontractor fails to comply with this requirement, Contractor may bond off any liens and all costs of such action shall be paid by Subcontractor.

15.2 If a subcontractor or supplier to Subcontractor shall file a lien against the Project, Subcontractor shall bond off the lien within ten (10) days of its receipt of a demand to do so by Contractor. Subcontractor's failure to do so shall constitute an event of default under Paragraph 10.2.

15.3 Subcontractor shall as often as requested by Owner or by Contractor, furnish a sworn statement identifying all parties in Subcontractor's chain of privity who have furnished, or who are furnishing, labor or materials for the Work with their names and addresses and amounts due, or to become due, each of them.

15.4 Subcontractor shall furnish Contractor, if requested, evidence of the payment of all bills, expenses or liabilities incurred by Subcontractor for labor, services, equipment and materials used by Subcontractor in the performance of the Work. If requested by Contractor, Subcontractor shall also furnish written releases, in a form acceptable to Contractor, from all persons, firms, or corporations that have furnished to Subcontractor any labor, services, equipment and materials whether on or for the Project, and written releases of lien, in a form acceptable to Contractor, from all persons, firms and corporations that may have in any way had any dealings or agreements in connection with the Work.

ARTICLE 16 - Coordination

16.1 Subcontractor acknowledges its obligation under this Agreement to coordinate and review the Work with materials and/or equipment to be furnished by others to ensure completed compatible systems. Accordingly, Subcontractor shall review all submittals, fabrication and shop drawings and all product data referring to items requiring integration and compatibility with the Work.

16.2 Subcontractor shall review the surfaces provided by others to which the Work is to be applied, and shall notify Contractor of any known defect or condition detrimental to proper procedures, prior to the commencement of the Work; otherwise, Subcontractor agrees to accept the condition of such surfaces and shall be liable for all consequences resulting therefrom.

16.3 Subcontractor shall cooperate with Contractor, other subcontractors and Owner's forces to the extent their work might interfere with the Work and Subcontractor shall prepare coordinated drawings in areas of congestion if necessary for the timely and proper completion of the Project. Subcontractor shall also advise Contractor of any potential conflicts between the Work and the work of Contractor, other subcontractors or Owner's forces.

16.4 Subcontractor shall take all necessary precautions to protect, and shall be liable for any damage, to adjacent surfaces caused by the Work, including damages resulting from Subcontractor's cleaning of such surfaces.

16.5 If Subcontractor performs the Work on or adjacent to work provided by others that Subcontractor knows, or should know, is defective or is in violation of any laws, codes, regulations, orders and ordinances that apply to the Work, Subcontractor shall be fully responsible and shall indemnify Contractor for all damages caused thereby, including the costs to remove and replace the Work and any work of other subcontractors, Contractor, or Owner's forces affected thereby.

16.6 Subcontractor shall provide and be responsible for all layouts, including the accuracy thereof, necessary for the performance of the Work.

16.7 Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting, and sealing of the Work that may be required to fit it to, receive, or be received by the work of others as shown, or reasonably implied by, the Prime Contract, or as required, or reasonably implied by the rules and regulations, codes, and requirements of any regulatory or governmental agency having jurisdiction over the Project; or as required or reasonably implied to achieve consistency and compatibility with the design elements being penetrated.

ARTICLE 17 - Miscellaneous

17.1 Subcontractor shall provide, maintain and remove from the Project site upon completion of the Work, all temporary offices, structures for the use of its employees, sheds and storage facilities complete with all related utilities, gas, telephone and water. Storage areas for the use of Subcontractor shall be designated by Contractor, and no materials or equipment shall be stored by Subcontractor except in areas approved by Contractor. Such storage areas shall be maintained in an orderly condition by Subcontractor.

17.2 Except as may be otherwise provided in the Prime Contract, Subcontractor shall pay Contractor the reasonable value of any of Contractor's equipment used by Subcontractor in performing the Work.

17.3 Subcontractor represents that it has investigated, examined, inspected and thoroughly familiarized itself with the Prime Contract, surface and subsurface conditions and the location where the Work is to be performed, and that it has thoroughly informed itself as to any difficulties in connection therewith. Subcontractor further warrants that Contractor has made no representation of any kind or nature with reference thereto and not contained in this Agreement. By entering this Agreement with Contractor, Subcontractor further warrants and represents that it has taken into account all surface, subsurface and climatic conditions, the availability and costs of labor and materials, tools and equipment, Owner's and Contractor's scheduling requirements, and potential Project congestion caused by the work of others proceeding simultaneously with Subcontractor.

17.4 The scope of the Work includes an obligation to completely clean the Work and remove all contributing debris from the Project site and to locations designated by Contractor as often as necessary. If Subcontractor fails, within twenty-four (24) hours of receipt of verbal notice, to correct a failure to properly clean-up and dispose of all trash and waste materials created by Subcontractor, Contractor shall have the right to terminate in accordance with Paragraph 11.2 or perform such clean-up for Subcontractor; and Subcontractor hereby agrees to indemnify and to pay Contractor all costs incurred by Contractor in performing the clean-up work. Clean-up of the Work and the daily removal of debris from the areas of the Work is mandatory. Each day, all trash and debris shall be removed from the Project. Fire exits, corridor ladders, doorways and exit paths in general shall be clear of debris and open to pedestrian and wheelchair traffic at all times, specifically including nights and weekends.

17.5 Subcontractor waives all claims and all rights of subrogation against Contractor and Owner for loss of, or damage to, the Work, tools, machinery, equipment, material or supplies.

17.6 Where testing agency standards are referenced in the Prime Contract, all materials shall be tested and certified by an approved, independent testing firm acceptable to Contractor. N/A

17.7 If Subcontractor seeks to contract with a sub-subcontractor or supplier for any portion of the Work, prior written approval of Contractor must be obtained. All such contracts with sub-subcontractors and suppliers shall be pursuant to a contract that is assignable to Contractor in the event of Subcontractor's termination and specifically binds the sub-subcontractor or supplier to the terms of this Agreement.

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Date: 2/28/2017

17.8 Subcontractor agrees that payments due from Contractor for the Work are not assignable and that no part of this Agreement or the Work hereunder, can be assigned, except by and with the written consent of Contractor. ~~Contractor shall have the unconditional right to assign this Agreement, any party thereof, or any payments due hereunder.~~

17.9 Title to all materials supplied by Subcontractor shall pass to Contractor upon payment for the materials or upon delivery to the Project, whichever occurs first.

17.10 The headings provided in this Agreement are for ease of reference only. The headings form no part of the Agreement between this parties and shall be given no weight in the interpretation or construction of this Agreement.

17.11 If any provision of this Agreement is determined by a court to be unenforceable, such a determination shall not affect the validity and enforceability of any other section or part hereof.

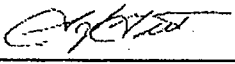
17.12 The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of this Agreement or the Prime Contract shall not be construed to be and shall not be a waiver of any such provision or provisions and Contractor shall thereafter be entitled to enforce each and every such provision without any requirement that Contractor provide notification to Subcontractor of its intention to thereafter enforce said provision or provisions.

17.13 If either party employs an attorney to enforce any of the provisions of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs, charges and expenses.

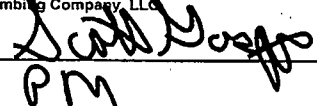
17.14 This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may only be amended or modified in a writing signed by both Subcontractor and Contractor.

IN WITNESS WHEREOF, Contractor and Subcontractor hereby executed this Agreement the day and year first written above.

Garrard Construction Group, Inc.

By: 
Shawn Gill
Title: Project Manager
Date: March 16, 2017

Billy's Plumbing Company, LLC

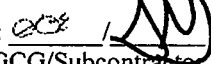
By: 
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Title:
Date: 3-16-17

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Attachment "A"
Plumbing Scope of Work
Billy's Plumbing
Dave & Buster's Shell – Myrtle Beach, SC
10-6028-23

General Scope Items:

1. All City, County, State & Federal laws, rules, regulations and policies shall apply to this project. Subcontractor, by execution of this Subcontract, states that he/she is familiar and compliant with all requirements. Subcontractor is responsible for meeting and maintaining requirements at all times. Subcontractor has reviewed the plans and specifications with knowledge of all governing codes and has included the cost of compliance, even if all of said governing code requirements have not been incorporated into the plans and specifications.
2. Subcontractor, by execution of this Subcontract, states that he/she has visited the job-site, has become familiar with the existing conditions under which the work will be performed, and has correlated those observations with the requirements of this agreement.
3. A copy of the Project Schedule is attached and made a part of this Subcontract. All agreed updates and revisions to the schedule will also be made a part of this Subcontract. Subcontractor shall provide such manpower, supervision, materials, facilities, equipment and shall work such hours (nights, weekends, overtime) as required to complete the work within the scheduled durations.
4. Subcontractor shall maintain and monitor an email account for the duration of the project. This account shall be checked a minimum of twice daily during the standard work week.
5. All submittals required by this scope of work must be transmitted to the Contractor within three (3) business days of execution of this Agreement.
6. All closeout documents required, including but not limited to, waivers, warranties, as-builts, O&M manuals, etc., will be transmitted to Contractor no later than 15 days after substantial completion of Subcontractor's scope of work.
7. Subcontractor will be responsible for completing and submitting a daily report to Contractor's Superintendent on a daily basis.
8. Mandatory safety meetings will be held as scheduled by the Superintendent. Attendance is mandatory by all persons performing work onsite. Abide by all current OSHA requirements and GCG Safety Policies at all times. Ensure all MSDS and Hazardous Material Data is on-file with the Superintendent. Subcontractor shall provide an OSHA 10 Hour Certified Employee (Competent Person) to the project at all times during this scope of work. The Competent Person must be provided with a cell phone as a means of emergency communications. The Superintendent shall provide one (1) ~~verbal~~ warning to Subcontractor if not adequately performing this contract requirement. After this warning, each safety violation will be assessed and ~~back-charged at \$300 per occurrence.~~ written
9. Hard hats, long pants and work boots must be worn at all times, regardless of the work being performed. No exceptions will be made for anyone. Any person not complying with this policy will be instructed to leave the Project.
10. Mandatory Subcontractor Scheduling meetings will be held as scheduled by the Contractor. Attendance by an authorized representative of the Subcontractor is required when Subcontractor is working onsite and as requested by the Contractor.
11. Any temporary lighting, beyond the safety lighting required to be provided by the Electrical Subcontractor, will be provided by the Subcontractor. The Subcontractor will also be

Initials: 

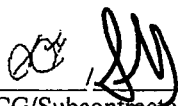
GCG/Subcontractor

Defendant 000472

- responsible for any additional temporary lighting required to meet project schedule requirements.
12. Subcontractor is responsible for the clean-up of all trash/debris associated with this scope of work. The debris/trash shall be placed in a dumpster provided by GCG. The Superintendent shall provide one (1) ~~verbal~~ ^{Amount to be per hour, in written warning.} warning to Subcontractor if not adequately performing this contract requirement. After this warning, Contractor shall provide clean-up services and deduct the cost from funds due or that may become due to Subcontractor.
 13. Provide all joint sealants, caulking, fire caulking, filler metals, etc. as required for this scope of work.
 14. Store and protect the work of this Subcontract during and after installation, until project substantial completion, to prevent damage.
 15. It is understood and agreed that the work of this Subcontract may not be performed in a continuous operation and Subcontractor includes the cost of multiple mobilizations, including travel time & expenses. Subcontractor shall respond to punch and warranty items within 24 hours, regardless of travel time.
 16. Protect all existing items designated to remain from work of this contract; including but not limited to: structures, light poles, sidewalks, curbs, paving, vegetation, finished products, etc.
 17. Subcontractor will not use and will not allow "1099 Labor" practices. Only valid Subcontractors and lower-tiered Subcontractors (as defined as independent contractors by the IRS) will be paid via 1099. All laborers are to be employees of the entity engaging them and their wages are to be reported to the IRS via W-2 forms.
 18. ORIGINAL PAY APPLICATIONS FOR THE WORK PERFORMED ARE DUE BY THE 20th OF THE MONTH FOR THE MONTH BEING BILLED. THE PAY APPLICATION SHOULD COVER THE WORK PERFORMED THROUGH THE 25th.
 19. Pay Applications shall include a list of all vendors and/or sub-subcontractors, with corresponding contact information, which performed work or provided materials to the Project during the Pay Application period. ~~All vendors and sub-subcontractors shall produce current project accounting statements for the Project to be attached to Subcontractor's Pay Application. Subcontractor's monthly Pay Application shall not be approved without this back-up.~~ Materialman/Supplier Lien Waivers shall be provided for all vendors and/or sub-subcontractors before payments are made. If General Contractor chooses not to bond Subcontractor, General Contractor reserves the right to "joint check" Subcontractor's vendors and sub-subcontractors.
 20. No change orders are to be submitted unless all cost associated with the change are broken down by unit cost, labor hours and cost, material cost, equipment cost, overhead & profit, etc. such that it can be properly evaluated. Change Orders shall be issued by GCG and fully executed before being included on Pay Applications. Failure to comply with this requirement will cause delay in payment.
 21. Ensure quality in all work placed. Perform all punch work necessary to meet the approval of the Owner, Design Team & Contractor.

Specific Scope Items:

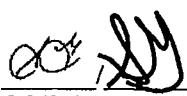
22. This Agreement is "turn-key" and includes all costs associated with labor, fasteners, accessories, equipment, materials, material stocking & material conveyance. Provide traffic control and lane closures if required for material deliveries or installations.
23. Provide a full-time Foreman, dedicated only to this project, during the work of this agreement. This Foreman shall be qualified, English speaking and OSHA 10 certified.
24. Secure all necessary local permits as required for this work.

Initials: 
GCG/Subcontractor

Defendants 000473

25. Provide a temporary water connection to the jobsite. Furnish and install a hose bib on the existing water service for temporary site water.
26. Provide all required layout for proper installation of this scope of work from the building corners established by others.
27. Furnish and install a complete plumbing system as indicated in the construction documents and required by governing codes. This work includes, but is not limited to;
 - i. Furnish and install one pressure reducing backflow device on the main water main into building.
 - ii. Furnish and install all gas piping and gas regulators to HVAC equipment as shown on the contract documents. Connection to all equipment is included.
 - iii. Furnish and install condensate drains on all roof top equipment as shown on the contract drawings.
 - iv. Furnish and install all pre-manufactured PVC roof blocks and related pipe clamps for all roof top gas piping and condensate drain piping.
 - v. Furnish and install all cast iron piping and drains for the 2 roof drains as shown on the contract drawings. These drains are to terminate 5 foot outside the building.
 - vi. Furnish and install all PVC vent pipes through roof. (Flashing by Others)
 - vii. Furnish and install all roof side condensate drains as shown on the contract documents.
28. Layout all systems to avoid conflict with the HVAC system, the electrical system, security system, etc. Denote discrepancies prior to commencement of work.
29. Ensure all piping, hanger mounting, and insulation is installed per the listed schedules in the contract documents. Install proper unions where dissimilar pipe is connected.
30. Ensure proper sleeves are provided in thru-wall penetrations. Properly stencil and label all piping and equipment.
31. Flush, test and certify all systems upon completion and ensure systems are functioning properly before demobilization.
32. Prior to mobilization, this subcontractor is to provide the GC's office or field superintendent with MSDS documentation for all materials used by this subcontractor as well as a site specific safety plan for this project.
33. Provide equipment operator's certificates as required by OSHA.

Total Subcontract: \$36,884.00

Initials: 
GCG/Subcontractor

Defect/Errors 000474

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HERRY - COMMON PLEAS - CASE#2017CP2603562

Provide labor, materials, equipment, tools, supplies and supervision for a complete Plumbing & Gas System.


 GCG _____ Subcontractor
 Initials

APPLICATION FOR PAYMENT BREAKDOWN SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT,
Containing SubContractor's signed Certification, is attached.
In tabulations below, amounts are stated to the nearest dollar.

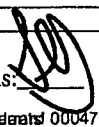
Application #: _____
Date: _____
Period To: _____
Project # 10 10 6028
SUBC # 10-6028-

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D FROM PREVIOUS APPLICATION (D+E)	E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIATION RATE)
15-400-S	Underground Labor	1 LS \$2,800.00						
15-400-S	Underground Materials	1 LS \$3,600.00						
15-400-S	Above ground Labor	1 LS \$8,700.00						
15-400-S	Above ground Materials	1 LS \$8,200.00						
15-400-S	Insulation	1 LS \$1,200.00						
15-400-S	Gas Piping	1 LS \$10,800.00						
15-400-S	Fixtures	1 LS \$3,584.00						
CHANGE ORDERS:								
TOTALS FOR EACH COLUMN:								
		\$35,884.00						

**ATTACHMENT "B" THE SCHEDULE
DAVE & BUSTER'S SHELL - MYRTLE BEACH, SC**

ID	Task Name	Duration	Start	Finish	Predecessors
1	Dave and Buster's Shell Building - Myrtle Beach SC	148 days	Mon 10/10/16	Wed 5/3/17	
2	Mobilization	2 days	Mon 10/10/16	Tue 10/11/16	
3	Install Temp Barricades	2 days	Wed 10/12/16	Thu 10/13/16	
4	Erosion Control	2 days	Wed 10/12/16	Thu 10/13/16	
5	Building & Site Demolition	15 days	Fri 10/14/16	Thu 11/3/16	
6	Site Utilities	68 days	Mon 12/12/16	Wed 3/15/17	
7	Site Storm Sewer	6 days	Fri 12/16/16	Fri 12/23/16	
8	Site Sewer & Grease Traps	6 days	Wed 3/8/17	Wed 3/15/17	27FS-10 days
9	Underground Water Service	4 days	Mon 12/12/16	Thu 12/15/16	17FS-8 days
10	Site Grading	2 days	Fri 11/4/16	Mon 11/7/16	
11	Exterior Concrete & Paving	20 days	Wed 3/22/17	Tue 4/18/17	
12	Sidewalks	17 days	Wed 3/22/17	Thu 4/13/17	
13	Asphalt Paving	3 days	Fri 4/14/17	Tue 4/18/17	
14	Foundations	32 days	Tue 11/8/16	Wed 12/21/16	
15	Stake Pile Locations	2 days	Tue 11/8/16	Wed 11/9/16	
16	Install Wood Piles	12 days	Thu 11/10/16	Fri 11/25/16	
17	Footing Excavation & Pour	25 days	Thu 11/17/16	Wed 12/21/16	16SS+5 days
18	Electrical Stub Into Building	6 days	Wed 11/9/16	Wed 11/16/16	17SS-6 days
19	Plumbing Stub Into Building	8 days	Wed 11/9/16	Fri 11/18/16	17SS-6 days
20	Structural Steel	22 days	Fri 1/20/17	Mon 2/20/17	
21	Structural Steel Delivery and Unload	1 day	Fri 1/20/17	Fri 1/20/17	
22	Steel Erection	10 days	Mon 1/23/17	Fri 2/3/17	
23	Set Roof Rurbs	1 day	Thu 2/2/17	Thu 2/2/17	22SS+8 days
24	Set RTU's	2 days	Fri 2/17/17	Mon 2/20/17	
25	Masonry	69 days	Thu 12/15/16	Tue 3/21/17	
26	CMU Installation	26 days	Thu 12/15/16	Thu 1/19/17	17SS+20 days
27	Brick Veneer	30 days	Wed 2/8/17	Tue 3/21/17	22SS+12 days
28	Roofing	23 days	Mon 2/6/17	Wed 3/8/17	
29	Single Ply Roofing	9 days	Mon 2/6/17	Thu 2/16/17	
30	Building Dry In	1 day	Fri 2/17/17	Fri 2/17/17	
31	Parapet Metal Panels	10 days	Fri 2/17/17	Thu 3/2/17	
32	Exterior Framing and Sheathing	15 days	Thu 2/16/17	Wed 3/8/17	22SS+18 days
33	Cornice Installation	49 days	Fri 1/27/17	Wed 4/5/17	
34	Cornice Framing & Sheathing	12 days	Fri 1/27/17	Mon 2/13/17	27SS-8 days
35	EIFS	25 days	Tue 2/14/17	Mon 3/20/17	
36	Deco Metal Panels	8 days	Tue 3/21/17	Thu 3/30/17	
37	GFRG Accents	12 days	Tue 3/21/17	Wed 4/5/17	
38	Storefront & Curtain Wall Installation	10 days	Wed 3/22/17	Tue 4/4/17	
39	Install Overhead Door Elements	7 days	Wed 3/22/17	Thu 3/30/17	38SS
40	Completion	11 days	Wed 4/19/17	Wed 5/3/17	
41	FINAL INSPECTIONS	5 days	Wed 4/19/17	Tue 4/25/17	
42	Punch List	5 days	Wed 4/26/17	Tue 5/2/17	
43	TURNOVER	1 day	Wed 5/3/17	Wed 5/3/17	

Page 1

Subcontractor Initials: 

Defaulted 000477

Attachment "C" Drawing Enumeration						
DAVE & BUSTERS						
BROADWAY AT THE BEACH						
1322 CELEBRITY CIRCLE						
MYRTLE BEACH, SC 29577						
Sheet	Title	Issued Date	Addendum 1	Addendum 2	BULLETIN #1	BULLETIN #2
G-000	COVER SHEET	7/6/2016				
G-001	PROJECT INFORMATION SHEET	7/6/2016				
G-002	GROUND FLOOR LIFE SAFETY PLAN	7/6/2016				
G-003	CONSTRUCTION SUBSYSTEMS	7/6/2016				
	CIVIL					
C-1	COVER SHEET	7/5/2016				
C-2	GENERAL NOTES	7/5/2016				
C-3	DEMOLITION PLAN	7/5/2016				
C-4	EROSION CONTROL PLAN	7/5/2016				
C-5	LAYOUT	7/5/2016				
C-6	GRADING AND DRAINAGE	7/5/2016				
C-7	UTILITY LAYOUT	7/5/2016				
C-8	DETAIL #1	7/5/2016				
C-9	DETAIL #2	7/5/2016				
	LANDSCAPE					
L-1.1	PLANTING PLAN	6/6/2016	6/24/2016			
	STRUCTURAL					
S-001	CASE FORMS	7/6/2016				
S-002	CASE FORMS	7/6/2016				
S-100	GENERAL NOTES AND TYP. DETAILS	7/6/2016				
S-101	FOUNDATION PLAN	7/6/2016				
S-102	ROOF PLAN	7/6/2016				
S-121	ENLARGED PLAN - DISPLAY WINDOWS	7/6/2016				
S-122	ENLARGED PLAN - PLYON	7/6/2016				
S-123	ENLARGED PLAN - PATIO	7/6/2016				
S-124	ENLARGED PLAN - SOUTH ENTRY	7/6/2016				
S-201	ELEVATIONS	7/6/2016				
S-202	ELEVATIONS	7/6/2016				
S-351	WALL SECTIONS	7/6/2016				
S-352	WALL SECTIONS	7/6/2016				
S-353	TOP SIGNAGE ARMATURE	7/6/2016				
S-354	SIGNAGE ARMATURE	7/6/2016				
S-355	TV ARMATURE	7/6/2016				
S-400	FOUNDATION DETAILS	7/6/2016				
S-500	ROOF DETAILS	7/6/2016				
	ARCHITECTURAL					
A-001	ARCHITECTURAL SITE PLAN	7/6/2016				
A-002	NOT USED	7/6/2016				
A-003	EXTERIOR PATIO #1	7/6/2016				
A-004	EXTERIOR PATIO #2	7/6/2016				
A-005	EXTERIOR PATIO DETAILS	7/6/2016				
A-006	SERVICE YARD SCREEN WALL	7/6/2016				
A-007	TV ARMATURE	7/6/2016				
A-008	SIGNAGE ARMATURE	7/6/2016				
A-009	GABLE SIGNAGE ARMATURE	7/6/2016				
A-010	MOCK UP PANEL	7/6/2016				
A-101	GROUND FLOOR PLAN	7/6/2016				
A-102	ROOF PLAN	7/6/2016				
A-121	ENLARGED FLOOR PLANS	7/6/2016				
A-122	ENLARGED FLOOR PLANS	7/6/2016				
A-123	ENLARGED FLOOR PLANS	7/6/2016				
A-201	EXTERIOR ELEVATIONS	7/6/2016				
A-202	EXTERIOR ELEVATIONS	7/6/2016				
A-203	EXTERIOR PERSPECTIVES	7/6/2016				
A-301	BUILDING SECTIONS	7/6/2016				
A-351	WALL SECTIONS	7/6/2016				
A-352	WALL SECTIONS	7/6/2016				
A-353	WALL SECTIONS	7/6/2016				
A-421	ENLARGED ELEVATIONS	7/6/2016				
A-422	SOUTH PYLON ELEVATION AND SECTIONS	7/6/2016				
A-423	SOUTH PYLON PLAN DETAILS	7/6/2016				
A-501	PLAN DETAILS	7/6/2016				
A-511	SECTION DETAILS	7/6/2016				
A-512	SECTION DETAILS	7/6/2016				
A-513	WINDOW BOX PLAN AND SECTION DETAILS	7/6/2016				
A-601	DOOR & STOREFRONT, TYPE AND FRAME TYPES	7/6/2016				
	FIRE PROTECTION					
F-101	FIRE SPRINKLER SHELL PLAN	7/5/2016				
	PLUMBING					
P-101	PLUMBING SHELL PLAN	7/5/2016				
	MECHANICAL					
M-101	MECHANICAL ROOF PLAN	7/5/2016				
	ELECTRICAL					
E-101	ELECTRICAL SHELL PLAN	7/5/2016				

SUBCONTRACTOR INITIALS: 

Defect ID: 000478

Subcontractor Name:

Job Name: _____

[illegible]

INITIALS:

~~Subcontract~~

Defendant 000479



GARRARD

APPLICATION FOR PAYMENT

EXHIBIT D

TO: Garrard Construction Group, Inc. ("Contractor")

FROM: BILLY'S PLUMBING ("Subcontractor")

Subcontract #: 10-6028-23 (the "Subcontract")

PROJECT DESCRIPTION: DAVE & BUSTERS - MYRTLE BEACH

APPLICATION FOR PAYMENT #: _____ PERIOD _____, 20____, TO _____, 20____.

STATEMENT OF SUBCONTRACT:

1. Original Subcontract Amount	\$ <u>36,884</u>
2. Approved Contract Revision Numbers _____ (As per attached breakdown).....	\$ _____
3. Adjusted Subcontract Amount	\$ _____
4. Value of Work Completed to Date (As per attached breakdown)	\$ _____
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ _____
6. Materials Stored on Site (As per attached breakdown)	\$ _____
7. Total to Date	\$ _____
8. Less Amount Retained (10 %)	\$ _____
9. Total Less Retainage	\$ _____
10. Total Previously Certified (Deduct)	\$ _____
11. AMOUNT DUE THIS REQUEST	\$ *

* USE THIS \$ AMOUNT ON LIEN WAIVER

CERTIFICATE OF SUBCONTRACTOR AND PARTIAL WAIVER OF LIEN:

I, as authorized representative of Subcontractor, hereby certify that the work performed and the materials supplied by Subcontractor to date, as shown above, represent the actual value of the accomplishments under the terms of the Subcontract (and all authorized changes thereto) between Subcontractor and Contractor relating to the above referenced Project and, further, that Subcontractor has no basis in events occurring before the date of this Application for claims for additions to the Subcontract Amount except for such claims with respect to which Subcontractor has previously given Contractor written notice, and identified as follows: (leave blank if none)

Further, Subcontractor, upon payment of the sum requested in this Application, hereby waives all of its lien rights, if any, with respect to work for which payment is claimed in this or any preceding Applications for Payment, except as to retainage currently being withheld by Contractor.

I also certify that payments, less applicable retention, have been made through the period covered by previous payments received from Contractor (1) to all of Subcontractor's subcontractors and (2) for all materials and labor used in, or in connection with, the performance of the Subcontract. I further certify that Subcontractor has complied with federal, state and local tax laws, including Social Security law, Unemployment Compensation laws and Worker's Compensation laws insofar as applicable to the performance of the Subcontract.

SUBCONTRACTOR:

By: [Signature]
Title: pm
Date: 3-16-17

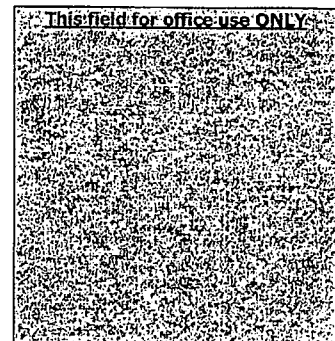
Witness Rachel Daisy Doyle

THE STATE OF South Carolina
COUNTY OF Horry County

BEFORE ME, the undersigned authority, on this day, personally appeared _____, known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16 day of March, 20 17.

Rachel Daisy Doyle
NOTARY PUBLIC
Feb 3, 2026
MY TERM EXPIRES



1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

EXHIBIT 13

[illegible]

EXHIBIT 14

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Carolina Cool, Inc.,)
Plaintiff,)
vs.)
Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)
Defendants.)

Garrard Construction Group, Inc.,)
Third-Party Plaintiff,)
vs.)
RLI Insurance Company,)
Third-Party Defendant.)

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT**

CASE NO: 2017-CP-26-03562

Carolina Cool Inc.'s Supplemental
Interrogatories to Defendants

TO: Andrew W. Countryman, Attorney for Defendants

SUPPLEMENTAL INTERROGATORIES TO DEFENDANTS

13. Set forth and identify any and all projects located in South Carolina, other than the Myrtle Beach Dave & Buster's Project, Defendant Garrard Construction Group, Inc. has served as general contractor from 2015 to the present, and for each project, set forth the city or county where the project is located.

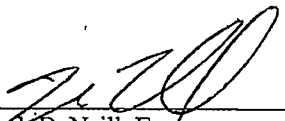
14. Set forth the names, addresses and phone numbers of all sub-contractors who worked on the Dave & Buster's Myrtle Beach Interior Project.

15. Set forth the names, addresses and phone numbers of all sub-contractors who worked on the Dave & Buster's Myrtle Beach Shell Project.

16. Set forth the total amount of monies paid to Billy's Plumbing Company, Inc. for services and materials provided for the Dave & Buster's Myrtle Beach Interior Project.
17. Set forth the total amount of monies paid to Billy's Plumbing Company, Inc. for services and materials provided for the Dave & Buster's Myrtle Beach Shell Project.
18. With regards to the contents of the plumbers connex of which Defendant Garrard took ownership on January 20, 2017, set forth the following information:
 - a. Give a description of the contents;
 - b. Set forth whether the contents were used for the Dave & Buster's Myrtle Beach Project;
 - c. If the contents were not used for the Dave & Buster's Myrtle Beach Project, set forth what happened to the contents;
 - d. Identify the owner of the contents prior to Defendant Garrard taking ownership on January 20, 2017;
 - e. Set forth the amount of consideration paid by Defendant Garrard and to whom the consideration was paid as compensation for the contents.
19. With regard to the Dave & Buster's Myrtle Beach Project, set forth whether or not any jobsite meetings were ever conducted by Defendant Garrard Construction Group, Inc.; and if so, for each jobsite meeting, provide the following information:
 - a. The date of the meeting;
 - b. The subject matter of the meeting, i.e. worker safety, scheduling;
 - c. Identify individuals present for the meeting;

d. Were any notes regarding the meeting generated, and if so, who has possession of the notes.

NEILL LAW FIRM, PA


Mark D. Neill, Esq.
S.C. Bar No: 14273
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Carolina Cool, Inc.

January 16, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Carolina Cool, Inc.,)

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Garrard Construction Group, Inc., Dave &)
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22. Any and all Daily Job Progress Reports for the Dave & Buster's Myrtle Beach Shell Project from the beginning of the project to its completion.
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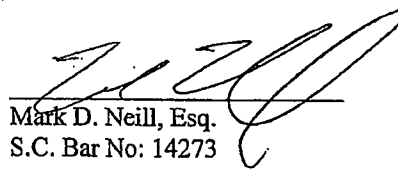
24. Any and all bids received from subcontractors, including but not limited to Billy's Plumbing Company, LLC, to provide plumbing services and materials for the Dave & Buster's Myrtle Beach Shell Project.
25. Any and all bank statements showing checks issued to Billy's Plumbing Company, Inc. that were negotiated and that the monies were drawn from Defendant's account.
26. Any and all bank statements showing check #124977 issued to ASE Group, Inc. was negotiated and monies drawn from Defendant's account.
27. Any and all emails, letters and other documents showing communications with MH Brown Concrete with regard to the Dave & Buster's Myrtle Beach Interior Project.
28. Any and all emails, letters and other documents showing communications with MH Brown Concrete with regard to the Dave & Buster's Myrtle Beach Shell Project.
29. Any and all emails, letters and other documents showing communications with ASE Group, Inc. with regard to the Dave & Buster's Myrtle Beach Interior Project.
30. Any and all emails, letters and other documents showing communications with ASE Group, Inc. with regard to the Dave & Buster's Myrtle Beach Shell Project.
31. Any and all "Non Compliance" letters and/or notices of default issued to any and all subcontractors involved with the Dave & Buster's Myrtle Beach Interior Project.
32. Any and all "Non Compliance" letters and/or notices of default issued to any and all subcontractors involved with the Dave & Buster's Myrtle Beach Shell Project.
33. Any and all demands for payment issued to any insurance or bonding companies for any Subcontract Performance Bonds pertaining to the Dave & Buster's Myrtle Beach Interior Project.
34. Any and all demands for payment issued to any insurance or bonding companies for any

Subcontract Performance Bonds pertaining to the Dave & Buster's Myrtle Beach Shell Project.

35. Any and all documentation showing Defendants paid consideration for the materials stored in the plumbers' storage connex of which it took ownership on January 20, 2017.

36. Any and all notes or other documentation regarding or generated from jobsite meetings, including but not limited to, meetings regarding worker safety, scheduling meetings, progress meetings.

NEILL LAW FIRM, PA



Mark D. Neill, Esq.

S.C. Bar No: 14273

P.O. Box 2810

Murrells Inlet, SC 29576

(843) 651-8580

Attorney for Carolina Cool, Inc.

January 16, 2018

EXHIBIT 14

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COUNTY OF HORRY)

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

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Broadway at the Beach, Inc.,)

Defendants.)

Garrard Construction Group, Inc.,)

Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)

Third-Party Defendant.)

TO: Andrew W. Countryman, Attorney for Defendants

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

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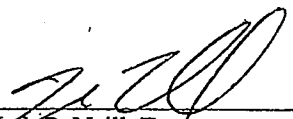
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 - c. Identify individuals present for the meeting;

d. Were any notes regarding the meeting generated, and if so, who has possession of the notes.

NEILL LAW FIRM, PA



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January 16, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Carolina Cool, Inc.,)
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Garrard Construction Group, Inc.,)
Third-Party Plaintiff,)
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IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Carolina Cool Inc.'s Supplemental
Requests for Production of Documents

TO: Andrew W. Countryman, Attorney for Defendants

SUPPLEMENTAL REQUESTS FOR PRODUCTION OF DOCUMENTS

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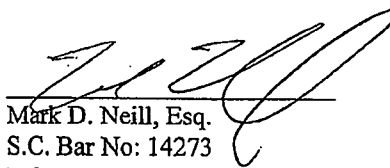
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25. Any and all bank statements showing checks issued to Billy's Plumbing Company, Inc. that were negotiated and that the monies were drawn from Defendant's account.
26. Any and all bank statements showing check #124977 issued to ASE Group, Inc. was negotiated and monies drawn from Defendant's account.
27. Any and all emails, letters and other documents showing communications with MH Brown Concrete with regard to the Dave & Buster's Myrtle Beach Interior Project.
28. Any and all emails, letters and other documents showing communications with MH Brown Concrete with regard to the Dave & Buster's Myrtle Beach Shell Project.
29. Any and all emails, letters and other documents showing communications with ASE Group, Inc. with regard to the Dave & Buster's Myrtle Beach Interior Project.
30. Any and all emails, letters and other documents showing communications with ASE Group, Inc. with regard to the Dave & Buster's Myrtle Beach Shell Project.
31. Any and all "Non Compliance" letters and/or notices of default issued to any and all subcontractors involved with the Dave & Buster's Myrtle Beach Interior Project.
32. Any and all "Non Compliance" letters and/or notices of default issued to any and all subcontractors involved with the Dave & Buster's Myrtle Beach Shell Project.
33. Any and all demands for payment issued to any insurance or bonding companies for any Subcontract Performance Bonds pertaining to the Dave & Buster's Myrtle Beach Interior Project.
34. Any and all demands for payment issued to any insurance or bonding companies for any

Subcontract Performance Bonds pertaining to the Dave & Buster's Myrtle Beach Shell Project.

35. Any and all documentation showing Defendants paid consideration for the materials stored in the plumbers' storage connex of which it took ownership on January 20, 2017.

36. Any and all notes or other documentation regarding or generated from jobsite meetings, including but not limited to, meetings regarding worker safety, scheduling meetings, progress meetings.

NEILL LAW FIRM, PA



Mark D. Neill, Esq.
S.C. Bar No: 14273
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Carolina Cool, Inc.

January 16, 2018

EXHIBIT 15

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

COUNTRYMAN LAW FIRM

LITIGATION ♦ MEDIATION

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843.253.4477 office
844.644.3165 fax

February 20, 2018

Via Email

Mark D. Neill, Esq.
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576
mneill@neilllawfirm.com

Re: *Carolina Cool, Inc. v. Garrard Construction Group, Inc., Dave & Buster's of South Carolina, Inc. and Broadway at the Beach, Inc.*; C/A 2017-CP-26-03562
CLF File: 000018 – 000024

Dear Mark:

I attach the Defendants' responses to Plaintiff's Supplemental Discovery Requests of 1/16/18.

Yours,



Andrew W. Countryman

AWC/sgc
Attachments
cc via email: Robert Lyles and Joe Cunningham

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - COMMON PLEAS - CASE#2017CP2603562

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff,

v.

GARRARD CONSTRUCTION GROUP, INC.,
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC. AND BROADWAY AT THE BEACH, INC.,

Defendants.

GARRARD CONSTRUCTION GROUP, INC.,

Third-Party Plaintiff,

v.

RLI INSURANCE COMPANY,

Third-Party Defendant.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A NO.: 2017-CP-26-03562

)
) DEFENDANTS' ANSWERS TO
) CAROLINA COOL'S SUPPLEMENTAL
) DISCOVERY REQUESTS OF 1/16/18

TO: PLAINTIFF, CAROLINA COOL, INC., AND ATTORNEY FOR PLAINTIFF, MARK D. NEILL:

The Defendants, by and through their undersigned counsel and reserving the right to supplement and/or amend, respond to the Plaintiff's Supplemental Interrogatories and Requests for Production as follows:

ANSWERS TO SUPPLEMENTAL INTERROGATORIES

13. Set forth and identify any and all projects located in South Carolina, other than the Myrtle Beach Dave & Buster's Project, Defendant Garrard Construction Group, Inc. has served as general

contractor from 2015 to the present, and for each project, set forth the city or county where the project is located.

ANSWER: The Defendants object as irrelevant and unlikely to lead to the discovery of admissible evidence. Subject to this objection, Garrard identifies the following South Carolina projects for which it served as GC:

- (a) Ruth's Chris, Greenville, 2015
- (b) Ruth's Chris, Greenville, 2016
- (c) Up on the Roof, Greenville, 2016
- (d) Dave & Busters, Columbia, 2016
- (e) ALDI, Taylors, 2016
- (f) ALDI, Greenwood, 2017
- (g) ALDI, Laurens, 2017
- (h) ALDI, Anderson, 2017
- (i) ALDI, Seneca, 2017

14. Set forth the names, addresses and phone numbers of all sub-contractors who worked on the Dave & Buster's Myrtle Beach Interior Project.

ANSWER: See Defendants 000587 produced with these responses.

15. Set forth the names, addresses and phone numbers of all sub-contractors who worked on the Dave & Buster's Myrtle Beach Shell Project.

ANSWER: See Defendants 000588 produced with these responses.

16. Set forth the total amount of monies paid to Billy's Plumbing Company, Inc. for services and materials provided for the Dave & Buster's Myrtle Beach Interior Project.

ANSWER: Garrard paid Billy's a total of \$379,408.46. See Defendants 000589 – 598 produced with these responses.

17. Set forth the total amount of monies paid to Billy's Plumbing Company, Inc. for services and materials provided for the Dave & Buster's Myrtle Beach Shell Project.

ANSWER: Garrard paid Billy's a total of \$379,408.46. See Defendants 000589 – 598 produced with these responses.

18. With regards to the contents of the plumbers connex of which Defendant Garrard took ownership on January 20, 2017, set forth the following information:

- a. Give a description of the contents;
- b. Set forth whether the contents were used for the Dave & Buster's Myrtle Beach Project;
- c. If the contents were not used for the Dave & Buster's Myrtle Beach Project, set forth what happened to the contents;
- d. Identify the owner of the contents prior to Defendant Garrard taking ownership on January 20, 2017;
- e. Set forth the amount of consideration paid by Defendant Garrard and to whom the consideration was paid as compensation for the contents.

ANSWER: Defendants object to this Interrogatory as confusing, overly broad and drawing and asking for legal conclusions. Subject to this objection:

- (a) see Defendants 000599 – 000600 produced with these responses showing the contents of the plumbers connex.
- (b) Most of the materials left were used to complete the underground scope of work in addition to materials Billy's Plumbing supplied. No materials left were used for the above ground scope of work because this was all supplied by Billy's.
- (c) All remaining materials Carolina Cool left were placed on pallets, and Carolina Cool was notified to come pick them up.

(d) Defendants object as confusing and drawing legal conclusions.

(e) Defendants object as confusing and drawing legal conclusions.

19. With regard to the Dave & Buster's Myrtle Beach Project, set forth whether or not any jobsite meetings were ever conducted by Defendant Garrard Construction Group, Inc.; and if so, for each jobsite meeting, provide the following information:

- a. The date of the meeting;
- b. The subject matter of the meeting, i.e. worker safety, scheduling;
- c. Identify individuals present for the meeting;
- d. Were any notes regarding the meeting generated, and if so, who has possession of the notes.

ANSWER:

- (a) Yes. The initial coordination meeting for the interior took place 12/7/17. Allen Anderson of Carolina Cool attended. Bill Bromley coordinated a weekly subcontractor meeting every Tuesday morning which all trade foremen are required to attend.
- (b) The Tuesday coordination meetings relate to scheduling, two-week "look ahead," requests for information, percentage of trade work completion and safety.
- (c) Carolina Cool's on-site foreman refused to participate in the weekly meetings.
- (d) This is a verbal on-site meeting. Some notes may have been taken but have not been located. This is a meeting for foremen to ask questions and receive direction from the superintendent.

RESPONSES TO SUPPLEMENTAL REQUESTS FOR PRODUCTION

21. Any and all Daily Job Progress Reports for the Dave & Buster's Myrtle Beach Interior Project from the beginning of the project to its completion.

RESPONSE: See Defendants 000742 – 001007 produced with these responses.

22. Any and all Daily Job Progress Reports for the Dave & Buster's Myrtle Beach Shell Project from the beginning of the project to its completion.

RESPONSE: Defendants 001008 – 001341 produced with these responses.

23. Any and all bids received from subcontractors, including but not limited to Billy's Plumbing Company, LLC, to provide plumbing services and materials for the Dave & Buster's Myrtle Beach Interior Project.

RESPONSE: See Defendants 000605 – 000609 produced with these responses.

24. Any and all bids received from subcontractors, including but not limited to Billy's Plumbing Company, LLC, to provide plumbing services and materials for the Dave & Buster's Myrtle Beach Shell Project.

RESPONSE: See Defendants 000610 – 000613 produced with these responses.

25. Any and all bank statements showing checks issued to Billy's-Plumbing Company, Inc. that were negotiated and that the monies were drawn from Defendant's account.

RESPONSE: The Defendants object as seeking sensitive and irrelevant material not likely to lead to the discovery of admissible evidence. It is not necessary to produce bank statements. Subject to this objection, see Defendants 000589 – 598 produced with these responses (cleared checks evidencing payment to Billy's).

26. Any and all bank statements showing check #124977 issued to ASE Group, Inc. was negotiated and monies drawn from Defendant's account.

RESPONSE: The Defendants object as seeking sensitive and irrelevant material not likely to lead to the discovery of admissible evidence. It is not necessary to produce bank statements. Subject to this objection, see Defendants 000614 produced with these responses (cleared check evidencing payment to ASE).

27. Any and all emails, letters and other documents showing communications with MH Brown Concrete with regard to the Dave & Buster's Myrtle Beach Interior Project.

RESPONSE: None.

28. Any and all emails, letters and other documents showing communications with MH Brown Concrete with regard to the Dave & Buster's Myrtle Beach Shell Project.

RESPONSE: See Defendants 000615 – 000648 produced with these responses.

29. Any and all emails, letters and other documents showing communications with ASE Group, Inc. with regard to the Dave & Buster's Myrtle Beach Interior Project.

RESPONSE: See Defendants 000649 – 000732 produced with these responses.

30. Any and all emails, letters and other documents showing communications with ASE Group, Inc. with regard to the Dave & Buster's Myrtle Beach Shell Project.

RESPONSE: See Defendants 000649 – 000732 produced with these responses.

31. Any and all "Non Compliance" letters and/or notices of default issued to any and all sub-contractors involved with the Dave & Buster's Myrtle Beach Interior Project.

RESPONSE: See Defendants 000733 – 000741 produced with these responses.

32. Any and all "Non Compliance" letters and/or notices of default issued to any and all sub-contractors involved with the Dave & Buster's Myrtle Beach Shell Project.

RESPONSE: See Defendants 000733 – 000741 produced with these responses.

33. Any and all demands for payment issued to any insurance or bonding companies for any Subcontract Performance Bonds pertaining to the Dave & Buster's Myrtle Beach Interior Project.

RESPONSE: None other than the bond company for Carolina Cool. Upon information and belief, you already have demands for payment to Carolina Cool's bond company.

34. Any and all demands for payment issued to any insurance or bonding companies for any Subcontract Performance Bonds pertaining to the Dave & Buster's Myrtle Beach Shell Project.

RESPONSE: None other than the bond company for Carolina Cool. Upon information and belief, you already have demands for payment to Carolina Cool's bond company.

35. Any and all documentation showing Defendants paid consideration for the materials stored in the plumbers' storage connex of which it took ownership on January 20, 2017.

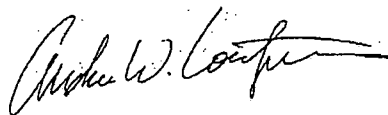
RESPONSE: Objection- confusing and calls for legal conclusion. Further responding, see answer to Int. 18.

36. Any and all notes or other documentation regarding or generated from jobsite meetings, including but not limited to, meetings regarding worker safety, scheduling meetings, progress meetings.

RESPONSE: Objection- overly broad and not specific. Subject to this, see all material the Defendants have produced in this case to date (Defendants 00001 - 001341).

[signature page to follow]

Respectfully submitted,



By:

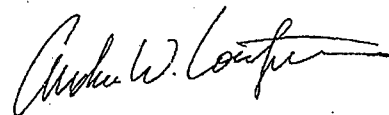
ANDREW W. COUNTRYMAN
State Bar No.: 72700
321 Wingo Way, Suite 102
Mt. Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com
sgc@countrymanlawfirm.com

**Lawyer for the Defendants/Third-
Party Plaintiff**

I certify that I have this day served a copy of Defendants' Answers to Plaintiff's Supplemental Interrogatories and Requests for Production of 1/16/18 on all parties to this matter via email as follows:

Mark D. Neill Neill Law Firm, PA P.O. Box 2810 Murrells Inlet, SC 29576 843-651-8580 mneill@neilllawfirm.com lwelsch@neilllawfirm.com <i>Counsel for Defendant Carolina Cool, Inc.</i>	Robert T. Lyles Joe K. Cunningham Lyles & Associates, LLC 342 East Bay Street Charleston, SC 29401 cm@lylesfirm.com rtl@lylesfirm.com jkc@lylesfirm.com <i>Counsel for RLI Insurance Co., Inc.</i>

This 20th day of February, 2018



Andrew W. Countryman

EXHIBIT 16

1 have been?

2 A 1978.

3 Q And what happened as a result of the
4 charge?

5 A Probation. That was it.

6 Q And where did this occur?

7 A In Atlanta.

8 Q Anything else since then?

9 A No.

10 Q Are there any conditions today that might
11 affect your ability to understand questions being
12 asked?

13 A No.

14 Q Or your ability to answer?

15 A No.

16 Q What is your birthday?

17 A **REDACTED**

18 Q And what is your current address?

19 A My current address is 34 Bob White
20 Circle, Osterville, Massachusetts.

21 Q Is that temporary or permanent?

22 A Two years.

23 Q Where did you live prior to --

24 A 527 Little Refuge Road, Waleska, Georgia
25 30183. That is my permanent home residence.

1 meeting on whatever subject, more or less just
2 another job-box discussion; and/or if there are
3 issues on the job, somebody is doing something wrong
4 or this person is not acting as they should be,
5 tying off when they go up on a lift or whatever it
6 may be, and then we work on scheduling for the next
7 two weeks.

8 Q When you say typically, generally
9 speaking, that's your role as superintendent?

10 A Typically that's what I do job after job
11 after job.

12 Q I do see later on in your progress
13 reports like safety meetings being reported. But
14 for this period in January, I don't see any
15 references to meetings taking place.

16 A I don't either.

17 Q It seemed like later on you did write
18 down meetings taking place. So that would be
19 something you would record if it had happened?

20 A Yes. There would be some type of
21 documentation. But I'm not going to have a meeting
22 with only one person. I would not record a meeting
23 with one person.

24 Q If you had said, Guys, I'm going to have
25 a meeting on this date at this time and they didn't

1 show up, would you document that fact?

2 A I should have or should. If it's become
3 a habit and they don't show up, yes. If I have the
4 meeting with other people and this person doesn't
5 show, yes, it gets documented.

6 Here, obviously, I did not.

7 Q You did not have the meetings or you did
8 not document it?

9 A Both.

10 Q Because it looks like you felt
11 comfortable listing out your complaints you had with
12 Carolina Cool. Would you agree with that?

13 A Yeah.

14 Q And so if that had been something else,
15 you would have included that in your list of
16 complaints?

17 A Yes.

18 Q So you're not aware of a meeting that
19 they just blew off from attending?

20 A Somebody said, no, it was more important
21 for them to be working on the job. I agreed, and we
22 let it go.

23 Q Earlier today when I asked you if you had
24 any involvement in choosing the subcontractors and
25 you said no -- Let me ask it more specifically so I

1 get the information correct.

2 Did you have any involvement with
3 Carolina Cool being hired for the job?

4 A No.

5 Q Now, after Carolina Cool left, it's my
6 understanding that Billy's Plumbing came in and
7 replaced them. Is that correct?

8 A Yes.

9 Q Did you have any involvement in choosing
10 Billy's Plumbing?

11 A No, I did not.

12 Q Did you have any involvement in any type
13 of written contract with Billy's Plumbing?

14 A No, I did not.

15 Q How did they become involved with the
16 project?

17 A I believe they were a bidder on the
18 project.

19 Q And you said earlier that after the
20 decision was made to let Carolina Cool go, Garrard
21 was looking at the contractors who had bid on the
22 project to replace Carolina Cool. Is that correct?

23 A I believe that is correct.

24 Q Who from Garrard would have that
25 information?

1 A Shawn.

2 Q Anybody else with Garrard?

3 A I don't know who does the bidding and who
4 takes all the bidding in the office. I don't work
5 in the office.

6 Q Going back to January 6th, which is that
7 first 24-hour notice of default we talked about
8 earlier today, there's not reflected in your daily
9 reports, but in Pat Watson's handwritten reports
10 from January 6th there's a handwritten note that,
11 "Billy's Plumbing looking at job for possible
12 takeover." What do you remember about Billy's
13 Plumbing being at the job site on January 6th?

14 A I don't.

15 Q You don't remember meeting with anybody?

16 A No, not that early in the job.

17 Q I'll show you what is Bates stamped
18 Billy's Plumbing 1762. It's an email dated January
19 6th from Shawn to Billy's Plumbing which you're cc'd
20 on, and Shawn is giving them a link to the project
21 plans. Do you recall receiving an email and
22 thinking, Oh, wow, there's a new plumber about to
23 take over?

24 A Do I recall it? No.

25 Q Do you recall getting emails regarding

Page 165

1 Billy's Plumbing?

2 A An email like this I wouldn't even look
3 at twice.

4 Q Do you get a lot of emails?

5 A Yes, I get a lot of emails. If it really
6 doesn't have anything to do with me, and this
7 wouldn't, sending Scott a link, it would just get
8 filed.

9 Q It just seems like since you're
10 supervising the subcontractors --

11 A But they were not hired as a
12 subcontractor at that time.

13 Q But it's discussing replacing a current
14 subcontractor.

15 A Okay. But I do not recall that.

16 Q Have you gone back to look at what emails
17 you might have regarding this project?

18 A No, I have not.

19 Q Have you been asked to go back and look
20 at emails you may have?

21 A I have not.

22 Q Is there a possibility you have more
23 emails regarding this project that have not been --

24 A There's a possibility, yes.

25 Q So from this email it appears, as early

1 as January 6th, plans are being emailed to Billy's
2 Plumbing. Is that correct?

3 A I didn't read it. But if that's what it
4 says, yeah. It's saying here's the drawings and
5 then a bulletin had come out.

6 Q A bulletin 1 that they flipped the family
7 restroom, lavatory and toilet?

8 A That's what it says.

9 Q And would that have been regarding the
10 interior work?

11 A Yes.

12 Q So in January they are still tweaking the
13 plans for the interior work?

14 A Always.

15 Q So this email to Billy's is just that
16 first bulletin. So there are changes going on then.

17 Was there any reason why you would not
18 have noted Billy's being on site that day of January
19 6th?

20 A I was pretty busy, I believe. And one
21 person walking on site -- Obviously, Pat walked him.
22 I wouldn't necessarily pay attention to it.

23 Q Do you recall any conversations with Pat
24 regarding Billy's being on site?

25 A I do not recall any conversations about

1 it at this time.

2 Q How about with anybody else? Do you
3 recall any conversations about Billy's being on
4 site?

5 A Maybe Shawn and I talked. I don't know.
6 (Exhibit No. 2 marked for
7 identification.)

8 BY MS. NEILL:

9 Q I will give you a copy of an email,
10 again, from Scott Gasque -- Do you know who Scott
11 Gasque is from Billy's Plumbing?

12 A Possibly.

13 Q Billy's Plumbing Bates stamp 66.

14 MR. COUNTRYMAN: You-all didn't
15 produce this or identify this before the deposition.
16 Right?

17 MS. NEILL: No. You actually
18 provided this.

19 MR. COUNTRYMAN: Did you identify it
20 as a potential deposition exhibit for the deposition
21 as Rule 30J8 requires?

22 MS. NEILL: This is not a deposition
23 exhibit right now.

24 MR. COUNTRYMAN: It's a document
25 that you're showing the witness. I can read you the

1 language of the rule if you'd like.

2 MS. NEILL: Well, it's something
3 that you had and it came from Scott to Shawn Gill,
4 but it's something that apparently you-all have not
5 produced in discovery, even though you had it in
6 your records.

7 MR. COUNTRYMAN: That has nothing to
8 do with the rule, which says deposing counsel shall
9 provide to opposing counsel a copy of all documents
10 shown to the witness during the deposition, either
11 before the deposition begins or contemporaneous with
12 the showing of the document to the witness, which
13 you obviously have not done. You've identified the
14 labels. That's fine --

15 MS. NEILL: We provided this to you
16 before, though --

17 MR. COUNTRYMAN: That's not what the
18 rule says, does it? I'm just asking if you
19 specifically identified that document as something
20 that you would use in the deposition before. I
21 don't think you have.

22 BY MS. NEILL:

23 Q On January 18th, Scott from Billy's
24 Plumbing is emailing Shawn, and you're copied on the
25 email. And it states, "I have made a site visit and

1 talked to your superintendent Bill."

2 What do you recall about Scott from
3 Billy's Plumbing talking to you on January 18th?

4 A I remember somebody talking to me at that
5 late date. But what came up in the conversation, I
6 have no idea.

7 Q And looking at your progress report from
8 January 18th, there does not appear to be a
9 reflection of any visitors to the site. Is that
10 correct?

11 A Yes, I agree.

12 Q And why would you have not identified
13 Scott as a visitor to the site?

14 A No idea. There was nothing intentional
15 about it.

16 Q According to Scott, he talked to you and
17 saw that Carolina Cool is still on site working. Do
18 you recall any conversations you had with either
19 Steve or Buck or anybody working on site with
20 Carolina Cool regarding Billy's Plumbing being there
21 to possibly take over the work?

22 A Do I remember a conversation? I'm sure
23 there probably was one. But, no, I do not.

24 Q I would think if you told somebody from
25 Carolina Cool, Look, guys, we're going to replace

1 you with Billy's right here, you don't recall what
2 kind of reaction that would --

3 A No, ma'am, I do not. And I do not
4 recall.

5 Q So you do not recall any conversations
6 with Carolina Cool --

7 A I do not.

8 Q -- regarding Billy's Plumbing?

9 A I do not.

10 Q According to this email, Billy's Plumbing
11 is waiting for confirmation on when Carolina Cool
12 will be off the project permanently. So January
13 18th it indicates here, at least, that Billy's
14 Plumbing is waiting to get on the site to start
15 working. Would you agree with that?

16 A It says if they work out the paperwork,
17 work out some paperwork. So obviously it has not
18 been finalized yet.

19 Q Scott says he's working on setting up the
20 manpower to finish the underground. So in order to
21 work out the manpower needed, would he have talked
22 to you about what was left to be done on the
23 underground?

24 A Probably so.

25 Q Do you have any reason to think that

1 Scott wasn't on the job site on January 18th?

2 A No. I remember meeting somebody. On
3 the 6th, I have no knowledge of that. Later date, I
4 do remember meeting a Billy's representative.
5 Whether it was Scott, I don't know.

6 Q What do you remember about meeting
7 Billy's representative?

8 A That we walked the job.

9 Q Do you remember meeting any other plumber
10 and walking the job with any other plumber?

11 A No, I do not.

12 Q So you only remember a representative
13 from Billy's Plumbing there?

14 A That's all I recall.

15 Q Do you remember if this occurred on one
16 or more occasion?

17 A I believe only once.

18 Q I'll give you a document that's been
19 Bates stamped Billy's Plumbing 1771, and it appears
20 that it's from Shawn Gill to Scott Gasque, and
21 you're also cc'd on this. It's just stating,
22 "Sorry, I've been on the phone with our owner and
23 waiting on confirmation back from out" -- I think
24 he's meaning our attorney -- "that we have buttoned
25 up on the appropriate notices and paperwork to

1 legally remove the current plumbing contractor. Our
2 attorney is to let me know the exact time we can
3 release them. We are working on it. I'll be in
4 touch soon."

5 Do you recall receiving a copy of that
6 email?

7 A This specific email? No. But it doesn't
8 surprise me any. I mean, that's common
9 communication.

10 Q And this communication, would you agree
11 it seems to reflect that -- It seems pretty evident
12 that a decision has been made for Carolina Cool to
13 be let go?

14 A Yes.

15 Q And then going back to the Conex, on
16 January 23rd it appears that you emailed Shawn Gill
17 and -- I'm sorry. It appears April, using your
18 email, emailed Shawn Gill and cc'd Scott with
19 Billy's Plumbing.

20 MR. COUNTRYMAN: Do you have a Bates
21 label on that?

22 MS. NEILL: Yes. It is Bates --

23 MR. COUNTRYMAN: 1773 Billy's.

24 MS. NEILL: Billy's Plumbing 1773.

25 BY MS. NEILL:

1 there?

2 A No.

3 Q I'm sorry. What are they putting there?

4 A We are putting in -- cut off the old
5 Sears and they are putting in a Target, and we are
6 putting in a Dick's, and we are moving tenants
7 around and giving them all a facelift.

8 Q Do you own your home in Waneska, Georgia?

9 A Yes.

10 Q And where is that located? What's the
11 street address?

12 A 527 Little Refuge Road.

13 Q What's the zip?

14 A 30183.

15 Q Do you still have your driver's license
16 in Georgia?

17 A Yes.

18 Q You haven't switched it to Massachusetts?

19 A No.

20 Q After this job in Cape Cod is completed,
21 where do you go next?

22 A I have no idea.

23 Q You don't plan to move to Massachusetts
24 permanently?

25 A No. God, no.

1 Q I don't blame you. I don't want to go
2 anywhere colder than here. Do you have plans to go
3 back to Georgia?

4 A It's my home.

5 Q I think earlier today you said that was
6 your permanent address?

7 A Yes.

8 MS. NEILL: I think we're about
9 wrapped up, but just give me a few minutes.

10 (Recess taken.)

11 BY MS. NEILL:

12 Q Mr. Bromley, I don't have any follow-up
13 questions. I just wanted to confirm with you that I
14 allowed you to answer all the questions that I asked
15 of you today. Did you feel like I stopped you in
16 any way from answering fully?

17 A No.

18 Q Do you believe that anything happened
19 from the beginning of the day until the end of the
20 day that would have affected your ability to
21 understand the questions I did ask you?

22 A No.

23 MS. NEILL: That's all I have,
24 unless Mr. Countryman has some follow-up questions.

25 E X A M I N A T I O N

EXHIBIT 17

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

NEILL
LAW FIRM

MARK D. NEILL
MNEILL@NEILLLAWFIRM.COM

POST OFFICE BOX 2810 • MURRELLS INLET, SC 29576
PHONE: (843) 651-8580 FACSIMILE: (843) 651-8586
WWW.NEILLLAWFIRM.COM

MARY ANNA NEILL
MANEILL@NEILLLAWFIRM.COM

November 20, 2018

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464

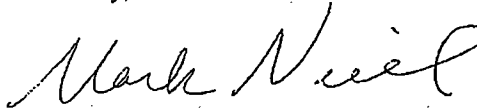
Re: *Carolina Cool, Inc. vs. Garrard Construction Group, Inc., et al.*
Case No: 2017-CP-26-3562

Dear Andrew:

Please find enclosed Plaintiff's Second Supplemental Requests for Production of Documents to Defendants along with a certificate of service.

With kindest regards, I am

Sincerely,



Mark Neill

cc Robert T. Lyles, Jr., Attorney for RLI Insurance Company
342 East Bay Street
Charleston, SC 29401

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - COMMON PLEAS - CASE#2017CP2603562

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)

Defendants.)

Garrard Construction Group, Inc.,)

Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)

Third-Party Defendant.)

TO: Andrew W. Countryman, Attorney for Defendants

SECOND SUPPLEMENTAL REQUESTS FOR PRODUCTION OF DOCUMENTS

37. With regards to the Dave & Buster's of Myrtle Beach project, any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between Garrard Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf) and Dave & Buster's of South Carolina, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

38. With regards to the Dave & Buster's of Myrtle Beach project, any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between Garrard

Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf) and Broadway at the Beach, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

39. Any and all lease agreements and contracts entered into between Dave & Buster's of South Carolina, Inc. and Broadway at the Beach, Inc.

40. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by Broadway at the Beach, Inc. to Garrard Construction Group, Inc.

41. Any and all invoices or other documentation evidencing requests and/or applications for payment from Garrard Construction Group, Inc. to Broadway at the Beach, Inc.

42. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by Dave & Buster's of South Carolina, Inc. to Garrard Construction Group, Inc.

43. Any and all invoices or other documentation evidencing requests and/or applications for payment from Garrard Construction Group, Inc. to Dave & Buster's of South Carolina, Inc.

44. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all calendars maintained by Garrard Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

45. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all calendars maintained by Dave & Buster's of South Carolina, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

46. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all calendars maintained by Broadway at the Beach, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

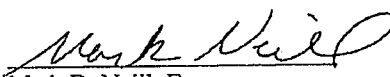
47. With regards to the Dave & Buster's of Myrtle Beach project, any and all contracts or agreements entered into by Garrard Construction Group, Inc. with any party or third-party to supervise the project's construction.
48. With regards to the Dave & Buster's of Myrtle Beach project, any and all contracts or agreements entered into by Broadway at the Beach, Inc. with any party or third-party to supervise the project's construction.
49. With regards to the Dave & Buster's of Myrtle Beach project, any and all contracts or agreements entered into by Dave & Buster's of South Carolina, Inc. with any party or third-party to supervise the project's construction.
50. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by Garrard Construction Group, Inc. to Broadway at the Beach, Inc.
51. Any and all invoices or other documentation evidencing requests and/or applications for payment from Broadway at the Beach, Inc. to Garrard Construction Group, Inc.
52. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by Garrard Construction Group, Inc. to Dave & Buster's of South Carolina, Inc.
53. Any and all invoices or other documentation evidencing requests and/or applications for payment from Dave & Buster's of South Carolina, Inc. to Garrard Construction Group, Inc.
54. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all inspection reports or documentation of inspections by Garrard Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).
55. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all inspection reports or documentation of inspections by Broadway at the Beach, Inc. (including any of

its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

56. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all inspection reports or documentation of inspections by Dave & Buster's of South Carolina, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

57. With regards to the Dave & Buster's of Myrtle Beach project, any and all construction summaries prepared by Garrard Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

NEILL LAW FIRM, PA



Mark D. Neill, Esq.
S.C. Bar No: 14273
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Carolina Cool, Inc.

November 20, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc. and)
Broadway at the Beach, Inc.,)

Defendants.)

Garrard Construction Group, Inc.,)

Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

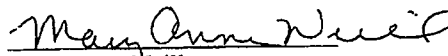
Certificate of Service of Plaintiff's
Second Supplemental Requests for
Production

I, Myra Murray, hereby certify that I caused a true and accurate copy of Carolina Cool's Second Supplemental Requests for Production to be served by United States Mail, postage prepaid, addressed as follows to opposing counsel:

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
awc@countrymanlawfirm.com

Robert T. Lyles
342 East Bay Street
Charleston, S.C. 29401
rtl@lylesfirm.com

NEILL LAW FIRM PA


Mary Anna Neill
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorneys for Carolina Cool, Inc.

November 20, 2018

EXHIBIT 18

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - COMMON PLEAS - CASE#2017CP2603562

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff,

v.

GARRARD CONSTRUCTION GROUP, INC.,
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC. AND BROADWAY AT THE BEACH, INC.,

Defendants.

GARRARD CONSTRUCTION GROUP, INC.,

Third-Party Plaintiff,

v.

RLI INSURANCE COMPANY,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C/A NO.: 2017-CP-26-03562

**DEFENDANTS' RESPONSES TO
PLAINTIFF'S SECOND
SUPPLEMENTAL REQUESTS FOR
PRODUCTION**

TO: MARK D. NEILL, COUNSEL FOR CAROLINA COOL, INC.:

**DEFENDANTS' ANSWERS TO SECOND
SUPPLEMENTAL REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendants object to these requests as overly burdensome, cumulative, and exceeding the allowable/reasonable number of such requests. Subject to this objection, Defendants respond as follows:

37. With regards to the Dave & Buster's of Myrtle Beach project, any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between Garrard Construction Group, Inc. (including any of its employees, representatives, agents,

contractors, managers, owners, officers or anyone else on its behalf) and Dave & Buster's of South Carolina, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

RESPONSE: The Defendants object to this request as overly broad, burdensome, cumulative, vague, unclear and seeking irrelevant and potentially confidential and/or privileged material not likely to lead to the discovery of admissible evidence and otherwise outside the scope of SCRCF 26(b). The material requested is not limited in scope to that related to the scope of work that is the subject of this lawsuit. Subject to this objection, see material produced with these responses, including D&B 1 - 22.

38. With regards to the Dave & Buster's of Myrtle Beach project, any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between Garrard Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf) and Broadway at the Beach, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

RESPONSE: The Defendants object to this request as overly broad, burdensome, cumulative, vague, unclear and seeking irrelevant and potentially confidential and/or privileged material not likely to lead to the discovery of admissible evidence and otherwise outside the scope of SCRCF 26(b). The material requested is not limited in scope to that related to the scope of work that is the subject of this lawsuit. Subject to this objection, see Correspondence 1 - 229 produced with these responses (correspondence b/w BAB and Garrard related to the scope of work at issue in this lawsuit).

39. Any and all lease agreements and contracts entered into between Dave & Buster's of South Carolina, Inc. and Broadway at the Beach, Inc.

RESPONSE: The Defendants object to this request as seeking irrelevant material not likely to lead to the discovery of admissible evidence. Lease agreements between D&B and BAB are not at issue in this lawsuit. The Defendants also object because the request seeks confidential and proprietary information/material and trade secrets protected by S.C. Code §

39-8-60. In that regard, the lease agreement(s) contain confidentiality provisions that preclude their production here.

40. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by Broadway at the Beach, Inc. to Garrard Construction Group, Inc.

RESPONSE: The Defendants object to this request as overly broad and seeking irrelevant and potentially confidential and/or privileged material not likely to lead to the discovery of admissible evidence and otherwise outside the scope of SCRCF 26(b). Payments made by BAB to Garrard are not at issue in this case. Subject to this objection, see material produced with these responses including Payment 1 - 203.

41. Any and all invoices or other documentation evidencing requests and/or applications for payment from Garrard Construction Group, Inc. to Broadway at the Beach, Inc.

RESPONSE: The Defendants object to this request as overly broad and seeking irrelevant and potentially confidential material not likely to lead to the discovery of admissible evidence and otherwise outside the scope of SCRCF 26(b). Payments made by BAB to Garrard are not at issue in this case. Subject to this objection, any responsive material in Defendants' possession/control is included in material produced with these responses including Payment 1 - 203.

42. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by Dave & Buster's of South Carolina, Inc. to Garrard Construction Group, Inc.

RESPONSE: The Defendants object to this request as overly broad and seeking irrelevant and potentially confidential material not likely to lead to the discovery of admissible evidence and otherwise outside the scope of SCRCF 26(b). Payments made by D&B to Garrard are not at issue in this case. Further, the request is not limited to material related to the plumbing work that is at issue in this case. Subject to this objection, see responsive material contained in D&B 1-22 and Payment 1-203 produced with these responses.

43. Any and all invoices or other documentation evidencing requests and/or applications for payment from Garrard Construction Group, Inc. to Dave & Buster's of South Carolina, Inc.

RESPONSE: The Defendants object to this request as overly broad and seeking irrelevant and potentially confidential material not likely to lead to the discovery of admissible evidence and otherwise outside the scope of SCRCF

26(b). Payments made by D&B to Garrard are not at issue in this case. Further, the request is not limited to material related to the plumbing work that is at issue in this suit. Subject to this objection, see responsive material contained in D&B 1-22 and Payment 1-203 produced with these responses. To the extent this is asking for information and material related to request for payment from D&B to Garrard, none exists.

44. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all calendars maintained by Garrard Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

RESPONSE: Objection overly broad and vague. This request is not limited to calendar entries related to the subject project or the scope of work at issue. Subject to this objection, Garrard does not keep job specific calendars outside of the daily and weekly reports (produced with these responses). Defendants the following documents, produced with these responses, may contain material responsive to this request: (a) Garrard Calendar 1-8, which shows Shawn Gill's calendar entries for the time period at issue and (b) Garrard Notes 1 - 283.

45. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all calendars maintained by Dave & Buster's of South Carolina, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

RESPONSE: The Defendants object as overly broad, not limited in scope and seeking irrelevant material not likely to lead to the discovery of admissible evidence. The request is not limited to calendar entries related to the portion of work at the project at issue in this lawsuit. Subject to this objection, the Defendants do not have any calendar entires responsive to this request. D&B did have a weekly phone call on Fridays during the project to discuss its progress.

46. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all calendars maintained by Broadway at the Beach, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

RESPONSE: The Defendants object to this request as irrelevant and seeking material not likely to lead to the discovery of admissible evidence. Subject to this objection, see BAB Cal 1 - 8 produced with these responses.

47. With regards to the Dave & Buster's of Myrtle Beach project, any and all contracts or agreements entered into by Garrard Construction Group, Inc. with any party or third-party to supervise the project's construction.

RESPONSE: None.

48. With regards to the Dave & Buster's of Myrtle Beach project, any and all contracts or agreements entered into by Broadway at the Beach, Inc. with any party or third-party to supervise the project's construction.

RESPONSE: None. Broadway at the Beach did not retain a third-party to supervise construction. BAB entered into an agreement with Geometrics Consulting, LLC for geotechnical services at the project. See GEO 1-82 produced with these responses.

49. With regards to the Dave & Buster's of Myrtle Beach project, any and all contracts or agreements entered into by Dave & Buster's of South Carolina, Inc. with any party or third-party to supervise the project's construction.

RESPONSE: None. D&B did not retain a third-party to supervise construction. 360 CM was D&B's field representative for the project.

50. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by Garrard Construction Group, Inc. to Broadway at the Beach, Inc.

RESPONSE: The Defendants object to this Request as irrelevant and not likely to lead to the discovery of admissible evidence. Subject to this objection, none.

51. Any and all invoices or other documentation evidencing requests and/or applications for payment from Broadway at the Beach, Inc. to Garrard Construction Group, Inc.

RESPONSE: The Defendants object to this Request as irrelevant and not likely to lead to the discovery of admissible evidence. Subject to this objection, none.

52. Any and all checks, receipts, account statements, or other documentation evidencing any payments made by Garrard Construction Group, Inc. to Dave & Buster's of South Carolina, Inc.

RESPONSE: None.

53. Any and all invoices or other documentation evidencing requests and/or applications for payment from Dave & Buster's of South Carolina, Inc. to Garrard Construction Group, Inc.

RESPONSE: The Defendants object to this request as vague and unclear. They also object as seeking irrelevant material not likely to lead to the discovery of admissible evidence because the request is not limited to the work at issue in this lawsuit. Subject to this objection, see material contained in D&B 1-22 and Payment 1-203 produced with these responses.

54. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all inspection reports or documentation of inspections by Garrard Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

RESPONSE: Defendants object as overly broad and not limited in time or scope. Subject to this objection, see the daily reports, weekly reports and photographs produced with these responses.

55. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all inspection reports or documentation of inspections by Broadway at the Beach, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

RESPONSE: Defendants object as overly broad, vague, and not limited in time or scope. Subject to this objection, see BAB Photos 1-4232 and BAB Weekly Reports 1-356 produced with these responses.

56. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all inspection reports or documentation of inspections by Dave & Buster's of South Carolina, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

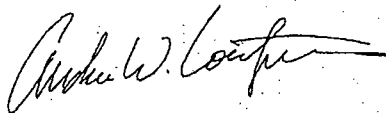
RESPONSE: Defendants object as overly broad and not limited in time or scope. Subject to this objection, see the daily reports, weekly reports and photographs produced with these responses.

57. With regards to the Dave & Buster's of Myrtle Beach project, any and all construction summaries prepared by Garrard Construction Group, Inc. (including any of its employees, representatives, agents, contractors, managers, owners, officers or anyone else on its behalf).

RESPONSE: The Defendants object as vague and unclear. It is not clear what is meant by "construction summaries." Subject to this objection, see previously produced Garrard daily reports and the following produced with these responses: (a) Garrard Notes 1-283; (b) Garrard Weekly Reports Interior 1-91; and (c) Garrard Weekly Reports Shell 1-350.

[signature page to follow]

Respectfully submitted,



By:

ANDREW W. COUNTRYMAN

State Bar No.: 72700

321 Wingo Way, Suite 102

Mt. Pleasant, SC 29464

843-253-4477

awc@countrymanlawfirm.com

sgc@countrymanlawfirm.com

Lawyer for the Defendants/Third-
Party Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff,

v.

GARRARD CONSTRUCTION GROUP, INC.,
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC. AND BROADWAY AT THE BEACH, INC.,

Defendants.

GARRARD CONSTRUCTION GROUP, INC.,

Third-Party Plaintiff,

v.

RLI INSURANCE COMPANY,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C/A NO.: 2017-CP-26-03562

DEFENDANTS' PRIVILEGE LOG

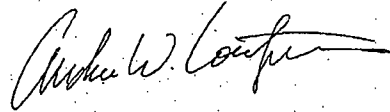
TO: MARK D. NEILL, COUNSEL FOR THE PLAINTIFF

The Defendants, by and through their undersigned counsel, hereby identify documents being withheld from the production in discovery.

Bates Label	Description	Designation
Leases 1 – 132	Lease agreements between Broadway at the Beach and Dave & Busters	Confidential, sensitive, trade secrets, not likely to lead to discovery of admissible evidence. <i>See</i> S.C. Code § 39-8-60.

[signature page to follow]

Respectfully submitted,



By:

ANDREW W. COUNTRYMAN
State Bar No.: 72700
321 Wingo Way, Suite 102
Mt. Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com

**Lawyer for the Defendants/Third-
Party Plaintiff**