

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
NOV 16 2020
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 II**

HAYNSWORTH SINKLER BOYD, P.A.

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Sarah P. Spruill, S.C. Bar No. 68337
P.O. Box 2048
Greenville, South Carolina 29602-2048
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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

EXHIBIT 19

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

Mary Anna Neill

From: Andrew Countryman <awc@countrymanlawfirm.com>
Sent: Monday, October 08, 2018 9:16 AM
To: Jordan Hyman HLG
Cc: sgc; Mark Neill; Mary Anna Neill; Robert Lyles
Subject: Re: Carolina Cool v. Garrard

Jordan,

Here is a link to my client's documents related to Billy's Plumbing for this project:

https://countrymanlaw410-my.sharepoint.com/:b:/g/personal/awc_countrymanlawfirm_com/EVH5LM60qXNikTx2N6hUt2sBxu8r1s20W-Ltyzjl0qoW61g?e=nRgnSo

FYI, I do not plan to attend the hearing tomorrow.

Andy

Andrew Countryman
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com
*Certified South Carolina Circuit Court Mediator

Garrard Construction Group, Inc.

124660

REFERENCE NO.	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
2-28-17 1-6030	10-10-6030		185675.33	18567.53	167107.80
CHECK DATE	CHECK NO.	PAYEE	DISCOUNTS TAKEN	CHECK AMOUNT	
3-17-17	124660		18567.53	167107.80	

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON.



GARRARD
Garrard Construction Group, Inc.
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
(770) 822-1944

The Brand Banking Company
Duluth, GA 30097
64-327/611
March 17, 2017

DATE 124660
AMOUNT
\$ ****167,107.80

PAY TO THE ORDER OF

*One hundred sixty-seven thousand one hundred seven dollars and 80 cents

Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

AUTHORIZED SIGNATURE

Garrard Construction Group, Inc.

124660

REFERENCE NO.	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
	 WAIVER - need to provide D & B waiver Ad. COT				
CHECK DATE	CHECK NO.	PAYEE	DISCOUNTS TAKEN	CHECK AMOUNT	

Order/Invoice Number: 354800

For Quick Reorder Go to BusinessChecksPrinting.com/Reorder - Call: 1800-385-1383

MARBLE MIDDLE

Countryman 10-8-18 1

Garrard Construction Group, Inc.

124905

REFERENCE NO.	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
3-20-17 2-6030	10-10-6030		11500.00	1150.00	10350.00
CHECK DATE	CHECK NO.	PAYEE	DISCOUNTS TAKEN	CHECK AMOUNT	
4-26-17	124905		1150.00	10350.00	

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON.

GARRARD **Garrard Construction Group, Inc.**
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
(770) 822-1944

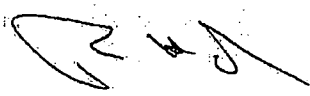
The Brand Banking Company
Duluth, GA 30097
64-327611

DATE **124905**
April 26, 2017

AMOUNT
\$ *****10,350.00

PAY TO THE ORDER OF
*****Ten thousand three hundred fifty dollars and no cents.

Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528


AUTHORIZED SIGNATURE

Garrard Construction Group, Inc.

124905

REFERENCE NO.	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
	✓ \$ ✓ waiver ✓ Ad ✓ cor				
CHECK DATE	CHECK NO.	PAYEE	DISCOUNTS TAKEN	CHECK AMOUNT	

Order/Invoice Number: 354800

For Quick Reorder Go to BusinessChecksPrinting.com/Reorder - Call: 1800-365-1383

MARBLE MIDDLE

Countryman 10-8-18 2

Garrard Construction Group, Inc.

125113

REFERENCE NO.	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
4-30-17 3-6030	10-10-6030		44444.39	4444.44	39999.95
CHECK DATE	CHECK NO.	PAYEE	DISCOUNTS TAKEN	CHECK AMOUNT	
5-26-17	125113		4444.44	39999.95	

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON.



Garrard Construction Group, Inc.
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
(770) 822-1944

The Brand Banking Company
Duluth, GA 30097
64-327/611
May 26, 2017

DATE **125113**

AMOUNT

\$ *****39,999.95

PAY TO THE ORDER OF *****Thirty-nine thousand nine hundred ninety-nine dollars and 95 cents

Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

AUTHORIZED SIGNATURE

Garrard Construction Group, Inc.

125113

REFERENCE NO.	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
	✓ WAKES ✓ \$ ✓ AD				
CHECK DATE	CHECK NO.	PAYEE	DISCOUNTS TAKEN	CHECK AMOUNT	

Order/Invoice Number: 354800

For Quick Reorder Go to BusinessChecksPrinting.com/Reorder - Call: 1800-386-1363

MARBLE MIDDLE

Countryman 10-8-18 3

Garrard Construction Group, Inc.

125328

DATE	INVOICE NO.	COMMENT	AMOUNT	RETAINAGE	NET AMOUNT
5-17-17	4-6030	10-10-6030	112872.00	11287.20	101584.80
6-30-17	125328		TOTAL	11287.20	101584.80

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON.

GARRARD **Garrard Construction Group, Inc.**
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
(770) 822-1944

BRAND BANKING CO.
Duluth, GA 30097
64-327/611

125328

June 30, 2017 \$***101,584.80

DATE CHECK AMOUNT

PAY: **One hundred one thousand five hundred eighty-four dollars and 80 cents

TO THE ORDER OF Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

AUTHORIZED SIGNATURE

Garrard Construction Group, Inc.

125328

DATE	INVOICE NO.	COMMENT	AMOUNT	RETAINAGE	NET AMOUNT
		✓ \$ ✓ 101,584.80 ✓ A.D.			
			TOTAL		

Order/Invoice Number: 801898

For Quick Reorder Go to BusinessChecksPrinting.com/Reorder.html - Call: 1800-365-1363

MARBLE MIDDLE

Countryman 10-8-18 4

Garrard Construction Group, Inc.

125589

DATE	INVOICE NO.	COMMENT	AMOUNT	RETAINAGE	NET AMOUNT
2-28-17	1-6030	10-10-6030	18567.53	.00	18567.53
3-20-17	2-6030	10-10-6030	1150.00	.00	1150.00
4-30-17	3-6030	10-10-6030	4444.44	.00	4444.44
5-17-17	4-6030	10-10-6030	11287.20	.00	11287.20
6-15-17	5-6030	10-10-6030	24916.74	2491.68	22425.06
8-04-17	125589		TOTAL	2491.68	57874.23

* THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON.



Garrard Construction Group, Inc.
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
(770) 822-1944

BRAND BANKING CO.
Duluth, GA 30097
64-327/611

125589

August 4, 2017

\$****57,874.23

DATE

CHECK AMOUNT

PAY: ****Fifty-seven thousand eight hundred seventy-four dollars and 23 cents

TO THE
ORDER
OF

Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

AUTHORIZED SIGNATURE

Garrard Construction Group, Inc.

125589

DATE	INVOICE NO.	COMMENT	AMOUNT	RETAINAGE	NET AMOUNT
		✓ Final payment (in Ret pay app) OK to release * goes w/ chkr 125634			
			TOTAL		

Order/Invoice Number: 801898

For Quick Reorder Go to BusinessChecksPrinting.com/Reorder.html - Call: 1800-385-1363

MARBLE MIDDLE

Countryman 10-8-18 5

Garrard Construction Group, Inc.

DATE	INVOICE NO.	COMMENT	AMOUNT	RETAINAGE	NET AMOUNT
6-15-17	5-6030	10-10-6030 <i>litany</i>	2491.68	.00	2491.68
8-04-17	125634		TOTAL	.00	2491.68

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON.



GARRARD
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
(770) 822-1944

BRAND BANKING CO.
Duluth, GA 30097
64-327/611

125634

August 4, 2017 \$*****2,491.68

DATE CHECK AMOUNT

PAY: *****Two thousand four hundred ninety-one dollars and 68 cents

TO THE ORDER OF Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

[Signature]
AUTHORIZED SIGNATURE

Garrard Construction Group, Inc.

DATE	INVOICE NO.	COMMENT	AMOUNT	RETAINAGE	NET AMOUNT
		<i>* goes w/ check 125589</i>			
			TOTAL		

Order/Invoice Number: 801888

For Quick Reorder Go to BusinessChecksPrinting.com/Reorder.html - Call: 1800-385-1383

MARBLE MIDDLE

Countryman 10-8-18 6

**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 #: **1** PERIOD **Feb. 1, 2017** TO **Feb. 28, 2017****STATEMENT OF SUBCONTRACT:**

1. Original Subcontract Amount	\$ 350,197.33
2. Approved Contract Revision Numbers (As per attached breakdown)	\$ 350,197.33
3. Adjusted Subcontract Amount	\$ 185,875.33
4. Value of Work Completed to Date (As per attached breakdown)	\$ 185,875.33
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ 18,567.53
6. Materials Stored on Site (As per attached breakdown)	\$ 167,107.80
7. Total to Date	\$ 0
8. Less Amount Retained (10 %)	\$ 167,107.80
9. Total Less Retainage	\$ 167,107.80
10. Total Previously Certified (Deduct)	\$ 0
11. AMOUNT DUE THIS REQUEST	\$ *167,107.80

* 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:

Billy's Plumbing Co., LLC

By:

Title: **OMI**Date: **2/20/17**

Witness:

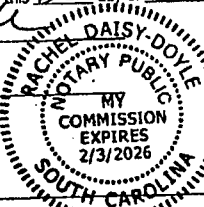
 THE STATE OF **SC**
 COUNTY OF **Horry**

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 **20** day of **February**, 20**17**.

NOTARY PUBLIC
Feb 3, 2016
 MY TERM EXPIRES



This field for office use ONLY

TW

 1905 SOUTH LITTLE (ANTHONY) BLVD - DULUTH - GEORGIA - 30097
 PHONE: 770-822-1944 • FAX: 770-822-4633

[illegible]



INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF SC
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 \$ 167,107.80 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
2/28/17 (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.

Billy's Plumbing Co., LLC

SUBCONTRACTOR

BY: [Signature]

TITLE: OM

DATE: 2/20/17

1960 SATELLITE BLVD • SUITE 200 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

Page 2 of 10

Countryman 10-8-18 9



GARRARD

STATE OF SC
COUNTY OF Horry

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY, PERSONALLY APPEARED
Amy Bryant 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 20th DAY OF February
20 17

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 44-14-365.

1960 SATELLITE ROAD • SUITE 2500 • DULUTH, GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

Page 3 of 10

Countryman 10-8-18 10



APPLICATION FOR PAYMENT

EXHIBIT D

TO: Garrard Construction Group, Inc. ("Contractor")FROM: BILLY'S PLUMBING CO. ("Subcontractor")Subcontract #: 10-6030-15 (the "Subcontract") PROJECT DESCRIPTION: DAVE & BUSTERS - MYRTLE BEACH-INTAPPLICATION FOR PAYMENT #: 2 PERIOD March 1, 20 17 TO March 31, 20 17

STATEMENT OF SUBCONTRACT:

1. Original Subcontract Amount	\$ <u>350,197.33</u>
2. Approved Contract Revision Numbers (As per attached breakdown)	\$ <u>350,197.33</u>
3. Adjusted Subcontract Amount	\$ <u>197,175.33</u>
4. Value of Work Completed to Date (As per attached breakdown)	\$ <u>197,175.33</u>
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ <u>197,175.33</u>
6. Materials Stored on Site (As per attached breakdown)	\$ <u>19,717.33</u>
7. Total to Date	\$ <u>177,457.80</u>
8. Less Amount Retained (<u>10</u> %)	\$ <u>187,107.80</u>
9. Total Less Retainage	\$ <u>10,350.00</u>
10. Total Previously Certified (Deduct)	\$ <u>10,350.00</u>
11. AMOUNT DUE THIS REQUEST	\$ <u>10,350.00</u>

* 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:

Billy's Plumbing Co., LLC

By: [Signature]

Title: OM

Date: 3/17/17

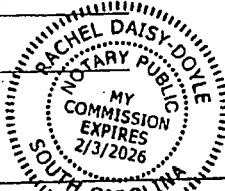
Witness _____

THE STATE OF SC
COUNTY OF Horry

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 17 day of March, 20 17.

Rachel Daisy Doyle
NOTARY PUBLIC
2023, 2026
MY TERM EXPIRES



1560 STATE STREET, SUITE 100 • DULUTH, GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

This field for office use ONLY

TW

[illegible]



INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF SC

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 \$ 10,350.00 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 3/31/17 (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.

Billy's Plumbing Co., LLC

SUBCONTRACTOR

BY: [Signature]

TITLE: OM

DATE: 3/31/17

1960S VILLAGE BLVD • SUITE 200 • DULUTH, GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

STATE OF SC

COUNTY OF Horry

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY, PERSONALLY APPEARED
Amy Bryant, 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.

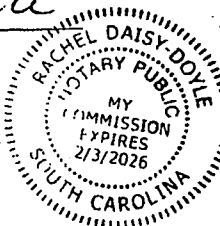
GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 17th DAY OF March
20 17.

SEAL

Rachel Daisy Doyle
NOTARY PUBLIC

MY TERM EXPIRES

Feb 3, 2026



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 S. ATLANTIC BLVD • SUITE 200 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

Page 3 of 10

Countryman 10-8-18 14

**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 #: **3** PERIOD **April**, 20 **17** TO **April 30**, 20 **17****STATEMENT OF SUBCONTRACT:**

1. Original Subcontract Amount	\$ 350,197.33
2. Approved Contract Revision Numbers 1 (As per attached breakdown)	\$ 4,204.39
3. Adjusted Subcontract Amount	\$ \$364,491.72
4. Value of Work Completed to Date (As per attached breakdown)	\$ 237,325.33
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ 4,204.39
6. Materials Stored on Site (As per attached breakdown)	\$ 241,819.72
7. Total to Date	\$ 241,819.72
8. Less Amount Retained (10 %)	\$ 24,181.97
9. Total Less Retainage	\$ 217,457.80
10. Total Previously Certified (Deduct)	\$ 177,457.80
11. AMOUNT DUE THIS REQUEST	\$ *39,999.95

* 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:

Billy's Plumbing Co., LLC

By:

Title: **OM**Date: **4/18/17**
 THE STATE OF **SC**
 COUNTY OF **Horry**

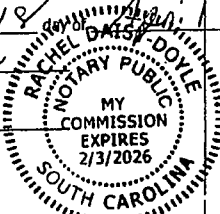
BEFORE ME, the undersigned authority, on this day, personally appeared **Dave Busters**, known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this **18** day of **April**, 20 **17**.

NOTARY PUBLIC

Feb 3, 2026

MY TERM EXPIRES

**This field for office use ONLY****TW**
 1960 S. FLEET STREET, SUITE 2300 • DULUTH • GEORGIA • 30097
 PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF SC

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 \$ 38,999.95 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 4/30/17 (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.

Billy's Plumbing Co., LLC

SUBCONTRACTOR

BY: [Signature]

TITLE: OM

DATE: 4/18/17

1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

Page 2 of 10

Countryman 10-8-18 17



GARRARD

STATE OF SC

COUNTY OF Horry

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY, PERSONALLY APPEARED
Amy Bryant, 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 18th DAY OF April
20 17.

Rachel Day-Dyck
NOTARY PUBLIC

MY TERM EXPIRES

Feb 3, 2026

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.

1960S ATTORNEY BLVD • SUITE 200 • DUBLIN • GEORGIA • 30127
PHONE: 770-822-1944 • FAX: 770-822-4633

Page 3 of 10

Countryman 10-8-18 18

**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-INTAPPLICATION FOR PAYMENT #: 4 PERIOD May 1, 20 17, TO May 3, 20 17.**STATEMENT OF SUBCONTRACT:**

1. Original Subcontract Amount	\$ 350,197.33
2. Approved Contract Revision Numbers <u>1</u> (As per attached breakdown)	\$ 4,294.39
3. Adjusted Subcontract Amount	\$ 354,491.72
4. Value of Work Completed to Date (As per attached breakdown)	\$ 350,197.33
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ 4,294.39
6. Materials Stored on Site (As per attached breakdown)	\$ 354,491.72
7. Total to Date	\$ 35,449.17
8. Less Amount Retained (<u>10</u> %)	\$ 319,042.55
9. Total Less Retainage	\$ 217,457.75
10. Total Previously Certified (Deduct)	\$ 101,584.80
11. AMOUNT DUE THIS REQUEST	\$ 101,584.80

* USE THIS \$ AMOUNT ON LIEN WAIVER

CERTIFICATE OF SUBCONTRACTOR AND PARTIAL WAIVER OF LIEN:

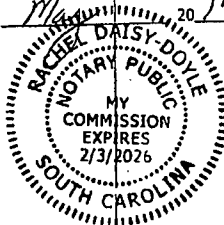
I, as authorized representative of Subcontractor, hereby certify that the work performed and the materials supplied by Subcontractor to date, as shown above, represent the actual value of the accomplishments under the terms of the Subcontract (and all authorized changes thereto) between Subcontractor 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:Billy's Plumbing Co., LLCBy: [Signature]Title: OMDate: 5/17/17Witness [Signature]THE STATE OF SC
COUNTY OF Horry

BEFORE ME, the undersigned authority, on this day, personally appeared Anthony W. Bryant, 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 17 day of May, 20 17.[Signature]
NOTARY PUBLIC25 3 2026
MY TERM EXPIRES**This field for office use ONLY**

TW

1960 SATELLITE BLVD • SUITE 200 • DULUTH • GEORGIA • 30117
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF SC

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 \$ 101,584.80 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 5/31/17 (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.

Billy's Plumbing Co., LLC

SUBCONTRACTOR

BY: [Signature]

TITLE: OM

DATE: 5/17/17

1960 SATELLITE BLVD • SUITE 200 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

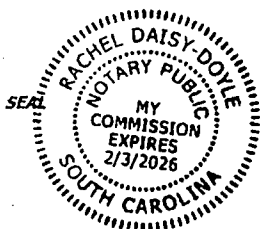


STATE OF SC

COUNTY OF Horry

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY, PERSONALLY APPEARED
Amey Bryant, 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 17th DAY OF May
20 17



Rachel Daisy Doyle
NOTARY PUBLIC

MY TERM EXPIRES

Feb 3, 2026

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 200 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

Page 1 of 2 Pages

TO CONTRACTOR:	PROJECT:	APPLICATION NO.:	5	☐ Distribution to:
Garrard	Dave & Busters	APPLICATION DATE:	6/14/2017	☐ CONTRACTOR
2055 Sugarloaf Circle Ste 400		PERIOD TO:	6/30/2017	
Duluth, GA 30097		PROJECT NO.:		
FROM SUBCONTRACTOR:	VIA ARCHITECT:			
Billy's Plumbing Co., LLC				
PO Box 1051				
Conway, SC 29528				
CONTRACT FOR:	Plumbing			

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$ 350,197.33
2. Net change by Change Orders	\$ 27,531.61
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$ 377,728.94
4. TOTAL COMPLETED & STORED TO DATE	\$ 379,408.46
(Column G on G703)	
5. Retainage:	
a. 10% of Completed Work	\$ 37,940.85
(Column D + E on G703)	
b. 10% of Stored Material	\$ -
(Column F on G703)	
Total Retainage (Line 5a + 5b or	\$ 37,940.85
Total in Column I of G703)	
6. Total Earned Less Retainage	\$ 341,467.61
(Line 4 less Line 5 Total)	
7. Less Previous Certificates for Payment	\$ 319,042.55
(Line 6 from prior Certificate)	
8. Current Payment Due	\$ 22,425.07
9. Balance to finish, including Retainage	\$ 38,281.33
(Line 3 less Line 8)	

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 4,294.39	
Total Approved this Month	\$ 23,237.22	
TOTALS	\$ 27,531.61	\$ -
Net Changes by Change Order	\$ 27,531.61	

The undersigned Subcontractor certifies that to the best of the Subcontractor's knowledge, information and belief the work covered by this Application for Payment has been completed in accordance with the Subcontract Documents, that all amounts have been paid by the Subcontractor for work for which previous Certificates for Payment were issued and payments received from the Contractor, and that current payment shown herein is now due.

SUBCONTRACTOR:

By: [Signature] Date: 6/13/17

State of:

County Of: Horry

Subscribed and sworn to before me this

13 day of

Notary Public

My Commission Expires:

26 3, 2026



[illegible]

08/27/2015

Page 80 of 81

SUBCONTRACTOR'S PROGRESS PAYMENT CLAIM RELEASE
(to be provided with each progress payment application)

Date: 6/14/17

The undersigned, (Insert subcontractor's Name) Billy's Plumbing Co., LLC
 ("Subcontractor"), is a subcontractor furnishing services, labor or material in the
 construction, remodel or repair of improvements (the "Work") upon the real estate site
 (the "Site") owned or leased by Dave and Buster's, Inc., including its
 affiliates and/or subsidiaries, ("Owner") with corporate offices located at
2481 Monana Drive, Dallas, TX 75220. The Site upon which Contractor is providing
 services and/or materials is defined as:

Project Name: Dave & Buster's - Myrtle Beach
 Project Address: 1322 Celebrity Circle
 City: Myrtle Beach, County: Horry, State: South Carolina

The monetary terms for the Work at the Site, which Subcontractor is providing to
 contractor Garrard Construction Group, Inc. (insert contractor's name) hereinafter referred
 to as "Contractor", are:

Conditional Waiver Portion:

Upon receipt of consideration in the sum of \$ 22,425.07 (insert amount
 covered by this Progress Payment) - together with receipt of any currently unpaid sums covered
 by previous lien waivers and claim releases to be paid by Contractor, Subcontractor for itself, its
 successors and assigns hereby waives, releases and forever discharges Owner of and from all
 manner of debts, demands, actions, causes of action, suits, agreements and any and all claims and
 liabilities whatsoever in law and in equity, in connection with the Work to the Site through
June 30, 2017 (insert date payment is requested through), exclusive only of rights to
 retainage.

Unconditional Waiver Portion:

Subcontractor further certifies that Subcontractor has previously been paid
 \$ 217,457.75 (insert amount actually paid to date) by Contractor as full compensation
 and payment for all labor, services, equipment or materials furnished to Owner and Contractor for
 the Work, through 4/30/17 (the "Date") exclusive only of the right to payment of
 retainage. Subcontractor hereby unconditionally waives and releases any and all claims or rights
 upon the Work or property of the Owner and all improvements thereon, on account of services,
 material, equipment, labor or other items furnished by Subcontractor to the Date, in connection
 with the Work, exclusive only of the right to payment for retainage, and for services and material
 provided after the Date. The foregoing certification and release are not contingent in any respect
 nor are they subject to any condition precedent. Subcontractor acknowledges that the foregoing
 representations are made to induce Contractor and/or Owner to make the Progress Payment above
 knowing that Contractor and Owner rely on the representations herein contained. Subcontractor
 further warrants and represents that all bills, claims, demands, liabilities and obligations for
 services, material, equipment, labor and any other items furnished through the Date in connection
 with the Work have been paid and satisfied.

Partial Invalidity

08/27/2015

Page 80 of 81

08/27/2016

Page 81 of 81

If any provision of this document or the application thereof to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this document and its application to other persons or circumstances shall not be affected by such partial invalidity but shall be enforced to the fullest extent permitted by law as though such invalid or unenforceable provision was never a part hereof.

SUBCONTRACTOR

Billy's Plumbing Co., LLC.

By: [Signature]

Title: OM

[INSERT STATE SPECIFIC NOTARY ACKNOWLEDGMENT.]

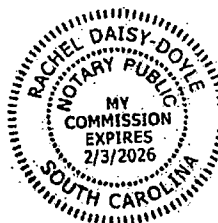
State of SC

County of Horry

Subscribed and sworn to before me
this 13th day of June 2017

Rachel Daisy-Dyke

My Commission Expires Feb 3, 2026



08/27/2016

Page 81 of 81

08/27/2015

Page 80 of 81

SUBCONTRACTOR'S PROGRESS PAYMENT CLAIM RELEASE
(to be provided with each progress payment application)

Date: 05/17/2017

The undersigned, (Insert subcontractor's Name) Billy's Plumbing
 ("Subcontractor"), is a subcontractor furnishing services, labor or material in the construction, remodel or repair of improvements (the "Work") upon the real estate site (the "Site") owned or leased by Dave and Buster's, Inc., including its affiliates and/or subsidiaries, ("Owner") with corporate offices located at 2481 Manana Drive, Dallas, TX 75220. The Site upon which Contractor is providing services and/or materials is defined as:

Project Name: Dave & Buster's - Myrtle Beach
 Project Address: 1322 Celebrity Circle
 City: Myrtle Beach, County: Horry, State: South Carolina

The monetary terms for the Work at the Site, which Subcontractor is providing to contractor Garrard Construction Group, Inc. (Insert contractor's name) hereinafter referred to as "Contractor", are:

Conditional Waiver Portion:

Upon receipt of consideration in the sum of \$ 39,999.95 (Insert amount covered by this Progress Payment) - together with receipt of any currently unpaid sums covered by previous lien waivers and claim releases to be paid by Contractor, Subcontractor for itself, its successors and assigns hereby waives, releases and forever discharges Owner of and from all manner of debts, demands, actions, causes of action, suits, agreements and any and all claims and liabilities whatsoever in law and in equity, in connection with the Work to the Site through 05/30/2017 (Insert date payment is requested through), exclusive only of rights to retainage.

Unconditional Waiver Portion:

Subcontractor further certifies that Subcontractor has previously been paid \$ 217,457.76 (Insert amount actually paid to date) by Contractor as full compensation and payment for all labor, services, equipment or materials furnished to Owner and Contractor for the Work, through 04/30/2017, (the "Date") exclusive only of the right to payment of retainage. Subcontractor hereby unconditionally waives and releases any and all claims or rights upon the Work or property of the Owner and all improvements thereon, on account of services, material, equipment, labor or other items furnished by Subcontractor to the Date, in connection with the Work, exclusive only of the right to payment for retainage, and for services and material provided after the Date. The foregoing certification and release are not contingent in any respect nor are they subject to any condition precedent. Subcontractor acknowledges that the foregoing representations are made to induce Contractor and/or Owner to make the Progress Payment above knowing that Contractor and Owner rely on the representations herein contained. Subcontractor further warrants and represents that all bills, claims, demands, liabilities and obligations for services, material, equipment, labor and any other items furnished through the Date in connection with the Work have been paid and satisfied.

Partial Invalidity

08/27/2015

Page 80 of 81

08/27/2015

Page 81 of 81

If any provision of this document or the application thereof to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this document and its application to other persons or circumstances shall not be affected by such partial invalidity but shall be enforced to the fullest extent permitted by law as though such invalid or unenforceable provision was never a part hereof.

SUBCONTRACTOR

Billy's Plumbing Co.

By: [Signature]

Title: Operations Manager

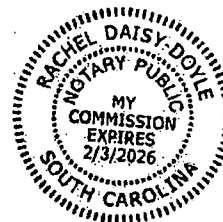
[INSERT STATE SPECIFIC NOTARY ACKNOWLEDGMENT.]

State of SC
County of Horry

The foregoing instrument was acknowledged before me this 17th day of May 2014 by Amy D. Bryant.

Rachel Daisy Doyle
Notary Public

My Commission Expires
Feb 3, 2026



08/27/2015

Page 81 of 81

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

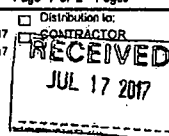
Page 1 of 2 Pages

TO CONTRACTOR
Garrard
2055 Sugarloaf Circle Ste 400
Duluth, GA 30097
FROM SUBCONTRACTOR:
Billy's Plumbing Co., LLC
PO Box 1051
Conway, SC 29528
CONTRACT FOR:

PROJECT:
Dave & Busters

VIA ARCHITECT:

APPLICATION NO.: 6
APPLICATION DATE: 7/20/2017
PERIOD TO: 7/31/2017
PROJECT NOS.:



CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 350,197.33
2. Net change by Change Orders \$ 29,211.13
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 379,408.46
4. TOTAL COMPLETED & STORED TO DATE \$ 379,408.46
(Column G on G703)
5. Retainage:
 - a. 10% of Completed Work \$ 37,940.85
(Columns D + E on G703)
 - b. 10% of Stored Material \$ -
(Column F on G703)
 - Total Retainage (Line 5a + 5b or
Total in Column I of G703) \$ 37,940.85
6. Total Earned Less Retainage \$ 341,467.61
(Line 4 less Line 5 Total)
7. Less Previous Certificates for Payment \$ 341,467.61
(Line 6 from prior Certificate)
8. Current Payment Due \$ 37,940.85
9. Balance to finish, including Retainage
(Line 5 less Line 8)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 27,531.61	
Total Approved this Month	\$ 1,679.52	
TOTALS	\$ 29,211.13	\$ -
Net Changes by Change Order	\$ 29,211.13	

The undersigned Subcontractor certifies that to the best of the Subcontractor's knowledge, information and belief the work covered by this Application for Payment has been completed in accordance with the Subcontract Documents, that all amounts have been paid by the Subcontractor for work for which previous Certificates for Payment were issued and payments received from the Contractor, and that current payment shown herein is now due.

SUBCONTRACTOR:
By: *[Signature]*

Date: 7/14/17

State of: SC
County of: Horry

Subscribed and sworn to before
me this 14 day of July 2017

Notary Public: *[Signature]*
My Commission Expires: 7/3/2026

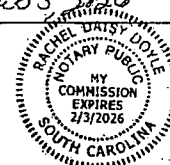


Exhibit "E"

CONTRACTOR'S FINAL UNCONDITIONAL CLAIM RELEASE*(to be provided with application for final payment)*Date: July 14, 2017

The undersigned, *(Insert Contractor's Name)* Billy's Plumbing Co., LLC
 ("Contractor"), is a contractor furnishing services, labor or material in the construction, remodel
 or repair of improvements (the "Work") upon the real property (the "Site") owned or leased by
Dave & Busters, including its affiliates and/or subsidiaries, ("Owner") with
 corporate offices located at _____. The Site upon which
 Contractor is providing services and/or materials is defined as:

Project Name: Dave & Buster's Myrtle Beach Interior
 Project Address: Broadway at the Beach - 1322 Celebrity Circle
 City: Myrtle Beach, County: _____, State: South Carolina

The Contract with Owner pursuant to which Contractor is performing Work upon the Site
 is dated: _____.

In consideration of final payment in the amount of Thirty-Seven Thousand Nine Hundred Forty & 85/100
 Dollars (\$ 37,940.85) *(insert amount of final payment)* (hereinafter referred to
 as "Final Payment"), paid by Owner to Contractor, Contractor for itself, its successors and
 assigns hereby remises, waives, releases and forever discharges Owner of and from all manner of
 debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, and
 any and all claims and liabilities whatsoever in law and in equity, arising out of, in connection
 with, or in any way related to the Contract, the Work, the Site, or services, labor, equipment or
 materials provided by or on behalf of Contractor arising from or in connection with the Contract,
 the Work or the Site.

Contractor hereby accepts Final Payment as full and complete compensation and
 payment for all labor, services, equipment or materials furnished to Owner for or in connection
 with the Work and the Site, and Contractor further warrants and represents that Contractor has
 fully and completely paid all subcontractors, materialmen and suppliers who have provided any
 services, labor, equipment or materials in connection with the Work or the Site, and that all bills,
 claims, demands, liabilities and obligations for services, material, equipment, labor and any other
 items furnished to the date hereof in connection with the Work and the Site have been paid and
 satisfied. Contractor agrees to fully and completely defend and indemnify Owner from any
 claim, demand, action or cause of action by any subcontractor, supplier or materialman arising
 out of or relating to the Work or the Site, including holding Owner harmless from any and all
 costs and expenses of any type, including but not limited to attorney's fees. The foregoing
 certifications, releases and promise to defend and indemnify are not contingent in any respect nor
 are they subject to any condition precedent. Contractor acknowledges that the foregoing
 representations are material and are made to induce Owner to make the Final Payment above
 knowing that Owner relies on the certifications, representations and promises made herein

Contractor unconditionally certifies that Contractor has been paid in full for all of the
 Work, and all labor, material, equipment, or services of any kind furnished by or through
 Contractor relating to or concerning the Work or the Site, and Contractor hereby unconditionally
 waives, releases and relinquishes any and all claims, actions, causes of action, demands or rights
 of any kind upon the Work, the Site or property of the Owner and all improvements thereon, on
 account of services, material, equipment, labor or other items furnished by or through Contractor

7/12/2016

Page 76 of 82

behalf of Contractor arising out of or in connection with the Work or the Site.
The foregoing

Page 76 of 82

Countryman 10-8-18 32

7/12/2018

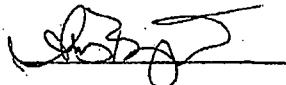
Page 77 of 82

certification, release, and indemnification are material and are not contingent in any respect nor are they subject to any condition precedent. Contractor acknowledges that the foregoing representations are made to induce Owner to make Final Payment knowing that Owner relies on the certifications, representations and promises made herein.

CONTRACTOR:

Billy's Plumbing Co., LLC

(signature)

By: 

Title: OM

[INSERT STATE SPECIFIC NOTARY ACKNOWLEDGMENT.]

NOTICE: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

State of SC

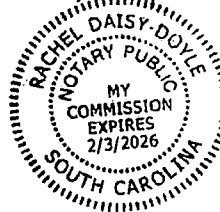
County of Horry

Subscribed and sworn to before me this

14 day of July 2017

Notary Public Rachel Daisy Doyle

my Commission Expires Feb 3 2026



7/12/2018

2

Page 77 of 82

Billy's Plumbing Contract Amount, Change Orders, Payments, Etc. Ledger

1	2/1/2017	\$ 167,107.80
2	3/1/2017	\$ 10,350.00
3	4/1/2017	\$ 39,999.95
4	5/1/2017	\$ 101,584.80
5	6/14/2017	\$ 22,425.07
6 - Ret	7/20/2017	\$ 37,940.85

Payments Made to Billy's Plumbing

124660	3/17/2017	\$ 167,107.80
124905	4/26/2017	\$ 10,350.00
125113	5/26/2017	\$ 39,999.95
125328	6/30/2017	\$ 101,584.80
125589	8/4/2017	\$ 57,874.23
125634	8/4/2017	\$ 2,491.68

Billy's Plumbing Original Contract Amount	\$ 350,197.33
P&P Bond Included in Original Contract	\$ 5,175.33
Original Contract Amount Without Bond	\$ 345,022.00
Change Order #1 - (Not Related to Carolina Cool)	\$ 4,294.39
Change Order #2 - (\$21,219.03 related to Carolina Cool underslab plumbing work Billy's had to complete & correct).	\$ 23,237.22
Change Order #3 - (Not Related to Carolina Cool)	\$ 1,679.52

Billy's Plumbing Original Contract Work Minus P&P Bond	\$ 345,022.00
Change Order Related to Incompletion and Corrections to Carolina Cool Unseal Slab Work	\$ 21,219.03
Total:	\$ 366,241.03
Carolina Cool Contract Amount:	\$ 294,688.00

Claim Amount to Correct and Complete Carolina Cool Work: \$ 71,553.03



ENTERED

2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph: (770)822-1944

Subcontract Change Order

Project: 10-10-6030 Dave & Buster's M Douch 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 FS-1 Floor Sinks damaged by other trade lifts	\$3,558.10
Total:			\$4,296.39

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	\$4,296.39
The new Contract Amount including this Change Order will be	\$354,493.72
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

Countryman 10-8-18 35



ENTERED

2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph : (770)822-1944

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

By
5/17/17

Date

Countryman 10-8-18 36

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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: 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
McNeill

By
5/31/17

Date

Countryman 10-8-18 37

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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 #: 10-10-6030
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 1 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

1960 Satellite Blvd • Suite 2300 • Duluth • Georgia • 30097
Phone (770) 822-1944 • Fax (770) 822-4833

Countryman 10-8-18 38

Contractor:
Garrard Construction Group, Inc.
2055 Sugarloaf Circle, Suite 400
Duluth, GA 30097
Ph: (770)822-1944

Project #: 10-10-8030
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 & 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

Page 3 of 7

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 Phone (770) 822-1944 • Fax (770) 822-4633

Countryman 10-8-18 40

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

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

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

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 ~~Macon, Georgia~~ ^{MB 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. § 9-4-44 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 ~~Cherokee~~ ^{MB SC} 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.

Contractor:
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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

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 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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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 part 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

Date

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

JS

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

[Handwritten signature]

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

OC

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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OC

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: di
GCG/Subcontractor

cc

Date 1/31/2017
Contractor Billy's Plumbing
Contact Scott Gasque 843-241-4988
Project # 10 10 8030

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	CITY	UNIT	COST	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 % (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	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								

Countyman 10-8-18 51

478

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

ATTACHMENT "B"
THE SCHEDULE
DAVE & BUSTER'S MYRTLE BEACH, SC

ID	Task Name	Duration	Start	Finish
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29	HOOD DELIVERY	1 day	Tue 2/14/17	Tue 2/14/17
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Page 1

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: _____

Countryman 10-8-18 54

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: _____

Countryman 10-8-18 55

Attachment "C"			Dave Busters -	
Drawing Enumeration			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: _____

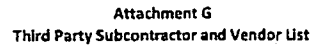
Countryman 10-8-18 56

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: _____

Countryman 10-8-18 57

**Job Name:**[illegible]

Subcontractor



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 • 30607
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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Page 3 of 10

Countryman 10-8-18 61

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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

Page 4 of 10

Countryman 10-8-18 62



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 5 of 10

Countryman 10-8-18 63



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 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633



GARRARD

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 • 30197
PHONE: 770-822-1944 • FAX: 770-822-4633

Page 7 of 10

Countryman 10-8-18 65

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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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Page 8 of 10

Countryman 10-8-18 66



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.

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Page 10 of 10

Countryman 10-8-18 68



SUBCONTRACT

ENTERED

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

Subcontractor:

Billy's Plumbing Company, LLC
P.O. Box 1051
Conway, SC 29528

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: \$ 38,884.00 (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

Page 1 of 7

1960 Satellite Blvd * Suite 2300 * Duluth * Georgia * 30097
Phone (770) 822-1944 * Fax (770) 822-4633

Countryman 10-8-18 69

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

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

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Project #: 10-10-6028
Project Name: Dave & Buster's M Beach Shell
Date: 2/28/2017

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 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

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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 hereafter 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 hereafter 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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Project #: 10-10-6028
Project Name: Dave & Buster's M Beach Shell
Date: 2/28/2017

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 ~~Metre, 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. § ~~9-11-4 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 Law. 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 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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Project #: 10-10-6028
Project Name: Dave & Buster's M Beach Shell
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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 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 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.

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

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.

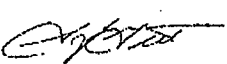
17.12 The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of this Agreement or the Prime Contract shall not be construed to be and shall not be a waiver of any such provision or provisions and Contractor shall thereafter be entitled to enforce 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.

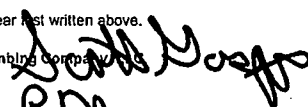
17.14 This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may only be amended or modified in a writing signed by both Subcontractor and Contractor.

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

By: 
By: PM
Title: 3-16-17
Date:

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

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

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

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-

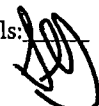
A ITEM NO.	B DESCRIPTION OF WORK	QTY	UNIT	COST	C SCHEDULED VALUE	D WORK COMPLETED FROM PREVIOUS APPLICATION (D+E)	E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G divided by C)	I BALANCE TO FINISH (C - D)	J RETAINAGE (IF VARIABLE RATE)
15-400-S	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	\$6,700.00								
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:			\$36,884.00								

1562 - COMMON PLEAS - CASE#2017CP2603562

**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	7FS-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: 

Countryman 10-8-18 81

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	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:

Countryman 10-8-18 82

Subcontractor Name: Job Name:

[illegible]

INITIALS:

Subcontractor

Countryman 10-8-18 83



GARRARD

EXHIBIT D

APPLICATION FOR PAYMENT

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 (<u>10</u> %)	\$ _____
9. Total Less Retainage	\$ _____
10. Total Previously Certified (Deduct)	\$ _____
11. AMOUNT DUE THIS REQUEST	\$ <u>*</u>

* 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:

Witness Rachel Daisy

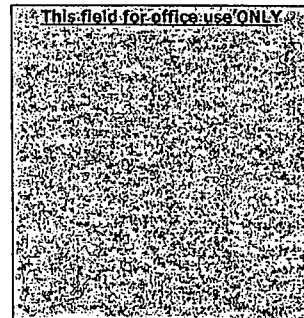
By: [Signature]
Title: pm
Date: 3-16-17

THE STATE OF South
COUNTY OF Horry

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 Marc, 20 17.

[Signature]
NOTARY PUBLIC
7-6-3-2026
TERM EXPIRES



1960 SAWTOOTH BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

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

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of

\$_____ and a balance of \$_____ for labor, services, equipment or material

furnished to _____ on the job of _____
YOUR CUSTOMER OWNER

located at _____
JOB DESCRIPTION

and does hereby release any mechanic's lien, stop notice or bond right that the undersigned has on the above referenced job to the following extent:

This release covers a progress payment for labor, services, equipment, or material furnished to

_____ through _____
YOUR CUSTOMER DATE

only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: _____
COMPANY NAME

By: _____
TITLE

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITONAL RELEASE FORM.

Note: This form is to be used to release claims to the extent that a progress payment has actually been received by the releasing party.

Subscribed and sworn to before me on this _____ day of _____, 20____.

Notary Public: _____

My Commission Expires: _____

Seal or Stamp Required

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment, or material furnished with final payment amount of \$ _____ made payable to

_____ on the job of _____
YOUR CUSTOMER OWNER

located at _____ and does hereby waive and release any
JOB DESCRIPTION

right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job.

Dated: _____
COMPANY NAME

By: _____
TITLE

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITONAL RELEASE FORM.

Note: This form is to be used to release claims to the extent that a progress payment has actually been received by the releasing party.

Subscribed and sworn to before me on this _____ day of _____, 20____.

Notary Public: _____

My Commission Expires: _____

Seal or Stamp Required



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. 10-6028-23 (the "Subcontract") between BILLY'S PLUMBING ("Subcontractor") and Contractor dated 2/28/17.

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.

SUBCONTRACTOR

WITNESS

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_____.

NOTARY PUBLIC

SEAL

MY TERM EXPIRES

Person to contact in case of emergency:

Name _____

Phone No. _____

1960 SATELLITE BLVD • SUITE 2300 • DULUTH • GEORGIA • 30097
PHONE: 770-822-1944 • FAX: 770-822-4633

Page 6 of 10
Countryman 10-8-18 87

EXHIBIT 20

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - Common Pleas - Case#2017CP2603562

From: Amy Bryant amy@billysplumbingcompany.com
Subject: FW: Dave and Buster's Interior Myrtle Beach
Date: October 8, 2018 at 9:47 AM
To: Jordan@thehymanlawgroup.com



From: Scott Gasque <scott.bpccllc@gmail.com>
Sent: Monday, October 8, 2018 9:14 AM
To: Amy Bryant <amy@billysplumbingcompany.com>; Scott Gasque
<scott@billysplumbingcompany.com>; Jody Bryant <jody@billysplumbingcompany.com>
Subject: Fwd: Dave and Buster's Interior Myrtle Beach

Thanks,
Scott Gasque
Adm PM



----- Forwarded message -----

From: Shawn Gill <sgill@garrardgroup.com>
Date: Fri, Jan 6, 2017 at 1:51 PM
Subject: Dave and Buster's Interior Myrtle Beach
To: scott.bpccllc@gmail.com <scott.bpccllc@gmail.com>
Cc: Bill Bromley <bbromley@garrardgroup.com>, Pat Watson <pwatson@garrardgroup.com>

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

<http://www.garrardprojects.com/files/Currently%20Under%20Construction/Dave%20and%20Busters>

ters%20-%20Myrtle%20Beach%20SC%20Interior/Current%20Construction%20Drawings/

We are Moving! Please note our new address.

Garrard Group
2055 Sugarloaf Circle
Suite 400
Duluth, GA 30097

SHAWN J. GILL



GARRARD

Project Manager
1960 Satellite Blvd.
Suite 2300
Duluth, GA 30097
Direct: 678-990-4550
Cell: 404-295-8104
sgill@garrardgroup.com

EXHIBIT 21

ELECTRONICALLY FILED - 2020 Jan 21 4:18 PM - Horry - Common Pleas - Case#2017CP2603562



GARRARD

Project Manager

2055 Sugarloaf Circle

Suite 400

Duluth, GA 30097

Direct: 678-990-4550

Cell: 404-295-8104

sgill@garrardgroup.com

From: Scott Gasque [mailto:scott.bpcilc@gmail.com]

Sent: Wednesday, January 18, 2017 1:26 PM

To: Shawn Gill

Cc: Jody Bryant; Amy Bryant; Bill Bromley

Subject: Dave & Busters

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 be off the project permanently. Also need to work about the material they have on site now. I am working on setting up man power to finish the underground. But can not go much farther than that until we work out the details. Please let me know how you want me to proceed.

Thanks,

Scott Gasque

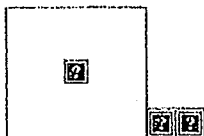
Billy's Plumbing

EXHIBIT 22

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

From: Scott Gasque
To: Amy Bryant; Scott Gasque; Jody Bryant
Subject: Fwd: Dave & Busters
Date: Monday, October 8, 2018 9:19:22 AM

Thanks,
Scott Gasque
Adm PM



----- Forwarded message -----

From: Shawn Gill <sgill@garrardgroup.com>
Date: Wed, Jan 18, 2017 at 1:38 PM
Subject: RE: Dave & Busters
To: Scott Gasque <scott.bpellic@gmail.com>
Cc: Jody Bryant <jeb5156@gmail.com>, Amy Bryant <amy.bpellic@gmail.com>, Bill Bromley <bbromley@garrardgroup.com>

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

Note: We have Moved. See Address Below.

SHAWN J. GILL

EXHIBIT 23

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

From: Amy Bryant
To: Amy Bryant
Subject: Fwd: D & B
Date: Tuesday, February 26, 2019 2:06:12 PM

----- Forwarded message -----

From: Shawn Gill <sgill@garrardgroup.com>
Date: Wed, Feb 1, 2017 at 7:17 PM
Subject: RE: D & B
To: Scott Gasque <scott.bpcllc@gmail.com>
Cc: Amy Bryant <amy.bpcllc@gmail.com>, Jody Bryant <jeb5156@gmail.com>

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 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

Note: We have Moved. See Address Below.

SHAWN J. GILL



Project Manager
2055 Sugarloaf Circle
Suite 400

Billy's Plumbing 50

EXHIBIT 24

Billy's Plumbing Co. LLC

PO BOX 1051
 CONWAY, SC 29528
 Phone# 843-234-0123 Fax# 843-234-0127
 SC License M107631
 NC License #16265

January 23, 2017

JOB: DAVE & BUSTERS underground

Price per the following:

To Furnish Material & Labor to complete under slab plumbing. This is to be done on a Time & Material Basis including rentals, demo, etc. (Per the Rates, Overhead & Profit percentages as laid out below.)

Superintendent: \$~~150~~0 per hour
 Plumber: \$~~120~~0 per hour
 Plumber Helper: \$~~80~~00 per hour

Overhead & Profit Percentage: ~~15~~%

BPC CONDITIONS:

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, but not limited to, any and all legal representation if needed to protect BPC from Carolina Cool and/or Bonding Company. Legal representation shall be of BPC choice.

BPC shall be held harmless, and Garrard Group to take full responsibility from any property damage due to malice. BPC shall not take any responsibility for any under slab plumbing for elevation, placement, material, nor prior workmanship. BPC shall not be held liable for delay due to this process.

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.

ALL WORK TO BE COMPLETED IN A SUBSTANTIAL WORKMANLIKE MANNER ACCORDING TO STANDARD PRACTICES. ANY ALTERATION OR DEVIATION FROM ABOVE SPECIFICATIONS INVOLVING EXTRAS COST WILL BE EXECUTED ONLY UPON WRITTEN ORDERS AND WILL BECOME AN EXTRA ABOVE THIS ESTIMATE. ALL AGREEMENTS ARE CONTINGENT UPON STRIKES, ACCIDENTS OR DELAYS BEYOND OUR CONTROL. OWNER TO CARRY FIRE, TORNADO AND OTHER NECESSARY INSURANCES. OUR WORKERS ARE COVERED BY WORKMANS COMPESATION INSURANCE.

*DUE TO THE CONSTANT RISE IN MATERIALS, THIS PROPOSED PRICE IS ONLY GOOD FOR A PERIOD OF 30 DAYS FROM SUBMITTAL DATE ABOVE.

"ACCEPTANCE OF PROPOSAL"

THE ABOVE PRICE, SPECIFICATIONS AND CONDITIONS ARE SATISFACTORY AND ARE HEREBY ACCEPTED. YOU ARE AUTHORIZED TO DO THE WORK AS SPECIFIED.

SIGNATURE

DATE OF ACETANCE 1-23-2017

Billy's Plumbing 1787

EXHIBIT 25

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



GARRARD

Project Manager

2055 Sugarloaf Circle

Suite 400

Duluth, GA 30097

Direct: 678-990-4550

Cell: 404-295-8104

sgill@garrardgroup.com

From: Scott Gasque [mailto:scott.bpcllc@gmail.com]

Sent: Monday, January 23, 2017 10:46 AM

To: Shawn Gill

Cc: Bill Bromley; Amy Bryant; Jody Bryant

Subject: Dave & Busters

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

Thanks,

Scott Gasque

Billy's Plumbing

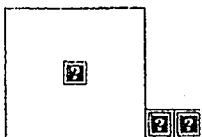
Billy's Plumbing 1776

EXHIBIT 26

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

From: Scott Gasque
To: Amy Bryant; Scott Gasque; Jody Bryant
Subject: Fwd: Dave & Busters
Date: Monday, October 8, 2018 9:21:58 AM
Attachments: UG Contract Signed By Garrard 1-23-2017.pdf

Thanks,
Scott Gasque
Adm PM



----- Forwarded message -----

From: Shawn Gill <sgill@garrardgroup.com>
Date: Mon, Jan 23, 2017 at 11:22 AM
Subject: RE: Dave & Busters
To: Scott Gasque <scott.bpcilc@gmail.com>
Cc: Bill Bromley <bbromley@garrardgroup.com>, Amy Bryant <amy.bpcilc@gmail.com>, Jody Bryant <jeb5156@gmail.com>

Scott,

See attached signed copy per your request. Thank you!

Note: We have Moved. See Address Below.

SHAWN J. GILL

EXHIBIT 27

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

April 12, 2019

Via Email

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576
mncill@ncilllawfirm.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 have called you 4-5 times now to discuss this case, yet you refuse to call me back and only respond with letters. That is not the way I would prefer to handle things moving forward with this case.

Also, despite my agreement to work with you to produce Garrard, Dave & Buster's and Broadway at the Beach witnesses for their depositions, you sent me Subpoenas via certified mail for them. Regardless of any potential issues with the Subpoenas, we are set for the depositions as noticed. I do ask you to consider having the Dave & Buster's 30(b)(6) at my office. That would make travel much less troublesome for the witness. Also, I have family coming to town from Texas that week, and having the deposition at my office would make things much easier on me personally.

Also, Judge Culbertson's Order provides *Plaintiff is required to pay any fees as required by the SCRCF* for the upcoming depositions. Under SCRCF 30(a)(2), each witness is entitled to "\$25 plus mileage for going from and returning to his place of residence." See also SCRCF 45(b)(1). The residence addresses for the Garrard witnesses set to give depositions are as follows:

Shawn Gill
4 Blueberry Road
Jasper, GA 30143

800 miles roundtrip x \$.58 per mile = \$464 mileage + \$25 witness fee = \$489.00

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

Pat Watson
1213 Breckinridge Trail
Winder, GA 30680

668 miles roundtrip x \$.58 per mile = \$387.44 mileage + \$25 witness fee = \$412.44

Bill Bromley
34 Bob White Cr.
Osterville, MA 02655¹

1,822 miles roundtrip x \$.58/mile = \$1,056.76 mileage + \$25 witness fee = \$1,081.76

The witnesses do not reside at Garrard's office or the office of Garrard's registered agent.

Finally, please let me know if you have had a chance to review the Consent Confidentiality Order I gave you the other week. I'd like to go ahead and get one entered. Thanks, and as always, please feel free to call anytime to discuss.

Sincerely,



Andrew W. Countryman

AWC/sgc
cc: Robert Lyles

¹ Bill Bromley is stationed in Massachusetts for the time being and is renting a house at the above address.

EXHIBIT 28

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

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO. 2017-CP-26-03562
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.)

* * * * *

DEPOSITION OF: SHAWN GILL
DATE TAKEN: Wednesday, April 17, 2019
TIME: 9:00 a.m.
PLACE: Neill Law Firm
1727 Glenns Bay Road
Surfside Beach, South Carolina
REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

POST OFFICE BOX 21119
CHARLESTON, SOUTH CAROLINA 29413

Live Oak Reporting
843-437-9697 www.LiveOakReporting.com

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1 Q. And why did it not start until January
2 3rd?

3 A. They originally had it scheduled to
4 start on the 26th. And like Bill stated
5 yesterday, we had a meeting with the underslab
6 contractors, which would be Carolina Cool and
7 United Electric -- or United Electric of Myrtle
8 Beach. Just there were some footings that we were
9 trying to get complete and move the masons around
10 the building. And so we decided to move the start
11 date from the 26th to the 2nd. And that
12 conversation and -- I was in Myrtle Beach, you
13 know, prior, and Bill communicated that and I was
14 in Myrtle Beach prior to that too, you know, to
15 make a decision on moving that date.

16 Q. And was this a decision that was made
17 when you were actually in Myrtle Beach?

18 A. I don't recall. I would have to look at
19 it. I don't recall.

20 Q. And how would you make that
21 determination? What would you have to look at to
22 try to figure out when that was made -- decision
23 was made?

24 A. I would have to look at data reports and
25 then also the timeline that I submitted.

1 Q. And when you say "timeline," what
2 document are you referring to?

3 A. I provided a timeline during this whole
4 period of what was moved and when. It was part of
5 the discovery.

6 Q. Okay. And what would that timeline look
7 like? Is it entitled "Timeline"?

8 A. Yeah. It's entitled "Timeline." I
9 believe it's a three-page document.

10 MR. COUNTRYMAN: That may be work
11 product. I'm not sure of the context of the
12 production. If we produced it, you're welcome
13 to ask him about it, but I need to look at it
14 and see if it's attorney work product.

15 MS. NEILL: I'm not familiar with having
16 a timeline.

17 BY MS. NEILL:

18 Q. Do you recall when you made the
19 timeline?

20 A. I do not remember.

21 Q. Was it within the last couple of years?

22 A. It was during this time to basically
23 document what was going on specifically in
24 relation to the project and the Carolina Cool
25 situation.

1 Q. And when you say "this time," you're
2 talking about -- you were kind of motioning
3 towards the calendar. During January?

4 A. Yes, in January.

5 Q. So sometime in -- gosh, it's amazing it
6 was two years ago. So sometime in January of 2017
7 there was a timeline?

8 A. It probably would have been late January
9 2017, yes.

10 Q. Is that something that would be created
11 under the 360 software?

12 A. No. It was an independent document that
13 I created just to document.

14 Q. Like a Word document?

15 A. Yeah. It was a Word document.

16 MR. COUNTRYMAN: Is this it?

17 THE WITNESS: No. It's on Garrard
18 letterhead. It was basically used to
19 communicate what happened step-by-step based
20 on the daily reports so I could communicate it
21 to both our group and our attorney, Matt
22 Benson.

23 BY MS. NEILL:

24 Q. And I flipped to the last page, which is
25 in May. There's an entry on May 22nd, "Myrtle

1 meetings?

2 A. Correct. And then whatever e-mails that
3 would be sent out. That would be -- that would
4 kind of encompass all of the communication --
5 written communication.

6 Q. And when you say the e-mails, between
7 who?

8 A. You know, there was always e-mails from
9 him to subcontractors, subcontractors to him, as
10 well as myself between me and my superintendent,
11 me and Bill or Pat on that project.

12 Q. And have you gathered those e-mails
13 related to this project?

14 A. To the best of my knowledge, I've
15 submitted -- we did a -- when you get that many
16 e-mails, you did a search for that whole thing and
17 turned them over to Rebekah, and then she
18 submitted them with the -- to Andrew with the
19 discovery requests.

20 Q. And when would that have taken place?

21 A. Um, there were -- I believe there were
22 some e-mails on the first discovery request and
23 then we figured out how to go in and consolidate
24 them and print them to PDF, and so there were more
25 that were sent with the second discovery request.

1 Q. Okay. And approximately when was that
2 second discovery request?

3 A. Two months ago.

4 Q. Did you -- how did you communicate with
5 Seth McCoy with Broadway?

6 A. Via phone and e-mail.

7 Q. And how did you communicate with Dave &
8 Buster's folks?

9 A. Both phone and e-mail and through
10 Expesite when we submit RFIs or change requests or
11 submittals. I guess that would be considered
12 communication as well.

13 MR. COUNTRYMAN: Mary Anna, I didn't
14 withhold anything from that. I'm looking at
15 what I produced to you all recently. I don't
16 see e-mails, other than the ones that were
17 between -- it looks like stuff that was
18 between Garrard and Burroughs & Chapin. But
19 if there's something we missed, that's fine.
20 But I was not withholding anything.

21 MS. NEILL: Thank you.

22 BY MS. NEILL:

23 Q. How did you keep Broadway at the Beach
24 and Dave & Buster's informed about the job
25 progress?

1 specifically. I can give you the task name but
2 this schedule --

3 Q. Has been changed?

4 A. -- has been updated each week with the
5 weekly update. It would be line item 15 on this
6 schedule, plumbing underground.

7 Q. So according to this report, 65 percent
8 of that would have been completed?

9 A. That's correct. Based on this report,
10 yeah.

11 Q. And you believe the plumbing underslab
12 in the restrooms at 95 percent?

13 A. That's what we reported that week, yes.

14 Q. And would that be included in the 65
15 percent?

16 A. Yes.

17 Q. Okay. I was just trying to get my
18 numbers straight. I've looked through the
19 interior reports that you have, and I can't find
20 week three. And I was hoping you could tell me,
21 why are we missing week three? And if you find
22 it, that would be great, but I haven't seen it.

23 A. Do you want me to take time and flip
24 through to see if it's in here?

25 Q. Yes, please. Because if you can't find

1 it, I'm going to ask you if you could please find
2 it for me.

3 MR. COUNTRYMAN: Do you know what the
4 date should be? Because I can search for it
5 on my PDF.

6 MS. NEILL: If week two is January 5th,
7 I would be looking for January 12th.

8 MR. COUNTRYMAN: That would be 01/12?

9 MS. NEILL: And I'll go get my glasses.
10 (The deposition went off the record.)

11 BY MS. NEILL:

12 Q. Mr. Gill, with these weekly project
13 update reports, would this be information you
14 would -- you said you would provide on Thursdays
15 about what is going on on the site; is that
16 correct?

17 A. Correct.

18 Q. And I'm just assuming this is so that
19 everybody involved in the project knows what's
20 happening?

21 A. Correct.

22 Q. And we talked about week four. And then
23 on week five, which is Garrard Weekly Reports
24 Interior 17, it looks like you have the plumbing
25 underslab as 80 percent completed at that week

1 later. Is that correct?

2 A. Week -- which one are you looking at?

3 Q. Week five.

4 A. Yes.

5 Q. And then you have the plumbing underslab
6 in the restroom is still 95 percent. And then you
7 have installation of soda and beer chases at a
8 hundred percent; is that correct?

9 A. Correct.

10 Q. And would the installation of soda and
11 beer chases, would that also be a part of the
12 plumbing underslab?

13 A. Yes. It's considered part of the
14 plumbing underslab.

15 Q. So at this point, if 80 percent is
16 completed, what is the 20 percent left to be done?

17 A. I would have to read the daily report to
18 see what exactly was done as of the 26th.

19 Q. And that would be Bill Bromley's daily
20 report?

21 A. Correct.

22 Q. Do you have any handwritten notes that
23 you maintained on this project?

24 A. No.

25 Q. So we don't have to go through all those

1 daily reports that we did with Bill Bromley
2 yesterday, those are the reports you're talking
3 about, you would have to look at to see what was
4 left to be done?

5 A. Yes.

6 Q. And yesterday, when Bill Bromley and I
7 were talking about those daily reports, would you
8 have any additional source of information to know
9 that those daily reports are missing anything?

10 A. Ask that again.

11 Q. That was a poor question. Do you have
12 any information outside of the information
13 contained in the daily reports?

14 A. Just my knowledge of the job and what I
15 see done in the photos, and discussions I may have
16 with subcontractors would be the additional
17 information that would possibly be added into the
18 daily report. But I depend on Bill and Pat or any
19 superintendent to put a comprehensive description
20 of what work was done on any given day.

21 Q. And hearing Bill Bromley yesterday, do
22 you have any information to dispute anything that
23 he talked about in his daily reports?

24 A. No.

25 MR. COUNTRYMAN: Mary Anna, I put the

1 document on here. So whenever you want to
2 grab it and print it, you can.

3 MS. NEILL: Thank you. We might come
4 back to that at a break.

5 MR. COUNTRYMAN: I apologize for that
6 oversight. I don't know why that didn't come
7 through the first time.

8 BY MS. NEILL:

9 Q. Mr. Gill, I'm going to mark as
10 Plaintiff's 12 Garrard Weekly Reports Interior
11 Numbers 1, 6, 13, and 17 for the record. And
12 those are four weeks one, two, four, and five.

13 A. Okay.

14 (Plaintiff's Exhibit No. 12, Garrard
15 Weekly Reports Interior 1, 6, 13 and 17, was
16 marked for identification.)

17 Q. And hopefully I'll get a copy of the
18 week three. Because that's the period in time
19 that I'm primarily concerned about, is that month
20 of --

21 MR. COUNTRYMAN: Do you want to run out
22 and have the secretary print it?

23 (The deposition went off the record.)

24 BY MS. NEILL:

25 Q. We've printed out a copy of the week

1 underground.

2 A. I guess this one, by the percentage of
3 completion, would be an update after --

4 Q. The page 5?

5 A. -- after page 5 and 6.

6 Q. Okay. And then if you go to the report
7 No. 9, just looking at the percentage of work
8 that's being done, it looks like it would have
9 been --

10 A. Previous to 5.

11 Q. Yeah, yeah. So it looks like we're kind
12 of working our way back in time?

13 A. Correct.

14 Q. I didn't know if these were reports --
15 since they're not dated, if you were just fiddling
16 around with dates, seeing what the work would be,
17 or if they were just produced --

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

24 Q. But each schedule we're looking at would
25 have been prepared on a different date based on

1 compare them to that, how they're labeled with
2 the --

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

8 THE WITNESS: But the file name is
9 what's important to me to be able to determine
10 which date that was -- the update for that
11 date.

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

18 THE WITNESS: By the file name, yes.

19 MS. NEILL: Yeah. Because that's the
20 important information that we need.

21 MR. COUNTRYMAN: Well, then, I'm looking
22 at his Dropbox where he -- a link where he
23 sent me those.

24 MS. NEILL: Why don't we go ahead and
25 mark this as Plaintiff's 14 so we can refer to

1 the same document while we're talking on the
2 record?

3 (Plaintiff's Exhibit No. 14, Shell
4 schedule, was marked for identification.)

5 MS. NEILL: And just for the record,
6 we're looking at what has been marked as
7 Plaintiff's 14, and we're comparing it to some
8 schedules that are being shown on the personal
9 laptop computer of Mr. Countryman.

10 MR. COUNTRYMAN: Yeah. I'm looking at a
11 Dropbox page which contains four documents,
12 and those documents I have combined into one
13 document, which is a total of eight pages
14 long, which is Exhibit No. 14, correct?

15 MS. NEILL: That sounds good. And
16 you'll be e-mailing me --

17 MR. COUNTRYMAN: I have e-mailed you a
18 color copy of those. But what I did was put
19 them in order based on the dates. There are
20 four documents; D & B Myrtle Beach is the
21 beginning label, but then they each have a
22 date. One is 1/5 -- actually, I'll do them in
23 order. There's 12/29/16 and then 1/5/17,
24 1/2/17 (sic), and 1/19/17. And my
25 understanding is this represents four

1 which you determined would have been prepared on
2 January 5th, you have the plumbing underground at
3 5 percent; is that correct?

4 A. That's correct.

5 Q. And that would have been two days after
6 Carolina Cool's start date for the interior work?

7 A. Yes.

8 Q. And then on page 5, that would have been
9 the schedule for January 12th?

10 A. That is correct.

11 Q. And you have the plumbing underground at
12 40 percent; is that correct?

13 A. That's correct.

14 Q. And then the last two pages we
15 determined is for January 19th?

16 A. Correct.

17 Q. And you have the plumbing at 68 percent
18 for the underground?

19 A. That's correct.

20 Q. Now, are there additional schedules
21 after January 19th?

22 A. Yes.

23 Q. And would you also have those?

24 A. Yes.

25 Q. And is that something that you have been

1 asked to look for?

2 A. I understood that we were to supply the
3 schedule updates for the duration in question.

4 Q. Not for the whole project?

5 A. I did not understand it that way, the
6 best I remember.

7 Q. So you --

8 A. But I would be happy to -- we have those
9 schedules.

10 Q. You have those schedules for the --

11 MR. COUNTRYMAN: I can get you those if
12 they haven't been provided.

13 Q. And you're saying it's your
14 understanding you weren't supposed to produce any
15 additional schedules than the ones we have in
16 Exhibit 14?

17 A. Yes.

18 Q. And would the -- your notation as to
19 work and the percentage done of work, would that
20 be accurate, to the best of your knowledge?

21 A. Yes.

22 Q. And, again, that would be based on your
23 conversations with your superintendents and your
24 observation of the information provided to you by
25 those superintendents?

1 A. This is the one I did for John, kind of
2 condensed.

3 Q. So that's different?

4 A. Yeah, this is different from the one I
5 referenced earlier.

6 Q. I thought I saw that but -- so D & B 18
7 is not what you were talking about earlier?

8 A. No.

9 Q. Thanks.

10 MR. COUNTRYMAN: I think I have that.

11 MS. NEILL: Mr. Countryman, you believe
12 you have what Mr. Gill is talking about?

13 MR. COUNTRYMAN: Yeah. I'm looking at
14 it to see if it's privileged. I'm looking at
15 a discovery folder that I have not had access
16 to before today. I produced stuff that I'd
17 received. So I didn't remember whether I had
18 gotten this and produced it before. And I
19 don't know as we sit here right now if I have.
20 But would you let me talk with him for a
21 second privately to see if there's any issue
22 with privilege or work product? If there's
23 not, then I can produce it to you.

24 MS. NEILL: Sure. That would be good.
25 We'll take a five-minute break.

1 to when Carolina Cool is going to be gone
2 permanently; is that correct?

3 A. That's the way this reads, yes.

4 Q. So what information had been provided to
5 Scott to give him the impression that Carolina
6 Cool will be off the job permanently?

7 A. Um, it was probably a conversation.
8 Obviously, I had reached out to Billy's Plumbing
9 about possibly having to replace them. But when a
10 commitment was made on Wednesday, for them to be
11 done by Friday, I was in contact with Scott and
12 said, I'm going to give these guys a chance to
13 finish it up.

14 I was also in consultation with our
15 attorney, Ron Garrard and Tim Wright on, what is
16 the right thing to do here? And we decided to
17 give Carolina Cool a shot to see if they could
18 finish the underground by the end of the day
19 Friday.

20 Q. And did you tell Billy's Plumbing that?

21 A. I did. And I believe I also told him in
22 an e-mail to hold tight; you know, we don't know
23 what direction this is going to go.

24 Q. And from this period of time, January
25 2017, where are all your e-mails stored?

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Shawn Gill - April 17, 2019

Page 183

1 A. In Office 365, our e-mail server, I
2 guess you would call it.

3 Q. And have you looked for e-mails you may
4 have had with anybody at Billy's Plumbing?

5 A. Yes.

6 Q. And have you found e-mails?

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

14 Q. And you've provided those documents?

15 A. Yes.

16 MR. COUNTRYMAN: I don't recall there
17 being any e-mails in that production in April.

18 MS. NEILL: I have not received any
19 e-mails regarding Billy's Plumbing except for
20 what Billy's Plumbing just gave us in response
21 in to the Subpoena.

22 MR. COUNTRYMAN: Let me check on that --
23 I didn't receive something and failed to give
24 it to you in that regard. Let me see if
25 there's something that I overlooked.

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1 THE WITNESS: Me and Rebekah did that,
2 and I assume she got that to you. I can check
3 with Rebekah, but we did do a search for that.

4 BY MS. NEILL:

5 Q. So there are more e-mails possibly out
6 there from you to Billy's Plumbing?

7 A. In addition to what?

8 Q. The zero that I have.

9 A. There were some, and I served all those
10 up. We printed them to PDF, and I'll circle back
11 with Rebekah and make sure those are part of --
12 but there were e-mails between me and Billy's
13 Plumbing.

14 Q. We'll go over what I have right here,
15 with the understanding that there may be more
16 documents out there.

17 A. Okay.

18 Q. Let's go ahead and mark that as
19 Plaintiff's 23, the e-mail from Scott to you dated
20 January 18th at 1:26.

21 (Plaintiff's Exhibit No. 23, 1/18/17
22 E-mail from Scott Gasque to Shawn Gill, was marked
23 for identification.)

24 BY MS. NEILL:

25 Q. And just in the industry, I would just

1 think that you had Billy's Plumbing out there on
2 the 6th and getting plans for the project and
3 they're back on the 18th. If I was Billy's
4 Plumbing, I would be thinking that this is my
5 project now. Is that fair?

6 A. Um, there was no commitment made. Yeah,
7 I was very clear to Scott that, you know -- it
8 wasn't going to benefit anybody. I mean, Billy's
9 Plumbing was more expensive than what we were
10 under contract with Carolina Cool. So the intent
11 was to work with Carolina Cool to kind of drag
12 through this underground and see if we can still
13 salvage it. But commitments were made but then
14 not met physically in the site -- on-site. And so
15 the decision had to be made for them to be
16 removed. But, no, I never, you know, awarded it
17 to them prior to terminating Carolina Cool, if
18 that's what you're asking.

19 Q. Now, after Carolina Cool left the
20 project, according to the job site reports, it
21 looks like Billy's Plumbing was there the
22 following Monday; is that correct?

23 A. Correct.

24 Q. And I'll show you what is Bates stamped
25 -- let's see. What is it? Defendant's 17- -- I'm

1 sorry -- Billy's Plumbing 1787. And it looks like
2 a document from Billy's Plumbing, and it's dated
3 January 23rd. Do you remember receiving that?

4 A. Yes.

5 Q. And is that your signature on the
6 document?

7 A. It is.

8 Q. And would this be a document that you
9 would keep a record of in your file?

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

21 Q. That Carolina Cool had been involved
22 with?

23 A. Correct.

24 Q. And this looks like a contract to me,
25 correct?

1 A. Correct. It's an hourly rate agreement
2 is what it is.

3 Q. An hourly rate agreement. And you
4 maintained that in your file for the Myrtle Beach
5 Dave & Buster's project?

6 A. Yes. It would have been -- yes.

7 Q. And are there any other documents that
8 you would have had with Billy's Plumbing, any
9 other agreements?

10 A. We had a subcontract with them at a
11 later date to do the -- everything from the slab
12 up. This was specifically for the underslab. And
13 then we had a formal subcontract similar to what
14 our subcontract was with Carolina Cool for all the
15 work above the slab.

16 Q. And during the course of this lawsuit,
17 did you look for your agreements you had with
18 Billy's Plumbing?

19 A. Yeah. When we were asked for discovery,
20 we were asked for their subcontract, their checks,
21 their pay applications and all that.

22 Q. And would this document be regarding
23 their subcontracts?

24 A. Would be what?

25 Q. A subcontract you would have with

1 Billy's Plumbing?

2 A. Yes. This should be on -- in our files,
3 yes.

4 Q. Because Billy's Plumbing, they didn't
5 contract directly with the owner, right?

6 A. No.

7 Q. They contracted with Garrard?

8 A. That's correct.

9 Q. And do you have any idea why Garrard
10 wouldn't have produced this document in discovery?

11 A. I don't know why we wouldn't have. I
12 mean, if it wasn't provided -- if it wasn't
13 provided, it wasn't intentional.

14 MS. NEILL: We'll go ahead and mark that
15 as Plaintiff's 24.

16 (Plaintiff's Exhibit No. 24, Billy's
17 Plumbing rate agreement, was marked for
18 identification.)

19 BY MS. NEILL:

20 Q. And that document is -- we received from
21 a Subpoena to Billy's Plumbing, and some of the
22 information is redacted. Do you -- would you have
23 an unredacted copy of that agreement?

24 A. I would think we would.

25 Q. And what are the terms of that

1 agreement?

2 A. The pay terms?

3 Q. Yes.

4 A. Net 30.

5 Q. And what does that mean?

6 A. Upon completion of the work at these
7 hourly rates, they get paid within 30 days of them
8 invoicing it.

9 Q. I'll show you an e-mail, and it appears
10 it's from you on Monday, January 23rd at 11:22
11 a.m. It appears that it's attaching a copy of
12 that signed agreement. I just want to make sure
13 we're on the same page.

14 A. Yeah, it looks like it. That's correct.

15 MS. NEILL: We'll go ahead and mark that
16 as Plaintiff's 25.

17 (Plaintiff's Exhibit No. 25, E-mail -
18 Billy's Plumbing 1768, was marked for
19 identification.)

20 BY MS. NEILL:

21 Q. You mentioned a few moments ago an
22 invoice, and I just want to see if this is the
23 invoice you were talking about. It's dated March
24 31st.

25 A. Yes. This would be the invoice related

1 to those hourly rates.

2 Q. Again, would an invoice from a
3 subcontractor be something that you would
4 regularly keep in your project file?

5 A. This would be with the accounting file,
6 yes. With -- any invoices paid to Billy's
7 Plumbing, this would be with it, yes.

8 Q. And do you have any information as to
9 why it wasn't produced by Garrard?

10 A. I don't know why it wouldn't have been.
11 It wouldn't have been intentional.

12 MS. NEILL: Let's mark that as
13 Plaintiff's 26.

14 (Plaintiff's Exhibit No. 26, Invoice
15 from Billy's Plumbing, was marked for
16 identification.)

17 A. I believe we provided all the checks
18 that we paid Billy's Plumbing, so there should be
19 a check in the amount of whatever this invoice
20 was.

21 MR. COUNTRYMAN: I think that's right.
22 And for the record, I produced a ton of
23 material. If there are things that arise out
24 of this deposition that you don't have and you
25 think you should, I'll happily get you that

1 material. But there was nothing withheld
2 intentionally. To the extent that you don't
3 have something that you think you should have,
4 I'm happy to address that.

5 BY MS. NEILL:

6 Q. That's the problem in discovery. One
7 side doesn't know what the other one has. And
8 then you get bits and pieces, and we got that from
9 Billy.

10 A. And from our end, it comes from a couple
11 different departments too. I wouldn't necessarily
12 have invoices, you know, in their job folder
13 because that all goes to accounting.

14 Q. So there might be a separate accounting
15 folder for this project?

16 A. Well, the pay applications and the
17 checks, you know, all of that comes out of
18 accounting, which, when this was paid, it would
19 have been paid out of that accounting -- the
20 program that they keep invoices in.

21 Q. Going back to Wednesday, January 18, I
22 believe we talked a few minutes ago about how
23 Scott Gasque was in contact with you. And here is
24 an e-mail from you at 1:38 p.m., Wednesday, which
25 states, "Sorry, I have been on the phone with our

EXHIBIT 29

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF HORRY

CAROLINA COOL, INC., CASE NO. 2017-CP-26-03562
Plaintiff(s),

-vs-

GARRARD CONSTRUCTION GROUP,
INC., DAVE & BUSTER'S OF
SOUTH CAROLINA, INC., and
BROADWAY AT THE BEACH, INC.,
Defendant(s).

GARRARD CONSTRUCTION
GROUP, INC.,
Third-Party Plaintiff,
Vs.
RLI INSURANCE COMPANY,
Third-Party Defendant.

DEPOSITION OF: PATRICK J. WATSON
DATE TAKEN: Wednesday, May 8th, 2019
TIME: 10:30 a.m.
LOCATION: Neill Law Firm
 1727 Glenns Bay Road
 Surfside Beach, South Carolina.
REPORTED BY: Nicole D. White
 Certified Court Reporter
 Notary Public

LIVE OAK REPORTING
P.O. BOX 21119
CHARLESTON, SOUTH CAROLINA 29413

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1 whatnot.

2 A lot of things I write in my notebook
3 don't go in the daily report that I sent to the
4 office. Put it in the report, we just write
5 daily activities, man count and everything and
6 locations they're working in.

7 Q. Okay. Do you ever keep a calendar to
8 show where you're supposed to be for each day?

9 A. No.

10 Q. And are there certain -- do you have
11 certain hours that you have to keep each week?

12 A. For the --

13 Q. Your --

14 A. -- subcontractors or for myself?

15 Q. For yourself.

16 A. No.

17 Q. How many hours a week do you typically
18 work?

19 A. About sixty.

20 Q. How did you stay in contact with Shawn
21 Gill regarding this Myrtle Beach Dave and
22 Buster's site?

23 A. We had several phone calls every day
24 and e-mails back and forth a lot.

25 Q. And what would be more typical, that

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EXHIBIT 30

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF HORRY

CAROLINA COOL, INC., CASE NO. 2017-CP-26-03562
Plaintiff(s),

-vs-

GARRARD CONSTRUCTION GROUP,
INC., DAVE & BUSTER'S OF
SOUTH CAROLINA, INC., and
BROADWAY AT THE BEACH, INC.,
Defendant(s).

GARRARD CONSTRUCTION
GROUP, INC.,
Third-Party Plaintiff,
Vs.
RLI INSURANCE COMPANY,
Third-Party Defendant.

DEPOSITION OF: JOHN MULLEADY

DATE TAKEN: Wednesday, May 15th, 2019

TIME: 9:45 a.m.

LOCATION: Neill Law Firm
 1727 Glenns Bay Road
 Surfside Beach, South Carolina

REPORTED BY: Nicole D. White
 Certified Court Reporter
 Notary Public

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1 documents. It's Bate stamped Interior Pay Apps 1
2 through 35. I'll hand you the copy. I'm sorry,
3 it's 1 through 37. Sorry, the last few pages
4 fell off your copy of it.

5 A. Uh-huh.

6 Q. On page Bate stamp 32, it looks like
7 it's application number 7. And under the
8 contractor's application for payment, it states
9 the original contract was the 3,628,786, but then
10 there were change orders of \$140,393.24. Would
11 that -- would the original amount and the change
12 order amount totalling \$3,769,179.24, was that
13 the total amount that Dave & Buster's paid
14 Garrard Construction for the project?

15 A. Based on this pay application 32, it
16 seems that would be the amount, yes.

17 Q. And did Dave & Buster's make the
18 payments as requested from Garrard Construction?

19 A. Yes, I think we did. Doesn't show
20 that we have anything withholding.

21 Q. And how would the payments have been
22 made?

23 A. Either check or wire. I don't know.
24 They do it both -- accounting does it both ways.

25 Q. And would the accounting department

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1 retain documentation of making those payments?

2 A. They should, yeah.

3 Q. Would those documents be something
4 that Dave & Buster's would retain in their file
5 for this project?

6 A. They should.

7 Q. Do you know why those documents
8 weren't produced to us?

9 A. No, I don't.

10 Q. You think that is something that could
11 be provided to us?

12 A. I guess.

13 Q. Yes?

14 A. Yes.

15 Q. The change orders identified as
16 \$140,393.24, did that increase the maximum pay
17 out amount? And that's a poor question. So did
18 you pay the full amount, so that would have been
19 going -- the change orders would have gone above
20 the maximum amount pursuant to the contract; is
21 that right?

22 A. Correct, based on this pay
23 application, the pay application I'm looking
24 right now, the revised guaranteed maximum price
25 is 3,769,179.

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EXHIBIT 31

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MARY ANNA NEILL
MANEILL@NEILLLAWFIRM.COM

August 22, 2019

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
Our File 17-32

Dear Andrew:

Thank you for your letter of August 1, 2019 with the change order discussed during Mr. McCoy's deposition. 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 & Busters 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;

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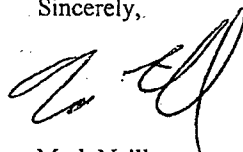
Page 2

- 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.

With kindest regards, I am

Sincerely,



Mark Neill

cc Robert T. Lyles
Jordan Hyman

EXHIBIT 32

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MARY ANNA NEILL
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September 16, 2019

SENT VIA EMAIL AND U.S. MAIL

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
awc@countrymanlawfirm.com

Re: Carolina Cool, Inc. vs. Garrard Construction Group, Inc., et al.
Case No: 2017-CP-26-3562
Our File 17-32

Dear Andrew:

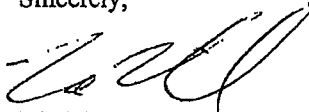
In reviewing my file it appears that I have not received the documents requested in my letter to you dated August 22, 2019.

Kindly forward these documents to me within (10) days from the date of this letter so that I can avoid the filing of a Motion to Compel.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



Mark D. Neill

MDN/sam

cc: Jordan W. Hyman
1208 Third Avenue
Conway, SC 29526
jordan@thehymanlawgroup.com

Robert T. Lyles, Jr.
342 East Bay Street
Charleston, SC 29401
rtl@lylesfirm.com

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EXHIBIT 33

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843-253-4477 office
844-644-3165 fax

September 25, 2019

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576

REC'D SEP 30 2019

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

Mark:

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. I am still in the process of gathering material from Dave & Buster's (material referenced regarding John Mulleady's deposition) and will follow up with that shortly. Let me know if you have any questions in the meantime.

Sincerely,



Andrew W. Countryman

AWC/sgc
Enclosure

Cc: Jordan Hyman, Robert Lyles

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CONFIDENTIAL

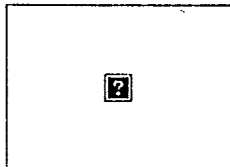
From: Shawn Gill
To: Aprille Bromley; Bill Bromley
Subject: Billy's Plumbing Underslab Rough
Date: Wednesday, April 12, 2017 8:05:26 AM
Attachments: [image001.jpg](#)
[D & B UG T&M INVOICE.docx](#)

Bill,

Can you get with Aprille and have her go back through the daily reports and put a list together of the documented manpower qty that Billy's Plumbing had on site from the day they started the underslab takeover to the day they completed it along with how many hours they worked each day so we can see if the hours match up with what they have submitted. This is part of the Carolina Cool Claim to their bonding agent and all of the attorneys so it will be in front of God and everybody so I want to make sure there is no significant gaps. See attached for your reference as well. Thanks

Note: We have Moved. See Address Below.

SHAWN J. GILL



Project Manager
2055 Sugarloaf Circle
Suite 400
Duluth, GA 30097
Direct: 678-990-4550
Cell: 404-295-8104
sgill@garrardgroup.com

EXHIBIT 35



THE HYMAN LAW GROUP, P.A.
CIVIL, CRIMINAL DEFENSE, AND REAL ESTATE

Phone: (843) 248-2024 • Fax: (843) 248-3233
Conway Office: 1208 3rd Avenue • Conway, SC 29524

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

October 18, 2019

VIA U.S. MAIL AND ELECTRONIC MAIL

Neill Law Firm
671 Jamestown Drive, Suite 207
P.O. Box 2810
Murrells Inlet, SC 29576
mneill@neilllawfirm.com

Re: Carolina Cool, Inc. v. Garrard Construction, et al.
Case Number: 2017-CP-26-3562

Dear Mark:

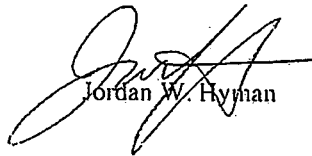
Please find enclosed Defendant Billy's Plumbing Company's Responses to Plaintiff's First Set of Interrogatives (Supplement to Interrogatory #8). Also enclosed please find Certificate of Mailing for the same.

Please feel free to contact me with any questions and/or concerns.

With Kind Regards, I remain

Sincerely,

THE HYMAN LAW GROUP, P.A.



Jordan W. Hyman

JWH/psh

cc:

Andrew Countryman (via electronic mail)
awc@countrymanlawfirm.com

Robert T. Lyles (via electronic mail)
rtl@lylesfirm.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
CAROLINA COOL, INC.,	)	CASE NO.: 2017-CP-26-03562
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Garrard Construction Group, Inc., Dave &	)	
Buster's of South Carolina, Inc., Broadway	)	
at the Beach, Inc., and Billy's Plumbing	)	
Company LLC	)	
	)	DEFENDANT BILLY'S PLUMBING
Defendants.	)	COMPANY'S RESPONSES TO
	)	PLAINTIFF'S FIRST SET OF
	)	INTERROGATORIES
	)	(Supplement to Interrogatory #8)
Garrard Construction Group,	)	
Inc.	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
RLI INSURANCE COMPANY,	)	
	)	
Third-Party Defendant.	)	

TO: NEIL LAW FIRM, ATTORNEYS FOR PLAINTIFF:

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, indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

ANSWER: Billy's Plumbing Company objects to Interrogatory #1 to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine and/or other applicable privileges or doctrines that protect the mental impressions, conclusions, opinions, theories or strategies of counsel. This Defendant further objects to Interrogatory #1 to the extent that it seeks information or the identity of documentation or material prepared in anticipation of litigation. Without waiving these objections, Billy's Plumbing Company identifies the following witnesses:

- a. Joseph "Jody" Bryant
c/o Jordan W. Hyman, Esq.
1208 Third Avenue
Conway, SC 29526
(843) 248-2024
- b. Kyle Rahner
c/o Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576
- c. Scott Gasque
343 Rabon Road
Aynor, SC 29511
- d. Shawn Gill
c/o Andrew Countryman, Esq.
321 Wingo Way, Suite 2
Mt Pleasant, SC 29464

Upon information and belief, no written or recorded statements have been taken from any of the above-referenced witnesses with the exception of Shawn Gill. Billy's Plumbing Company specifically reserves the right to supplement these answers and call any witness listed by any party, including experts, as well as any witness otherwise identified through the course of discovery. This Defendant further reserves the right to elicit expert testimony from any witness listed above, from any witness named by any other party and from any witness otherwise identified through the course of discovery, regarding issues for which those witnesses are qualified to render expert opinions.

2. 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 witness.

ANSWER: Billy's Plumbing Company objects to Interrogatory #2 to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine and/or other applicable privileges or doctrines that protect the mental impressions, conclusions, opinions, theories or strategies of counsel. Without waiving these objections, each of the above-named witnesses will testify as to their knowledge of the facts and circumstances surrounding Defendant Billy's Plumbing Company's involvement in the Dave & Buster's Project.

3. 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 and all such materials which know or believe to be in the possession of others, together with the identity of the person or entity in possession of the materials.

ANSWER: Billy's Plumbing Company objects to Interrogatory #3 to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine and/or other applicable privileges or doctrines that protect the mental impressions, conclusions, opinions, theories or strategies of counsel. This Defendant further objects to Interrogatory #3 to the extent that it seeks information or the identity of documentation or material prepared in anticipation of litigation. Without waiving these objections, pursuant to Rule 33(c) of the SCRPC, Defendant Billy's Plumbing craves reference to the documents produced pursuant to the Subpoena issued to Defendant Billy's Plumbing Company prior to it being named a party hereto. Other than what may have already been produced in accordance with the subpoena and what is contained in Defendant Billy's Plumbing Company's document production, this Defendant is not aware of, and is not in possession of any information responsive to Interrogatory #3. This Defendant reserves the right to supplement or amend its answer to this interrogatory should new information or material become known or available.

4. Specify all such materials, which you intend to introduce as evidence or utilize at the trial of this matter.

ANSWER: This Defendant has not yet decided what materials it intends to use at trial. This Defendant will identify any materials it intends to use at trial, prior to trial, and pursuant to the South Carolina Rules of Civil Procedure.

5. Give the full names and addresses of all expert witnesses you have consulted or expect to call at the trial of the case and with respect to each witness state the following:

- a. The subject matter on which each said expert witness is expected to testify;
- b. The substance of the facts and opinions to which each said expert witness is expected to testify;
- c. A summary of the grounds of each opinion;

- d. Whether or not any such expert witness is employed by you and in what capacity;
and
- e. The financial interest each said expert witness has in this litigation.

ANSWER: Billy's Plumbing Company objects to Interrogatory #5 to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine and/or other applicable privileges or doctrines that protect the mental impressions, conclusions, opinions, theories or strategies of counsel. Without waiving this objection, Counsel of Record for Defendant Billy's Plumbing Company have not yet decided which expert, if any, they will rely on to render trial testimony. This Defendant will supplement its answer to Interrogatory #5 if expert witness(es) have been identified pursuant to SCRCF. Further answering, this Defendant reserves the right to supplement this answer and call any witness listed by any party, including experts, as well as any witness otherwise identified through the course of discovery, regarding issues for which those witnesses are qualified to render expert opinions.

6. Identify any documents that support the defenses and claims that you have alleged in your Answer.

ANSWER: See Documents previously produced pursuant to Subpoena issued to Billy's Plumbing Company and in the possession of Plaintiff. See Verizon call log indicating a telephone conversation with Jody Bryant and Kyle Rahner (843-902-7292) on January 23, 2019 at 8:36 a.m.

7. Set for the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set for the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: Plaintiff's claim is not covered under Defendant's Liability Insurance policy.

8. Identify each and every contract you entered into regarding the Myrtle Beach Dave & Busters 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:

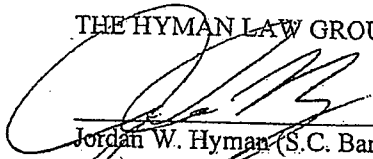
1. **Dave & Busters Underground Contract**—Contract entered into between Billy's Plumbing Company and Garrard on January 23, 2017 to furnish labor and materials to correct and complete the underground plumbing portion of the Dave & Buster's project. The work was performed on a time and materials basis 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 & Busters 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 an amount of \$356,171.24.
 3. **Dave & Busters Shell Subcontract** – Contract entered into between Billy's Plumbing and Garrard Construction Company 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.
9. Identify all bank accounts you utilized in the year 2017 and specify the name and address of the bank where the accounts were held.

ANSWER: Defendant utilized accounts in 2017 at the following financial institutions:

Conway National Bank
1411 4th Avenue
Conway, SC 29526

Respectfully Submitted,

THE HYMAN LAW GROUP, P.A.



Jordan W. Hyman (S.C. Bar 101257)
1208 Third Avenue
Conway, South Carolina 29526
Phone: (843) 248-2024
Fax: (843) 438-8161
Attorney for Billy's Plumbing
Company LLC

October 11, 2019

Conway, South Carolina.

EXHIBIT 36

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 4, 2019

SENT VIA EMAIL AND U.S. MAIL

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
awc@countrymanlawfirm.com

Re: Carolina Cool, Inc. vs. Garrard Construction Group, Inc., et al.
Case No: 2017-CP-26-3562
Our File 17-32

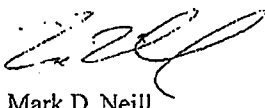
Dear Andrew:

Please find enclosed Supplemental Requests for Production of Documents.

Also, we need to take the 30(b)(6) Deposition of Garrard Construction. I am looking at December 10-13 or December 16-19. Please let me know which dates works best for you. Enclosed is Notice of Deposition in which I designated December 10, 2019 as the deposition date.

With kindest regards, I am

Sincerely,



Mark D. Neill

MDN/sam

cc: Jordan W. Hyman
1208 Third Avenue
Conway, SC 29526
jordan@thehymanlawgroup.com

Robert T. Lyles, Jr.
342 East Bay Street
Charleston, SC 29401
rtl@lylesfirm.com

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., 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

Certificate of Service

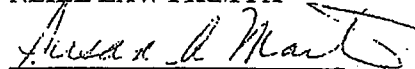
I, Susan A. Martin, hereby certify that I caused a true and accurate copy of the Plaintiff Carolina Cool, Inc.'s Supplemental Requests for Production of Documents and Plaintiff's 30(b)(6) Notice of Deposition Garrard Construction Group, Inc. to be served via E-mail and Regular U.S. Mail, addressed as follows to opposing counsel:

Andrew W. Countryman
Countryman Law Firm
321 Lingo Way
Suite 102
Mt. Pleasant, SC 29464
awc@countrymanlawfirm.com

Jordan W. Hyman
1208 Third Avenue
Conway, SC 29526
jordan@thehymanlawgroup.com

Robert T. Lyles
Lyles and Associates
342 East Bay Street
Charleston, SC 29401
rtl@lylesfirm.com

NEILL LAW FIRM PA



Susan A. Martin

Dated: November 4, 2019

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

Plaintiff Carolina Cool, Inc.'s
Supplemental Requests for
Production of Documents

TO: Andrew Countryman, Counselor for Defendants Garrard Construction, Inc., Broadway at the Beach, Inc., and Dave & Busters of South Carolina:

Supplemental Requests for Production

58. As to the Myrtle Beach Dave & Buster's project, any and all (1) detailed construction profit and loss statements, (2) detailed income statements, and (3) detailed expense statements of Garrard Construction Group, Inc. regarding its "Shell Contract" with Broadway at the Beach, Inc. generated by Defendant or by any agent of Defendant.

59. As to the Myrtle Beach Dave & Buster's project, any and all (1) detailed construction profit and loss statements, (2) detailed income statements, and (3) detailed expense statements of Garrard Construction Group, Inc. regarding its "Interior Contract" with Dave & Buster's of

South Carolina Inc. generated by Defendant or by any agent of Defendant.

60. As to the Myrtle Beach Dave & Buster's project, any and all projected overhead and profit margins for Garrard Construction Group, Inc. regarding its "Shell Contract" with Broadway at the Beach, Inc. generated by Defendant or by any agent of Defendant.

61. As to the Myrtle Beach Dave & Buster's project, any and all projected overhead and profit margins for Garrard Construction Group, Inc. regarding its "Interior Contract" with Dave & Busters of South Carolina, Inc. generated by Defendant or by any agent of Defendant.

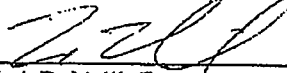
62. As to the Myrtle Beach Dave & Buster's project, any and all detailed reports and summaries calculating Garrard Construction Group Inc.'s projected net profits generated by Defendant or by any agent of Defendant.

63. As to the Myrtle Beach Dave & Buster's project, any and all detailed reports and summaries calculating Garrard Construction Group Inc.'s realized net profits generated by Defendant or by any agent of Defendant.

64. As to the Myrtle Beach Dave & Buster's project, any and all detailed financial statements prepared by Garrard Construction Group Inc. or by any agent of Defendant.

November 7, 2019

NEILL LAW FIRM, PA



Mark D. Neill, Esq.

S.C. Bar No: 14273

P.O. Box 2810

Murrells Inlet, SC 29576

mneill@neilllawfirm.com

(843) 651-8580

Attorney for Carolina Cool, Inc.

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,	)	
	)	Plaintiff's 30(b)(6) Notice of Deposition
vs.	)	Garrard Construction Group, Inc.
	)	
Garrard Construction Group, Inc., Dave &	)	
Buster's of South Carolina, Inc., 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.	)	
	)	

To: Andrew Countryman, Counsel for Defendant Garrard Construction Group, Inc.

YOU WILL PLEASE TAKE NOTICE that the undersigned Attorney for the Plaintiff will take the deposition of those persons designated by the Defendant Garrard Construction Group, Inc. under Rule 30(b)(6), South Carolina Rules of Civil Procedure, for the purpose of being examined on the following matters:

- Construction profit and loss statements for Garrard Construction Group, Inc. regarding its "Shell Contract" with Broadway at the Beach, Inc.;
- Construction profit and loss statements for Garrard Construction Group, Inc. regarding its "Interior Contract" with Dave & Busters of South Carolina, Inc.;

- Projected overhead and profit margins for Garrard Construction Group, Inc. regarding its "Shell Contract" with Broadway at the Beach, Inc.;
- Projected overhead and profit margins for Garrard Construction Group, Inc. regarding its "Interior Contract" with Dave & Busters of South Carolina, Inc.;
- Income and Expense statements for the Dave & Buster's project;
- Garrard Construction Group Inc.'s projected net profits for the project;
- Garrard Construction Group Inc.'s realized net profits for the project;
- Payments made by Broadway at the Beach, Inc. to Garrard Construction Group, Inc. or received by Broadway at the Beach, Inc. from Garrard Construction Group, Inc.;
- Payments made by Dave & Buster's of South Carolina, Inc. to Garrard Construction Group, Inc. or received by Broadway at the Beach, Inc. from Garrard Construction Group, Inc.;
- Contracts or agreements, whether written or oral, between Billys Plumbing Company LLC and Garrard Construction Group, Inc.;
- Payments received by Billys Plumbing Company LLC from Garrard Construction Group, Inc. for the Dave & Buster's shell project;
- Payments received by Billys Plumbing Company LLC from Garrard Construction Group, Inc. for the Dave & Buster's interior project;
- Communications between Billys Plumbing Company LLC and Garrard Construction Group, Inc. regarding the Dave & Buster's construction project;
- Lien waivers submitted by Garrard Construction Group, Inc. to Dave and Buster's of South Carolina Inc. and Broadway at the Beach, Inc.;
- Applications for payments made by Garrard Construction Group, Inc. to Dave and

Buster's of South Carolina Inc. and Broadway at the Beach, Inc;

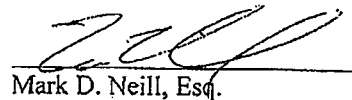
- Calculation of alleged damages asserted by Garrard Construction Group, Inc. in its counterclaim against Carolina Cool, Inc.;
- Contracts with Carolina Cool, Inc.;
- Garrard's breach of contract claim against Carolina Cool, Inc.

The corporate representatives of Garrard Construction Group, Inc. shall appear on **December 10, 2019 at 10:00 a.m.** for the purpose of this 30(b)(6) Notice of Deposition at the Neill Law Firm, PA located at **1727 Glenns Bay Road, Surfside Beach, South Carolina 29575** before a notary public or before some other officer authorized by law to take depositions. You are invited to attend and take such part as is fit and proper. The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

Pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Plaintiff is hereby providing notice to counsel that the witness or witnesses may be shown documents and/or materials during this deposition specifically including but not limited to any document and/or materials that have been produced by any party, or by any others pursuant to subpoena. Additionally, the witness may be asked questions from any information source, reference material or case reference which has been identified in discovery or is available to witness by any agent, employer, Plaintiff or Defendants.

November 7, 2019

NEILL LAW FIRM, PA



Mark D. Neill, Esq.

S.C. Bar No: 14273

P.O. Box 2810

Murrells Inlet, SC 29576

mneill@neilllawfirm.com

(843) 651-8580

Attorney for the Plaintiff

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

EXHIBIT 37

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, South Carolina 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843-253-4477 office
844-644-3165 fax

November 18, 2019

REC'D NOV 21 2019

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576

Re: *Carolina Cool, Inc. v. Garrard Construction Group, Inc., et al.*;
C/A 2017-CP-26-03562
CLF File: 000018 – 000024

Mark:

I enclose my clients' Supplemental/Amended Responses to Plaintiff's Interrogatories.

Sincerely,



Andrew W. Countryman

AWC/sgc
Enclosure

Cc: Jordan Hyman, Robert Lyles

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., BROADWAY AT THE BEACH, INC.,
AND BILLY'S PLUMBING COMPANY, LLC,

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

)
) **CERTAIN DEFENDANTS'**
) **SUPPLEMENTAL/AMENDED**
) **ANSWERS TO PLAINTIFF'S**
) **INTERROGATORIES**

TO: MARK D. NEILL, PLAINTIFF, ATTORNEY FOR PLAINTIFF:

The Defendants Garrard Construction Group, Dave & Buster's of South Carolina, Inc. and Broadway at the Beach, Inc. ("these Defendants"), reserving the right to supplement and/or amend, and pursuant to SCRCP 33, supplement/amend their response to Plaintiff's Interrogatories 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: In addition to the witnesses identified in their prior discovery responses, these Defendants identify the following witness:

Scott Gasque
343 Rabon Rd.
Aynor, SC 29511

Mr. Gasque was the estimator and project manager for Billy's Plumbing during the time period at issue in this lawsuit. He is expected to testify regarding his knowledge of the facts and circumstances in the pleadings. This includes the following:

- Carolina Cool was in over its head on the Dave & Buster's Myrtle Beach project.
- Carolina Cool did not have experience in large scale commercial plumbing jobs like this prior to the Myrtle Beach Dave & Buster's job.
- Carolina Cool was not properly experienced, equipped or staffed to perform its work on the interior contract with Garrard.
- Carolina Cool's work on the project was defective and not timely.
- Billy's had to repair or replace significant portions of Carolina Cool's work on the interior of the project because the work was incorrect.
- Delay in start date of Carolina Cool's scope of work did not change the time it had to perform under the contract(s) with Garrard.
- Billy's Plumbing had no relationship with Garrard before the Dave & Buster's Myrtle Beach.
- Billy's Plumbing did not work with Garrard to get Carolina Cool kicked off the job.
- There was no benefit to Garrard to having to replace Carolina Cool other than having the job done correctly.

Representative(s) of RLI Insurance Company
Care of Lyles & Associates

RLI representative(s) are expected to testify regarding their knowledge of the facts and circumstances in the pleadings, including the issuance of the Bond and decisions made on Garrard's claim on it.

These Defendants are not aware of any written statement by Mr. Gasque or RLI.

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

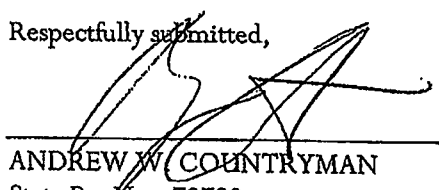
ANSWER:

- (a) \$102,091.78 in delay and additional costs as detailed in these Defendants' prior discovery responses.
- (b) Attorney's fees (\$60,275 currently and increasing by the day).
- (c) Punitive damages in an amount for the jury to determine.
- (d) Damages against RLI recoverable under the claim on the Bond, including attorney's fees and interest.

Garrard is not making a claim for lost profits and withdraws such a claim to the extent prior pleadings refer to one.

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

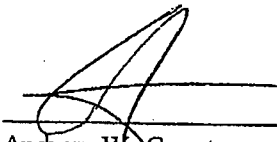
I certify that I have this day served a copy of the foregoing pleading on all parties to this matter U.S. mail as follows:

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for Plaintiff Carolina Cool, Inc.

Robert T. Lyles
Lyles & Associates, LLC
342 East Bay Street
Charleston, SC 29401
Counsel for RLI Insurance Co., Inc.

Jordan W. Hyman
1208 Third Ave.
Conway, SC 29526
Counsel for Billy's Plumbing Company, LLC

This 18th day of November, 2019



Andrew W. Countryman

EXHIBIT 38

COUNTRYMAN LAW FIRM

Litigation ♦ Mediation

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, South Carolina 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843-253-4477 office
844-644-3165 fax

November 29, 2019

REC'D DEC 03 2019

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576

Re: *Carolina Cool, Inc. v. Garrard Construction Group., Inc., et al.*;
C/A 2017-CP-26-03562
CLF File: 000018 – 000024

Mark:

I received your Notice of Garrard's 30(b)(6) Deposition for 12/10/19. Garrard objects to the first seven topics, which relate to financial information for the project. 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. This information is also sensitive and proprietary.

Please let me know if you will agree to limit the deposition to the other topics. Otherwise, I will need to file a Motion for a Protective Order. Finally, Shawn Gill will be Garrard's designee for the remaining topics.

Sincerely,



Andrew W. Countryman

AWC/sgc

Cc: Jordan Hyman, Robert Lyles

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

EXHIBIT 39

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

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.	)	
	)	
Garrard Construction Group, Inc., Dave &	)	AFFIDAVIT OF ATTORNEY'S FEES
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.	)	
	)	

MARK D. NEILL, being duly sworn, deposes and says:

1. I am over the age of eighteen years and am competent to make this Affidavit.
2. I am counsel for the Plaintiff in this matter.
3. I submit this Affidavit in support of the fee requested in connection with Plaintiff's Notice of Motion to Impose Sanctions filed on November 4, 2019.
4. I have been practicing law since 1997.
5. Throughout the course of this case, Defendant, Garrard Construction Group, Inc. has committed numerous discovery violations, including the repeated withholding of relevant documents from counsel for the Plaintiff.
6. As a result of the Defendant Garrard's actions, Plaintiff has been required to incur additional attorney's fees in an attempt to obtain the withheld documents.

7. My hourly rate and the rate of Mary Anna Neill in this matter is \$225.00 per hour and our rate for paralegals is \$125.00. My office has expended in excess of forty one (41) attorney hours reviewing prior depositions to compile a list of documents not produced by the Defendants, drafting correspondence requesting said documents, reviewing Defendant's Discovery responses dated September 25, 2019, drafting this motion, and preparing for this motion to be heard.¹

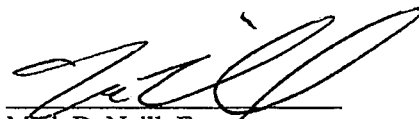
8. I have more than 22 years of experience in civil litigation. My hourly rate and the fee amount requested is customary for practitioners in Horry County.

9. I am requesting an award of attorney fees of \$9,225.00, \$31.74 for the filing fee of the Motion and \$44.80 for copies related to this motion hearing, for a total of \$9,301.54 in connection with this Motion.

FURTHER AFFIANT SAYETH NAUGHT.

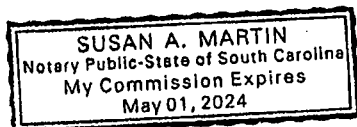
Respectfully submitted,

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.

SWORN to before me this 18th day
Of December, 2019


Notary Public for the State of South Carolina
My Commission Expires: May 1, 2024



¹ This includes as estimated two (2) hours for the hearing and travel to and from the Courthouse.



Horry County Fifteenth Judicial Circuit Public Index



Horry County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

Carolina Cool Inc , plaintiff, et al VS Garrard Construction Group Inc , defendant, et al

Case Number:	2017CP2603562	Court Agency:	Common Pleas	Filed Date:	06/08/2017
Case Type:	Common Pleas	Case Sub Type:	Mechanic's Lien 430	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Judgment	Disposition Date:	01/27/2020	Disposition Judge:	Culbertson, Benjamin H.
Original Source Doc:		Original Case #:			
Judgment Number:	2017CP2603562	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Garrard Construction Group Inc	Appeal/Notice of Appeal to Court of Appeals	Action		02/14/2020-15:44		
Garrard Construction Group Inc	NEF(02-13-2020 03:44:44 PM) Appeal/Notice of Appeal to C...	Filing		02/14/2020-11:17		
Garrard Construction Group Inc	Notice/Notice of Appearance	Filing		02/13/2020-15:44		
Buffington, Robert Walton	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Buffington, Robert Walton	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Buffington, Robert Walton	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Matthews, J. W. III	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Matthews, J. W. III	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Matthews, J. W. III	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Hyman, Jordan W.	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
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Bakker, Elizabeth	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		

LaMance						
Bakker, Elizabeth LaMance	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Bakker, Elizabeth LaMance	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Lyles, Robert T. Jr.	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
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Lyles, Robert T. Jr.	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Cunningham, Joseph Kendrick	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
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Cunningham, Joseph Kendrick	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
Neill, Mark David	3/9/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/11/2020-10:51		
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Carolina Cool Inc	Stipulation Of Dismissal as to BILLYS PLUMBING COMPANY, LLC.	Filing		02/10/2020-13:59		
Carolina Cool Inc	NEF(02-10-2020 10:52:25 AM) Order/Electronic Form 4	Filing		02/10/2020-10:52		
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Carolina Cool Inc	NEF(02-07-2020 09:39:23 AM) Order/Electronic Form 4	Filing		02/07/2020-09:39		
Carolina Cool Inc	Order/Electronic Form 4-Plaintiff's Motion to Compel Granted	Order		02/07/2020-09:39		
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Carolina Cool Inc	NEF(02-03-2020 08:32:57 AM) Motion/Withdraw	Filing		02/03/2020-08:45		
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Garrard Construction Group Inc	Affidavit/Affidavit of RR - please see notes	Filing		01/31/2020-14:19		
	Verification	Filing		01/27/2020-16:37		
Carolina Cool Inc	Judgment/Judgment	Judgment		01/27/2020-16:36		
Garrard Construction	Judgment/Judgment	Judgment		01/27/2020-16:36		

Group Inc						
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Garrard Construction Group Inc	NEF(01-24-2020 03:49:08 PM) Motion/Summary Judgment	Filing		01/24/2020-16:05	01/27/2020-16:05	
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Carolina Cool Inc	Motion/Summary Judgment	Motion		01/24/2020-14:06	02/14/2020-14:06	
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Garrard Construction Group Inc	Order/Consent Order for Substitution of Counsel	Order		01/24/2020-09:36	01/27/2020-09:36	
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Inc				17:03	17:03	
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Carolina Cool Inc	Filing/Other - Exhibit 34e	Filing		01/21/2020-16:32	01/27/2020-16:32	
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Carolina Cool Inc	Filing/Other - Exhibit 31	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 32	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 33	Filing		01/21/2020-16:18	01/27/2020-16:18	
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Carolina Cool Inc	Filing/Other - Exhibit 36	Filing		01/21/2020-16:18	01/27/2020-16:18	
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Carolina Cool Inc	Filing/Other - Exhibit 25	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 26	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 27	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 28	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 29	Filing		01/21/2020-16:18	01/27/2020-16:18	
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Carolina Cool Inc	Filing/Other - Exhibit 19	Filing		01/21/2020-16:18	01/27/2020-16:18	
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Carolina Cool Inc	Filing/Other - Exhibit 21	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 22	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 23	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 12	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 13	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 14	Filing		01/21/2020-	01/27/2020-	

Inc				16:18	16:18	
Carolina Cool Inc	Filing/Other- Exhibit 15	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 16	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 17	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 6	Filing		01/21/2020-16:18	01/27/2020-16:18	
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Carolina Cool Inc	Filing/Other - Exhibit 8	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 9	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 10	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 11	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 37	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 38	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 39	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 1	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 2	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 3	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 4	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Filing/Other - Exhibit 5	Filing		01/21/2020-16:18	01/27/2020-16:18	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		01/21/2020-15:32	01/27/2020-15:32	
Garrard Construction Group Inc	NEF(01-15-2020 02:31:06 PM) Notice/Notice of Appearance	Filing		01/15/2020-16:04	01/27/2020-16:04	
Garrard Construction Group Inc	Order/Order Cover Sheet \$25.00	Filing		01/15/2020-14:31	01/27/2020-14:31	
Garrard Construction Group Inc	Notice/Notice of Appearance	Filing		01/15/2020-14:31	01/27/2020-14:31	
Garrard Construction Group Inc	NEF(01-13-2020 11:58:49 AM) Motion/Compel	Filing		01/13/2020-13:11	01/27/2020-13:11	
Garrard Construction Group Inc	Motion/Compel Plaintiff to fully respond to 11/19/19 discove	Motion		01/13/2020-11:58	02/14/2020-11:58	
Carolina Cool Inc	NEF(01-13-2020 09:39:07 AM) ADR/Proof of ADR	Filing		01/13/2020-09:39	01/27/2020-09:39	
Carolina Cool Inc	ADR/Proof of ADR	Action		01/13/2020-09:39	01/07/2020-09:39	
Carolina Cool Inc	ADR/Notice of ADR	Action		01/10/2020-14:54	01/13/2020-14:54	
Hyman, Jordan W.	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Hyman,	2/3/2020_MOTION_Roster/Notice of	Action		01/06/2020-	01/27/2020-	

Jordan W.	Motions Roster Publication			13:34	13:34	
Hyman, Jordan W.	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Lyles, Robert T. Jr.	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Lyles, Robert T. Jr.	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Lyles, Robert T. Jr.	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Cunningham, Joseph Kendrick	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Cunningham, Joseph Kendrick	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Cunningham, Joseph Kendrick	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Neill, Mark David	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Neill, Mark David	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Neill, Mark David	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Countryman, Andrew W.	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Countryman, Andrew W.	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Countryman, Andrew W.	2/3/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		01/06/2020-13:34	01/27/2020-13:34	
Carolina Cool Inc	NEF(12-23-2019 11:22:05 AM) Motion/Compel	Filing		12/23/2019-13:22	01/27/2020-13:22	
Carolina Cool Inc	Motion/Compel	Motion		12/23/2019-11:22	02/04/2020-11:22	
Carolina Cool Inc	NEF(12-18-2019 04:13:09 PM) Order/Electronic Form 4	Filing		12/18/2019-16:13	01/27/2020-16:13	
Carolina Cool Inc	Order/Electronic Form 4-Motion/Sanctions is GRANTED	Order		12/18/2019-16:13	01/27/2020-16:13	
Garrard Construction Group Inc	NEF(12-17-2019 03:01:30 PM) Affidavit/Attorney Fees	Filing		12/18/2019-08:33	01/27/2020-08:33	
Garrard Construction Group Inc	Affidavit/Affidavit of Attorney Fees	Filing		12/17/2019-15:01	01/27/2020-15:01	
Garrard Construction Group Inc	NEF(12-09-2019 09:48:29 AM) Memo/Memo in Opposition	Filing		12/09/2019-10:05	01/27/2020-10:05	
Garrard Construction Group Inc	Memo/Memo in Opposition	Filing		12/09/2019-09:48	01/27/2020-09:48	
Carolina Cool Inc	NEF(12-05-2019 09:39:14 AM) Motion/Summary Judgment	Filing		12/05/2019-09:46	01/27/2020-09:46	
Carolina Cool Inc	Motion/Summary Judgment	Motion		12/05/2019-09:39	02/03/2020-09:39	
Garrard Construction Group Inc	NEF(12-04-2019 02:33:44 PM) Motion/Protection from Disco...	Filing		12/04/2019-14:42	01/27/2020-14:42	
Garrard Construction Group Inc	Motion/Protection from Discovery	Motion		12/04/2019-14:33	02/04/2020-14:33	
Neill, Mark David	12/16/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/08/2019-08:15	01/27/2020-08:15	

Countryman, Andrew W.	12/16/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/08/2019-08:15	01/27/2020-08:15	
Cunningham, Joseph Kendrick	12/16/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/08/2019-08:15	01/27/2020-08:15	
Hyman, Jordan W.	12/16/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/08/2019-08:15	01/27/2020-08:15	
Lyles, Robert T. Jr.	12/16/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/08/2019-08:15	01/27/2020-08:15	
Carolina Cool Inc	NEF(11-04-2019 02:27:36 PM) Motion/Sanctions	Filing		11/04/2019-14:56	01/27/2020-14:56	
Carolina Cool Inc	Motion/Sanctions	Motion		11/04/2019-14:27	12/18/2019-14:27	
Carolina Cool Inc	NEF(10-16-2019 04:04:50 PM) Order/Consent Order	Filing		10/16/2019-16:05	01/27/2020-16:05	
Carolina Cool Inc	CONSENT ORDER REGARDING DEFENDANT BILLY'S PLUMBING COMPANY,	Order		10/16/2019-16:04	01/27/2020-16:04	
Carolina Cool Inc	NEF(10-14-2019 05:46:52 PM) Proposed Order/Consent Order	Filing		10/15/2019-10:24	01/27/2020-10:24	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		10/14/2019-17:46	01/27/2020-17:46	
Hyman, Jordan W.	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Hyman, Jordan W.	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Cunningham, Joseph Kendrick	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Cunningham, Joseph Kendrick	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Lyles, Robert T. Jr.	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Lyles, Robert T. Jr.	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Countryman, Andrew W.	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Neill, Mark David	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Neill, Mark David	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Countryman, Andrew W.	10/14/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/18/2019-10:01	01/27/2020-10:01	
Billys Plumbing Company Llc	NEF(09-11-2019 10:50:05 AM) Motion/Compel	Filing		09/11/2019-11:05	01/27/2020-11:05	
Billys Plumbing Company Llc	Motion/Compel	Motion		09/11/2019-10:50	10/15/2019-10:50	
Carolina Cool Inc	NEF(09-09-2019 11:05:06 AM) Motion/Compel	Filing		09/09/2019-14:17	01/27/2020-14:17	
Carolina Cool Inc	Motion/Compel	Motion		09/09/2019-11:05	10/15/2019-11:05	
Carolina Cool Inc	NEF(08-23-2019 02:24:15 PM) Order/Scheduling Order	Filing		08/23/2019-14:24	01/27/2020-14:24	
Carolina Cool Inc	Order/Amended Scheduling Order	Order		08/23/2019-14:24	01/27/2020-14:24	
Billys Plumbing Company Llc	NEF(08-14-2019 03:28:52 PM) Order/Protection from Court ...	Filing		08/14/2019-15:29	01/27/2020-15:29	
Billys	Order/Protection from Court	Order		08/14/2019-	01/27/2020-	

Plumbing Company Llc	Appearance			15:28	15:28	
Billys Plumbing Company Llc	NEF(08-12-2019 10:30:56 AM) Proposed Order/Protection fr...	Filing		08/13/2019-08:09	01/27/2020-08:09	
Billys Plumbing Company Llc	Order/Order Cover Sheet \$25.00	Filing		08/12/2019-10:30	01/27/2020-10:30	
Carolina Cool Inc	NEF(08-09-2019 09:51:27 AM) Proposed Order/Scheduling Or...	Filing		08/12/2019-09:37	01/27/2020-09:37	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		08/09/2019-09:51	01/27/2020-09:51	
Billys Plumbing Company Llc	NEF(06-27-2019 01:21:01 PM) Answer/Answer To Amended Com...	Filing		06/27/2019-13:38	01/27/2020-13:38	
Billys Plumbing Company Llc	Answer/Answer To Amended Complaint	Filing		06/27/2019-13:21	01/27/2020-13:21	
Neill, Mark David	7/22/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		06/25/2019-08:37	01/27/2020-08:37	
Countryman, Andrew W.	7/22/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		06/25/2019-08:37	01/27/2020-08:37	
Lyles, Robert T. Jr.	7/22/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		06/25/2019-08:37	01/27/2020-08:37	
Cunningham, Joseph Kendrick	7/22/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		06/25/2019-08:37	01/27/2020-08:37	
Hyman, Jordan W.	7/22/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		06/25/2019-08:37	01/27/2020-08:37	
Carolina Cool Inc	NEF(05-24-2019 11:25:40 AM) Motion/Sanctions	Filing		05/24/2019-15:43	01/27/2020-15:43	
Garrard Construction Group Inc	NEF(05-24-2019 10:34:21 AM) Motion/Compel	Filing		05/24/2019-14:21	01/27/2020-14:21	
Carolina Cool Inc	Motion for Order of Contempt/Sanctions as to Billys Plumbing	Motion		05/24/2019-11:25	07/19/2019-11:25	
Garrard Construction Group Inc	CERTAIN DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO FULLY	Motion		05/24/2019-10:34	06/20/2019-10:34	
RLI Insurance Company	NEF(05-23-2019 09:27:27 AM) Answer/Third Party Answer	Filing		05/23/2019-12:39	01/27/2020-12:39	
RLI Insurance Company	Answer/Third Party Answer	Filing		05/23/2019-09:27	01/27/2020-09:27	
Carolina Cool Inc	NEF(05-22-2019 02:07:57 PM) Reply/Reply to Counterclaim	Filing		05/22/2019-14:32	01/27/2020-14:32	
Carolina Cool Inc	Reply/Reply to Counterclaim	Filing		05/22/2019-14:07	01/27/2020-14:07	
Garrard Construction Group Inc	NEF(05-10-2019 11:25:51 AM) Answer/Amended Answer And Co...	Filing		05/10/2019-11:28	01/27/2020-11:28	
Garrard Construction Group Inc	Answer/Amended Answer And Counterclaim	Filing		05/10/2019-11:25	01/27/2020-11:25	
Carolina Cool Inc	NEF(05-03-2019 10:13:02 AM) Amended/Amended Summons And ...	Filing		05/06/2019-09:25	01/27/2020-09:25	
Carolina Cool Inc	Amended/Amended Summons And Complaint	Filing		05/03/2019-10:13	01/27/2020-10:13	
Carolina Cool Inc	NEF(04-30-2019 02:59:38 PM) Order/Consent Order	Filing		04/30/2019-15:00	01/27/2020-15:00	

Carolina Cool Inc	Order/Consent Order to Amend Complaint	Order		04/30/2019-14:59	01/27/2020-14:59	
Carolina Cool Inc	NEF(04-10-2019 01:08:31 PM) Order/Sanctions	Filing		04/10/2019-13:08	01/27/2020-13:08	
Carolina Cool Inc	ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT/SANCTIONS	Order		04/10/2019-13:08	01/27/2020-13:08	
Carolina Cool Inc	NEF(04-10-2019 08:22:15 AM) Proposed Order/Sanctions	Filing		04/10/2019-09:16	01/27/2020-09:16	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		04/10/2019-08:22	01/27/2020-08:22	
Carolina Cool Inc	NEF(04-03-2019 12:40:31 PM) Order/Electronic Form 4	Filing		04/03/2019-12:40	01/27/2020-12:40	
Carolina Cool Inc	Order/Electronic Form 4-Sanctions is GRANTED	Order		04/03/2019-12:40	01/27/2020-12:40	
Carolina Cool Inc	NEF(04-01-2019 03:17:12 PM) Order/Electronic Form 4	Filing		04/01/2019-15:17	01/27/2020-15:17	
Carolina Cool Inc	Order/Electronic Form 4	Order		04/01/2019-15:17	04/01/2019-15:17	
Carolina Cool Inc	NEF(03-26-2019 10:38:04 AM) Proposed Order/Consent Order	Filing		03/27/2019-08:33	01/27/2020-08:33	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		03/26/2019-10:38	01/27/2020-10:38	
Garrard Construction Group Inc	NEF(03-18-2019 02:11:31 PM) Memo/Memo in Opposition	Filing		03/19/2019-08:30	01/27/2020-08:30	
Garrard Construction Group Inc	Memo/Memo in Opposition	Filing		03/18/2019-14:11	01/27/2020-14:11	
Neill, Mark David	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Neill, Mark David	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Neill, Mark David	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Neill, Mark David	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Countryman, Andrew W.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Countryman, Andrew W.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Countryman, Andrew W.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Countryman, Andrew W.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Hyman, Jordan W.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Hyman, Jordan W.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Hyman, Jordan W.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Hyman, Jordan W.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Cunningham, Joseph Kendrick	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Cunningham, Joseph Kendrick	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Cunningham, Joseph Kendrick	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	

Cunningham, Joseph Kendrick	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Lyles, Robert T. Jr.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Lyles, Robert T. Jr.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Lyles, Robert T. Jr.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Lyles, Robert T. Jr.	4/1/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2019-11:39	01/27/2020-11:39	
Carolina Cool Inc	NEF(02-27-2019 01:13:19 PM) Motion/Alter and/or Amend	Filing		02/27/2019-14:52	01/27/2020-14:52	
Carolina Cool Inc	Motion/Alter and/or Amend	Motion		02/27/2019-13:13	04/03/2019-13:13	
Carolina Cool Inc	NEF(02-26-2019 04:27:05 PM) Order/Electronic Form 4	Filing		02/26/2019-16:27	01/27/2020-16:27	
Carolina Cool Inc	Order/Electronic Form 4-Motion/Sanctions is CONTINUED	Order		02/26/2019-16:27	01/27/2020-16:27	
Carolina Cool Inc	NEF(02-15-2019 01:34:28 PM) Motion/Compel	Filing		02/15/2019-13:44	01/27/2020-13:44	
Carolina Cool Inc	Motion/Compel	Motion		02/15/2019-13:34	04/01/2019-13:34	
Carolina Cool Inc	NEF(02-13-2019 10:27:34 AM) Motion/Compel	Filing		02/13/2019-10:34	01/27/2020-10:34	
Carolina Cool Inc	Motion/Compel	Motion		02/13/2019-10:27	04/01/2019-10:27	
Lyles, Robert T. Jr.	2/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/30/2019-08:26	01/27/2020-08:26	
Cunningham, Joseph Kendrick	2/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/30/2019-08:26	01/27/2020-08:26	
Hyman, Jordan W.	2/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/30/2019-08:26	01/27/2020-08:26	
Countryman, Andrew W.	2/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/30/2019-08:26	01/27/2020-08:26	
Neill, Mark David	2/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/30/2019-08:26	01/27/2020-08:26	
Countryman, Andrew W.	1/28/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		12/28/2018-08:22	01/27/2020-08:22	
Neill, Mark David	1/28/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		12/28/2018-08:22	01/27/2020-08:22	
Cunningham, Joseph Kendrick	1/28/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		12/28/2018-08:22	01/27/2020-08:22	
Hyman, Jordan W.	1/28/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		12/28/2018-08:22	01/27/2020-08:22	
Lyles, Robert T. Jr.	1/28/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		12/28/2018-08:22	01/27/2020-08:22	
Carolina Cool Inc	NEF(12-11-2018 02:36:08 PM) Order/Scheduling Order	Filing		12/11/2018-14:36	01/27/2020-14:36	
Carolina Cool Inc	Order/Amended Scheduling Order	Order		12/11/2018-14:36	01/27/2020-14:36	
Carolina Cool Inc	NEF(12-06-2018 05:04:57 PM) Proposed Order/Scheduling Or...	Filing		12/10/2018-08:24	01/27/2020-08:24	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		12/06/2018-17:04	01/27/2020-17:04	
Carolina Cool Inc	NEF(11-20-2018 10:10:56 AM) Motion/Sanctions	Filing		11/20/2018-11:50	01/27/2020-11:50	
Carolina Cool Inc	Motion/Sanctions	Motion		11/20/2018-10:10	04/03/2019-10:10	

Lyles, Robert T. Jr.	12/10/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/06/2018-09:31	01/27/2020-09:31	
Hyman, Jordan W.	12/10/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/06/2018-09:31	01/27/2020-09:31	
Neill, Mark David	12/10/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/06/2018-09:31	01/27/2020-09:31	
Cunningham, Joseph Kendrick	12/10/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/06/2018-09:31	01/27/2020-09:31	
Countryman, Andrew W.	12/10/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/06/2018-09:31	01/27/2020-09:31	
Carolina Cool Inc	NEF(10-11-2018 12:20:21 PM) Order/Consent Order	Filing		10/11/2018-12:20	01/27/2020-12:20	
Carolina Cool Inc	Order/Consent Order	Order		10/11/2018-12:20	01/27/2020-12:20	
Garrard Construction Group Inc	NEF(10-11-2018 10:22:36 AM) Order/Protection from Court ...	Filing		10/11/2018-10:22	01/27/2020-10:22	
Garrard Construction Group Inc	Order/Protection from Court Appearance	Order		10/11/2018-10:22	01/27/2020-10:22	
Garrard Construction Group Inc	NEF(10-10-2018 04:28:47 PM) Order/Order Cover Sheet \$25....	Filing		10/11/2018-09:17	01/27/2020-09:17	
Garrard Construction Group Inc	Order/Order Cover Sheet \$25.00	Filing		10/10/2018-16:28	01/27/2020-16:28	
Carolina Cool Inc	NEF(10-09-2018 02:16:08 PM) Proposed Order/Consent Order	Filing		10/10/2018-08:11	01/27/2020-08:11	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		10/09/2018-14:16	01/27/2020-14:16	
RLI Insurance Company	NEF(10-01-2018 03:18:42 PM) Order/Consent Order	Filing		10/01/2018-15:19	01/27/2020-15:19	
RLI Insurance Company	Order/Consent Order	Order		10/01/2018-15:18	01/27/2020-15:18	
Carolina Cool Inc	NEF(09-11-2018 09:37:37 AM) Motion/Other	Filing		09/11/2018-10:46	01/27/2020-10:46	
Carolina Cool Inc	Motion/Amend Scheduling Order	Motion		09/11/2018-09:37	12/10/2018-09:37	
RLI Insurance Company	NEF(09-04-2018 04:50:58 PM) Order/Order Cover Sheet \$25....	Filing		09/05/2018-08:38	01/27/2020-08:38	
RLI Insurance Company	Order/Order Cover Sheet \$25.00	Filing		09/04/2018-16:50	01/27/2020-16:50	
Countryman, Andrew W.	10/8/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		09/04/2018-14:46	01/27/2020-14:46	
Cunningham, Joseph Kendrick	10/8/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		09/04/2018-14:46	01/27/2020-14:46	
Neill, Mark David	10/8/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		09/04/2018-14:46	01/27/2020-14:46	
Hyman, Jordan W.	10/8/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		09/04/2018-14:46	01/27/2020-14:46	
Lyles, Robert T. Jr.	10/8/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		09/04/2018-14:46	01/27/2020-14:46	
Billys Plumbing Company Llc	NEF(08-13-2018 03:31:23 PM) Order/Protection from Court ...	Filing		08/13/2018-15:31	01/27/2020-15:31	
Billys	Order/Protection from Court	Order		08/13/2018-	01/27/2020-	

Plumbing Company Llc	Appearance			15:31	15:31	
Billys Plumbing Company Llc	NEF(08-13-2018 10:47:50 AM) Proposed Order/Protection fr...	Filing		08/13/2018-12:51	01/27/2020-12:51	
Billys Plumbing Company Llc	Order/Order Cover Sheet \$25.00	Filing		08/13/2018-10:47	01/27/2020-10:47	
Lyles, Robert T. Jr.	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Lyles, Robert T. Jr.	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Hyman, Jordan W.	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Hyman, Jordan W.	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Neill, Mark David	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Neill, Mark David	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Cunningham, Joseph Kendrick	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Cunningham, Joseph Kendrick	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Countryman, Andrew W.	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Countryman, Andrew W.	9/4/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/02/2018-08:51	01/27/2020-08:51	
Billys Plumbing Company Llc	NEF(07-31-2018 10:58:24 AM) Add Party to Case	Filing		07/31/2018-12:53	01/27/2020-12:53	
Billys Plumbing Company Llc	Add Party to Case	Filing		07/31/2018-10:58	01/27/2020-10:58	
Billys Plumbing Company Llc	Motion/Quash	Motion		07/31/2018-10:58	10/08/2018-10:58	
RLI Insurance Company	NEF(07-26-2018 10:13:14 AM) Order/Protection from Court ...	Filing		07/26/2018-10:13	01/27/2020-10:13	
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RLI Insurance Company	NEF(07-25-2018 11:46:33 AM) Proposed Order/Protection fr...	Filing		07/26/2018-09:32	01/27/2020-09:32	
RLI Insurance Company	Order/Order Cover Sheet \$25.00	Filing		07/25/2018-11:46	01/27/2020-11:46	
Countryman, Andrew W.	7/30/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2018-09:20	01/27/2020-09:20	
Countryman, Andrew W.	7/30/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2018-09:20	01/27/2020-09:20	
Cunningham, Joseph Kendrick	7/30/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2018-09:20	01/27/2020-09:20	
Neill, Mark David	7/30/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2018-09:20	01/27/2020-09:20	
Neill, Mark David	7/30/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2018-09:20	01/27/2020-09:20	

Cunningham, Joseph Kendrick	7/30/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2018-09:20	01/27/2020-09:20	
Lyles, Robert T. Jr.	7/30/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2018-09:20	01/27/2020-09:20	
Lyles, Robert T. Jr.	7/30/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2018-09:20	01/27/2020-09:20	
Carolina Cool Inc	NEF(06-29-2018 10:13:32 AM) Order/Scheduling Order	Filing		06/29/2018-10:13	01/27/2020-10:13	
Carolina Cool Inc	Order/Scheduling Order	Order		06/29/2018-10:13	01/27/2020-10:13	
Carolina Cool Inc	NEF(06-27-2018 01:39:00 PM) Proposed Order/Scheduling Or...	Filing		06/28/2018-09:17	01/27/2020-09:17	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		06/27/2018-13:39	01/27/2020-13:39	
Garrard Construction Group Inc	NEF(05-24-2018 08:48:53 AM) Motion/Compel	Filing		05/24/2018-11:42	01/27/2020-11:42	
Garrard Construction Group Inc	Motion/Compel Plaintiff to respond to Discovery	Motion		05/24/2018-08:48	08/30/2018-08:48	
Garrard Construction Group Inc	NEF(05-10-2018 03:35:08 PM) Motion/Compel	Filing		05/10/2018-16:01	01/27/2020-16:01	
Garrard Construction Group Inc	Motion/Compel RLI to respond to discovery	Motion		05/10/2018-15:35	09/05/2018-15:35	
Carolina Cool Inc	NEF(04-24-2018 10:14:18 AM) Order/Protection from Court ...	Filing		04/24/2018-10:14	01/27/2020-10:14	
Carolina Cool Inc	Order/Protection from Court Appearance	Order		04/24/2018-10:14	01/27/2020-10:14	
Carolina Cool Inc	NEF(04-19-2018 01:14:39 PM) Order/Order Cover Sheet \$25....	Filing		04/19/2018-15:09	01/27/2020-15:09	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		04/19/2018-13:14	01/27/2020-13:14	
Carolina Cool Inc	NEF(12-29-2017 03:52:25 PM) Order/Protection from Court ...	Filing		12/29/2017-15:52	01/27/2020-15:52	
Carolina Cool Inc	Order/Protection from Court Appearance	Order		12/29/2017-15:52	01/27/2020-15:52	
Carolina Cool Inc	NEF(12-13-2017 10:59:09 AM) Proposed Order/Protection fr...	Filing		12/13/2017-14:33	01/27/2020-14:33	
Carolina Cool Inc	Order/Order Cover Sheet \$25.00	Filing		12/13/2017-10:59	01/27/2020-10:59	
RLI Insurance Company	Answer/Answer of RLI Insurance Company	Filing		09/25/2017-16:30	01/27/2020-16:30	
RLI Insurance Company	Notice/Notice of Appearance	Filing		09/25/2017-16:28	01/27/2020-16:28	
Garrard Construction Group Inc	Answer/Defendants Answer to Amended Complaint	Filing		09/13/2017-10:49	01/27/2020-10:49	
Carolina Cool Inc	Amended/Amended Summons And Complaint	Filing		09/05/2017-13:53	01/27/2020-13:53	
Carolina Cool Inc	Reply/Reply to Counterclaim	Filing		09/05/2017-13:53	01/27/2020-13:53	
Carolina Cool Inc	Affidavit/Affidavit of Service	Filing		08/25/2017-11:48	01/27/2020-11:48	
Garrard Construction Group Inc	Answer/Third Party Summons	Filing		07/06/2017-16:19	01/27/2020-16:19	
Garrard	Notice/Notice of Appearance	Filing		06/29/2017-	01/27/2020-	

Construction Group Inc				09:43	09:43	
Carolina Cool Inc	Service/Affidavit Of Service on Dave & Busters Of South Caro	Filing		06/12/2017-09:18	01/27/2020-09:18	
Carolina Cool Inc	Service/Affidavit Of Service on Dave & Busters Of South Caro	Filing		06/12/2017-09:18	01/27/2020-09:18	
Carolina Cool Inc	Summons & Complaint	Filing		06/08/2017-09:52	01/27/2020-09:52	

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
NOTICE AND CERTIFICATE OF
MECHANIC'S LIEN

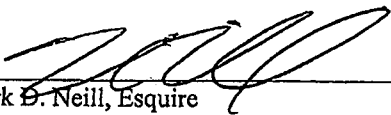
TO TENANT: DAVE & BUSTER'S OF SOUTH CAROLINA, INC.

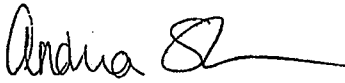
TO PROPERTY OWNER: BROADWAY AT THE BEACH, INC.

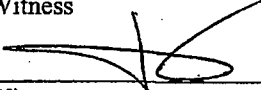
YOU WILL PLEASE TAKE NOTICE that a mechanic's lien has been filed in the Office of the Register of Deeds for Horry County, South Carolina, on behalf of CAROLINA COOL, INC. for labor and materials furnished and actually used in the alternation and repair of improvements located on the real property described in the Affidavit attached hereto and of which reference to the description in the attached Affidavit will more fully show.

YOU WILL FURTHER TAKE NOTICE that a true copy of the Notice and Certificate of Mechanic's Lien is herewith served upon you.

NEILL LAW FIRM, P.A.


Mark D. Neill, Esquire
Attorney for Carolina Cool, Inc.
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580


Witness


Witness

Material Supplier – not required to have S.C. Contractor's License

X South Carolina Contractor's License # M1956

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF HORRY

I, the undersigned Notary Public, do certify that the within named Mark D. Neill, Esquire, personally appeared before me, and having satisfactorily proven to be the person whose name appears above, has acknowledged the due execution of the within Notice and Certificate of Mechanic's Lien.

Witness my official seal this 11th day of April, 2017.

Andrea Lorentz
Print Name of Notary: Andrea Lorentz
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/13/2022



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

AFFIDAVIT OF LIENOR

PERSONALLY appeared before me, Verlon Wulf, President of **CAROLINA COOL, INC.** (hereinafter "Lienor"), who after being duly sworn deposes and states: Lienor furnished labor and materials for the repair, remodeling, and improvement of the buildings or structures located and situated upon the property described in Exhibit "A" by virtue of an agreement with **GARRARD CONSTRUCTION GROUP, INC.** and with the knowledge and consent of **DAVE & BUSTER'S OF SOUTH CAROLINA, INC.** The labor and materials furnished in connection with the repair, remodeling, and improvements of the real property are more fully described in the invoice attached as Exhibit "B." The Lienor is owed for the labor and materials provided in the amount of One Hundred Thirteen Thousand Three Hundred and Fifty Dollars (\$113,350.00), as well as, additional attorney's fees and costs incurred. This said amount is a just and true account of labor and materials furnished for the benefit of the property with all just credits given. It has been less than ninety (90) days since Lienor ceased to furnish labor and materials for the improvement of the real property.

That the real property is located at 1322 Celebrity Circle, Myrtle Beach, South Carolina. SEE ATTACHED EXHIBIT "A" for LEGAL DESCRIPTION.

The fee simple owner of the property described in Exhibit "A" is **BROADWAY AT THE BEACH, INC.** Dave & Buster's of South Carolina, Inc. owns a leasehold interest in the real property described in the attached Exhibit "A" pursuant to a lease agreement as set forth in a Memorandum of Lease filed with the Horry County Register of Deeds in Deed Book 3888 at Page 2106.

CAROLINA COOL, INC. claims a mechanic's lien against the leasehold interest of **DAVE & BUSTER'S OF SOUTH CAROLINA, INC.** in the amount of One Hundred Thirteen Thousand Three Hundred Fifty Dollars (\$113,350.00), as well as, attorney's fees and costs as provided under Section 29-5-10 of the South Carolina Code of Laws, as amended.

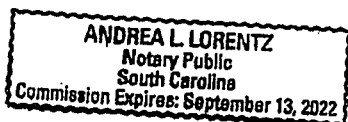
CAROLINA COOL, INC.

By: _____

Verlon Wulf
Its: President

SWORN to before me this 11th
Day of April, 2017

Andrea Lorentz
Notary Public for South Carolina
My Commission Expires: 9/13/2022



STATE OF SOUTH CAROLINA)
) **STATEMENT OF ACCOUNT**
COUNTY OF HORRY)

I certify that the following Statement of Account is a true statement of account as to what is
due and owing the Lienor for materials and labor provided for the benefit and improvement of the
real property:

PROJECT: Dave & Buster's of South Carolina, Inc., located at 1322 Celebrity
Circle, Myrtle Beach, SC.

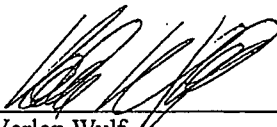
Interior Project Subcontract: \$93,437.00

Building Shell Subcontract: \$19,913.00

TOTAL DUE: \$113,350.00*

*** Plus interest, additional attorney's fees and costs as provided pursuant to
South Carolina Law.**

CAROLINA COOL, INC.

By: 
Verlon Wulf
Its: President

SWORN TO before me this

11th day of April, 2017.

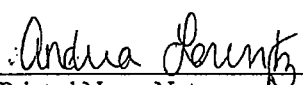

Printed Name Notary: Andrea Lorentz
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/13/2022



EXHIBIT "A"

ALL AND SINGULAR, that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, Horry County, South Carolina. Said tract containing 111.313 acres, more or less, in aggregate and shown as "REVISED TRACT 12 BROADWAY AT THE BEACH PROJECT", "TRACT 4-A", "TRACT 6", "TRACT 9", "TRACT 10", and "TRACT 11" on sheet B-1 of a map entitled "A.L.T.A.SURVFEY PLAN SET OF BROADWAY AT THE BEACH" made by the Associated Land Surveyors for Burroughs & Chapin Company, Inc., dated July 14, 1997 and recorded July 30, 1997 in Plat Book 149 at Page 80 in the Office of the Register of Deeds for Horry County, South Carolina.

This being the same property leased to Dave & Busters of South Carolina, Inc. by Broadway at the Beach, Inc. as evidence by that Memorandum of Lease dated December 10, 2015 and recorded January 28, 2016 in Deed Book 3888 at Page 2106 in the Office of the Register of Deeds, Horry County, South Carolina.

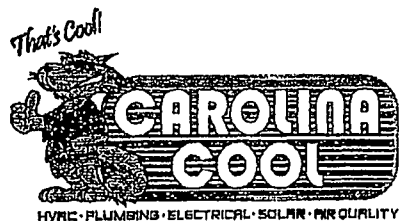
Address: 1322 Celebrity Circle, Myrtle Beach, South Carolina

TMS: 1730004086

Instrument#: 2017000040753, LIEN BK: 249 PG: 3478 DOCTYPE: 015 04/12/2017 at
12:10:39 PM, 6 OF 14 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF
DEEDS

Carolina Cool, Inc.
1294 Surfside Industrial Park
Surfside Beach, SC 29575

Phone: (843) 238-5805
Fax: (843) 238-9042



INVOICE

Invoice Date: 1-26-2017
Invoice #: 283293
Terms: Net 30
Due Date: 2-26-2017
PO #:

Bill to:
Garrard Group
2055 Sugarloaf Circle Suite 400
Duluth, GA 30097

Work Performed:
Dave & Busters
1322 Celebrity Circle
Myrtle Beach

DESCRIPTION OF WORK REQUESTED:

Building shell perform gas and plumbing connections per signed contract.

Bld Price: \$35,500.00.

C/O #1: Install PVC sleeves for 3" & 8" fire mains. \$950.00

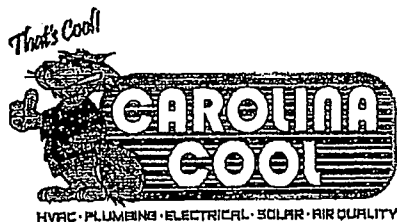
Total Amount Due Including Retainage: \$19,913.00
TOTAL AMOUNT DUE: \$19,913.00



Instrument#: 2017000040753, LIEN BK: 249 PG: 3479 DOCTYPE: 015 04/12/2017 at
12:10:39 PM, 7 OF 14 MARION D. FOXWORTH III, Horry County, SC REGISTRAR OF
DEEDS

Carolina Cool, Inc.
1294 Surfside Industrial Park
Surfside Beach, SC 29575

Phone: (843) 238-5805
Fax: (843) 238-9042



INVOICE

Invoice Date: 1-26-2017
Invoice #: 283293
Terms: Net 30
Due Date: 2-26-2017
PO #:

Bill to:
Garrard Group
2055 Sugarloaf Circle Suite 400
Duluth, GA 30097

Work Performed:
Dave & Busters
1322 Celebrity Circle
Myrtle Beach

DESCRIPTION OF WORK REQUESTED:

Building shell perform gas and plumbing connections per signed contract.
Bid Price: \$35,500.00.
C/O #1: Install PVC sleeves for 3" & 8" fire mains. \$950.00

Stored Materials:	\$9,413.00
TOTAL AMOUNT DUE:	\$9,413.00

283293



GARRARD

EXHIBIT D

APPLICATION FOR PAYMENT

TO: Garrard Construction Group, Inc. ("Contractor")

FROM: CAROLINA COOL, INC. ("Subcontractor")

Subcontract #: 10-6028-09 (the "Subcontract") PROJECT DESCRIPTION: DAVE & BUSTERS - MYRTLE BEACH

APPLICATION FOR PAYMENT #: 1 PERIOD 12/30 20 16 TO 1/15 20 17.

STATEMENT OF SUBCONTRACT:

1. Original Subcontract Amount	\$ 35,500.00
2. Approved Contract Revision Numbers <u>1</u> (As per attached breakdown)	\$ 950
3. Adjusted Subcontract Amount	\$ 36,450
4. Value of Work Completed to Date (As per attached breakdown)	\$ 10,500
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ -
6. Materials Stored on Site (As per attached breakdown)	\$ -
7. Total to Date	\$ 10,500
8. Less Amount Retained (10%)	\$ 1,050
9. Total Less Retainage	\$ 9,450
10. Total Previously Certified (Deduct)	\$ -
11. AMOUNT DUE THIS REQUEST	\$ * 9,450

* 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: Caroline Cool, Inc.
Title: Controller
Date: 1-10-17

Witness [Signature]
THE STATE OF South Carolina
COUNTY OF Horry

BEFORE ME, the undersigned authority, on this day, personally appeared Caroline Cool, Inc. 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 10th day of JANUARY, 20 17.

[Signature]
NOTARY PUBLIC
4/14/25
MY TERM EXPIRES

This field for office use ONLY

Instrument#: 2017000040753, LIEN BK: 249 PG: 3481 DOCTYPE: 015 04/12/2017 at
 12:10:39 PM, 9 OF 14 MARION D. FOXWORTH III, Horry County, SC REGISTRAR OF
 DEEDS

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing
 Contractor's signed certification is attached.

APPLICATION NO: 1
 APPLICATION DATE: 1/15/2017

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO: 1/15/2017

Use Column I on Contracts where variable retainage for line items may apply.

ARCHITECT'S PROJECT NO: 10-10-6028

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D O R E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G + C)		
1	Slab	\$10,500.00		\$10,500.00		\$10,500.00	100.00%	\$0.00	\$1,050.00
2	Gas Piping	\$15,000.00						\$15,000.00	\$0.00
3	Roof Drains	\$6,500.00						\$6,500.00	\$0.00
4	Condensate Drains	\$3,500.00						\$3,500.00	\$0.00
	C/O #1								
5	Install sleeves for 3" & 8" fire mains	\$950.00						\$950.00	\$0.00
GRAND TOTALS		\$36,450.00	\$0.00	\$10,500.00	\$0.00	\$10,500.00	28.81%	\$25,950.00	\$1,050.00

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

283293



GARRARD

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF SOUTH CAROLINA
THE UNDERSIGNED CAROLINA COOL, INC. (SUBCONTRACTOR) HAS BEEN EMPLOYED BY GARRARD CONSTRUCTION GROUP (NAME OF CONTRACTOR) TO FURNISH PLUMBING & GAS SYSTEM 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 \$ 9,450.00 BEING THE PROGRESS PAYMENT DUE ON ACCOUNT OF ITS SUBCONTRACT NO. 10-6028-09 (THE SUBCONTRACT) WITH THE CONTRACTOR DATED 10/19/2016 THE SUBCONTRACTOR CAROLINA COOL, INC. 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 1/10/17 (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.

CAROLINA COOL INC.
SUBCONTRACTOR

BY: [Signature]

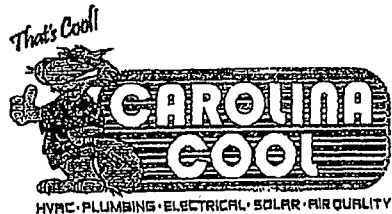
TITLE: Controller

DATE: 1-10-17

Instrument#: 2017000040753, LIEN BK: 249 PG: 3483 DOCTYPE: 015 04/12/2017 at
12:10:39 PM, 11 OF 14 MARION D. FOXWORTH III, Horry County, SC REGISTRAR OF
DEEDS

Carolina Cool, Inc.
1294 Surfside Industrial Park
Surfside Beach, SC 29575

Phone: (843) 238-5805
Fax: (843) 238-9042



INVOICE

Invoice Date: 1-26-2017
Invoice #: 285574
Terms: Net 30
Due Date: 2-26-2017
PO #:

Bill to:
Garrard Group
2055 Sugarloaf Circle Suite 400
Duluth, GA 30097

Work Performed:
Dave & Busters
1322 Celebrity Circle
Myrtle Beach

DESCRIPTION OF WORK REQUESTED:
Perform plumbing upfit per contract.
Bid Price: \$294,688.00.

Total Amount Due Including Retainage: \$93,437.00
TOTAL AMOUNT DUE: \$93,437.00



285574



GARRARD

EXHIBIT D

APPLICATION FOR PAYMENT

TO: Garrard Construction Group, Inc. ("Contractor")

FROM: CAROLINA COOL, INC. ("Subcontractor")

Subcontract #: 10-6030-03 (the "Subcontract")

PROJECT DESCRIPTION: DAVE & BUSTERS - MYRTLE BEACH-INT

APPLICATION FOR PAYMENT #: 1 PERIOD 12/30, 2016, TO 1/15, 2017.

STATEMENT OF SUBCONTRACT:

1. Original Subcontract Amount	\$ 294,688
2. Approved Contract Revision Numbers	(As per attached breakdown).....
3. Adjusted Subcontract Amount	\$ 294,688
4. Value of Work Completed to Date (As per attached breakdown)	\$ 91,437
5. Value of Approved Contract Revisions Completed (As per attached breakdown)	\$ -
6. Materials Stored on Site (As per attached breakdown)	\$ 91,437
7. Total to Date	\$ 183,255
8. Less Amount Retained (10%)	\$ 18,325.50
9. Total Less Retainage	\$ 164,929.50
10. Total Previously Certified (Deduct)	\$ -
11. AMOUNT DUE THIS REQUEST	\$ 164,929.50

* 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:

Carolina Cool, Inc.
By: Marion D. Foxworth III
Title: Contractor
Date: 1-10-17

Witness Carla M. Wulf
THE STATE OF South Carolina
COUNTY OF Horry

BEFORE ME, the undersigned authority, on this day, personally appeared Carla M. Wulf 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 10th day of JANUARY, 2017.

[Signature]
NOTARY PUBLIC
4/14/25
MY TERM EXPIRES



Instrument#: 2017000040753, LIEN BK: 249 PG: 3485 DOCTYPE: 015 04/12/2017 at 12:10:39 PM, 13 OF 14 MARION D. FOXWORTH III, Horry County, SC REGISTRAR OF DEEDS

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

AIA Document G703, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
APPLICATION DATE: 1/15/2017

PERIOD TO: 1/15/2017

ARCHITECT'S PROJECT NO: 10-10-6030

A ITEM NO.	B DESCRIPTION OF WORK	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 % (G ÷ C)	I BALANCE TO FINISH (C - G)	J RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
15-400-S	Under slab Rough In	\$93,437.00		\$93,437.00		\$93,437.00	100.00%	\$0.00	\$9,343.70
15-400-S	Overhead Rough	\$93,437.00						\$93,437.00	\$0.00
15-400-S	Cas Piping	\$64,687.00						\$64,687.00	\$0.00
15-400-S	Fixture Trim Out	\$35,939.00						\$35,939.00	\$0.00
17-020-D	Performance & Payment Bond	\$7,188.00						\$7,188.00	\$0.00
GRAND TOTALS		\$294,688.00	\$0.00	\$93,437.00	\$0.00	\$93,437.00	31.71%	\$201,251.00	\$9,343.70

Users may obtain validation of this document by requesting of the licensee a completed AIA Document D401 - Certification of Document's Authenticity



GARRARD

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF South Carolina
THE UNDERSIGNED CAROLINA COOL, INC. (SUBCONTRACTOR) HAS BEEN EMPLOYED BY GARRARD CONSTRUCTION GROUP (NAME OF CONTRACTOR) TO FURNISH CAROLINA COOL, INC. 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 \$ 84,093.30 BEING THE PROGRESS PAYMENT DUE ON ACCOUNT OF ITS SUBCONTRACT NO. 10-6030-03 (THE SUBCONTRACT) WITH THE CONTRACTOR DATED 11/17/2016 THE SUBCONTRACTOR CAROLINA COOL, INC. 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 1/10/17 (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.

Carolina Cool Inc.
SUBCONTRACTOR

BY: David A. Welf
TITLE: Controller
DATE: 1-10-17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	CASE NO: 2017-CP-26-_____
Carolina Cool, Inc.,	)	
	)	
Plaintiff,	)	COMPLAINT
vs.	)	Breach of Contract
	)	Foreclosure of Mechanic's Lien
Garrard Construction Group, Inc., Dave &	)	Quantum Meruit
Buster's of South Carolina, Inc., and	)	
Broadway at the Beach, Inc.,	)	
	)	
Defendants.	)	

TO: DEFENDANTS ABOVE

The Plaintiff, Carolina Cool, Inc., complaining of the Defendants herein, alleges and would show as follows:

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

1. Carolina Cool, Inc. is a South Carolina corporation with its principal place of business in Horry County.
2. Upon information and belief, Defendant Garrard Construction Group, Inc., is a Georgia corporation conducting business in South Carolina.
3. Upon information and belief, Defendant Dave & Buster's of South Carolina, Inc., is a Delaware corporation conducting business in South Carolina.
4. Upon information and belief, Defendant Broadway at the Beach, Inc. is a South Carolina corporation conducting business and owning property in Horry County.
5. The subject matter of this lawsuit concerns property located in Horry County, South Carolina and a contractual agreement regarding the property to be performed in Horry County, South Carolina.

6. Defendants are not in the Military Service of the United States of America, as contemplated under the Soldier's and Sailor's Relief Act of 1940, and any amendments thereto.

7. Defendant Broadway at the Beach, Inc. is the owner of real property which is the subject of this lawsuit by virtue of a Limited Warranty Deed from Burroughs & Chapin Company, Inc. recorded July 31, 1997, in Deed Book 1961 at Page 853, in the Office of the Register of Deeds for Horry County, South Carolina.

8. Defendant Dave & Buster's of South Carolina, Inc. owns a leasehold interest in the real property pursuant to a lease agreement as set forth in a Memorandum of Lease filed with the Horry County Register of Deeds in Deed Book 3888 at Page 2106.

9. The property is more fully described as:

ALL AND SINGULAR, that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, Horry County, South Carolina. Said tract containing 111.313 acres, more or less, in aggregate and shown as "REVISED TRACT 12 BROADWAY AT THE BEACH PROJECT", "TRACT 4-A", "TRACT 6", "TRACT 9", "TRACT 10", and "TRACT 11" on sheet B-1 of a map entitled "A.L.T.A.SURVFEY PLAN SET OF BROADWAY AT THE BEACH" made by the Associated Land Surveyors for Burroughs & Chapin Company, Inc., dated July 14, 1997 and recorded July 30, 1997 in Plat Book 149 at Page 80 in the Office of the Register of Deeds for Horry County, South Carolina.

This being the same property leased to Dave & Busters of South Carolina, Inc. by Broadway at the Beach, Inc. as evidence by that Memorandum of Lease dated December 10, 2015 and recorded January 28, 2016 in Deed Book 3888 at Page 2106 in the Office of the Register of Deeds, Horry County, South Carolina.

Address: 1322 Celebrity Circle, Myrtle Beach, South Carolina
TMS: 173-00-04-086

10. That Defendant Garrard Construction Group, Inc. was at all relevant times the general contractor hired by Defendant Dave & Buster's of South Carolina, Inc., presumably with the consent and knowledge of Defendant Broadway at the Beach, Inc.

11. Defendant Garrard Construction Group, Inc. entered into an agreement with the Plaintiff in South Carolina for the performance and delivery of services and materials for the benefit and improvement of the subject property.

12. This Honorable Court has jurisdiction over the parties and subject matter herein.

13. Defendant Garrard Construction Group, Inc. and Plaintiff entered into two contracts whereby Plaintiff agreed to provide labor and materials for a building located on the property.

14. The contract dated October 19, 2016 is known as Dave & Buster's Myrtle Beach Shell Contract, hereinafter the "Shell Contract."

15. Pursuant to the Shell Contract, Defendant Garrard Construction Group, Inc. promised to pay Plaintiff \$35,500.00 for services and materials related to the plumbing and gas system connecting to the exterior and foundation of the building.

16. The contract dated November 18, 2016 is known as the Dave & Buster's Myrtle Beach Interior Contract, hereinafter the "Interior Contract."

17. Pursuant to the Interior Contract, Defendant Garrard Construction Group, Inc. promised to pay Plaintiff \$294,688.00 for services and materials related to the portion of the plumbing and gas system within the building.

18. At all times, Plaintiff Carolina Cool, Inc. provided competent supervision and manpower to perform the tasks and provide the materials required by the contracts.

19. Any delays associated with the work were caused by Defendant Garrard Construction Group Inc.'s failure to maintain the agreed upon schedule.

20. Defendant also failed to conduct any jobsite meetings, scheduling meetings, or safety meetings.

21. Plaintiff Carolina Cool, Inc. did not cause a delay to the project schedule and was ready, willing, and able to perform both contracts.

22. On January 18, 2017, Defendant Garrard Construction Group Inc. and Plaintiff Carolina Cool, Inc. agreed that the services and materials to be provided pursuant to the Interior Project would be completed January 20, 2017.

23. Carolina Cool, Inc. was on schedule to complete the under-slab rough-in on January 20th, but Defendant forced Carolina Cool, Inc. out of the job site and prohibited the completion of its work.

24. Earlier in the day on January 20th, in response to Plaintiff Carolina Cool Inc.'s request, an Horry County building inspector came to the job site, inspected Carolina Cool Inc.'s work, and declared everything looked good and in compliance. The inspector further agreed to come back the following morning to complete his final inspection so that Carolina Cool Inc.'s work could be covered before arrival of anticipated rain. Because Carolina Cool, Inc. was ordered to vacate the premises by Defendant Garrard Construction Group, Inc., its work could not be completed.

25. Defendant Garrard Construction Group Inc.'s unjustified termination of the Interior Contract just as Plaintiff's work was almost complete, is not only a breach of the contract, but an act of intentional bad faith as well.

26. In accordance with the Interior Contract, Plaintiff is owed monies totaling \$93,437.00 (includes retainage) for the work completed.

27. Additionally, with regards to the Interior Contract, Plaintiff is owed lost profits on the remaining balance of the contract.

28. Defendant Garrard Construction Group Inc. also terminated, without justification, the Shell Contract without providing any reason.

29. In accordance with the Shell Contract, Plaintiff is owed monies totaling \$19,913.00 (includes retainage) for the work completed.

30. Additionally, with regards to the Shell Contract, Plaintiff is owed lost profits for the balance of the contract.

31. That despite demand for payment, the Defendant Garrard Construction Group, Inc., has declined, failed, neglected and willfully refused to pay the amounts due.

32. Defendant is in breach of the Contracts and the Plaintiff is entitled to a judgment against Defendant in the amount of \$113,350.00, lost profits to be determined by the Court, attorney fees, costs and prejudgment interest.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT WITH FRAUDULENT ACT)

33. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

34. As set forth above, Plaintiff and Defendant entered into Contracts.

35. Defendant Garrard Construction Group, Inc. made false representations as to the services provided and work performed by Plaintiff.

36. Defendant Garrard Construction Group, Inc. made false representations to the Plaintiff regarding the schedule of when work was to be performed.

37. Upon information and belief, Defendant Garrard Construction Group, Inc. blamed Plaintiff for the delays in the project so as to explain its failure to perform in accordance with its general contract agreement with Defendant Dave & Buster's of South Carolina, Inc.

38. Defendant Garrard Construction Group, Inc. did not act fairly in its dealings with Plaintiff Carolina Cool, Inc.

39. Defendant breached the Contracts and Plaintiff suffered damages as more fully set forth above.

40. Defendant Garrard Construction Group, Inc. had fraudulent intent when it breached the Contracts and a fraudulent act accompanied the breach.

41. Defendant is liable to Plaintiff in the amount of \$113,350.00, lost profits to be determined by the Court, additional punitive damages, plus pre-judgment interest, and attorney fees and costs.

FOR A THIRD CAUSE OF ACTION
(FORECLOSURE OF MECHANIC'S LIEN AS TO THE LEASEHOLD INTEREST OF DAVE & BUSTER'S OF SOUTH CAROLINA, INC.)

42. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

43. On or about April 12, 2017, Plaintiff timely filed a Notice and Certificate of Mechanic's Lien ("Mechanic's Lien") in Lien Book 249 at Page 3473 in the Office of the Register of Deeds for Horry County.

44. The Mechanic's Lien was timely served upon all Defendants.

45. That simultaneously with the filing of this pleading, Plaintiff filed a Notice of Lis Pendens and has commenced foreclosure of its lien within six (6) months of the last date Carolina Cool, Inc. provided labor and materials to the property.

46. Plaintiff Carolina Cool, Inc. is entitled to reasonable attorneys' fees, court costs and prejudgment interest.

47. Therefore, Plaintiff Carolina Cool, Inc. is entitled to a judgment of foreclosure of its Mechanic's Lien against Defendant Dave & Buster's of South Carolina, Inc.'s leasehold interest in

the Property in the amount of \$113,350.00, prejudgment interest, court costs and reasonable attorneys fees.

FOR A FOURTH CAUSE OF ACTION
(UNJUST ENRICHMENT)

48. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

49. As stated herein, Carolina Cool, Inc. provided labor, services and materials that were used to make improvements to the Property.

50. The Defendants accepted, used, and realized benefits from Plaintiff Carolina Cool, Inc.'s provision of labor, services and materials in the improvement of the Property.

51. It would be unjust and inequitable for the Defendants to retain the benefit of Plaintiff's furnishing of labor, services and materials unless the Defendants pay the value of the materials and services provided by Carolina Cool, Inc.

52. Neither the Plaintiff nor the Defendants anticipated Carolina Cool, Inc. would provide free materials and labor for improvements to the Property and allow the Defendants to reap the benefits of these materials and supplies without paying for the same would be to provide unjust enrichment at Plaintiff's expense.

53. That despite demand having been made, Plaintiff remains unpaid for the provision of its labor and materials which has resulted in the unjust enrichment of the Defendants, so that Plaintiff is informed and believes it is entitled to a judgment in *quantum meruit* for the amount of the material and labor provided to the Property, which is equal to \$113,250.00.

WHEREFORE, Carolina Cool, Inc. prays for the following relief:

- a. That the Court inquire into the pleadings of all parties and after hearing evidence, issue such order and determine such priorities for relief as is appropriate to the respective parties;
- b. For a judgment against Defendant Garrard Construction Group, Inc. in the amount of \$113,350.00 and all lost profits to be determined by the Court;
- c. For judgment against the Defendants in the amount of \$113,250.00 in *quantum meruit*;
- d. For a judgment against Defendant Garrard Construction Group, Inc. for punitive damages and attorney fees;
- e. That its Mechanic's Lien interest as to the Leasehold interest in the Property be foreclosed and that the priority of the various parties be established by the court;
- f. That it be granted interest, attorneys fees and costs; and,
- g. For such other and further relief as this Court may deem just and equitable.

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

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

Dated: June 8, 2017
Murrells Inlet, South Carolina.

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' ANSWER AND
) GARRARD'S COUNTERCLAIM AND
) THIRD-PARTY COMPLAINT

Defendant and Third-Party Plaintiff Garrard Construction Group, Inc. and Defendants Dave & Busters of South Carolina, Inc. and Broadway at the Beach, Inc., by and through their undersigned counsel, respond to the Complaint as follows:

1. The Defendants deny all allegations not specifically admitted in this Answer.
2. Upon information and belief, the Defendants admit paragraph 1.
3. In response to paragraph 2, the Defendants admit only that Garrard Construction Group, Inc.

("Garrard") is a Georgia company authorized to do business in South Carolina.

4. In response to paragraph 3, the Defendants admit only that Dave & Buster's of South Carolina, Inc. ("DBSC") is a Delaware company authorized to do business in South Carolina.

5. The Defendants admit paragraphs 4 – 9.

6. In response to paragraph 10, the Defendants admit only that Garrard was retained to provide general contracting services for the subject project which involved building the Dave & Buster's Myrtle Beach location.

7. In response to paragraph 11, the Defendants admit only that Garrard and Plaintiff entered into two contracts with each other regarding the project. The Defendants crave reference to the terms of the contracts and deny paragraph 11 to the extent it is inconsistent with the contracts.

8. Paragraph 12 is a conclusion of law to which the Defendants are not required to respond.

9. In response to paragraphs 13 – 17, the Defendants admit only that Plaintiff and Garrard entered into two contracts whereby Plaintiff agreed to provide certain labor and materials in exchange for certain amounts of money from Garrard. The Defendants crave reference to those contracts as to the specifics and deny said paragraphs to the extent they are inconsistent with the contracts. Further responding, Plaintiff breached both contracts.

10. The Defendants deny paragraphs 18 – 21.

11. The Defendants deny paragraph 22 as stated.

12. The Defendants deny paragraphs 23 – 32.

13. In response to paragraph 33, the Defendants re-allege all preceding paragraphs as if restated here.

14. In response to paragraph 34, the Defendants admit only that Plaintiff and Garrard entered into two contracts (that Plaintiff breached) for work at the Dave & Buster's Myrtle Beach project.

The Defendants crave reference to those contracts and deny said paragraph to the extent it is inconsistent with them.

15. The Defendants deny paragraphs 35 – 41.

16. In response to paragraph 42, the Defendants re-allege all preceding paragraphs as if restated here.

17. In response to paragraphs 43 – 45, the Defendants admit only that Plaintiff filed a baseless Mechanic's Lien and Lis Pendens wrongfully alleging Plaintiff is owed money on the project. The Defendants deny all remaining and/or inconsistent allegations.

18. The Defendants deny paragraphs 46 – 47.

19. In response to paragraph 48, the Defendants re-allege all preceding paragraphs as if restated here.

20. The Defendants deny paragraphs 49 – 53.

21. The Defendants deny the prayer for relief (including all subparts), that comprising the remainder of the Complaint.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

22. The Complaint fails to state facts sufficient to constitute a cause of action against the Defendants, and the Court should therefore dismiss it pursuant to SCRCP 12(b)(6).

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Laches, Waiver, Estoppel)

23. The Defendants raise the equitable defenses of laches, waiver and estoppel.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Unclean Hands)

24. Plaintiff's claims are barred because it has unclean hands.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Prior Breach)

25. No Defendant can be liable for breach of contract because of Plaintiff prior breach.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Adherence to Contract)

26. Plaintiff's claims fail because Garrard terminated Plaintiff from the project pursuant to the terms of Garrard's contract(s) with Plaintiff and after Plaintiff's default. Further responding.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(S.C. Code § 29-5-10)

27. The Defendants raise all defenses provided by S.C. Code § 29-5-10, the South Carolina Mechanic's Lien Statute. This includes that Plaintiff did or may have failed to initiate this lawsuit within the time frame set forth in the South Carolina Mechanic's Lien statute which would bar recovery from the Bond posted by Garrard. This also includes the paid in full defense.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Failure to Mitigate)

28. Plaintiff has failed to mitigate its alleged damages as the law requires.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Contract)

29. Plaintiff does not have privity of contract with Broadway at the Beach, Inc. or DBSC.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Punitive Damages Unconstitutional)

30. Plaintiff's claim for punitive damages violate the Constitutions of South Carolina and the United States, and such claim should be barred and/or limited appropriately.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Reservation and Non-waiver)

31. The Defendants reserve any additional and further defenses as may be revealed by information obtained during discovery and investigation and as are consistent with the South Carolina Rules of Civil Procedure.

FURTHER RESPONDING TO THE COMPLAINT
AND AS A COUNTERCLAIM BY GARRARD

32. Garrard re-alleges all preceding paragraphs as if restated here verbatim.

33. Garrard was the general contractor of the Dave & Buster's Myrtle Beach project identified in the Complaint.

34. Garrard contracted with Plaintiff to provide certain shell and interior work at the project as a subcontractor. Plaintiff and Garrard entered into two written contracts to that end.

35. One contract was for a construction of the interior plumbing and gas system and was in the amount of \$294,688.

36. The other was for shell work on the plumbing and gas system and was in the amount of \$35,500.

37. The Contracts contained certain deadlines and maintained time was of the essence.

38. Plaintiff represented to Garrard it was competent and able to perform the work in the contracts.

39. Plaintiff was not competent to perform this work. Its employees, subcontractors, independent contractors, and /or agents were not properly trained or supervised, Plaintiff failed to properly staff the project, and the work Plaintiff did perform was not in accordance with the terms of the contracts or in line with industry recognized standards of care.

40. Garrard gave Plaintiff notice of its shortcomings during the course of the project and even gave Plaintiff additional time to perform some of the work than was initially agreed or that the work should have taken.

41. However, Plaintiff still failed to timely and appropriately complete its work under the terms of the contracts.

42. After providing proper notice, Garrard was forced to terminate the contracts and remove Plaintiff from the project.

43. Garrard had to retain additional subcontractors to correct and complete Plaintiff's incorrect and incomplete work at the project.

44. This came at significant cost to Garrard and caused it to incur damages and expenses.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

45. Garrard re-alleges all preceding paragraphs as if restated here.

46. Garrard and Plaintiff entered into two contracts for work to be performed at the subject project as described above.

47. Plaintiff breached the contracts by failing to complete its work under the contract according to the agreed upon schedule and failing to complete the work in accordance with industry standards.

48. These breaches proximately caused Garrard to incur actual and consequential damages, including those related having to retain additional subcontractors to correct and complete Plaintiff's incorrect and incomplete work, as well as lost profits.

49. Pursuant to the contracts, Garrard is entitled to recovery of attorney's fees from Plaintiff.

**FOR A SECOND CAUSE OF ACTION
(Contractual Indemnity)**

50. Garrard re-alleges all preceding paragraphs as if restated here.

51. In the contracts between Plaintiff and Garrard, Plaintiff agreed to indemnify, defend and hold Garrard harmless from and against any and all claims arising out of or related to Plaintiff's work at the project (see Article 13.2).

52. Plaintiff's filing of a mechanic's lien and filing of this lawsuit constitute claims arising out of and related to Plaintiff's work at the project.

53. Pursuant to the contracts between Garrard and Plaintiff, Plaintiff is required to defend, indemnify and hold Garrard harmless for and against any and all allegations asserted in this lawsuit and related to the mechanic's lien and all costs related to Plaintiff's poor and incomplete work at the Project.

**FOR A THIRD CAUSE OF ACTION
(Negligence)**

54. Garrard re-alleges all preceding paragraphs as if restated here.

55. Plaintiff had a duty to perform its work under the terms of the contracts with Garrard in accordance with accepted industry standards.

56. Plaintiff breached this duty by failing to perform its work in a timely manner, properly hire and train its employees, and complete the work it did finish in accordance with accepted industry standard and the applicable standard(s) of care.

57. Plaintiff's breaches of duties owed to Garrard were negligent, grossly negligent, willful, wanton and reckless.

58. As a direct and proximate result of said breaches, Garrard has incurred damages, including but not limited to acceleration and delay costs, attorney's fees and additional overhead.

59. Garrard is entitled to recover from Plaintiff, actual damages, as well as incidental and consequential damages resulting from the breaches and punitive damages.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Warranty)**

60. Garrard re-alleges all preceding paragraphs as if restated here.

61. Plaintiff warranted its work would be fit for the purposes intended, free from defects in material and workmanship, in compliance with the Prime contract and all applicable industry standards and codes and free and clear of all claims, liens and encumbrances (see Article 14.1 of Plaintiff's contracts with Garrard).

62. Plaintiff agreed to pay for all changes to the work resulting from defects in workmanship or materials, as well as all expenses necessary to replace or repair the work, including all damages resulting from the same, including reimbursing Garrard for all costs associated with defective workmanship and materials (see Article 14.3 of Plaintiff's contracts with Garrard).

63. Plaintiff has breached the warranties provided to Garrard by failing to complete its work at the project pursuant to the terms and schedule identified in its contracts and in accordance with accepted industry standards.

64. Plaintiff's breach(es) of warranty have caused Garrard to incur damages, including costs to repair and complete Plaintiff's scope of work, as well as costs and attorney's fees associated.

65. Under the terms of Plaintiff's contract(s) with Garrard, it is entitled to recovery of all damages and costs resulting from Plaintiff's breaches of warranties as detailed above, to include attorney's fees.

**FOR A FIFTH CAUSE OF ACTION
(Breach of Contract with Fraudulent Act)**

66. Garrard re-alleges all preceding paragraphs as if restated here.

67. As detailed above, Garrard entered into two contracts with Plaintiff whereby Plaintiff agreed to perform certain work at the project in exchange for money.

68. As detailed above, Plaintiff breached its contracts with Garrard by failing to complete the work it promised to complete as described in the contracts between Plaintiff and Garrard.

69. Plaintiff knew it was not competent or able to complete the scope of work it agreed to complete in the contracts with Garrard. Plaintiff knowingly made false representations to Garrard that it was competent and able to complete the work.

70. Prior to and during the project, Plaintiff knowingly made multiple false representation to Garrard and others regarding its work at the project.

71. Plaintiff made these false representations intending to mislead Garrard and others regarding Plaintiff's ability to perform and complete its work at the project.

72. Plaintiff's misrepresentations were dishonest and unfair.

73. Plaintiff's misrepresentations as described above were made prior to, contemporaneously with and subsequent to its breach(es) of its contract(s) with Garrard.

74. As a direct and proximate result of Plaintiff's breach(es) of contract accompanied by fraudulent act(s), Garrard has suffered actual and consequential damages.

75. As a result of the aforesaid, Garrard is entitled to recover damages including actual, consequential and punitive damages, as well as attorney's fees, costs and interest against Plaintiff.

FOR A SIXTH CAUSE OF ACTION
(S.C. Code § 27-1-15)

76. Garrard re-alleges all preceding paragraphs as if repeated herein verbatim.

77. Garrard is a contractor which has expended labor, services or material under contract for the improvement of real property at the Dave & Buster's Myrtle Beach project.

78. Garrard made due and just demand for payment to Plaintiff for costs and damages related to labor and services Garrard incurred as a result of Plaintiff's breach(es) of contract with Garrard as described above.

79. Plaintiff had a duty to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within 45-days of the mailing of the demand(s).

80. Plaintiff has failed to make a fair investigation and has unreasonably refused to pay Garrard.

81. In addition to the amounts owed on the demand(s), Plaintiff is therefore liable to Garrard for its attorney's fees and interest from the judgment rate of the demand(s).

THIRD-PARTY COMPLAINT BY GARRARD

82. Garrard re-alleges all preceding paragraphs as if restated here verbatim.

83. Garrard is a Georgia entity authorized to do business in South Carolina.

84. RLI Insurance Company ("RLI") is, upon information and belief, an Illinois entity doing business in South Carolina.

85. On December 6, 2016, RLI, acting as Surety, issued Subcontract Performance Bond No. SSB0411109 (the "Bond") with Plaintiff as Principal and Garrard as Obligor. (Ex. A).

86. Under the terms of the Bond, RLI bound itself to guarantee the completion of Plaintiff's scope of work for the Dave & Buster's Myrtle Beach project under Plaintiff's contract with Garrard for interior work.

87. The Bond provides, inter alia, that RLI and Plaintiff, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Garrard for the performance of Plaintiff's contract with Garrard for interior work at the Dave & Buster's Myrtle Beach project.

88. The Bond further provides, inter alia, that RLI is liable to Garrard should Plaintiff breach its contract with Garrard.

89. Garrard has performed all obligations required of it under the Bond.

90. Plaintiff has breached its contract(s) with Garrard as described above, and is therefore in default within the meaning of the Bond.

91. As a result of said breach(es), Garrard is entitled to judgment against RLI in an amount to be determined by the trier of fact, as well as attorney's fees and costs.

**FOR A SECOND CAUSE OF ACTION
(S.C. Code § 27-1-15)**

92. Garrard re-alleges all preceding paragraphs as if repeated herein verbatim.

93. Garrard is a contractor which has expended labor, services or material under contract for the improvement of real property at the Dave & Buster's Myrtle Beach project.

94. Garrard made due and just demand for payment of damages to RLI under the terms of the Bond.

95. RLI had a duty to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within 45-days of the mailing of the demand(s).

96. RLI has failed to make a fair investigation and has unreasonably refused to pay Garrard on the claim on the Bond.

97. In addition to the amount(s) demanded, RLI is therefore liable to Garrard for its attorney's fees and interest from the judgment rate of the demand(s).

THEREFORE, the Defendants and Third-Party Plaintiff ask this Court to dismiss the Complaint and award recovery on Garrard's Counter-claim and Third-Party Complaint (to include actual damages, consequential damages, punitive damages, attorney's fees, interest) and other further relief as the Court deems just and proper.

[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 and Third-
Party Plaintiff**

EXHIBIT A

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA



BOND # SSB0411109

SUBCONTRACT PERFORMANCE BOND

Any singular reference to Principal, Surety, Obligor or other party shall be considered plural where

PRINCIPAL (SUBCONTRACTOR)

(Name and Address): Carolina Cool, Inc.
194 Surfside Industrial Park
Surfside Beach, SC 29575

OBLIGEE (CONTRACTOR)

(Name and Address): Garrard Construction Group, Inc.
1960 Satellite Blvd., Suite 2300
Duluth, GA 30097

SUBCONTRACT

Date: November 18, 2016

Amount: \$ Two Hundred Ninety-Four Thousand, Six Hundred Eighty-Eight and 00/100---- \$294,688.00

Description of Project (Name and Location): Plumbing - Dave & Buster's M Beach Int
1322 Celebrity Square, Myrtle Beach, SC 29577

**SURETY (Name and Address of Surety
Company Office):**

RLI Insurance Company
9025 N. Lindbergh Drive
Peoria, IL 61615

BOND

Date (Not earlier than Subcontract Date): December 6, 2016

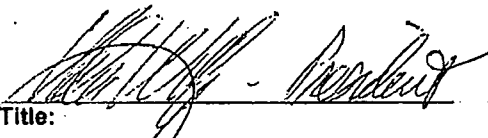
Penal Amount: \$ Two Hundred Ninety-Four Thousand, Six Hundred Eighty-Eight and 00/100---- \$294,688.00

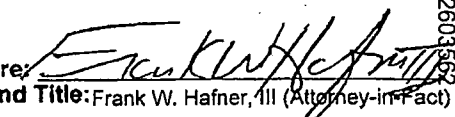
SUBCONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Carolina Cool, Inc.

SURETY

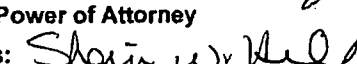
Company: (Corporate Seal)
RLI Insurance Company

Signature: 
Name and Title:

Signature: 
Name and Title: Frank W. Hafner, III (Attorney-in-Fact)

Attach Power of Attorney

Witness: 
(Any additional signatures appear on page attached)

Witness: 
Sherri W. Hill (Admin. Asst.)

FOR INFORMATION ONLY
AGENT or BROKER:
(Name, Address and Telephone)

South Risk Management, LLC
2711 Middleburg Dr., Suite 304
Columbia, SC 29204
(803) 733-5284

AGC DOCUMENT NO. 606 • SUBCONTRACT PERFORMANCE BOND • 1988

ARTICLES

1. **SCOPE OF BOND.** The Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Obligee for the performance of the Subcontract, which is incorporated in this bond by reference. In no event shall the Surety's total obligation exceed the penal amount of this bond.
2. **EFFECT OF OBLIGATION.** If the Principal performs the Subcontract, then this bond shall be null and void; otherwise it shall remain in full force and effect.
3. **ALTERATION OF NOTICE WAIVER.** The Surety hereby waives notice of any alteration or extension of the Subcontract, including but not limited to the Subcontract price and/or time, made by the Obligee. This waiver shall not apply to the time for suit provided by paragraph 5 hereunder.
4. **PRINCIPAL DEFAULT.** Whenever the Principal shall be, and is declared by the Obligee to be in default under the Subcontract, with the Obligee having performed its obligations in the Subcontract, the Surety may promptly remedy the default, or shall promptly:
 - 4.1 **COMPLETE SUBCONTRACT.** Complete the Subcontract in accordance with its terms and conditions; or
 - 4.2 **OBTAIN NEW CONTRACTORS.** Obtain a bid or bids formally, informally or negotiated for completing the Subcontract in accordance with its terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or negotiated proposal, or, if the Obligee elects, upon determination by the Obligee and the Surety jointly of the lowest responsible bidder, or negotiated proposal, arrange for a contract between such party and the Obligee. The Surety will make available as work progresses sufficient funds to pay the cost of completion less the balance of the contract price. The cost of completion includes responsibilities of the Principal for correction of defective work and completion of the Subcontract; the Obligee's legal and design professional costs resulting directly from the Principal's default, and; liquidated damages or actual damages if no liquidated damages are specified in the Subcontract. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the Obligee to the Principal under the Subcontract and any amendments to it, less the amount properly paid by the Obligee to the Principal; or
 - 4.3 **PAY OBLIGEE.** Determine the amount for which it is liable to the Obligee and pay the Obligee that amount as soon as practicable; or
 - 4.4 **DENY LIABILITY.** Deny its liability in whole or in part and notify and explain to the Obligee the reasons why the Surety believes it does not have responsibility for this liability.
5. **TIME FOR SUIT.** Any suit under this bond must be instituted before the expiration of two (2) years from the date of substantial completion as established by the contract documents.
6. **RIGHT OF ACTION.** No right of action shall accrue on this bond to or for the use of any person or entity other than the Obligee named herein, its heirs, executors, administrators or successors.

AGC DOCUMENT NO. 606 • SUBCONTRACT PERFORMANCE BOND • 1988



9025 N. Lindbergh Dr. | Peoria, IL 61615
Phone: (800)645-2402 | Fax: (309)689-2036

POWER OF ATTORNEY

RLI Insurance Company

Contractors Bonding and Insurance Company

ELECTRONICALLY FILED - 2017 Jul 06 4:19 PM - Horry - COMMON PLEAS - CASE#2017CP2603562

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That this Power of Attorney may be effective and given to either or both of RLI Insurance Company and Contractors Bonding and Insurance Company, required for the applicable bond.

That RLI Insurance Company and/or Contractors Bonding and Insurance Company, each Illinois corporations (as applicable), each authorized and licensed to do business in all states and the District of Columbia do hereby make, constitute and appoint:

W.D. Morris, Jr., Frank W. Hafner, III jointly and severally

in the City of Columbia, State of South Carolina, as Attorney in Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

RLI Insurance Company and Contractors Bonding and Insurance Company, as applicable, have each further certified that the following is a true and exact copy of the Resolution adopted by the Board of Directors of each such corporation, and now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation shall be executed in the corporate name of the Corporation by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Corporation. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation. The signature of any such officer and the corporate seal may be printed by facsimile or other electronic image."

IN WITNESS WHEREOF, RLI Insurance Company and/or Contractors Bonding and Insurance Company, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 27th day of May, 2016.

State of Illinois
County of Peoria

} SS



RLI Insurance Company
Contractors Bonding and Insurance Company

B.W. Davis

Barton W. Davis

Vice President

CERTIFICATE

I, the undersigned officer of RLI Insurance Company, and/or Contractors Bonding and Insurance Company, each Illinois corporations, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the RLI Insurance Company and/or Contractors Bonding and Insurance Company this 6th day of December, 2016.

RLI Insurance Company
Contractors Bonding and Insurance Company

B.W. Davis

Barton W. Davis

Vice President

Jacqueline M. Bockler
Jacqueline M. Bockler Notary Public



3973973020212

A0059115

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 and Third-Party Plaintiff

The Plaintiff, Carolina Cool, Inc., by and through its undersigned attorney, would respectfully show unto this Honorable Court the following in response to Defendant Garrard Construction Group Inc.'s Counterclaim:

FIRST DEFENSE

1. That each and every allegation of the Counterclaim and Third-Party Complaint which is not hereinafter specifically admitted is denied and strict proof demanded thereof.

2. Paragraph 32 is a pleading paragraph and does not require a response; to the extent the paragraph may assert any delict on the part of the Plaintiff or Third-Party Defendant, the allegations contained therein are denied and strict proof demanded thereof.

3. The allegations of Paragraph 33 are admitted.
4. As to the allegations of Paragraphs 34, 35, 36, 37, and 38 it is admitted the Plaintiff entered into two written contracts. Plaintiff craves specific reference to the two contracts regarding the terms and conditions of those contracts, scope of work to be performed and representations made.
5. The allegations of Paragraphs 39, 40, 41, 42, 43, and 44 are denied and strict proof demanded thereof.
6. Paragraph 45 is a pleading paragraph and does not require a response; to the extent the paragraph may assert any delict on the part of the Plaintiff or Third-Party Defendant, the allegations contained therein are denied and strict proof demanded thereof.
7. As to the allegations of Paragraph 46, it is admitted the Plaintiff entered into two written contracts. Plaintiff craves specific reference to the two contracts regarding the terms and conditions of those contracts, scope of work to be performed and representations made.
8. The allegations of Paragraphs 47, 48, and 49 are denied and strict proof demanded thereof.
9. Paragraph 50 is a pleading paragraph and does not require a response; to the extent the paragraph may assert any delict on the part of the Plaintiff or Third-Party Defendant, the allegations contained therein are denied and strict proof demanded thereof.
10. As to the allegations of Paragraph 51, it is admitted the Plaintiff entered into two written contracts. Plaintiff craves specific reference to the terms and conditions of the contracts and denies any allegation that is contradictory.
11. The allegations of Paragraphs 52 and 53 are denied and strict proof demanded thereof.
12. Paragraph 54 is a pleading paragraph and does not require a response; to the extent the paragraph may assert any delict on the part of the Plaintiff or Third-Party Defendant, the

allegations contained therein are denied and strict proof demanded thereof.

13. As to the allegations of Paragraph 55, Plaintiff craves specific reference to the two contracts regarding the terms and conditions of those contracts, scope of work to be performed and representations made. At all times Plaintiff performed its contractual obligations in accordance with accepted industry standards.

14. The allegations of Paragraphs 56, 57, 58, and 59 are denied and strict proof demanded thereof.

15. Paragraph 60 is a pleading paragraph and does not require a response; to the extent the paragraph may assert any delict on the part of the Plaintiff or Third-Party Defendant, the allegations contained therein are denied and strict proof demanded thereof.

16. As to the allegations of Paragraphs 61 and 62, it is admitted the Plaintiff entered into two written contracts. Plaintiff craves specific reference to the terms and conditions of the contracts and denies any allegation that is contradictory.

17. The allegations of Paragraphs 63, 64, and 65 are denied and strict proof demanded thereof.

18. Paragraph 66 is a pleading paragraph and does not require a response; to the extent the paragraph may assert any delict on the part of the Plaintiff or Third-Party Defendant, the allegations contained therein are denied and strict proof demanded thereof.

19. As to the allegations of Paragraph 67, it is admitted the Plaintiff entered into two written contracts. Plaintiff craves specific reference to the two contracts regarding the terms and conditions of those contracts, scope of work to be performed and representations made.

20. The allegations of Paragraphs 68, 69, 70, 71, 72, 73, 74, and 75 are denied and strict proof demanded thereof.

21. Paragraph 76 is a pleading paragraph and does not require a response; to the extent the paragraph may assert any delict on the part of the Plaintiff or Third-Party Defendant, the allegations contained therein are denied and strict proof demanded thereof.

22. As to the allegations of Paragraph 77, upon information and belief, Defendant/Third-Party Plaintiff was at all relevant times the general contractor hired by Defendant Dave & Buster's of South Carolina, Inc. for the improvement of real property. Upon information and belief, Defendant/Third-Party Plaintiff hired sub-contractors to expend labor, services, and materials for the project.

23. The allegations of Paragraphs 78, 79, 80, and 81 are denied and strict proof demanded thereof.

24. Upon information and belief, the allegations contained within Paragraphs 82 through 97 assert causes of action against the Third-Party Defendant and do not require a response from the Plaintiff; to the extent the paragraphs may assert any delict on the part of the Plaintiff the allegations contained therein are denied and strict proof demanded thereof.

SECOND DEFENSE

25. Each and every allegation alleged above is repeated verbatim herein.

26. The Counterclaim and Third-Party Complaint must be dismissed pursuant to SCRCR Rule 12(b)(6) for failure of the pleading to state facts sufficient to constitute a cause of action.

THIRD DEFENSE

27. Each and every allegation alleged above is repeated verbatim herein.

28. Plaintiff pleads contributory negligence as a complete and affirmative defense.

FOURTH DEFENSE

29. Each and every allegation alleged above is repeated verbatim herein.

30. Plaintiff pleads the intervening acts of others as a complete and affirmative defense.

FIFTH DEFENSE

31. Each and every allegation alleged above is repeated verbatim herein.
32. Plaintiff pleads Defendant/Third-Party Plaintiff's own comparative negligence as a complete and affirmative defense.

SIXTH DEFENSE

33. Each and every allegation alleged above is repeated verbatim herein.
34. Plaintiff pleads Defendant/Third-Party Plaintiff's failure to comply with the contractual obligations of the Interior and Shell Contracts as a complete and affirmative defense.

SEVENTH DEFENSE

35. Each and every allegation alleged above is repeated verbatim herein.
36. Plaintiff pleads Defendant/Third-Party Plaintiff's failure to comply with the requisite provisions of the Subcontract Performance Bond as a complete and affirmative defense.

EIGHTH DEFENSE

37. Each and every allegation alleged above is repeated verbatim herein.
38. Plaintiff pleads Defendant/Third-Party Plaintiff's failure to mitigate as a complete and affirmative defense.

NINTH DEFENSE

39. Each and every allegation alleged above is repeated verbatim herein.
40. Plaintiff is informed and believes and therefore alleges that if it failed to perform any oral or written promise, covenant or condition, it was prevented from performing such obligations by Defendant/Third-Party Plaintiff, other defendants, or third parties.

41. Therefore, the Defendant/Third-Party Plaintiff's Counterclaim should be barred in whole or in part due to the actions of Defendant/Third-Party Plaintiff, other defendants or third parties in expressly preventing performance, if any, on the part of the answering Plaintiff and Third-Party Defendant.

TENTH DEFENSE

42. Each and every allegation alleged above is repeated verbatim herein.

43. Plaintiff is informed and believes and therefore alleges the works of improvement installed by Plaintiff on the property which is the subject of this action was properly installed in strict accordance with plans, specifications and special orders supplied by the Defendant/Third-Party Plaintiff.

44. Because any alleged defects in materials or workmanship of the work of improvement installed by Plaintiff were caused by deficiencies in the plans, specifications and/or special orders supplied to answering Plaintiff, which deficiencies were neither known nor discoverable by Plaintiff by the exercise of reasonable care, any recovery against answering Plaintiff should be barred or otherwise diminished.

ELEVENTH DEFENSE

45. Each and every allegation alleged above is repeated verbatim herein.

46. Plaintiff is informed and believes and therefore alleges that although under a duty to do so, Defendant/Third-Party Plaintiff failed to give proper and timely notice of the alleged defects which are the subject of this action and failed to request Plaintiff cure such alleged defects, thereby relieving Plaintiff of any and all legal and equitable obligations with regard thereto, and barring recovery.

TWELFTH DEFENSE

- 47. Each and every allegation alleged above is repeated verbatim herein.
- 48. Plaintiff is informed and believes and therefore alleges Defendant/Third-Party Plaintiff's claims are barred or reduced because the claims are subject to setoff or recoupment.

THIRTEENTH DEFENSE

- 49. Each and every allegation alleged above is repeated verbatim herein.
- 50. Plaintiff is informed and believes and therefore alleges any and all contractual provisions allegedly breached by the Plaintiff were, and are unconscionable and unenforceable, thus barring any recovery against Plaintiff or Third-Party Defendant.

FOURTEENTH DEFENSE

- 51. Each and every allegation alleged above is repeated verbatim herein.
- 52. Plaintiff is informed and believes and thereon alleges that if any contracts, obligations or agreements were entered into as alleged in the Counterclaim, any duties of performance by Plaintiff thereunder were excused by reason of failure of consideration thus barring any recovery by Defendant/Third-Party Plaintiff.

FIFTEENTH DEFENSE

- 53. Each and every allegation alleged above is repeated verbatim herein.
- 54. Plaintiff pleads Defendant/Third-Party Plaintiff's Unclean hands as a complete and affirmative defense.

SIXTEENTH DEFENSE

- 55. Each and every allegation alleged above is repeated verbatim herein.
- 56. Plaintiff is presently unaware whether it may have additional, as yet unstated

defenses. Plaintiff hereby reserves all rights under the law to assert in the future any additional affirmative defenses as it becomes known during the course of litigation.

WHEREFORE, having fully answered the Counterclaim of Defendant, Plaintiff prays that:

1. Defendant's Counterclaims be dismissed with prejudice, with all costs assessed against the Defendant;
2. That the Plaintiff be granted the relief requested in its Complaint;
3. For a judgment against the Defendant in the amount of all reasonable attorneys fees and costs incurred in the defense of this action;
4. For such other and further relief in as this Court deems just and proper.

Respectfully submitted,

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

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.

September 5, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
CAROLINA COOL, INC.,	)	CASE NO.: 2017-CP-26-03562
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GARRARD CONSTRUCTION GROUP	)	
INC., DAVE & BUSTERS OF SOUTH	)	
CAROLINA, INC. AND BROADWAY AT	)	
THE BEACH, INC.	)	MOTION TO QUASH SUBPOENA ISSUED
	)	TO BILLY'S PLUMBING COMPANY, LLC
Defendants.	)	
	)	
GARRARD CONSTRUCTION GROUP,	)	
INC.	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
RLI INSURANCE COMPANY,	)	
	)	
Third-Party Defendant.	)	

TO: ALL ABOVE NAMED PARTIES, BY AND THROUGH THEIR ATTORNEYS
OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the undersigned hereby moves before the Presiding Judge of on the tenth (10th) day after service hereof or as soon thereafter as counsel might be heard for an Order Quashing the Subpoena issued by Mark D. Neill, attorney for Plaintiff, to Billy's Plumbing Company, LLC, a copy of which is attached hereto as Exhibit A and made a part and parcel hereof.

The attached Subpoena sets forth a blanket request for a "complete copy of your file, including any and all records whether in hard copy or electric form of any kind or nature

whatsoever, concerning or related to the Dave & Buster's Myrtle Beach project, located at 1322 Celebrity Circle, Myrtle Beach, South Carolina including but not limited to, all correspondence, emails, memoranda, notes, faxes, computer files, contracts, reports, checks, statements, receipts photographs, videos, inter-office and intra-office communications, notations of any sort of conversations, telephone calls, meetings, invoices, work sheets." It further requests (1) Bids for the project (2) progress reports (3) purchase orders for materials (4) requests for payments (5) change orders (6) time sheets for employees who worked on the project; payments received from general contractor or owner and (7) sub contractor bond.

Billy's Plumbing Company, LLC through the undersigned objects to the Subpoena on the following basis:

1. The Subpoena requires disclosure of trade secrets and/or other confidential research, development, or commercial information of a proprietary nature and disclosure thereof could diminish future earning capability of Billy's Plumbing Company, LLC in that Plaintiff is their direct competitor.
2. The subpoena requests are overly broad and subject Billy's Plumbing Company, LLC to undue burden and expense.

WHEREFORE, the undersigned moves the court to quash the Subpoena and requests to produce and order that Billy's Plumbing Company, LLC need not produce the requested documents. be quashed in its entirety, or at a minimum, limited in scope; and further for the Plaintiff to bear the costs of any required production.

Signature page to follow

July 27, 2018
Conway, South Carolina

Respectfully Submitted,

THE HYMAN LAW GROUP, P.A

/s Jordan W. Hyman

Jordan W. Hyman (S.C. Bar 101257)
1208 Third Avenue
Conway, South Carolina 29526
Phone: (843) 248-2024
Fax: (843) 438-8161

ELECTRONICALLY FILED - 2018 Jul 31 10:58 AM - Horry - COMMON PLEAS - CASE#2017CP2603562

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff

v.

SUBPOENA IN A CIVIL CASE

GARRARD CONSTRUCTION GROUP, INC.,

Case Number: 2017-CP-26-3562

Defendants.

Pending in HORRY County

TO: BILLY'S PLUMBING COMPANY, LLC

YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects

See Attached Exhibit A

PLACE

NEILL LAW FIRM, PA

1727 Glenn's Bay Road

Surfside Beach, SC 29575

DATE AND TIME

June 18, 2018 at 9:00 a.m.

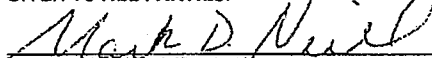
☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



June 1, 2018

MARK D. NEILL, ESQ.

Attorney/Issuing Officer's Signature
Attorney for Plaintiff CAROLINA COOL, INC.

Date

Print Name

Attorney's Address and Telephone Number:
1727 Glenn's Bay Road

Surfside Beach, SC 29575 (843) 651-8580

Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and Telephone Number:

Date

Print Name

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

ELECTRONICALLY FILED - 2018 JUN 31 10:58 AM - HORRY - COMMON PLEAS - CASE#2017/CP2603562

PROOF OF SERVICE

SERVED	DATE June 2018	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☒ NO AMOUNT \$
	PLACE	
SERVED ON Billy's Plumbing Company, LLC 1824 Lone Star Street Conway, SC 29526		MANNER OF SERVICE Personal
SERVED BY: Steve Parker		TITLE Process Server

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on June 2018.

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT "A"

A complete copy of your file, including any and all records whether in hard copy or electronic form of any kind or nature whatsoever, concerning or related to the DAVE & BUSTER'S MYRTLE BEACH project, located at 1322 Celebrity Circle, Myrtle Beach, South Carolina including, but not limited to, all correspondence, emails, memoranda, notes, faxes, computer files, contracts, reports, checks, statements, receipts, photographs, videos, inter-office and intra-office communications, notations of any sort of conversations, telephone calls, meetings, invoices, work sheets.

ALSO:

- Bids for the project;
- Progress reports;
- Purchase orders for materials;
- Requests for payments;
- Change orders;
- Times sheets for employees who worked on the project;
- Payments received from general contractor or owner;
- Emails or letters with general contractor or owner;
- Subcontractor bond.

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff

v.

SUBPOENA IN A CIVIL CASE

GARRARD CONSTRUCTION GROUP, INC.,

Case Number: 2017-CP-26-3562

Defendants.

Pending in HORRY County

TO: BILLY'S PLUMBING COMPANY, LLC

YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects

See Attached Exhibit A

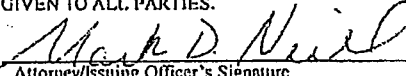
PLACE NEILL LAW FIRM, PA 1727 Glenn's Bay Road Surfside Beach, SC 29575	DATE AND TIME June 18, 2018 at 9:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

	June 1, 2018	MARK D. NEILL, ESQ.
Attorney/Issuing Officer's Signature	Date	Print Name
Attorney for Plaintiff CAROLINA COOL, INC.		
Attorney's Address and Telephone Number:		
1727 Glenn's Bay Road		
Surfside Beach, SC 29575 (843) 651-8580		

Clerk of Court/Issuing Officer's Signature	Date	Print Name
Pro Se Litigant's Name, Address and Telephone Number:		

PROOF OF SERVICE

SERVED	DATE June 2018	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☒ NO AMOUNT \$
	PLACE	
SERVED ON Billy's Plumbing Company, LLC 1824 Lone Star Street Conway, SC 29526		MANNER OF SERVICE Personal
SERVED BY: Steve Parker		TITLE Process Server

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on June 2018.

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

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(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT "A"

A complete copy of your file, including any and all records whether in hard copy or electronic form of any kind or nature whatsoever, concerning or related to the DAVE & BUSTER'S MYRTLE BEACH project, located at 1322 Celebrity Circle, Myrtle Beach, South Carolina including, but not limited to, all correspondence, emails, memoranda, notes, faxes, computer files, contracts, reports, checks, statements, receipts, photographs, videos, inter-office and intra-office communications, notations of any sort of conversations, telephone calls, meetings, invoices, work sheets.

ALSO:

- Bids for the project;
- Progress reports;
- Purchase orders for materials;
- Requests for payments;
- Change orders;
- Times sheets for employees who worked on the project;
- Payments received from general contractor or owner;
- Emails or letters with general contractor or owner;
- Subcontractor bond.

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

**Motion for Order of Contempt/Sanctions
as to Billy's Plumbing Company, LLC**

To: Jordan W. Hyman, Attorney for Billy's Plumbing Company, LLC

Motion for Order of Contempt/Sanctions

Plaintiff Carolina Cool, Inc., by and through its undersigned attorney, hereby moves for an Order holding Billy's Plumbing Company, LLC in contempt for violating the Consent Order Regarding Subpoena to Billy's Plumbing Company, LLC filed on October 11, 2018. Pursuant to the Order, Billy's Plumbing Company, LLC was required to produce documents on or before November 8, 2018. When Billy's Plumbing Company, LLC failed to timely produce the documents as ordered, the undersigned counsel provided notice to Billy's Plumbing Company, LLC that a motion seeking to hold Billy's Plumbing Company, LLC in contempt would be filed if the documents were not produced by November 14, 2018. Even after Billy's Plumbing Company, LLC was given additional

time to produce the documents, it still has not complied with the Court's Order and should be held in contempt.

Plaintiff seeks the Court's intervention and further Order requiring Billy's Plumbing Company, LLC to produce the requested documents. Plaintiff also petitions the Court to impose sanctions against Billy's Plumbing Company, LLC by requiring it to pay all costs and attorney fees incurred by the Plaintiff in having to file this motion and appear at the hearing. Billy's Plumbing Company, LLC should also be held responsible for any and all costs of photocopying, scanning, and producing the documents.

The undersigned certifies that he attempted to resolve this matter prior to filing this motion as set forth in the letter dated November 9, 2018, a copy of which is filed as an exhibit hereto.

Respectfully submitted,

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

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

Dated: November 20, 2018
Murrells Inlet, South Carolina.

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 9, 2018

via email and regular mail

Jordan W. Hyman
1208 Third Avenue
Conway, SC 29526
jordan@thehymanlawgroup.com

Re: *Carolina Cool, Inc. vs. Garrard Construction Group, Inc., et al.*
Case No: 2017-CP-26-3562

Dear Jordan:

Pursuant to our Consent Order filed October 11, 2018, Billy's Plumbing Company was required to provide subpoenaed documents no later than November 8th. We did not receive the documents as ordered. Please have the documents produced no later than Wednesday, November 14th to avoid having Billy's Plumbing Company held in contempt.

With kindest regards, I am

Sincerely,



Mark Neill

Cc:
Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464

Robert T. Lyles, Jr.
342 East Bay Street
Charleston, SC 29401

ELECTRONICALLY FILED - 2018 Nov 20 10:10 AM - 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 Countryman, Counsel for Defendants

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-03562

Plaintiff's Motion to Compel Against
Defendants Garrard Construction Group,
Inc., Dave & Buster's of South Carolina, Inc.,
Broadway at the Beach, Inc.

You will please take notice the Plaintiff, Carolina Cool, Inc., by and through its undersigned counsel, hereby moves for an Order of this Court compelling the Defendants to fully answer Supplemental Requests for Production of Documents served on November 20, 2018, a copy of which is attached hereto as Exhibit "A."

Plaintiff asks this Court to grant an Order compelling Defendants to provide the requested discovery and awarding its reasonable attorney's fees and costs of this motion. Plaintiff further requests the Court impose sanctions pursuant to *SCRCP* 37 because of Defendants' intentional actions to avoid producing the discovery, resulting in continued delay and hardship for the Plaintiff.

The undersigned, pursuant to *Rule 11, SCRPC*, hereby certifies that he has communicated in writing, email and by phone with Defendants' counsel and has attempted in good faith to resolve the matter contained in the Motion but to no avail.

Respectfully submitted,

February 13, 2019

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

Mark D. Neill, Esq.

S.C. Bar No: 14273

P.O. Box 2810

Murrells Inlet, SC 29576

mneill@neilllawfirm.com

(843) 651-8580

Attorney for Carolina Cool, Inc.

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 - 2019 Feb 13 10:27 AM - 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 Second Supplemental
Requests for Production of Documents
to 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).

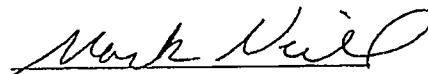
55. With regards to the construction of the Dave & Buster's of Myrtle Beach project, any and all inspection reports or documentation of inspections by Broadway at the Beach, Inc. (including any of

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

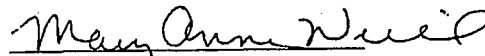
Certificate of Service of Plaintiff's
Second Supplemental Requests for
Production

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

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.	)	Motion to Compel Depositions of
	)	Defendants' Witnesses and to
	)	Impose Sanctions
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 Countryman, Counselor for Defendants:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Plaintiff, Carolina Cool, Inc., hereby moves pursuant to SCRCP Rule 37 for an Order compelling the Defendants to make available their witnesses to be deposed at the office of Defendants' Counselor pursuant to the parties' prior agreement. The Plaintiff will show the parties previously agreed for the depositions of Shawn Gill, Bill Bromley and Pat Watson to take place at the Countryman Law Firm, in Mount Pleasant, SC. The Plaintiff will further show the depositions were scheduled and re-scheduled several times to accommodate the witnesses and Defendants' Counselor, Andrew Countryman and at all times, the parties agreed the depositions were to take place in Mount Pleasant.

The depositions were finally scheduled to occur on February 12th and 13th 2019. The Plaintiff had desired to take the depositions several months ago but complied with Defendants' request to schedule them in February. On January 29, 2019, Defendants' Counselor, Andrew Countryman,

informed the undersigned that not only would the depositions not take place on February 12 and 13 as previously agreed, but that the witnesses would not appear in Mount Pleasant but would only appear in either Massachusetts or Georgia. As such, the witnesses did not appear for their noticed depositions in violation of the South Carolina Rules of Civil Procedure.

The Plaintiff will show that this last minute unavailability and disregard of the parties' discovery agreement is yet another attempt by the Defendants to impede the Plaintiff's ability to conduct discovery in support of its causes of action. The Plaintiff will further show that at all times, it has accommodated the Defendants and Defendants' Counselor and made available its witnesses to be deposed in accordance with the parties' agreement. The Plaintiff has been unduly prejudiced because of the numerous delay and avoidance tactics conducted by the Defendants. As such, Plaintiff is also entitled to an Order imposing sanctions against the Defendants.

Based on the foregoing, Plaintiff is entitled to the following relief:

1. For an Order compelling the Defendants to make their witnesses available for deposition at the Countryman Law Firm in Mount Pleasant, SC and that Defendants incur any costs of their witnesses as previously agreed by the parties;
2. In the alternative, if the Court allows the depositions of the witnesses to take place where the Defendants now dictate, the Plaintiff is entitled to an Order that the attorney fees and costs incurred by the undersigned to travel be paid by Defendants;
3. For an Order awarding Plaintiff's reasonable attorney's fees and costs in having to file this motion and to obtain the requested relief; and,
4. For an Order awarding such other further relief as this Court may deem just and proper.

In accordance with SCRCF, Rule 11, Plaintiff's counsel has communicated, both orally and in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, prior to its filing, to no avail.

Respectfully submitted,

February 15, 2019

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

Mark D. Neill, Esq.

S.C. Bar No: 14273

P.O. Box 2810

Murrells Inlet, SC 29576

mneill@neilllawfirm.com

(843) 651-8580

Attorney for Carolina Cool, Inc.

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' BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL DEPOSITIONS
AND FOR SANCTIONS (OF 2/15/19)**

The Defendants oppose Plaintiff's 2/15/19 Motion to Compel Depositions and for Sanctions as follows:

Bottom Line

Without any legal basis, Plaintiff seeks to compel fact witnesses who live in Georgia to give depositions in South Carolina without having to pay the witnesses for their mileage or travel costs as the Rules provide. Alternatively, Plaintiff seeks to have the Defendants pay for its attorney's fees and

costs associated with taking the depositions in Georgia. This Motion lacks any legal basis and is contrary to the discovery Rules. The Court should deny it accordingly.

Background

This case arises out of a monetary dispute between a contractor and a subcontractor during the construction of the Dave & Buster's in Myrtle Beach. Defendant Garrard was the general contractor for the construction of the project. Plaintiff Carolina Cool entered into two contracts with Garrard to perform certain scopes of work at the project. Prior to Carolina Cool's completion of its scope of work, Garrard terminated Carolina Cool from the project.

Carolina Cool maintains Garrard wrongly terminated it from the project and filed a Mechanic's Lien for monies Garrard allegedly owed on the contracts. Garrard maintains Carolina Cool's work was incomplete and incorrect, which led to Garrard properly terminating Carolina Cool from the project. Garrard has filed a Counterclaim against Carolina Cool for damages associated with its alleged failures at the project.

The parties are proceeding under a Scheduling Order with a discovery deadline of June 1, 2019. However, Plaintiff recently filed a Motion to Amend the Complaint to add another Defendant, Billy's Plumbing. The Defendants have consented to that amendment and it appears Billy's will be added as a party shortly. This will likely impact the discovery and trial schedule since Billy's

Garrard is a general contracting firm in Duluth, Georgia. It is engaged in projects in various locations across America. Its employees generally live in Georgia and work where the project takes them at any given time. Plaintiff indicated a desire to depose three fact witnesses who work for Garrard and were involved with the project (Shawn Gill, Pat Watson, and Bill Bromley). In November 2018, the parties set the depositions to take place at defense counsel's office in Mount

Pleasant on February 12th and 13th, by agreement. Plaintiff's counsel sent Notices for the depositions without Subpoenas.

On January 29, 2019, defense counsel received notice from the Dorchester Court of Common Pleas that various motions pending in a case¹ in which he is lead counsel for the Defendant, were set to be heard on February 13, 2019. Upon receiving notice from the Court of the hearing in that case, counsel for the Defendants notified Plaintiff's counsel that the depositions set for February 12-13 needed to be moved.

• Andrew Countryman •
Carolina Cool v. Garrard; discovery
To: Mary Anna Neill, Mark Neill, Cc: hwelsch@neilllawfirm.com

January 29, 2019 at 4:30 PM
Details

Mark,

I hope you are well. I need to touch base on this claim.

I am in the process of getting answers to your supplemental discovery requests. It is taking a while to coordinate with the folks on my end, but I expect to get material from them by the end of the week. I know I told you I would try to get responses by 2/1. That is still my goal, but realistically, next week is more likely.

As for the depositions, I was going to have to discuss the location, at least of Bill Bromley's deposition. He will be in Massachusetts working on a project, and I wanted to discuss the possibility of doing his deposition via video from there. I have been in touch with a court reporter's office there who can accommodate. The plan was to have the other depositions at my office as planned. I figured we could work this out, since the other option would be having to go to where the witnesses would be (Atlanta and MA).

However, I received notice today from the court that hearings have been set in a case pending in Dorchester County for 2/13 in front of Judge Dickson. This is a very contentious class action where I represent the remaining Defendant. The case is Richardson v. McCabe, Trotter & Beverly, PC; C/A No. 2016-CP-18-1001. There are at six motions set to be heard, including my Motion for Summary Judgment. I attach a copy of the roster. I expect the hearings to last most of the day and need the prior day to prepare. Since court proceedings take precedence over depositions, I need to look for other dates for the Garrard people you want to depose. I hate to do this but have no choice at this point. And again, the court just published the motions roster today, or I would have notified you earlier.

Please let me know what might work for you over the next weeks, and I will work to reschedule as soon as possible. Thanks for your understanding.

Andy

In response to the 1/29/19 email, Plaintiff's counsel sent a letter the next day with various demands regarding the depositions and threats of sanctions. Ex. 1. Defense counsel responded with a letter that same day indicating he would get new dates for the February 12 – 13 depositions. The letter also clarified that: (a) counsel had initially agreed to the depositions in South Carolina as a courtesy and because the witnesses could come here during those times; (b) but upon being rescheduled, their depositions would need to take place at Garrard in Georgia. The letter also said

¹ Richardson v. McCabe, Trotter & Beverly, PC; 2016-CP-18-1001.

that in the event the depositions took place in South Carolina, Plaintiff would be responsible (under the Rules) for their travel costs to come here. Ex. 2.

On February 8, 2019, defense counsel emailed Plaintiff's counsel and offered additional dates for the depositions. Counsel indicated that the depositions would need to take place in Georgia where the witnesses live and work and asked to discuss the situation as necessary.

• Andrew Countryman
Carolina Cool v. Garrard, et al.
To: Mary Anna Neill, Mark Neill, Cc: hwelsch@neilllawfirm.com

February 8, 2019 at 4:42 PM
Details 

Mark,

I am sorry for the delay in getting back to you on these discovery issues. My son has been under the weather this week (2 months old), and I have had to help out at home significantly. I do have dates for the depositions of the three Garrard witnesses you want to depose. They are: March 5-6, 19-20, 26-27 and April 9-10 and 16-17. These will need to take place where the witnesses are in Atlanta. I initially agreed to have them at my office on the dates next week based on the witnesses' schedules. They don't allow for the depositions to be here on the new dates. I will present the witnesses without subpoenas in Atlanta dates we can agree on out of the ones listed above. I know you may take issue with this based on your last letter. I would prefer to discuss next week before we have to deal with letters or motions on that topic. I am pretty available, so let me know what works for you.

I am also working on the discovery responses. It is taking some coordination and digging to see what my clients have in response, what we can produce, etc. I will get you a formal response as soon as possible (my goal is next week). Again, I am sorry for any delay. If you need to file a motion, I understand but hope we can avoid that.

Again, I am happy to discuss next week. In the meantime, have a good weekend.

Andy

On February 11, 2019, Plaintiff's counsel agreed to proceed with the depositions on March 26th and 27th. He never said anything about intending to proceed with the depositions on February 12th or 13th.

On Feb 11, 2019, at 2:54 PM, Mark Neill <mneill@neilllawfirm.com> wrote:

Andy, go ahead and schedule these depositions for March 26 & 27 in the same order as previously noticed. I do not agree with the location being scheduled for Atlanta. However, if your client insists on the depositions being held in Atlanta and not your office, I will need to petition the court for your client's payment of the additional attorney's fees and expenses my client will incur as a result to the depositions being held there.

Let me know what their position is so that I can make arrangements and send out deposition notices.

Thanks,

 MARK D. NEILL
Attorney at Law
Neill Law Firm, PA
Post Office Box 2810
Sheridan Inlet, SC 29576
Phone: 843.651.8580
Fax: 843.651.8586
mneill@NeillLawFirm.com
www.NeillLawFirm.com

The undersigned responded with an email indicating Plaintiff's counsel could send deposition Notices for those dates. As a courtesy, the undersigned did not require subpoenas. The email also clarified that even if the depositions took place in South Carolina, the Rules provide that Plaintiff, as the party noticing the depositions, would be responsible for the witnesses' travel costs/mileage to the depositions (under Rule 32(a)(2)).

• Andrew Countryman
 Re: Carolina Cool v. Garrard, et al.
 To: Mark Neill, Cc: Mary Anna Neill

February 11, 2019 at 3:37 PM
 Details

Thanks, Mark. As we discussed, you can go ahead and notice the depositions for March 26-27 at Garrard. The address is 2055 Sugarloaf Circle, Ste. 400, Duluth, GA. I will discuss the issue of your potential motion for costs and fees with my folks.

As a point of clarification, my understanding of the rules is that a non-party witness can be compelled to give a deposition where they are located. I did agree to the depositions at my office on the dates we initially discussed (2/12/13). I do not see how that provides a legal basis for you to get costs and attorney's fees for having to travel to the witnesses' location(s) for the depositions on different dates. Under the rules, your client would be responsible for the witnesses' travel costs or mileage if the depositions take place in South Carolina. That would either mean plane tickets for the witnesses or mileage for approximately 330 miles each way, 660 miles round trip. The federal rate is \$.58 per mile, so that comes out to: $330 \times 2 \times .58 = 382.80$ (approximately) \$1,150. I would have to check the plane ticket prices. However, even if you were to win a motion for costs/fees for taking the depositions in Atlanta, wouldn't the costs for my witnesses to travel to South Carolina be subtracted from that amount? Let me know if you agree on this analysis. I am happy to discuss further with my folks and see if we can avoid having to argue a motion on this issue. In any event, it would be helpful for both sides to know exactly what we are arguing about as far as the costs, etc. are concerned.

Plaintiff's counsel responded with an email discussing his disagreement on the issue and referencing a made up "agreement" to present witnesses in South Carolina at no cost. Plaintiff's Motion presents no evidence of any such agreement.

• Mark Neill
 RE: Carolina Cool v. Garrard, et al.
 To: Andrew Countryman

February 11, 2019 at 3:50 PM

Andy, sorry, but I cannot agree upon a confidentiality agreement until I have a much better understanding of why one would be necessary. We'll have to see what your responses to our discovery will be and then we can discuss. As for your assessment of costs, I completely disagree with your analysis. As you know, my client produced all of the witnesses you requested at no cost to your client in exchange for the same cooperation from your client. Your client's decision not to honor their end of the agreement should entitle my client to any additional legal fees and costs incurred as a result of their decision not to comply.

Counsel for the defense and Plaintiff's counsel also discussed things over the phone that day. Defense counsel sent a letter summarizing the day's events and his position. In pertinent part, the letter: (a) said that counsel initially agreed to the Garrard fact witness depositions in South Carolina based on their schedules; (b) indicated that counsel never waived Plaintiff's responsibility to pay for travel costs; (c) said there was never any agreement to present witnesses with no costs; (d) the Carolina Cool witnesses deposed were local to Horry County, so this was not an issue with them; and (e) offered the possibility of phone and/or video for the Garrard fact witnesses if Plaintiff's counsel did not want to travel to the Georgia for the depositions. Ex. 3.

Plaintiff's counsel never noticed the depositions for the agreed upon March 26th and 27th dates or indicated he did not want to proceed on those dates. Instead, on March 13, 2019, Plaintiff's counsel sent blind notices for the depositions to take place in Georgia on April 16 and 17, 2019. Of

course, the witnesses and counsel for the Defendants were no longer holding those dates since Plaintiff's counsel agreed a month prior to proceed with the depositions on March 26 – 27.

Plaintiff filed the subject Motion to Compel on February 15, 2019. The Motion asks the Court: (a) to compel the depositions of the Garrard fact witnesses to take place in South Carolina with Plaintiff not being responsible for the witnesses' travel costs and (b) in the alternative, to have the depositions in Georgia but make Defendants responsible for Plaintiff's counsel's attorney's fees and costs associated with taking the depositions.

Argument

Plaintiff seeks to compel out of state fact witnesses to give depositions in South Carolina without having to pay for their travel costs, or to have the Defendants pay for Plaintiff's attorney's fees for deposing the witnesses in Georgia. The Rules provide that a non-party witness may be compelled to give a deposition (1) in the county in which he resides, (2) in the county in which he is employed or transacts business in person or (3) at such other convenient place as is fixed by a court order. SCRCP 30(a)(2). The deponent is entitled to \$25 for each day's attendance plus mileage for going from and returning to his place of residence. *Id. see also Murphy v. Nationsbank, NA*, 362 S.C. 179, 607 S.E.2d 80 (2004). Plaintiff cites no authority supporting its position that Rule 30(a)(2) fails to apply here.

Defense counsel never agreed to present the Garrard employees to give depositions in South Carolina at no cost to the Plaintiff (which has not produced any such agreement). While counsel initially agreed to the depositions in South Carolina, he never waived Plaintiff's responsibility for travel costs/mileage under Rule 30(a)(2). Plaintiff's counsel says there was an agreement that the parties would present their fact witnesses at no cost in South Carolina. This is not true. There was

no such agreement. Counsel for the parties did not discuss any such thing. Perhaps the undersigned wrongly assumed the parties knew the rules would apply to provide mileage/travel costs to out of state fact witnesses if they came to South Carolina to sit for depositions.

Plaintiff points to the depositions of two Carolina Cool employees who gave depositions in October 2018, Kyle Rahner and Allen Anderson. Both live in Horry County, which is where their depositions took place (at Plaintiff's counsel's office in Surfside Beach).

4 Q Can you give your full name for the
5 record?
6 A Kyle Richard Rahner.
7 Q Birth date?
8 A January 23, 1968.
9 Q Home address?
10 A 8904 Highway 814, Myrtle Beach 29588. Dep. Kyle Rahner, p. 5, ln. 6 – 10 (Oct. 17, 2018).

18 Q Quick follow-up. Can you give me your
19 home address?
20 A Mine?
21 Q Yes.
22 A 5525 Tranquil Road, and that's Conway.
23 South Carolina 29527. Dep. A. Anderson, p. 139, ln. 18 – 23 (Oct. 17, 2018).

Plaintiff says that because these witnesses voluntarily appeared in South Carolina, this somehow means the defense waived Rule 30(a)(2). Plaintiff provides nothing to support this position.

Travel costs and mileage never came up regarding the depositions of Mr. Rahner and Mr. Anderson since, again, those witnesses were local to Horry County. Plaintiff's counsel only raised this issue and suddenly maintained there some agreement by the Defendants to present their employee fact witnesses in South Carolina at no cost after the cancelation of the February 12th and 13th depositions. The undersigned immediately wrote to clarify he had never entered into any such agreement and forwarded checks for the Carolina Cool witnesses mileage and witness fees to be safe.

See Ex. 3. Traveling within Horry County to give a deposition is much different than traveling hundreds of miles across two states.

The Rules are clear. Plaintiff can compel the witnesses to sit for depositions in Georgia. However, there is no basis for making the Defendants responsible for Plaintiff's attorney's fees and costs associated with getting its lawyer to and from Georgia for the depositions. If the witnesses were to appear in South Carolina, Plaintiff is responsible for their mileage/travel costs for coming here from Georgia. Plaintiff cites no authority to the contrary.

The undersigned initially agreed to produce the witnesses in South Carolina because it was convenient for the witnesses on February 12 – 13. However, there was never any agreement to waive costs associated with getting the witnesses to South Carolina, and Plaintiff is unable to produce any evidence of one. Plaintiff's counsel can certainly take the depositions, and defense counsel is willing to work together on dates and locations.

However, the depositions must proceed under the Rules. Again, those provide that the non-party fact witnesses may be compelled to give depositions where they live (Georgia). There is zero basis for forcing the Defendants to pay Plaintiff's attorney's fees and costs associated with going to Georgia for the depositions. Further, if the witnesses give depositions in South Carolina, the Plaintiff is responsible for getting the witnesses here.

Finally, Plaintiff now somehow takes the disingenuous position that the failure to produce witnesses in February 12 – 13 was in violation of the Rules. The undersigned notified Plaintiff's counsel immediately upon receiving notice of the hearing in his Dorchester County Circuit Court case. Under SCRAC 601, the hearing took precedence over the deposition on February 13th. Further, counsel indicated he needed the prior day to prepare and offered alternative dates. Plaintiff's counsel

accepted March 26th and 27th of the alternative dates, indicating an agreement not to proceed with the depositions as originally set. There is no basis to now claim the defense wrongly failed to produce witnesses on February 12th or 13th.

Conclusion

Plaintiff is a subcontractor that entered into an agreement to provide work at the project for Garrard, a Georgia general contractor. Plaintiff filed the subject Mechanic's Lien and lawsuit against Garrard, a Georgia company with employees who live in Georgia (and work there, as well as other states where Garrard has ongoing projects). Plaintiff can compel non-party fact witnesses to give depositions in Georgia, where they live, or where they are working at the time. If those witnesses, by agreement, give depositions in South Carolina, Plaintiff is responsible for the witnesses' mileage/travel costs associated with getting to and from their residence for the depositions.

No basis exists for Plaintiff to compel non-party fact witnesses to sit for depositions in South Carolina, to give depositions in South Carolina at their own costs, or for the Defendants paying for Plaintiff's attorney's fees and costs associated with the depositions taking place in Georgia. Plaintiff's Motion seeks a baseless obviation from the discovery Rules, and the Court should deny it. The Court should also award attorney's fees in favor of the Defendants under Rule 37 as a result of having to defend and argue this Motion.

[signature page to follow]

Respectfully submitted,

By: /s/ Andrew W. Countryman
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**

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

SECOND AMENDED COMPLAINT

Breach of Contract
Foreclosure of Mechanic's Lien
Quantum Meruit

The Plaintiff, Carolina Cool, Inc., complaining of the Defendants herein, alleges and would show as follows:

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

1. Carolina Cool, Inc. is a South Carolina corporation with its principal place of business in Horry County.
2. Upon information and belief, Defendant Garrard Construction Group, Inc., is a Georgia corporation conducting business in South Carolina.
3. Upon information and belief, Defendant Dave & Buster's of South Carolina, Inc., is a Delaware corporation conducting business in Horry County, South Carolina.

4. Upon information and belief, Defendant Broadway at the Beach, Inc. is a South Carolina corporation conducting business and owning property in Horry County, South Carolina.

5. Upon information and belief, Defendant Billys Plumbing Company LLC is a South Carolina limited liability company conducting business in Horry County, South Carolina.

6. The subject matter of this lawsuit concerns property located in Horry County, South Carolina and a contractual agreement regarding the property to be performed in Horry County, South Carolina.

7. Defendants are not in the Military Service of the United States of America, as contemplated under the Soldier's and Sailor's Relief Act of 1940, and any amendments thereto.

8. Defendant Broadway at the Beach, Inc. is the owner of real property which is the subject of this lawsuit by virtue of a Limited Warranty Deed from Burroughs & Chapin Company, Inc. recorded July 31, 1997, in Deed Book 1961 at Page 853, in the Office of the Register of Deeds for Horry County, South Carolina.

9. Defendant Dave & Buster's of South Carolina, Inc. owns a leasehold interest in the real property pursuant to a lease agreement as set forth in a Memorandum of Lease filed with the Horry County Register of Deeds in Deed Book 3888 at Page 2106.

10. The property is more fully described as:

ALL AND SINGULAR, that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, Horry County, South Carolina. Said tract containing 111.313 acres, more or less, in aggregate and shown as "REVISED TRACT 12 BROADWAY AT THE BEACH PROJECT", "TRACT 4-A", "TRACT 6", "TRACT 9", "TRACT 10", and "TRACT 11" on sheet B-1 of a map entitled "A.L.T.A.SURVFEY PLAN SET OF BROADWAY AT THE BEACH" made by the Associated Land Surveyors for Burroughs & Chapin Company, Inc., dated July 14, 1997 and recorded July 30, 1997 in Plat Book 149 at Page 80 in the Office of the Register of

Deeds for Horry County, South Carolina.

This being the same property leased to Dave & Busters of South Carolina, Inc. by Broadway at the Beach, Inc. as evidence by that Memorandum of Lease dated December 10, 2015 and recorded January 28, 2016 in Deed Book 3888 at Page 2106 in the Office of the Register of Deeds, Horry County, South Carolina.

Address: 1322 Celebrity Circle, Myrtle Beach, South Carolina
TMS: 173-00-04-086

11. That Defendant Garrard Construction Group, Inc. was at all relevant times the general contractor hired by Defendant Dave & Buster's of South Carolina, Inc., presumably with the consent and knowledge of Defendant Broadway at the Beach, Inc.

12. Defendant Garrard Construction Group, Inc. entered into an agreement with the Plaintiff in South Carolina for the performance and delivery of services and materials for the benefit and improvement of the subject property.

13. This Honorable Court has jurisdiction over the parties and subject matter herein.

14. Defendant Garrard Construction Group, Inc. and Plaintiff entered into two contracts whereby Plaintiff agreed to provide labor and materials for a building located on the property.

15. The contract dated October 19, 2016 is known as Dave & Buster's Myrtle Beach Shell Contract, hereinafter the "Shell Contract."

16. Pursuant to the Shell Contract, Defendant Garrard Construction Group, Inc. promised to pay Plaintiff \$35,500.00 for services and materials related to the plumbing and gas system connecting to the exterior and foundation of the building.

17. The contract dated November 18, 2016 is known as the Dave & Buster's Myrtle Beach Interior Contract, hereinafter the "Interior Contract."

18. Pursuant to the Interior Contract, Defendant Garrard Construction Group, Inc. promised to pay Plaintiff \$294,688.00 for services and materials related to the portion of the

plumbing and gas system within the building.

19. At all times, Plaintiff Carolina Cool, Inc. provided competent supervision and manpower to perform the tasks and provide the materials required by the contracts.

20. Any delays associated with the work were caused by Defendant Garrard Construction Group Inc.'s failure to maintain the agreed upon schedule.

21. Defendant also failed to conduct any jobsite meetings, scheduling meetings, or safety meetings.

22. Plaintiff Carolina Cool, Inc. did not cause a delay to the project schedule and was ready, willing, and able to perform both contracts.

23. On January 18, 2017, Defendant Garrard Construction Group Inc. and Plaintiff Carolina Cool, Inc. agreed that the underground rough-in services and materials to be provided pursuant to the Interior Project would be completed January 20, 2017.

24. Carolina Cool, Inc. was on schedule to complete the under-slab rough-in on January 20th, but Defendant forced Carolina Cool, Inc. out of the job site and prohibited the completion of its work.

25. Earlier in the day on January 20th, in response to Plaintiff Carolina Cool Inc.'s request, an Horry County building inspector came to the job site, inspected Carolina Cool Inc.'s work, and declared everything looked good and in compliance. The inspector further agreed to come back the following morning to complete his final inspection so that Carolina Cool Inc.'s work could be covered before arrival of anticipated rain. Because Carolina Cool, Inc. was ordered to vacate the premises by Defendant Garrard Construction Group, Inc., its work could not be completed.

26. Defendant Garrard Construction Group Inc.'s unjustified termination of the Interior Contract just as Plaintiff's work was almost complete, is not only a breach of the contract, but an act

of intentional bad faith as well.

27. Unbeknownst to the Plaintiff at the time, Defendant Garrard Construction Group, Inc. and Defendant Billys Plumbing Company, LLC had already come to an agreement that Billys Plumbing Company LLC would replace Plaintiff on the project.

28. Defendant Garrard Construction Group, Inc. and Billys Plumbing Company LLC had already entered into a secret agreement prior to January 18, 2017. Accordingly, Defendant Garrard Construction Group, Inc.'s representations to Carolina Cool, Inc. regarding work to be completed by Carolina Cool, Inc. by January 20, 2017 were false and were made intentionally with the intent to deceive Carolina Cool, Inc.

29. Defendant Billys Plumbing Company LLC knew there was a contract between Defendant Garrard Construction Group, Inc. and Carolina Cool, Inc. regarding the project and knew Carolina Cool, Inc. had provided and was continuing to provide goods and services pursuant to the contract. Furthermore, Billys Plumbing Company LLC knew that Carolina Cool, Inc. was not aware that Defendant Garrard Construction Group, Inc. and Billys Plumbing Company LLC had entered into the secret agreement to replace Carolina Cool, Inc.

30. Defendant Billys Plumbing Company LLC intentionally interfered with the contract between Carolina Cool, Inc. and Defendant Garrard Construction Group, Inc. and there was no justification for its interference. As a result, Carolina Cool, Inc. suffered damages.

31. Defendant Garrard Construction Group, Inc. and Defendant Billys Plumbing Company, LLC took possession of the materials purchased by Carolina Cool, Inc. for the project which were being stored on site and utilized those materials in improving the property.

32. Defendant Garrard Construction Group, Inc. and Defendant Billys Plumbing Company, LLC failed to compensate Carolina Cool, Inc. for the materials it seized or for the work

performed by Carolina Cool, Inc.

33. In accordance with the Interior Contract, Plaintiff is owed monies totaling \$93,437.00 (includes retainage) for the work completed and materials provided.

34. Additionally, with regards to the Interior Contract, Plaintiff is owed lost profits on the remaining balance of the contract.

35. Defendant Garrard Construction Group Inc. also terminated, without justification, the Shell Contract without providing any reason.

36. In accordance with the Shell Contract, Plaintiff is owed monies totaling \$19,913.00 (includes retainage) for the work completed and materials provided.

37. Additionally, with regards to the Shell Contract, Plaintiff is owed lost profits for the balance of the contract.

38. That despite demands for payment, the Defendant Garrard Construction Group, Inc., has declined, failed, neglected and willfully refused to pay the amounts due.

39. Defendant is in breach of the Contracts and the Plaintiff is entitled to a judgment against Defendant in the amount of \$113,350.00, lost profits to be determined by the Court, attorney fees, costs and prejudgment interest.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT WITH FRAUDULENT ACT)

40. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

41. As set forth above, Plaintiff and Defendant entered into Contracts.

42. Defendant Garrard Construction Group, Inc. made false representations as to the services provided and work performed by Plaintiff.

43. Defendant Garrard Construction Group, Inc. made false representations to the Plaintiff regarding the schedule of when work was to be performed.

44. Upon information and belief, Defendant Garrard Construction Group, Inc. blamed Plaintiff for the delays in the project so as to explain its failure to perform in accordance with its general contract agreement with Defendant Dave & Buster's of South Carolina, Inc. and with its agreement with Defendant Broadway at the Beach, Inc.

45. Defendant Garrard Construction Group, Inc. did not act fairly in its dealings with Plaintiff Carolina Cool, Inc.

46. Defendant Garrard Construction Group, Inc. secretly contracted with Billys Plumbing Company LLC and intentionally made false statements to Carolina Cool, Inc. as to when the underground slab rough-in could be completed.

47. Defendant breached the Contracts and Plaintiff suffered damages as more fully set forth above.

48. Defendant Garrard Construction Group, Inc. had fraudulent intent when it breached the Contracts and a fraudulent act accompanied the breach.

49. Defendant is liable to Plaintiff in the amount of \$113,350.00, lost profits to be determined by the Court, additional punitive damages, plus pre-judgment interest, and attorney fees and costs.

FOR A THIRD CAUSE OF ACTION
(FORECLOSURE OF MECHANIC'S LIEN AS TO THE LEASEHOLD INTEREST OF DAVE
& BUSTER'S OF SOUTH CAROLINA, INC.)

50. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

51. On or about April 12, 2017, Plaintiff timely filed a Notice and Certificate of Mechanic's Lien ("Mechanic's Lien") in Lien Book 249 at Page 3473 in the Office of the Register of Deeds for Horry County.

52. The Mechanic's Lien was timely served upon all Defendants.

53. That simultaneously with the filing of this pleading, Plaintiff filed a Notice of Lis Pendens and has commenced foreclosure of its lien within six (6) months of the last date Carolina Cool, Inc. provided labor and materials to the property.

54. Plaintiff Carolina Cool, Inc. is entitled to reasonable attorneys' fees, court costs and prejudgment interest.

55. Therefore, Plaintiff Carolina Cool, Inc. is entitled to a judgment of foreclosure of its Mechanic's Lien against Defendant Dave & Buster's of South Carolina, Inc.'s leasehold interest in the Property in the amount of \$113,350.00, prejudgment interest, court costs and reasonable attorneys fees.

FOR A FOURTH CAUSE OF ACTION
(UNJUST ENRICHMENT)

56. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

57. As stated herein, Carolina Cool, Inc. provided labor, services and materials that were used to make improvements to the Property.

58. The Defendants accepted, used, and realized benefits from Plaintiff Carolina Cool, Inc.'s provision of labor, services and materials in the improvement of the Property.

59. It would be unjust and inequitable for the Defendants to retain the benefit of Plaintiff's furnishing of labor, services and materials unless the Defendants pay the value of the

materials and services provided by Carolina Cool, Inc.

60. Neither the Plaintiff nor the Defendants anticipated Carolina Cool, Inc. would provide free materials and labor for improvements to the Property and allow the Defendants to reap the benefits of these materials and supplies without paying for the same would be to provide unjust enrichment at Plaintiff's expense.

61. That despite demand having been made, Plaintiff remains unpaid for the provision of its labor and materials which has resulted in the unjust enrichment of the Defendants, so that Plaintiff is informed and believes it is entitled to a judgment in *quantum meruit* for the amount of the material and labor provided to the Property, which is equal to \$113,250.00.

FOR A FIFTH CAUSE OF ACTION

(Payment of Claim and Recovery of Attorney Fees and Interest)

62. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

63. Plaintiff provided labor, services, and materials pursuant to its contract with Garrard Construction Group, Inc. for the improvement of real property leased by Dave & Buster's of South Carolina, Inc. from Broadway at the Beach, Inc.

64. Plaintiff made due demand to the Defendants by certified mail requesting payment for the provided labor, services, and materials.

65. Pursuant to S.C. Code § 27-1-15, Defendants had a duty to make a fair and reasonable investigation of the merits of the claim and to pay it, or whatever portion it is determined as valid, within forty-five days from the date of mailing the demand.

66. Defendants failed to make a fair and reasonable investigation or otherwise unreasonably failed to pay the claim.

67. Plaintiff is entitled to payment of its claim, reasonable attorney fees and costs, and interest in accordance with South Carolina law.

FOR A SIXTH CAUSE OF ACTION
(Payment of Claim and Interest)

68. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

69. Plaintiff contracted to furnish labor and materials and has provided labor and materials for Garrard Construction Group, Inc. for the improvement of real property leased by Dave & Buster's of South Carolina, Inc. from Broadway at the Beach, Inc.

70. Plaintiff is entitled to payment from Garrard Construction Group, Inc.

71. Plaintiff requested payment but Garrard Construction Group, Inc. failed to make payment.

72. Garrard Construction Group, Inc. violated S.C. Code § 29-6-10 et. seq.

73. Plaintiff is entitled to all payments due, costs, and interest allowed by S.C. Code § 29-6-50.

FOR A SEVENTH CAUSE OF ACTION
(Tortious Interference with a Contract)

74. The Plaintiff reincorporates and re-alleges all previous allegations as if fully repeated herein.

75. Defendant Billys Plumbing Company LLC is liable to the Plaintiff for tortious interference with a contractual relationship.

76. Billys Plumbing Company LLC was aware of the contracts between Carolina Cool, Inc. and Garrard Construction Group, Inc. and intentionally procured Garrard Construction Group, Inc.'s breach of those contracts.

77. Billys Plumbing Company LLC acted without justification and with gross disregard of Carolina Cool, Inc., which caused Carolina Cool, Inc. to suffer damages as a result.

78. Defendant is liable to Plaintiff in the amount of \$113,350.00, lost profits to be determined by the Court, additional punitive damages, plus pre-judgment interest, and attorney fees and costs.

WHEREFORE, Carolina Cool, Inc. prays for the following relief:

a. That the Court inquire into the pleadings of all parties and after hearing evidence, issue such order and determine such priorities for relief as is appropriate to the respective parties;

b. For a judgment against Defendant Garrard Construction Group, Inc. and Billys Plumbing Company LLC in the amount of \$113,350.00, lost profits and reasonable attorney fees and costs to be determined by the Court for breach of contract and tortious interference with contract;

c. For judgment against the Defendants in the amount of \$113,250.00 in *quantum meruit*;

d. For a judgment against Defendant Garrard Construction Group, Inc. and Billys Plumbing Company LLC for punitive damages;

e. That its Mechanic's Lien interest as to the Leasehold interest in the Property be foreclosed and that the priority of the various parties be established by the court;

f. For payment of its claim, reasonable attorney fees and costs, and interest in accordance with South Carolina law

g. That it be granted prejudgment interest, attorney fees and costs; and,

h. For such other and further relief as this Court may deem just and equitable.

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

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

Dated: May 3, 2019
Murrells Inlet, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff,

v.

GARRARD CONSTRUCTION GROUP, INC.,
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC., BROADWAY AT THE BEACH, INC., and
BILLY'S PLUMBING COMPANY, LLC,

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

) ANSWER TO THE SECOND
) AMENDED COMPLAINT OF
) DEFENDANTS GARRARD
) CONSTRUCTION GROUP, INC., DAVE
) & BUSTER'S OF SOUTH CAROLINA,
) INC., AND BROADWAY AT THE
) BEACH, INC. (AND COUNTER-
) CLAIM AND THIRD-PARTY CLAIM
) OF GARRARD CONSTRUCTION
) GROUP, INC.)

The Defendants, Garrard Construction Group, Inc., Dave & Buster's of South Carolina, Inc. and Broadway at the Beach, Inc. ("these Defendants") by and through their undersigned counsel, respond to the Second Amended Complaint as follows:

1. These Defendants deny all allegations not specifically admitted in this pleading.
2. Upon information and belief, these Defendants admit paragraph 1.
3. In response to paragraph 2, these Defendants admit only that Garrard Construction Group, Inc. ("Garrard") is a Georgia company authorized to do business in South Carolina.

4. In response to paragraph 3, these Defendants admit only that Dave & Buster's of South Carolina, Inc. ("DBSC") is a Delaware company authorized to do business in South Carolina.

5. These Defendants admit paragraph 4.

6. Upon information and belief, these Defendants admit paragraph 5.

7. In response to paragraph 6, these Defendants admit only that the project at issue is in Horry County and that Plaintiff's failure to perform on certain contracts underlies this action. These Defendants deny all remaining and/or inconsistent allegations.

8. These Defendants admit paragraph 7 as it relates to them (they are not in the military).

9. These Defendants admit paragraphs 8 – 10.

10. In response to paragraph 11, these Defendants admit only that Garrard was retained to provide general contracting services for the subject project which involved building the Dave & Buster's Myrtle Beach location.

11. In response to paragraph 12, these Defendants admit only that Garrard entered into two contracts with Plaintiff to perform specific scopes of work the project. These Defendants refer to the terms of the contracts and deny paragraph 12 to the extent it is inconsistent with the contracts.

12. Paragraph 13 is a conclusion of law to which the Defendants are not required to respond.

13. In response to paragraphs 14 – 18, these Defendants admit only that Plaintiff and Garrard entered into two contracts whereby Plaintiff agreed to provide certain labor and materials at/to the Dave & Buster's Myrtle Beach project. These Defendants crave reference to those contracts as to the specifics and deny said paragraphs to the extent they are inconsistent with the contracts. Further responding, Plaintiff breached the contracts.

14. These Defendants deny paragraphs 19 – 22.

15. These Defendants deny paragraph 23 as stated.

16. These Defendants deny paragraphs 24 – 30.

17. These Defendants deny paragraphs 31 – 32 as stated.

18. These Defendants deny paragraphs 33 – 39.

19. In response to paragraph 40, these Defendants re-allege all preceding paragraphs as if restated here.

20. In response to paragraph 41, these Defendants admit only that Plaintiff and Garrard entered into two contracts for work at the Dave & Buster's Myrtle Beach project. These Defendants crave reference to those contracts and deny said paragraph to the extent it is inconsistent with the contracts.

21. These Defendants deny paragraphs 42 – 49.

22. In response to paragraph 50, these Defendants re-allege all preceding paragraphs as if restated here.

23. In response to paragraphs 51 – 53, these Defendants admit only that Plaintiff filed a baseless Mechanic's Lien and *Lis Pendens* wrongfully alleging Plaintiff is owed money on the project. The Defendants deny all remaining and/or inconsistent allegations.

24. These Defendants deny paragraphs 54 – 55.

25. In response to paragraph 56, these Defendants re-allege all preceding paragraphs as if restated here.

26. These Defendants deny paragraphs 57 – 61.

27. In response to paragraph 62, these Defendants re-allege all preceding paragraphs as if restated here.

28. These Defendants deny paragraphs 63 – 67.

29. In response to paragraph 68, these Defendants re-allege all preceding paragraphs as if restated here.

30. These Defendants deny paragraphs 69 – 73.

31. In response to paragraph 74, these Defendants re-allege all preceding paragraphs as if restated here.

32. These Defendants deny paragraphs 75 – 78.

33. These Defendants deny the prayer for relief (including all subparts), that comprising the remainder of the Complaint.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

34. The Second Amended Complaint fails to state facts sufficient to constitute a cause of action against any of these Defendants, and the Court should therefore dismiss it pursuant to SCRCP 12(b)(6).

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Laches, Waiver, Estoppel)

35. These Defendants raise the equitable defenses of laches, waiver and estoppel.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Unclean Hands)

36. Plaintiff's claims are barred because it has unclean hands.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Prior Breach)

37. None of these Defendants can be liable for breach of contract because of Plaintiff's prior breach.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Adherence to Contract)

38. Plaintiff's claims fail because Garrard terminated Plaintiff from the project pursuant to the terms of Garrard's contract(s) with Plaintiff and after Plaintiff's default.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(S.C. Code § 29-5-10)

39. These Defendants raise all defenses provided by S.C. Code § 29-5-10, the South Carolina Mechanic's Lien Statute. This includes that Plaintiff did or may have failed to initiate this lawsuit within the time frame set forth in the South Carolina Mechanic's Lien statute which would bar recovery from the Bond posted by Garrard. This also includes the paid in full defense.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Failure to Mitigate)

40. Plaintiff has failed to mitigate its alleged damages as the law requires.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Contract)

41. Plaintiff does not have privity of contract with Broadway at the Beach, Inc. or DBSC and therefore is barred from recovery on any cause of action against either of them arising out of contract theory.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Punitive Damages Unconstitutional)

42. Plaintiff's claim for punitive damages violate the Constitutions of South Carolina and the United States, and such claim(s) should be barred and/or limited appropriately.

FURTHER RESPONDING
AND AS AN AFFIRMATIVE DEFENSE:
(Reservation and Non-waiver)

43. These Defendants reserve any additional and further defenses as may be revealed by information obtained during discovery and investigation and as are consistent with the South Carolina Rules of Civil Procedure.

FURTHER RESPONDING
AND AS A COUNTERCLAIM BY GARRARD

44. Garrard re-alleges all preceding paragraphs as if restated here verbatim.

45. Garrard refers to and incorporates by reference its Counter-claims filed on July 6, 2017.

THIRD-PARTY COMPLAINT BY GARRARD

46. Garrard re-alleges all preceding paragraphs as if restated here verbatim.

47. Garrard refers to and incorporates by reference the Third-Party Complaint filed on July 6, 2017.

THEREFORE, these Defendants ask this Court to dismiss the Second Amended Complaint and award recovery on Garrard's Counter-claim and Third-Party Complaint (to include actual damages, consequential damages, punitive damages, attorney's fees, interest) and other further relief as the Court deems just and proper.

[signature page to follow]

Respectfully submitted,

By: /s/ Andrew C. Countryman
ANDREW W. COUNTRYMAN
State Bar No.: 72700
321 Wingo Way, Suite 102
Mt. Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com

*Lawyer for Garrard Construction Group,
Inc., Dave and Buster's of South Carolina,
Inc. and Broadway at the Beach, Inc.*

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

Reply to Counterclaim of Defendant
Garrard Construction Group, Inc.
filed May 10, 2019

TO: Andrew W. Countryman, Attorney for Defendants and Third-Party Plaintiff

The Plaintiff, Carolina Cool, Inc., by and through its undersigned attorney, would respectfully show unto this Honorable Court the following in response to Defendant Garrard Construction Group Inc.'s Counterclaim:

FIRST DEFENSE

1. That each and every allegation of the Counterclaim and Third-Party Complaint which is not hereinafter specifically admitted is denied and strict proof demanded thereof.
2. The Plaintiff refers to and incorporates by reference its Reply to Counterclaim filed on September 5, 2017.

SECOND DEFENSE

3. Each and every allegation alleged above is repeated verbatim herein.
4. The Counterclaim and Third-Party Complaint must be dismissed pursuant to SCRCP Rule 12(b)(6) for failure of the pleading to state facts sufficient to constitute a cause of action.

THIRD DEFENSE

5. Each and every allegation alleged above is repeated verbatim herein.
6. Plaintiff pleads contributory negligence as a complete and affirmative defense.

FOURTH DEFENSE

7. Each and every allegation alleged above is repeated verbatim herein.
8. Plaintiff pleads the intervening acts of others as a complete and affirmative defense.

FIFTH DEFENSE

9. Each and every allegation alleged above is repeated verbatim herein.
10. Plaintiff pleads Defendant/Third-Party Plaintiff's own comparative negligence as a complete and affirmative defense.

SIXTH DEFENSE

11. Each and every allegation alleged above is repeated verbatim herein.
12. Plaintiff pleads Defendant/Third-Party Plaintiff's failure to comply with the contractual obligations of the Interior and Shell Contracts as a complete and affirmative defense.

SEVENTH DEFENSE

13. Each and every allegation alleged above is repeated verbatim herein.
14. Plaintiff pleads Defendant/Third-Party Plaintiff's failure to comply with the requisite provisions of the Subcontract Performance Bond as a complete and affirmative defense.

EIGHTH DEFENSE

15. Each and every allegation alleged above is repeated verbatim herein.

16. Plaintiff pleads Defendant/Third-Party Plaintiff's failure to mitigate as a complete and affirmative defense.

NINTH DEFENSE

17. Each and every allegation alleged above is repeated verbatim herein.

18. Plaintiff is informed and believes and therefore alleges that if it failed to perform any oral or written promise, covenant or condition, it was prevented from performing such obligations by Defendant/Third-Party Plaintiff, other defendants, or third parties.

19. Therefore, the Defendant/Third-Party Plaintiff's Counterclaim should be barred in whole or in part due to the actions of Defendant/Third-Party Plaintiff, other defendants or third parties in expressly preventing performance, if any, on the part of the answering Plaintiff and Third-Party Defendant.

TENTH DEFENSE

20. Each and every allegation alleged above is repeated verbatim herein.

21. Plaintiff is informed and believes and therefore alleges the works of improvement installed by Plaintiff on the property which is the subject of this action was properly installed in strict accordance with plans, specifications and special orders supplied by the Defendant/Third-Party Plaintiff.

22. Because any alleged defects in materials or workmanship of the work of improvement installed by Plaintiff were caused by deficiencies in the plans, specifications and/or special orders supplied to answering Plaintiff, which deficiencies were neither known nor

discoverable by Plaintiff by the exercise of reasonable care, any recovery against answering Plaintiff should be barred or otherwise diminished.

ELEVENTH DEFENSE

23. Each and every allegation alleged above is repeated verbatim herein.

24. Plaintiff is informed and believes and therefore alleges that although under a duty to do so, Defendant/Third-Party Plaintiff failed to give proper and timely notice of the alleged defects which are the subject of this action and failed to request Plaintiff cure such alleged defects, thereby relieving Plaintiff of any and all legal and equitable obligations with regard thereto, and barring recovery.

TWELFTH DEFENSE

25. Each and every allegation alleged above is repeated verbatim herein.

26. Plaintiff is informed and believes and therefore alleges Defendant/Third-Party Plaintiff's claims are barred or reduced because the claims are subject to setoff or recoupment.

THIRTEENTH DEFENSE

27. Each and every allegation alleged above is repeated verbatim herein.

28. Plaintiff is informed and believes and therefore alleges any and all contractual provisions allegedly breached by the Plaintiff were, and are unconscionable and unenforceable, thus barring any recovery against Plaintiff or Third-Party Defendant.

FOURTEENTH DEFENSE

29. Each and every allegation alleged above is repeated verbatim herein.

30. Plaintiff is informed and believes and thereon alleges that if any contracts, obligations or agreements were entered into as alleged in the Counterclaim, any duties of performance by Plaintiff

thereunder were excused by reason of failure of consideration thus barring any recovery by Defendant/Third-Party Plaintiff.

FIFTEENTH DEFENSE

31. Each and every allegation alleged above is repeated verbatim herein.

32. Plaintiff pleads Defendant/Third-Party Plaintiff's Unclean hands as a complete and affirmative defense.

SIXTEENTH DEFENSE

33. Each and every allegation alleged above is repeated verbatim herein.

34. Plaintiff pleads fraud as a complete and affirmative defense.

SEVENTEENTH DEFENSE

35. Each and every allegation alleged above is repeated verbatim herein.

36. Plaintiff pleads misrepresentation as a complete and affirmative defense.

EIGHTEENTH DEFENSE

37. Each and every allegation alleged above is repeated verbatim herein.

38. Plaintiff is presently unaware whether it may have additional, as yet unstated defenses. Plaintiff hereby reserves all rights under the law to assert in the future any additional affirmative defenses as it becomes known during the course of litigation.

WHEREFORE, having fully answered the Counterclaim of Defendant, Plaintiff prays that:

1. Defendant's Counterclaims be dismissed with prejudice, with all costs assessed against the Defendant;
2. That the Plaintiff be granted the relief requested in its Amended Complaint;

3. For a judgment against the Defendant in the amount of all reasonable attorneys fees and costs incurred in the defense of this action;
4. For such other and further relief in as this Court deems just and proper.

Respectfully submitted,

May 22, 2019

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

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mneill@neilllawfirm.com
Attorney for Carolina Cool, Inc.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CAROLINA COOL, INC.,

PLAINTIFF,

VS.

GARRARD CONSTRUCTION GROUP, INC.;
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC.; 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. 17-CP-26-03562

**ANSWER OF RLI INSURANCE
COMPANY TO THE THIRD-PARTY
COMPLAINT OF GARRARD
CONSTRUCTION GROUP, INC.**

**TO: ANDREW W. COUNTRYMAN AND COUNTRYMAN LAW FIRM, ATTORNEY FOR
GARRARD CONSTRUCTION GROUP, INC.**

Third-Party Defendant, RLI Insurance Company (hereinafter "RLI"), by and through its attorneys at Lyles & Associates, LLC answers the Third-Party Complaint of Garrard Construction Group, Inc. (hereinafter "Garrard Construction") and states as follows:

1. All allegations of Garrard Construction's Third-Party Complaint, which are not hereinafter admitted, denied or otherwise modified, are denied, and strict proof thereof is demanded.
2. Paragraphs 1 through 45, inclusive, constitute Defendants Garrard Construction, Dave & Buster's of South Carolina, Inc. and Broadway at the Beach, Inc.'s Answer to Plaintiff's Second Complaint and Counterclaim, and, as such, no response is required by RLI. To the extent that any response is required, RLI denies any allegations or statements made in Paragraphs 1 through 45 and demands strict proof thereof. To the extent that those allegations and defenses may constitute a defense

to Garrard Construction's Third-Party Complaint, RLI hereby adopts and incorporates by reference those allegations herein as if set forth verbatim.

3. In response to Paragraph 46, RLI reincorporates and realleges its responses to prior Paragraphs as if reincorporated verbatim herein.

4. RLI refers to and incorporates by reference the Answer of RLI Insurance Company to the Third-Party Complaint of Garrard Construction Group, Inc. filed on September 25, 2017.

5. In response to the allegations of Paragraph 82 of Garrard Construction's Third-Party Complaint, the allegations referred to therein were not directed to RLI, so no response is required from RLI. To the extent those allegations require a response from RLI, said Paragraph is denied and strict proof thereof is demanded.

6. RLI denies the "THEREFORE" paragraph.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient/Rule 12(b)(6), *SCRCP*)

7. RLI realleges and restates each and every Paragraph above as if fully restated verbatim herein.

8. Garrard Construction's Third-Party Complaint fails to state facts sufficient to constitute a cause of action against Third-Party Defendant, and should be dismissed, with prejudice.

FOR A SECOND AFFIRMATIVE DEFENSE
(Failure to Comply with a Condition Precedent)

9. RLI realleges and restates each and every Paragraph above as if fully restated verbatim herein.

10. Garrard Construction's claims against RLI are barred, in whole or in part, to the extent that Garrard Construction failed to comply with conditions precedent.

FOR A THIRD AFFIRMATIVE DEFENSE
(Statute of Limitations)

11. RLI realleges and restates each and every Paragraph above as if fully restated verbatim

herein.

12. Garrard Construction's claims are barred by the applicable statute of limitations.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Laches/Waiver/Estoppel)

13. RLI realleges and restates each and every Paragraph above as if fully restated verbatim herein.

14. Garrard Construction's claims should be barred, in whole or in part, by the equitable doctrines of laches, waiver and/or estoppel.

FOR A FIFTH AFFIRMATIVE DEFENSE
(RLI's Bond is Null and Void)

15. RLI realleges and restates each and every Paragraph above as if fully restated verbatim herein.

16. Garrard Construction's claims should be barred entirely as the bond of RLI is null and void.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Lack of Standing)

17. RLI realleges and restates each and every Paragraph above as if fully restated verbatim herein.

18. Garrard Construction's claims should be barred in whole or in part because Garrard Construction lacks standing to assert them.

RESERVATIONS AND NON-WAIVER

19. RLI realleges and restates each and every Paragraph above as if fully restated verbatim herein.

20. RLI reserves the right to assert and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

21. WHEREFORE, having fully answered Garrard Construction's Third-Party Complaint,

RLI prays that the same be dismissed with prejudice and RLI be entitled to recover all costs, including reasonable attorney's fees, incurred in defending this action, together with such other and further relief as this Court may deem just and proper.

s/Robert T. Lyles, Jr.

Robert T. Lyles, Jr., Esq. (SC Bar No. 10299)

LYLES & ASSOCIATES, LLC

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**ATTORNEYS FOR THIRD-PARTY DEFENDANT
RLI INSURANCE COMPANY**

Charleston, South Carolina
May 23, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
CAROLINA COOL, INC.,	)	CASE NO.: 2017-CP-26-03562
Plaintiff,	)	
v.	)	
Garrard Construction Group, Inc., Dave & Buster's of South Carolina, Inc., Broadway at the Beach, Inc., and Billy's Plumbing Company LLC	)	
Defendants.	)	ANSWER TO SECOND AMENDED COMPLAINT
Garrard Construction Group, Inc.	)	
Third-Party Plaintiff,	)	
v.	)	
RLI INSURANCE COMPANY,	)	
Third-Party Defendant.	)	

TO: ALL NAMED PARTIES AND THEIR COUNSEL OF RECORD:

Defendant Billy's Plumbing Co., LLC (hereinafter referred to as "Billy's Plumbing")

answers Plaintiff's Second Amended Complaint (the "Complaint") as follows:

FOR A FIRST DEFENSE
(General Defense)

1. Defendant Billy's Plumbing answers the Plaintiff's Complaint by denying each and every allegation not specifically admitted, modified or explained.

FOR A SECOND DEFENSE
(Responses to Specific Paragraphs of Complaint)

Answer to Second Amended Complaint
of Defendant Billy's Plumbing Company
Carolina Cool v. Garrard Construction Group, et al.
2017-CP-26-03562

2. Further answering of the Complaint herein and as a Second Defense thereto, Defendant Billy's Plumbing reallege and expressly incorporate the defense above as fully as if repeated verbatim herein.

3. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 1, 2, 3 and 4 of the Plaintiff's Complaint and, therefore deny the same.

4. Defendant Billy's Plumbing admits the allegation contained in Paragraph 5 of the Plaintiff's Complaint.

5. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Plaintiff's Complaint and, therefore deny the same.

6. Responding to Paragraph 7 of Plaintiff's Complaint, Defendant Billy's Plumbing admits that it is not in the Military Service of the United States of America, however, lacks sufficient information to form a belief as to the military status of the other named Defendants.

7. Responding to Paragraph 8 of Plaintiff's Complaint, Defendant Billy's Plumbing lacks sufficient knowledge or information to admit or deny the allegation as stated, however, Defendant would aver that the records for the Office of the Register of Deeds for Horry County speak for themselves.

8. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 9, 10, 11 and 12 of the Plaintiff's Complaint and, therefore deny the same.

9. Responding to Paragraph 13 of Plaintiff's Complaint, this paragraph sets forth

Answer to Second Amended Complaint
of Defendant Billy's Plumbing Company
Carolina Cool v. Garrard Construction Group, et al.
2017-CP-26-03562

jurisdictional and venue allegations that present legal conclusions and questions of law to be determined by the Court, to which no answer is required.

10. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the Plaintiff's Complaint and, therefore denies the same.

11. Defendant Billy's Plumbing denies the allegations in Paragraphs 27, 28, 29, 30, 31 and 32 of Plaintiff's Complaint.

12. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 33, 34, 35, 36, 37, 38 and 39 of the Plaintiff's Complaint and, therefore denies same

13. Responding to Paragraph 40 of Plaintiff's Complaint, Defendant Billy's Plumbing reincorporates and realleges all its previous responses as if repeated herein.

14. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 41, 42, 43, 44 and 45 of Plaintiff's Complaint and, therefore denies the same.

15. Responding to Paragraph 46 of Plaintiff's Complaint, Defendant Billy's Plumbing denies the existence of any secret contract between Garrard Construction Group and Billy's Plumbing. Defendant Billy's Plumbing lacks knowledge or information sufficient to admit or deny the remaining allegations, and therefore denies the same.

16. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 47, 48, and 49 of the Plaintiff's Complaint and, therefore denies same.

17. Responding to Paragraph 50 of Plaintiff's Complaint, Defendant Billy's Plumbing

Answer to Second Amended Complaint
of Defendant Billy's Plumbing Company
Carolina Cool v. Garrard Construction Group, et al.
2017-CP-26-03562

reincorporates and realleges all its previous responses as if repeated herein.

18. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 51, 52, 53, 54 and 55 Plaintiff's Complaint and, therefore denies the same.

19. Responding to Paragraph 56 of Plaintiff's Complaint, Defendant Billy's Plumbing reincorporates and realleges all its previous responses as if repeated herein.

20. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 57 of Plaintiff's Complaint and, therefore denies the same.

21. In response to Paragraphs 58, 59, 60 and 61 of Plaintiff's Complaint, it is unclear as to whom the Plaintiff is referring when using the term "Defendants." To the extent it could be inferred that Defendant Billy's Plumbing is included as part of this group, all allegations in these paragraphs are denied.

22. Responding to Paragraph 62 of Plaintiff's Complaint, Defendant Billy's Plumbing reincorporates and realleges all its previous responses as if repeated herein.

23. In response to Paragraphs 63, 64, 65, 66 and 67 of Plaintiff's Complaint, it is unclear as to whom the Plaintiff is referring when using the term "Defendants." To the extent it could be inferred that Defendant Billy's Plumbing is included as part of this group, all allegations in these paragraphs are denied.

24. Responding to Paragraph 68 of Plaintiff's Complaint, Defendant Billy's Plumbing reincorporates and realleges all its previous responses as if repeated herein.

25. Defendant Billy's Plumbing is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 69, 70, 71, 72 and 73 of

Plaintiff's Complaint and, therefore denies the same.

26. Responding to Paragraph 74 of Plaintiff's Complaint, Defendant Billy's Plumbing reincorporates and realleges all its previous responses as if repeated herein.

27. Defendant Billy's Plumbing denies the allegations in Paragraphs 75, 76, 77 and 78 of Plaintiff's Complaint and demands strict proof thereof.

28. Defendant Billy's Plumbing denies that Plaintiff is entitled to any of the relief requested against Billy's Plumbing in the prayer for relief paragraph following Paragraph 78 of Plaintiff's Complaint.

FURTHER ANSWERING BY WAY OF AFFIRMATIVE DEFENSES

FOR A THIRD DEFENSE:

(Rule 12(b)(6), SCRPC- Failure to State Facts)

29. Plaintiff's Complaint fails to state facts sufficient to constitute any cause of action against Defendant Billy's Plumbing. Plaintiff's Complaint should therefore be dismissed with regard to Defendant Billy's Plumbing, with prejudice.

FOR A FOURTH DEFENSE:

(Lack of Proximate Cause)

30. Plaintiff's alleged damages, if any, are not the proximate cause of any act or omission alleged to have been committed by Defendant Billy's Plumbing.

FOR A FIFTH DEFENSE:

(Set-Off to Prevent Double Recovery)

31. Any award of damages in favor of Plaintiff against Defendant Billy's Plumbing must be off set by any award of damages against the other named Defendants so as to avoid Double Recovery.

Answer to Second Amended Complaint
of Defendant Billy's Plumbing Company
Carolina Cool v. Garrard Construction Group, et al.
2017-CP-26-03562

FOR A SIXTH DEFENSE:

(Improper Claim for Punitive Damages)

32. Punitive damages are inappropriate in this case, since the alleged actions of Defendant Billy's Plumbing, which are denied, do not rise to the level required to justify a punitive damages award under a theory of tortious interference with a contractual relationship.

FOR A SEVENTH DEFENSE:

(Punitive Damages Unconstitutional)

33. Any award of punitive damages in Plaintiff's favor would violate those clauses of the United States Constitution and the South Carolina Constitution pertaining to privileges and immunities, due process and equal protection. Defendant Billy's Plumbing asserts entitlement to all benefits, privileges, protections and limitations on any punitive damages award under the South Carolina Fairness in Civil Justice Act of 2011.

FOR AN EIGHTH DEFENSE:

(Incorporation)

34. Defendant Billy's Plumbing hereby incorporates and asserts all defenses, counterclaims, cross-claims, setoffs and credits pled by other parties in this action to Plaintiff's claims, to the extent they are consistent with this Answer and Defendant Billy's Plumbing's denial of liability of any kind.

FOR A NINTH DEFENSE:

(Additional Defenses)

35. Defendant Billy's Plumbing hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to Plaintiff's Complaint to assert any such defenses

WHEREFORE, having fully answered the Plaintiff's Second Amended Complaint, Defendant Billy's Plumbing prays that the same be dismissed, with prejudice, together with the costs and disbursements of this action, and for such other and further relief as this Court deems just and proper.

Respectfully Submitted,

THE HYMAN LAW GROUP, P.A

/s Jordan W. Hyman

Jordan W. Hyman (S.C. Bar 101257)
1208 Third Avenue
Conway, South Carolina 29526
Phone: (843) 248-2024
Fax: (843) 438-8161

Conway, South Carolina

Answer to Second Amended Complaint
of Defendant Billy's Plumbing Company
Carolina Cool v. Garrard Construction Group, et al.
2017-CP-26-03562

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

Plaintiff's Motion to Compel Against
Defendant Billys Plumbing Company, LLC

TO: Jordan W. Hyman, Counsel for Defendant Billys Plumbing Company, LLC

You will please take notice the Plaintiff, Carolina Cool, Inc., by and through its undersigned counsel, hereby moves for an Order of this Court compelling the Defendant to fully answer the First Set of Interrogatories and Request of Documents served on June 28, 2019, a copy of which is attached hereto as Exhibit "A."

Plaintiff asks this Court to grant an Order compelling Defendant to provide the requested discovery and awarding its reasonable attorney's fee and costs of this motion.

The undersigned, pursuant to Rule 11, SCRPC, hereby certifies that he has attempted in good faith to resolve the matter contained in the Motion but to no avail.

Respectfully submitted,

September 9, 2019

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

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

EXHIBIT "A"

ELECTRONICALLY FILED - 2019 Sep 09 11:05 AM - HORRY - COMMON PLEAS - CASE#2017CP2603562

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>Certificate of Service</u>
	)	Plaintiff's Interrogatories and
Garrard Construction Group, Inc., Dave &	)	Request for Production of Documents
Buster's of South Carolina, Inc., Broadway	)	to Billys Plumbing Company, LLC.
at the Beach, Inc., and Billys Plumbing	)	
Company LLC,	)	
	)	
Defendants.	)	
	)	
Garrard Construction Group, Inc.,	)	
	)	
Third-Party Plaintiff,	)	
vs.	)	
	)	
RLI Insurance Company,	)	
	)	
Third-Party Defendant.	)	

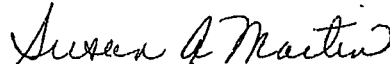
I hereby certify that I caused a true and accurate copy of Interrogatories and Request for Production of Document to Billys Plumbing Plumbing Company, LLC to be sent by via regular mail and emailed this date to:

Jordan W. Hyman
1208 Third Avenue
Conway, SC 29526
jordan@thehymanlawgroup.com

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


Susan A. Martin
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580

June 28, 2019

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

Plaintiff's Interrogatories to Billys Plumbing
Company LLC

TO: Jordan W. Hyman, Counsel for Defendant Billys Plumbing Company LLC

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 "Defendant", or any synonyms thereof, are intended to and shall embrace and include, in addition to the Defendant, said Defendant's attorneys and all officers, agents, servants, employees, representatives, investigators, independent contractors, and others who may have obtained information for or on behalf of said Defendant.

(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.

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.

2. 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 witness.

3. 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 and all such materials which you know or believe to be in the possession of others, together with the identity of the person or entity in possession of the materials.

4. Specify all such materials which you intend to introduce as evidence or utilize at the trial of this matter.

5. Give the full names and addresses of all expert witnesses you have consulted or expect to call upon at the trial of this case and with respect to each witness state the following:

- a) The subject matter on which each said expert witness is expected to testify;
- b) The substance of the facts and opinions to which each said expert

witness is expected to testify;

- c) A summary of the grounds of each opinion;
- d) Whether or not any such expert witness is employed by you and in what capacity; and,
- e) The financial interest each said expert witness has in this litigation.

6. Identify any documents that support the defenses and claims that you have alleged in your Answer.

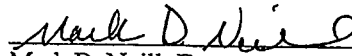
7. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

8. Identify each and every contract you entered into regarding the Myrtle Beach Dave & Busters 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.

9. Identify all bank accounts you utilized in the year 2017 and specify the name and address of the bank where the accounts were held.

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 Plaintiff Carolina Cool, Inc.

Dated: June 28, 2019

Murrells Inlet, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

Garrard Construction Group, Inc., Dave &)
Buster's of South Carolina, Inc., 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

Plaintiff's Requests for Production of
Documents to Billys Plumbing Company LLC

TO: Jordan W. Hyman, Counsel for Defendant Billys Plumbing Company LLC

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.

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 Defendant.

(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.

REQUESTS FOR PRODUCTION

1. Produce all contracts/policies of insurance providing coverage for claims arising out of the Project.
2. 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.
3. 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.
4. Any and all documents provided to any expert witness consulted by Defendant or named as a witness.
5. All reports, records, notes, photographs or opinions prepared or issued by any expert witnesses or investigators relating to the matters in the suit.
6. 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.
7. Any and all documents used or identified in answering these Interrogatories to the Defendant.
8. Any and all documents you intend to introduced at trial of this action, whether for

purposes of evidence or impeachment.

9. Any and all correspondence, emails, notes, voice mails or other forms of communications, between any and all employees, officers, independent contractors, members, agents of Billys Plumbing Company LLC regarding the Myrtle Beach Dave & Busters project.

10. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between you (THIS INCLUDES ANYONE ON BEHALF OF BILLYS PLUMBING COMPANY LLC) and Garrard Construction Group, Inc. (THIS INCLUDES ANYONE ON BEHALF OF GARRARD CONSTRUCTION GROUP, INC.) or any other Defendant.

11. Any and all correspondence, emails, notes, voice mails or other forms of communications, whether to or from, between any other third party regarding this lawsuit or the Myrtle Beach Dave & Busters project.

12. Any and all contracts with Garrard Construction Group, Inc.

13. Any and all invoices or other documentation evidencing requests for payment for work performed at the Myrtle Beach Dave & Busters project.

14. Any and all checks, receipts, account statements, or other documentation evidencing any payments received from Garrard Construction Group, Inc.

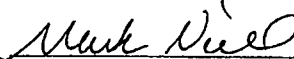
15. Any and all checks, receipts, account statements, or other documentation evidencing any payments made to Garrard Construction Group, Inc.

16. Any and all checks, receipts, account statements, or other documentation evidencing the materials you purchased for the Myrtle Beach Dave & Busters project.

17. Any and all timesheets for employees who worked on the Myrtle Beach Dave & Busters project.

18. Any and all timesheets for independent contractors who worked on the Myrtle Beach Dave & Busters project on your behalf.
19. Any and all subcontractor bonds for the Myrtle Beach Dave & Busters project.
20. Any and all calendar entries related to the Myrtle Beach Dave & Busters project for people who worked on the project on your behalf.
21. Any and all manpower schedules for the Myrtle Beach Dave & Busters project.
22. Any and all daily reports you created related to your work at the subject project or any other documentation of your work performed at the project and manpower supplied at the project.

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 Plaintiff Carolina Cool, Inc.

Dated: June 28, 2019
Murrells Inlet, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Carolina Cool, Inc.,

Plaintiff,

vs.

Garrard Construction Group, Inc., Dave &
Buster's of South Carolina, Inc., 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

Motion to Compel and Impose Sanctions
Against Defendants Garrard Construction
Group, Inc., Dave & Buster's of South
Carolina, Inc., Broadway at the Beach, Inc.

TO: Andrew Countryman, Counselor for Defendants:

YOU WILL PLEASE TAKE NOTICE that Plaintiff Carolina Cool, Inc., by its undersigned attorney, hereby moves pursuant to SCRCF Rule 37 for an Order compelling discovery responses and awarding sanctions against Defendants for (1) intentionally withholding documents from discovery production and (2) not timely producing documents.

Plaintiff will show it initially served discovery requests upon the Defendants on October 3, 2017. The Plaintiff will further show that only after it filed motions to compel and sanctions granted by the Court, it was finally able to depose individuals named as witnesses by the Defendants. During the depositions, it became evident that not all documents responsive to Plaintiff's discovery requests had been produced by the Defendants.

By way of letter dated August 22, 2019, the undersigned requested once again the documents referenced in the depositions which the witnesses testified existed but had not been produced. On September 25, 2019, Defendants' counsel responded with a letter enclosing a disc containing 4,401 pages of documents. (The disc received contained only 4,201 documents). The letter also stated Defendants were still gathering additional documents. They have not been produced as of today.

As one would expect, it took many hours to review the recently produced 4,201 additional documents. Upon review, it appears a good portion of the documents were the same as documents previously produced – which took additional scrutiny to verify whether they were indeed the same documents as previously produced or if they contained new information. However, hidden in this document dump were extremely relevant documents that clearly should have been produced two years ago after Defendants received Plaintiff's initial discovery requests.

Plaintiff also learned of relevant documents Garrard Construction Group, Inc. certainly has in its possession but has failed to produce. Had the Plaintiff not issued subpoenas to Billys Plumbing Company, LLC and moved to add Billys Plumbing Company, LLC as an additional Defendant, the existence of the documents and information would have remained hidden by Garrard Construction Group, Inc. In order to obtain the documents from Billys Plumbing Company, LLC, Plaintiff had to file motions to compel which the Court granted.

The Plaintiff will show the Defendants' failure to timely produce relevant documents was intentional and has tainted the discovery process in this case. The Plaintiff has clearly been prejudiced by Defendants' actions and is entitled to an Order compelling the Defendants to produce the requested documents.

The Plaintiff is also entitled to an Order awarding sanctions against the Defendants for their intentional and numerous violations of the South Carolina Rules of Civil Procedure and will argue

the striking of the Defendant Garrard Construction Group, Inc.'s counterclaim is appropriate. Plaintiff also requests reimbursement of attorney fees and costs for having to file and argue this motion, as well as, the time spent by its attorney in reviewing the 4,201 pages of documents produced by Defendants in which the relevant documents were sandwiched in between hundreds of pages of documents already produced. Plaintiff further requests an Order allowing Plaintiff, if it chooses to do so, to open the depositions of the witnesses in order to question the witnesses regarding the newly discovered information and awarding Plaintiff reimbursement of the resulting attorney fees and costs. Plaintiff is also entitled to any and all other further relief deemed appropriate by the Court.

The undersigned affirms pursuant to SCRCP Rule 11 that prior to filing this motion he has attempted to resolve the issues set forth herein and that further consultation would serve no useful purpose.

Respectfully submitted,

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

Mark D. Neill, Esq.

S.C. Bar No: 14273

P.O. Box 2810

Murrells Inlet, SC 29576

mneill@neilllawfirm.com

(843) 651-8580

Attorney for Carolina Cool, Inc.

November ____, 2019

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff,

v.

GARRARD CONSTRUCTION GROUP, INC.,
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC., BROADWAY AT THE BEACH, INC., and
BILLY'S PLUMBING COMPANY, LLC,

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

)
)
) **GARRARD'S MOTION FOR**
) **PROTECTIVE ORDER**
) **(Expedited Hearing Requested)**

Defendant Garrard Construction Group, Inc. ("Garrard") move this Court for an order limiting and preventing Plaintiff's counsel from examining Garrard on certain topics in its deposition noticed for December 10, 2019, or on such other date as the parties may convene or the Court may direct. Garrard moves pursuant to SCRCP 26(c) and other applicable rules and law.

The objectionable topics are as follows:

1. Construction profit and loss statements for Garrard regarding its "Shell Contract" with Broadway at the Beach, Inc.;

2. Construction profit and loss statements for Garrard regarding its "Interior Contract" with Dave & Busters of South Carolina, Inc.;
3. Project overhead and profit margins for Garrard regarding its Shell Contract with Broadway at the Beach;
4. Project overhead and profit margins for Garrard regarding its Interior Contract with Dave & Busters of South Carolina, Inc.;
5. Income and expense statements for the Dave & Buster's project;
6. Garrard's projected net profits for the project;
7. Payments made by Broadway at the Beach to Garrard or received by Broadway at the Beach from Garrard; and
8. Payments made by Dave & Buster's to Garrard or received by Broadway at the Beach [sic?] from Garrard.

This action arises out of a Mechanic's Lien Plaintiff filed related to work it performed as a subcontractor at the Dave & Buster's project in Myrtle Beach. Garrard was the general contractor on the project which was the construction of the Dave & Buster's in Myrtle Beach. Garrard had two prime contracts for construction with the owner of the property (Broadway at the Beach) and the owner/operator of the restaurant (Dave & Buster's). Garrard entered into two subcontracts with Plaintiff for certain scopes of work on the project.

Starting with its first days on the project, Garrard took issue with Plaintiff's work project and issued formal notices of noncompliance. Garrard ultimately terminated Plaintiff from the job and replaced it with another subcontractor. Plaintiff filed the subject Mechanic's Lien and this lawsuit against Garrard and others seeking money Plaintiff alleges it is owed on the contracts with Garrard, along with other damages. Garrard brought counterclaims against Plaintiff seeking damages related to having to hire another subcontractor to complete and repair Plaintiff's scope of work.

The issue(s) in the case are straightforward. Did Plaintiff properly and timely perform its work under the contracts with Garrard? Was Garrard's termination of Plaintiff from the project wrongful? If so, what damages did Plaintiff incur? If Plaintiff did not properly and timely perform its work on the project under its contracts with Garrard, is Plaintiff responsible for damages Garrard incurred as a result?

Plaintiff served a Notice of Garrard's Rule 30(b)(6) deposition on or about November 4, 2019. Ex. 1, Notice of Deposition. The Notice included a number of topics, including the ones referenced above relating to financial details about the project overall. The undersigned sent a letter objecting to those topics on November 29, 2019, and has not received a response as of the filing of this Motion. Ex. 2. On December 3, 2019, the undersigned emailed Plaintiff's counsel asking if they had time to discuss the case in the next days:

• Andrew Countryman
Carolina Cool v. Garrard; call
To: Mary Anna Neill, Mark Neill

Yesterday at 3:33 PM



Mark and Mary Anna,

Do you have time to talk for a few minutes about this case in the next couple of days? I would appreciate it and am relatively free to chat tomorrow and Thursday.

Thanks in advance,

Andy
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
843-253-4477
awc@countrymanlawfirm.com
*Certified S.C. Circuit Court Mediator

Counsel has not received a response. The undersigned also called Plaintiff's counsel on December 4, 2019 and left a voicemail. The undersigned has not received a response, and thus must file this Motion.

The topics at issue seek information related to the Garrard's overhead, profit margins, net profits, and payments Garrard received from Dave & Buster's and Broadway at the Beach related to

building the project. None of these topics is relevant to the issues in this case or reasonably likely to lead to the discovery of admissible evidence. Plaintiff alleged damages include money for unpaid materials and services on its contracts with Garrard, as well as lost profits on the job, and attorney's fees:

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

ANSWER: \$113,350.00 for unpaid materials and services provided, lost profits, legal interest, costs, and punitive damages to be to be determined by the Court.

Plaintiff's Responses to Defendants' Discovery Requests (Sept. 28, 2017).

Garrard's profits on the project have nothing at all to do with whether Garrard breached its contracts with Plaintiff or Plaintiff's claimed damages. Information regarding the money Garrard made on the project will not disclose any fact that could reasonably lead to the discovery of information making Plaintiff's claims more or less likely to succeed.

Similarly, Garrard is not claiming lost profits as a damage on its counterclaim against Plaintiff:

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

ANSWER:

- (a) \$102,091.78 in delay and additional costs as detailed in these Defendants' prior discovery responses.
- (b) Attorney's fees (\$60,275 currently and increasing by the day).
- (c) Punitive damages in an amount for the jury to determine.
- (d) Damages against RLI recoverable under the claim on the Bond, including attorney's fees and interest.

Garrard is not making a claim for lost profits and withdraws such a claim to the extent prior pleadings refer to one.

Garrard's Supp. Disco. Resp. (Nov. 18, 2019). None of Garrard's claimed damages relates in any way to its profits on the project or the other financial topics at issue.

Additionally, the financial information sought from Garrard is confidential, proprietary and sensitive. It relates to trade secrets and confidential information protected by SCRCF 26(c). Disclosing it in the context of this lawsuit would prejudice Garrard, which remains a contractor that builds Dave & Buster's and similar commercial projects.

The financial topics at issue are not likely to lead to the discovery of admissible evidence. Simply, they are not important or at all related to the issues in this case. Further, allowing their disclosure would prejudice Garrard and release confidential, sensitive proprietary information. Therefore, Garrard respectfully asks this Court for an Order limiting the topics of Garrard's 30(b)(6) deposition and precluding counsel from examining the witness regarding the topics relating to the financial information identified above (the first eight topics in the deposition Notice).

Garrard, which is in Georgia, remains ready to produce its witness to testify about the remaining nine topics in the deposition Notice as noticed on December 10, 2019 at Plaintiff's counsel's office in South Carolina. Given the timing of and travel associated with the deposition, Garrard requests an expedited hearing.

The undersigned has complied with Rule 11 in the filing of this Motion and regrets the need to involve the Court. However, Garrard is left with no other choice under the circumstances.

Garrard reserves the right to supplement this Motion with affidavits and/or memoranda as appropriate.

[signature page to follow]

Respectfully submitted,

By: /s/ Andrew W. Countryman
ANDREW W. COUNTRYMAN
State Bar No.: 72700
321 Wingo Way, Suite 102
Mt. Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com
Lawyer for Garrard Construction
Group, Inc., Dave & Buster's of South
Carolina, Inc. and Broadway at the
Beach, Inc.

EXHIBIT 1

ELECTRONICALLY FILED - 2019 Dec 04 2:33 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562

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,	)	
	)	Plaintiff's 30(b)(6) Notice of Deposition
vs.	)	Garrard Construction Group, Inc.
	)	
Garrard Construction Group, Inc., Dave &	)	
Buster's of South Carolina, Inc., 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.	)	
	)	

To: Andrew Countryman, Counsel for Defendant Garrard Construction Group, Inc.

YOU WILL PLEASE TAKE NOTICE that the undersigned Attorney for the Plaintiff will take the deposition of those persons designated by the Defendant Garrard Construction Group, Inc. under Rule 30(b)(6), South Carolina Rules of Civil Procedure, for the purpose of being examined on the following matters:

- Construction profit and loss statements for Garrard Construction Group, Inc. regarding its "Shell Contract" with Broadway at the Beach, Inc.;
- Construction profit and loss statements for Garrard Construction Group, Inc. regarding its "Interior Contract" with Dave & Busters of South Carolina, Inc.;

- Projected overhead and profit margins for Garrard Construction Group, Inc. regarding its “Shell Contract” with Broadway at the Beach, Inc.;
- Projected overhead and profit margins for Garrard Construction Group, Inc. regarding its “Interior Contract” with Dave & Busters of South Carolina, Inc.;
- Income and Expense statements for the Dave & Buster’s project;
- Garrard Construction Group Inc.’s projected net profits for the project;
- Garrard Construction Group Inc.’s realized net profits for the project;
- Payments made by Broadway at the Beach, Inc. to Garrard Construction Group, Inc. or received by Broadway at the Beach, Inc. from Garrard Construction Group, Inc.;
- Payments made by Dave & Buster’s of South Carolina, Inc. to Garrard Construction Group, Inc. or received by Broadway at the Beach, Inc. from Garrard Construction Group, Inc.;
- Contracts or agreements, whether written or oral, between Billys Plumbing Company LLC and Garrard Construction Group, Inc.;
- Payments received by Billys Plumbing Company LLC from Garrard Construction Group, Inc. for the Dave & Buster’s shell project;
- Payments received by Billys Plumbing Company LLC from Garrard Construction Group, Inc. for the Dave & Buster’s interior project;
- Communications between Billys Plumbing Company LLC and Garrard Construction Group, Inc. regarding the Dave & Buster’s construction project;
- Lien waivers submitted by Garrard Construction Group, Inc. to Dave and Buster’s of South Carolina Inc. and Broadway at the Beach, Inc.;
- Applications for payments made by Garrard Construction Group, Inc. to Dave and

Buster's of South Carolina Inc. and Broadway at the Beach, Inc;

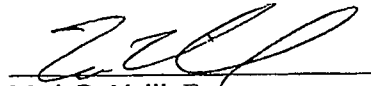
- Calculation of alleged damages asserted by Garrard Construction Group, Inc. in its counterclaim against Carolina Cool, Inc.;
- Contracts with Carolina Cool, Inc.;
- Garrard's breach of contract claim against Carolina Cool, Inc.

The corporate representatives of Garrard Construction Group, Inc. shall appear on **December 10, 2019 at 10:00 a.m.** for the purpose of this 30(b)(6) Notice of Deposition at the Neill Law Firm, PA located at **1727 Glenns Bay Road, Surfside Beach, South Carolina 29575** before a notary public or before some other officer authorized by law to take depositions. You are invited to attend and take such part as is fit and proper. The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

Pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Plaintiff is hereby providing notice to counsel that the witness or witnesses may be shown documents and/or materials during this deposition specifically including but not limited to any document and/or materials that have been produced by any party, or by any others pursuant to subpoena. Additionally, the witness may be asked questions from any information source, reference material or case reference which has been identified in discovery or is available to witness by any agent, employer, Plaintiff or Defendants.

November 7, 2019.

NEILL LAW FIRM, PA



Mark D. Neill, Esq.

S.C. Bar No: 14273

P.O. Box 2810

Murrells Inlet, SC 29576

mneill@neilllawfirm.com

(843) 651-8580

Attorney for the Plaintiff

ELECTRONICALLY FILED - 2019 Dec 04 2:33 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., 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

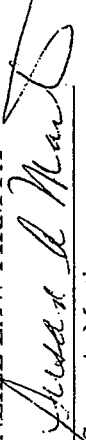
Certificate of Service

I, Susan A. Martin, hereby certify that I caused a true and accurate copy of the Plaintiff Carolina Cool, Inc.'s Supplemental Requests for Production of Documents and Plaintiff's 30(b)(6) Notice of Deposition Garrard Construction Group, Inc. to be served via E-mail and Regular U.S. Mail, addressed as follows to opposing counsel:

Andrew W. Countryman
Countryman Law Firm
321 Lingo Way
Suite 102
Mt. Pleasant, SC 29464
awc@countrymanlawfirm.com

Robert T. Lyles
Lyles and Associates
342 East Bay Street
Charleston, SC 29401
rtl@lylesfirm.com

Jordan W. Hyman
1208 Third Avenue
Conway, SC 29526
jordan@thehymanlawgroup.com

NEILL LAW FIRM PA

Susan A. Martin

Dated: November 4, 2019

COUNTRYMAN LAW FIRM

Litigation ♦ Mediation

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, South Carolina 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843-253-4477 office
844-644-3165 fax

November 29, 2019

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576

Re: *Carolina Cool, Inc. v. Garrard Construction Group., Inc., et al.*;
C/A 2017-CP-26-03562
CLF File: 000018 – 000024

Mark:

I received your Notice of Garrard's 30(b)(6) Deposition for 12/10/19. Garrard objects to the first seven topics, which relate to financial information for the project. 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. This information is also sensitive and proprietary.

Please let me know if you will agree to limit the deposition to the other topics. Otherwise, I will need to file a Motion for a Protective Order. Finally, Shawn Gill will be Garrard's designee for the remaining topics.

Sincerely,



Andrew W. Countryman

AWC/sgc

Cc: Jordan Hyman, Robert Lyles

ELECTRONICALLY FILED - 2019 Dec 04 2:33 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., BROADWAY AT THE BEACH, INC., and
BILLY'S PLUMBING COMPANY, LLC,

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

)
)
) **BRIEF IN OPPOSITION TO**
) **PLAINTIFF'S MOTION TO**
) **COMPEL/FOR SANCTIONS AGAINST**
) **DEFENDANTS GARRARD, DAVE &**
) **BUSTER'S AND BROADWAY AT THE**
) **BEACH**

Defendants Garrard Construction Group, Inc. ("Garrard"), Dave & Buster's of South Carolina, Inc. ("Dave & Buster's") and Broadway at the Beach, Inc. ("BAB") (collectively "these Defendants"), respond to Plaintiff's Motion to Compel and for Sanctions (filed November 4, 2019) as follows:

SUMMARY

This is a mechanic's lien/breach of contract case arising out of the construction of the Dave & Buster's restaurant in Myrtle Beach. Garrard served as the general contractor for the project.

Plaintiff Carolina Cool was a subcontractor for Garrard under two contracts for separate elements of work at the project. Garrard terminated Carolina Cool from the job after determining Carolina Cool's work performed to date was defective, slow and nonconforming with the project documents. Carolina Cool filed a Mechanic's Lien and this lawsuit seeking damages arising out of breach of contract and similar theories. Plaintiff maintains Garrard wrongfully terminated it from the project and seeks damages arising out of the alleged wrongful termination.

The key issues in the case are simple. Did Garrard breach its contract with Plaintiff by terminating it from the project? Did Plaintiff breach its contract with Garrard by failing to properly perform its scope of work? What damages, if any, did the parties suffer as a result of any breach?

The parties have engaged in written and deposition discovery, which has involved the production and exchange of thousands of pages of material. As the close of discovery draws near, Plaintiff now attempts to paint these Defendants as bad actors in an effort to gain some sort of favor with the court by filing a baseless Motion for Sanctions.

Plaintiff's Motion for Sanctions generally says these Defendants intentionally violated the Rules of Civil Procedure "numerous" times but fails to specify exactly how. The truth is these Defendants have been extremely forthcoming in producing material in this case, much of which has little to nothing to do with the issues at bear. The Court should deny the Motion and award attorney's fees and costs to these Defendants.

DISCOVERY HISTORY

Plaintiff served initial discovery requests to these Defendants on October 3, 2017, which included twenty requests for production. After receiving an extension to respond, these Defendants

served responses on November 28, 2017, along with 586 pages of material. Plaintiff did not take issue with the responses or the material produced.

Plaintiff then served supplemental discovery requests on January 16, 2018. These included an additional sixteen requests for production, bringing the total to thirty-six. On February 20, 2018, these Defendants served responses to those requests including an additional 755 pages of material responsive to the requests. Plaintiff did not take issue with this production.

Plaintiff then served Requests for Production 37 – 57 on November 20, 2018. On November 21, 2018, the undersigned's wife gave birth to their son, after which both his son and wife suffered medical complications over the ensuing weeks. Additionally, coordinating with the clients, two of which are out of state, was time consuming and difficult, especially over the holiday season. Counsel requested and received at least one extension and served responses on March 14, 2019. The responses included material responsive to each Request for Production, broken down and identified:

- BAB cal 1 - 8.pdf
- BAB Weekly Reports 1 - 356.pdf
- Correspondence 1-229 (G and BCC).pdf
- DB 1-22.pdf
- Garrard Calendar 1 -8.pdf
- Garrard Notes 1-283.pdf
- Garrard Weekly Reports Interior 1-91.pdf
- Garrard Weekly Reports Shell 1-350.pdf
- GEO 1 - 82.pdf
- Payment 1 - 203.pdf
- Photos 1-2366.pdf
- Photos 2367- end.pdf

The following depositions then took place:

- (a) Bill Bromley, superintendent for Garrard (Apr. 16, 2019);
- (b) Shawn Gill, project manager for Garrard (Apr. 17, 2019);
- (c) Pat Watson, superintendent for Garrard (May 8, 2019);

(d) John Mulleady as SCRCF 30(b)(6) designee for Dave & Busters (May 15, 2019); and

(e) Seth McCoy as SCRCF 30(b)(6) designee for BAB (Jul. 30, 2019).

In Mr. McCoy's deposition, it became apparent that a certain Change Order from the project file was inadvertently missing from Defendants' production. Following the deposition, the undersigned *sua sponte* obtained and produced the missing change order on August 1, 2019:

COUNTRYMAN LAW FIRM

Litigation ♦ Mediation Andrew W. Countryman 321 Wingo Way, Suite 102 Mount Pleasant, South Carolina 29464 *Certified S.C. Circuit Court Mediator	awc@countrymanlawfirm.com www.countrymanlawfirm.com 843-253-4477 office 844-644-3165 fax

August 1, 2019

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576

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 enclose a Change Order 16066. This is the missing one discussed in Seth McCoy's deposition earlier this week. Please accept this as a supplement to my clients' production.

Sincerely,



Andrew W. Countryman

AWC/sgc
Enclosure
Cc: Jordan Hyman, Robert Lyles

On August 22, 2019, Plaintiff's counsel sent the undersigned a letter asking for additional material discussed in the various depositions of witnesses listed above. The letter did not include formal requests for production but asked for fifteen separate items and included a two-week deadline.

[remainder of page intentionally blank]

NEILL
LAW FIRM

PO BOX 1000000, NEW YORK, NY 10000-0000
Phone: (212) 512-2000
www.neilllawfirm.com

MARK D. NEILL
www.neilllawfirm.com

MARK ANNA NEILL
www.neilllawfirm.com

August 22, 2019

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
awc@awneilllawfirm.com

Re: *Cumtine Coal, Inc. vs. Garrard Construction Group, Inc., et al*
Case No. 2017-CP-36-3562
Our File 17-32

Dear Andrew:

Thank you for your letter of August 1, 2019 with the change order discussed during Mr. McCoy's deposition. 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 & Busters to Garrard Construction referenced by Mr. Mulready on pages 68 & 69 of his deposition;
- Change orders for the interior contract referenced by Mr. Mulready on pages 71 & 73 of his deposition;
- Work Orders with supporting documentation referenced by Mr. Mulready on pages 75, 101 & 101 of his deposition;
- Emails referenced by Mr. Mulready on pages 87, 88 & 92 of his deposition;
- Emails referenced by 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 M11 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;
- The meeting agendas Mr. Bromley created as discussed on page 189 of his deposition;
- NSO calendar discussed by Mr. Gill 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.

With kindest regards, I am

Sincerely,



Mark Neill

This brought Plaintiff's requests for production total to 72.

On September 16, 2019, Plaintiff's counsel sent a letter demanding the material within ten days or he would file a motion to compel.

MARK D. NEILL
MNEILL@NEILLLAWFIRM.COM

NEILL
LAW FIRM
PORT OFFICE BOX 2619 • MURRELLS INLET, SC 29576
PHONE 843 651-6388 FAX 843 651-6388
WWW.NEILLLAWFIRM.COM

MARY ANNA NEILL
MANEILL@NEILLLAWFIRM.COM

September 16, 2019

SENT VIA EMAIL AND U.S. MAIL

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
awc@countrymanlawfirm.com

Re: Carolina Cool, Inc. vs. Garrard Construction Group, Inc., et al.
Case No: 2017-CP-26-3562
Our File 17-32

Dear Andrew:

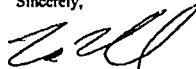
In reviewing my file it appears that I have not received the documents requested in my letter to you dated August 22, 2019.

Kindly forward these documents to me within (10) days from the date of this letter so that I can avoid the filing of a Motion to Compel.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



Mark D. Neill

MDN/sam

cc: Jordan W. Hyman
1208 Third Avenue
Conway, SC 29526
jordan@thehymanlawgroup.com

Robert T. Lyles, Jr.
342 East Bay Street
Charleston, SC 29401
rl@lylesfirm.com

On September 25, 2019, the undersigned served responsive material to the majority of the requests, along with a letter indicating he was still gathering material responsive to some of them (the four related to John Mullcady's deposition):

COUNTRYMAN LAW FIRM

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, South Carolina 29464
*Certified S.C. Circuit Court Mediator

Litigation ♦ Mediation

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843-253-4477 office
844-644-3165 fax

September 25, 2019

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576

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

Mark:

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. I am still in the process of gathering material from Dave & Buster's (material referenced regarding John Mulleady's deposition) and will follow up with that shortly. Let me know if you have any questions in the meantime.

Sincerely,


Andrew W. Countryman

AWC/sgc
Enclosure
Cc: Jordan Hyman, Robert Lyles

The disc included 4,201¹ pages of material.

Without calling, writing or otherwise attempting to contact the undersigned regarding any issues with the material produced, Plaintiff's counsel filed the subject Motion for Sanctions six weeks later on November 4, 2019. On or about that day, the undersigned called Plaintiff's counsel to discuss and left a message. Receiving no return call, the undersigned sent a letter to Plaintiff's counsel the next day indicating:

- (a) Plaintiff's counsel did not contact the undersigned prior to the filing of the Motion;

¹ The letter's reference to 4,401 documents was a scrivener's error.

(b) The 9/25/19 production was not a document dump or attempt to keep anything hidden;

(c) The 9/25/19 production was made in an effort to ensure there could be no argument these Defendants withheld items from production;

The letter also asked Plaintiff to specify what material the Motion says were hidden and should have been produced two years ago, as well as asking for a return phone call to discuss.

COUNTRYMAN LAW FIRM

Litigation ♦ Mediation

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321 Wingo Way, Suite 102
Mount Pleasant, South Carolina 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843-253-4477 office
844-644-3165 fax

November 5, 2019

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576

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

Mark:

I received the Motion to Compel/for Sanctions you filed yesterday. I was disappointed and surprised, especially since I did not hear anything from you on any issue referenced in the Motion prior to you filing it. The disc I sent on 9/25/19 was not a document dump or attempt to keep anything hidden. To the contrary, my intent was to make sure to produce everything your requests encompassed in order to avoid any argument about my clients failing to provide discoverable material.

I have no idea what you are referring to with respect to "extremely relevant documents that should have been produced two years ago." I also don't know what you mean by material revealed in Billy's production that my clients failed to produce. We certainly haven't hidden anything in that regard either, nor did we oppose the Subpoenas to Billy's. Please let me know what material you referring to so I can at least address the issues substantively.

[remainder of page intentionally blank]

Finally, the letter indicated the undersigned would be producing the remaining material, which it was gathering with Dave & Buster's, shortly.

I am still getting the material together regarding Dave & Buster's and hope to get that to you this week. Please let me know what else you need in order to withdraw your Motion. I look forward to hearing from you.

Sincerely,



Andrew W. Countryman

AWC/sgc

Cc: Jordan Hyman, Robert Lyles

On November 11, 2019, the undersigned produced the remaining material responsive to Plaintiff's August 22, 2019, requests.

COUNTRYMAN LAW FIRM

Litigation ♦ Mediation

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, South Carolina 29464
*Certified S.C. Circuit Court Mediator

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843-253-4477 office
844-644-3165 fax

November 11, 2019

Mark D. Neill
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576

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

Mark:

I enclose a disc with material labeled "D&B 1 - 87." I produce these documents in response to your August 22, 2019, letter on behalf of Dave & Buster's (the first four items). Please accept this as a supplement to my clients' production in discovery. Please let me know if you have any questions about it.

I would still like to discuss the Motion for Sanctions you filed last week. I called you but have not heard back. While some of the material had already been produced, the intent was to produce everything together. It was certainly not to hide anything or engage in a document dump. Please withdraw the Motion for Sanctions or at least call me back so we can discuss. Thanks, and I look forward to hearing from you.

Sincerely,



Andrew W. Countryman

AWC/sgc
Enclosure
Cc: Jordan Hyman, Robert Lyles

The material produced that day (87 pages) was in response to the first four requests in Plaintiff's August 22, 2019, letter. The November 11th letter again reiterated the September 25th production was not a document dump. It also asked Plaintiff's counsel to withdraw the Motion for Sanctions or at least call back to discuss. Plaintiff's counsel did not respond.

The deposition(s) of Billy's Plumbing Company, LLC's ("Billy's") 30(b)(6) designees took place at Plaintiff's counsel's office on November 22, 2019. Following the deposition, the undersigned discussed the Motion with Plaintiff's counsel Mary Anna Neill. The undersigned stated he was

unaware of any documents that were hidden, there was no "document dump," and this surely was something that could have been clarified with a phone call before filing a motion. The undersigned asked Ms. Neill to consider withdrawing the Motion. She indicated she would talk to Mark and follow up.

Having heard nothing in response, counsel emailed Plaintiff's counsel on December 3, 2019, asking to set up a call.

• Andrew Countryman
Carolina Cool v. Garrard; call
To: Mary Anna Neill, Mark Neill

December 3, 2019 at 3:33 PM

Mark and Mary Anna,

Do you have time to talk for a few minutes about this case in the next couple of days? I would appreciate it and am relatively free to chat tomorrow and Thursday.

Thanks in advance,

Andy
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
843-253-4477
awc@countrymanlawfirm.com
*Certified S.C. Circuit Court Mediator

The undersigned and Mark Neill finally had a discussion on December 5, 2019. During the call, Plaintiff's counsel refused to withdraw the Motion for Sanctions or disclose what documents were allegedly hidden and/or not produced timely.

APPLICABLE LAW

The Rules of Civil Procedure are designed to promote decisions on the merits after a full and fair hearing, and the court should not invoke sanctions lightly. Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12, (referencing Carver v. Salt River Valley Water Users' Assoc., 8 Ariz. App. 386, 446 P.2d 492, 496 (Ariz. 1968)). "Many variable circumstances determine whether a sanction is appropriate, and if so, what sanction should be imposed." Id. The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court and is subject to an abuse of discretion standard on review.

Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997) (quoting Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987)). An abuse of discretion may be found where the sanctioned party shows the conclusion the trial court reached was without reasonable factual support and resulted in prejudice to their rights.

The sanction imposed must be reasonable, and the court should not go beyond the necessities of a situation to foreclose a decision on the merits of a case. Kershaw Co. Bd. of Ed. v. U.S. Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990). The sanction should be aimed at the specific misconduct of the party sanctioned. Balloon Plantation v. Head Balloons, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990). "Whatever sanction is imposed should serve to protect the rights of discovery provided by the rules. A sanction of dismissal is too severe if there is no evidence of any intentional misconduct." Orlando v. Boyd, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996) (reversing the dismissal of an action for failure to follow a scheduling order). For the dismissal of an action to be an appropriate sanction, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. *Id.*, see also Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

ARGUMENT

1. These Defendants did not intentionally withhold documents from production or engage in a document dump.

There is no discovery order at issue here. To the contrary, at primary issue is production in response to a letter – not even formal requests to produce. The undersigned does not engage in discovery games. Despite the informal nature of Plaintiff's August 22, 2019, requests for documents, these Defendants did not object and instead went to great lengths to obtain responsive material and

produce it in a timely fashion. This was done in an effort to avoid a discovery motion alleging they failed to properly and fully respond to requests for documents. In fact, these Defendants have been overwhelmingly forthcoming with material in discovery throughout this case.

Plaintiff says these Defendants hid documents in their 9/25/19 production. These Defendants certainly did not engage in any such activity and have no idea what material Plaintiff refers to in this regard. Only Plaintiff's counsel knows what documents were allegedly hidden in the production, and he refuses to disclose that information. This makes it difficult to respond to that particular allegation. Regardless, these Defendants and counsel have gone to great lengths to gather and produce material responsive to Plaintiff's 72 requests for documents. Ex. 1, Aff. R. Rudd (Dec. 6, 2019). They have at all times acted in good faith and have not intentionally or knowingly withheld anything. Id.

Further, the material produced in response to the 8/22/19 letter was precisely the opposite of a document dump. Instead of just producing a "project file²," the 9/25/19 production corresponded directly to the bullet point requests in Plaintiff's 8/22/19 letter. The undersigned even specified the initial production did not include material related to the Dave & Buster's deposition, as that would be forthcoming (and provided it days later upon receipt). If Plaintiff's counsel took issue with the manner of production or had questions about the material, he should have called the undersigned to address (as the letter producing the material asked Plaintiff's counsel to do). Instead, Plaintiff's counsel filed yet another Motion seeking sanctions in this case.

² Which would have included many thousands more documents.

2. Plaintiff's Motion failed to comply with SCRCP 7(b)(1).

A motion must state with particularity the grounds for it. SCRCP 7(b)(1). When a party challenges a motion for lack of particularity, the court should ask whether any party is prejudiced by the lack of particularity or whether the court can comprehend the basis of the motion and deal fairly with it. Camp v. Camp, 386 S.C. 571, 689 S.E.2d 634 (2010). Further, Rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly. Id.

Plaintiff's Motion fails to meet the particularity requirement of SCRCP 7(b)(1) because it does not identify the material these Defendants allegedly hid and/or failed to timely produce. These Defendants are prejudiced because they do not know what documents are at issue (allegedly hidden and/or not timely produced), and Plaintiff's counsel refuses to disclose this. These Defendants cannot address issues with specific documents unless they know what the documents are.

Similarly, Plaintiff's Motion says these Defendants committed "numerous violations" of the Rules yet fails to cite a single Rule allegedly violated. The Motion also says the failure to timely produce documents has tainted the discovery process while providing no explanation of this. As best can be surmised from the Motion, this may refer to material produced by Billy's Plumbing in response to a subpoena.

Billy's Plumbing produced over 1,700 pages of material to Plaintiff on or about April 11, 2019. To the extent this production included material that was in these Defendants' files but was not previously produced, any failure to produce them initially was inadvertent. *See* Ex. 1. Further, any such failure did not prejudice and could not have prejudiced Plaintiff, as that material was available for use (and was used) in the defense witness depositions. Billy's later produced timesheets showing

the time its workers spent on the project. However, these are not documents these Defendants had/have in their possession other than receiving through Billy's production in this case.

3. Plaintiff did not comply with Rule 11 in the filing of this Motion.

Plaintiff's counsel did not consult in any manner with the undersigned regarding issues with the 9/25/19 production before filing the subject Motion for Sanctions. In fact, Plaintiff's counsel refused to discuss the issue for more than a month after filing it despite multiple attempts by the undersigned to do so. This does not comport with the letter or spirit of Rule 11 or the Lawyer's Oath of civility.

CONCLUSION

These Defendants ask the Court to deny the Motion for Sanctions. They also request an award of attorney's fees and costs associated with having to respond to and argue it, and other such relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Andrew W. Countryman
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**Lawyer for Garrard Construction
Group, Inc., Dave & Buster's of South
Carolina Inc., and Broadway at the
Beach, Inc.**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff,

Y.

GARRARD CONSTRUCTION GROUP, INC.,
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC., BROADWAY AT THE BEACH, INC., and
BILLY'S PLUMBING COMPANY, LLC,

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

**AFFIDAVIT OF
REBEKAH RUDD**

I, Rebekah R. Rudd, under oath, hereby declare and state as follows:

1. I am an adult over the age of 18 years and sound of mind.
2. I am the Chief Financial Officer of Garrard Construction Group, Inc. ("Garrard").
3. I was the point person in assisting counsel in gathering material responsive to Plaintiff's 8/22/19 requests for material in this case, and I have been involved with coordinating and gathering material and information responsive to other requests for information and material in this case.
4. I and others at Garrard have spent many hours responding to Plaintiff's voluminous discovery requests (including 72 requests for documents) in this case, including coordinating and gathering responsive material.

5. I and the others involved with gathering material responsive to Plaintiff's August 22, 2019, requests and the other discovery requests in this case, have always acted in good faith and endeavored to produce the requested material in conjunction with our counsel and under the applicable Rules.

6. At no time with respect to the production of any material in discovery in this case, did anyone intentionally withhold any documents from production that should have been produced or intend to "hide" documents in production.

7. I do not know what material Plaintiff's Motion for Sanctions refers to when it references "extremely relevant documents" that should have been produced previously.

8. Any failure to include such material was inadvertent and took place notwithstanding our efforts to produce the requested material in compliance with the Rules.

9. I do not know what material Plaintiff's Motion for Sanctions refers to when it references material "revealed" by Billy's Plumbing's production in this case.

10. I do not know what material Plaintiff's Motion for Sanctions refers to when it references material hidden in our September 25, 2019, production.

11. At no time did anyone hide or knowingly fail to produce any requested material relevant to this case.

12. To the extent there has been any violation of the Rules of Civil Procedure, which I deny, the violation was inadvertent and not intentional.

13. Garrard has always acted in good faith and made every effort to comply with the Rules in this vigorously contested case.

FURTHER AFFIANT SAYETH NOT.

Rebekah A. Rudd
Rebekah A. Rudd

Subscribed and Sworn to me this 9th day of
December, 2019, by Rebekah A. Rudd

[Signature]
Notary Public for Gwinnett County
My Commission Expires 5/7/2022

HENRY HUANG
Notary Public
Gwinnett County, Georgia
My Comm. Expires 5/7/2022

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CAROLINA COOL, INC.,

Plaintiff,

v.

GARRARD CONSTRUCTION GROUP, INC.,
DAVE & BUSTER'S OF SOUTH CAROLINA,
INC., BROADWAY AT THE BEACH, INC.,
AND BILLY'S PLUMBING COMPANY, LLC,

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

**MOTION TO ALTER OR AMEND AND TO HOLD IN ABEYANCE OF GARRARD
CONSTRUCTION GROUP, INC.**

Pursuant to Rule 59, SCRCP, Garrard Construction Group, Inc. ("Garrard" or "Defendant") hereby moves to alter or amend the Court's Order Granting Motion for Sanctions and Striking Counterclaim ("order") that was electronically filed January 27, 2020. Defendant received written notice of the order the day it was issued. The order strikes Garrard's counterclaim. As such, it is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(2). Accordingly, Garrard asks that this action be held in abeyance pending the resolution of this motion and any subsequent appeal.

The order was entered in response to a Motion to Compel that sought to remedy a supposedly overbroad, jumbled, “document dump,” which supposedly was missing highly relevant documents. However, the order instead purports to remedy two years of discovery issues, without addressing the “document dump” production that was the subject of the motion. The order does not delve into the organization of the production, the orderliness of the documents, or the supposed relevant documents that are being compelled. Rather, it recites a “Procedural History” that was not fairly raised by facts in the record, and makes findings that are unsupported, incorrect, or at a minimum incomplete and out of context.

In addition to the above and the arguments raised in Garrard’s memorandum in opposition and at the hearing which are incorporated by reference, the grounds for this motion to alter or amend are as follow:

1. The Court’s order makes findings of fact that were not in the record at the time of the hearing, such as:

(a) The order is based on a faulty premise throughout that, during the early stages of the case, Defendant had intentionally withheld critical documents disclosing the relationship between Defendant and replacement contractor Billy’s Plumbing when in fact, in its earliest productions from almost two years ago, Defendant produced all of the following documents:

Bates #	Date	Summary
Def 395	1/18/2017	Final 24 hour notice to Plaintiff saying “your firm will be replaced.”
Def 300	1/23/2017	Daily report that Billy’s Plumbing “came out to the job site” and that there has been “plumber change.”
Def 603	1/24/2017	Revised quote from Billy’s Plumbing to “complete project.”
Def 432	5/12/2017	Contractual change order #2 for time and materials (abbreviated “T&M”) between Garrard and Billy’s Plumbing for “correcting and completing” work of “previous plumbing contractor.”
Def 419-420	6/13/2017	Payment application including Change Order 2 for contractual administration of payment to Billy’s Plumbing for time and materials fixing work

Def 491		Summary of damages shows separate line item for Costs paid to Billy's plumbing for correction of work \$21,219.03
Def 598		Summary showing that Change Order #2 is specifically for Billy's to complete and correct the work of Carolina Cool

(b) The order (and the Motion it was based upon) are based on the premise that Defendant's supplemental document production of September 25, 2019 was a jumbled and duplicative "dump," when in fact the documents were produced in PDF format, organized with like things together as they were kept, and largely consisted of materials not previously produced (with certain items included for completeness). The table below shows the sequentially numbered index of documents in the production:

BATES # RANGE	DESCRIPTION
1-31	Change Order Requests a/k/a Work Orders
32-42	Calendars
43-2946	Shawn Gill emails
2947-3295	Progress Reports -- Interior
3296-3327	Two Week Look Ahead Reports
3328-3754	Progress Reports -- Shell Daily Reports
3755-3806	Schedules -- Interior
3807-3844	Schedules -- Shell
3845	Schematic of Incomplete Work
3846-3874	Pat's Notebook
3875-4201	Will Bromley emails

(c) The order repeatedly glosses over and omits significant productions by Defendant, leaving the impression that an earlier question was not addressed in good faith through consultation. For example, the order states (on page 5) that Defendant produced "no daily reports for the time period before, and only a few after Carolina Cool was terminated," while failing to mention that Defendant produced the requested six months of daily reports back in January of 2018.

(d) The order makes findings that "false" representations or interrogatory answers were given, when in fact they were not false or raised in the Motion. For example, Interrogatory responses are quoted on Page 7 and said to be "false" but their falsity is not demonstrable on the record, nor do they disclose documents not produced.

2. The Court's order makes findings that were not raised by the underlying motion at issue and/or that were not raised prior to the entry of the order. The Court has impermissibly

permitted Carolina Cool, Inc. to expand the basis for its request for sanctions well beyond those grounds expressed in its motion in violation of Rule 7, SCRCP. Among other things,

- (a) The order goes into an entire episode surrounding the subpoena of Billy's Plumbing in July of 2018, supposed "false" representations that were made, and a construction of an issue about "87 documents" which was not raised in the underlying motion. (Page 7).
- (b) The order purports to address a previous delay in scheduling depositions, which were the subject of a prior motion, and which was not raised in the underlying motion. (Page 10).
- (c) The order makes findings about the William Bromley deposition and whether Bromley lived in Boston or Georgia (Page 13).
- (d) The order makes detailed findings about document productions over the past two years, and whether they were produced as they were maintained or in a jumbled fashion, when in fact the explanations for the order of previous productions is reasonable. A particular deposition episode is recounted where the actual file name of a daily report was helpful to the witness. It is not uncommon for a witness to make more sense of computer folder names and digital file names, when those pieces of information are not readily apparent from a printed page. Had the underlying motion been about the issue of the order of production, the facts would have shown how each previous production was organized, and that most likely additional information was available to Plaintiff in the PDF bookmark field of the production. (Pages 17- 18).

3. The motion was not supplemented by any affidavits. Arguments of counsel are not evidence and should not serve as the basis for a sanction as severe as the one imposed here. *See S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."). Therefore, the order lacks an evidentiary basis for the harsh sanction imposed.

4. The Court's order imposes the "nuclear option" sanction of dismissal in the absence of direct evidence of willful disobedience or gross indifference to the rights of the adverse party. The factors to be considered in imposing the sanction of dismissal are as follow:

If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment. Rule 37(b)(2)(C), SCRCP. When the court orders default or

dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly. *See Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996).

Therefore, the sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990). Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198–99, 511 S.E.2d 716, 718–19 (Ct. App. 1999)

The order fails to consider the only evidence relating to willfulness and/or bad faith in the record, the Affidavit of Rebekah Rudd (attached as Exhibit A and previously filed with Defendant's memorandum in opposition) and instead indulges the unsworn supposition of counsel at the hearing. In addition, the order does not make any specific findings with respect to each of the required elements. Moreover, there has been no showing of prejudice or that a lesser sanction would be inadequate. Therefore, the sanction imposed represents an abuse of discretion.

For these reasons, the Court should alter or amend its order. Garrard urges the Court to impose no sanction or a lesser sanction (including but not limited to payment of the requested attorney's fees that was also included in the order). Such a ruling would not prejudice any party and would allow this case to proceed to a determination on the merits of all claims and defenses.

This motion will be supported by the laws of this state, applicable case law, arguments of counsel, the attached affidavit, and any other material the Court may receive, including a supplemental memorandum of law. Defendant asks that the Court set this motion for hearing such that these issues may be more fully explored and addressed.

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ J.W. Matthews III

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*Attorneys For Defendants Garrard
Construction Group, Inc., Dave & Buster's
Of South Carolina, Inc., Broadway At The
Beach, Inc.*

February 6, 2020
Greenville, South Carolina

EXHIBIT A

5. I and the others involved with gathering material responsive to Plaintiff's August 22, 2019, requests and the other discovery requests in this case, have always acted in good faith and endeavored to produce the requested material in conjunction with our counsel and under the applicable Rules.

6. At no time with respect to the production of any material in discovery in this case, did anyone intentionally withhold any documents from production that should have been produced or intend to "hide" documents in production.

7. I do not know what material Plaintiff's Motion for Sanctions refers to when it references "extremely relevant documents" that should have been produced previously.

8. Any failure to include such material was inadvertent and took place notwithstanding our efforts to produce the requested material in compliance with the Rules.

9. I do not know what material Plaintiff's Motion for Sanctions refers to when it references material "revealed" by Billy's Plumbing's production in this case.

10. I do not know what material Plaintiff's Motion for Sanctions refers to when it references material hidden in our September 25, 2019, production.

11. At no time did anyone hide or knowingly fail to produce any requested material relevant to this case.

12. To the extent there has been any violation of the Rules of Civil Procedure, which I deny, the violation was inadvertent and not intentional.

13. Garrard has always acted in good faith and made every effort to comply with the Rules in this vigorously contested case.

FURTHER AFFIANT SAYETH NOT.

Rebekah A. Rudd
Rebekah A. Rudd

Subscribed and Sworn to me this 9th day of
December, 2019, by Rebekah A. Rudd.

[Signature]
Notary Public for Gwinnett County
My Commission Expires 5/7/2022

HENRY HUANG
Notary Public
Gwinnett County, Georgia
My Comm. Expires 5/7/2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson

Carolina Cool, Inc. Plaintiff,

v.

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

Garrard Construction Group, Inc. Third-Party Plaintiff,

v.

RLI Insurance Company Third-Party Defendant

of whom:

Carolina Cool, Inc. is the Respondent,

and

Garrard Construction Group, Inc. is the Appellant.

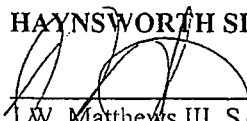
NOTICE OF APPEAL

Garrard Construction Group, Inc. ("Garrard") appeals the Orders in this matter filed on January 27, 2020 and February 10, 2020, dismissing its counterclaim and denying its motion for relief pursuant to Rule 59, SCRPC. Garrard received written notice of the entry of the Order

Granting Plaintiff's Motion for Sanctions and Striking Counterclaim of Defendant Garrard Construction Group, Inc. on January 27, 2020 and the Order denying its Motion to Alter or Amend and to Hold in Abeyance on February 10, 2020. A copy of the Orders are attached to this Notice as Exhibits A and B.

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, P.A.


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EXHIBIT A

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 Exesite 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 Feb 13 3:44 PM - HORRY - COMMON PLEAS - CASE#2017CP2603562
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 **EXHIBIT B**

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-Fileers 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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson

Carolina Cool, Inc. Plaintiff,

v.

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

Garrard Construction Group, Inc. Third-Party Plaintiff,

v.

RLI Insurance Company Third-Party Defendant

of whom:

Carolina Cool, Inc. is the Respondent,

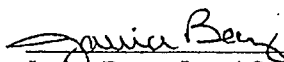
and

Garrard Construction Group, Inc. is the Appellant.

PROOF OF SERVICE

I certify that I have served *Appellant's Notice of Appeal* on all attorneys of record by
depositing a copy of the same in the United States Mail, postage prepaid, on February 13, 2020,
addressed to:

Robert T. Lyles Lyles and Associates, LLC 1037 Chuck Dawley Blvd., St. G-100 Mt. Pleasant, SC 29464	Joseph Kendrick Cunningham Joe Cunningham Law, LLC P.O. Box 21768 Charleston, SC 29413
Mark David Neill Mary Anna Neill Neill Law Firm, PA P.O. Box 2810 Murrells Inlet, SC 29576	Jordan W. Hyman 1208 Third Ave. Conway, SC 29526


Janice Barry, Legal Secretary
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2017-CP-26-03562

Carolina Cool, Inc.,)

Plaintiff,)

vs.)

Garrard Construction Group, Inc.,)

Dave & Buster's of South Carolina,)

Inc., Broadway at the Beach, Inc.,)

and Billy's Plumbing LLC,)

Defendants.)

Garrard Construction Group, Inc.,)

Third-Party Plaintiff,)

vs.)

RLI Insurance Company,)

Third-Party Defendant.)

April 1, 2019

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Mark David Neill, Esquire
Attorney for Plaintiff

Andrew W. Countryman, Esquire
Attorney for Defendants,
Garrard Construction Group, Inc.,
Dave & Buster's of South Carolina, Inc., and
Broadway at the Beach, Inc., and
Attorney for Third-Party Plaintiff,
Garrard Construction Group, Inc.,

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 E X H I B I T S

2 (There were no exhibits marked during the hearing.)

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1 (On the record, April 1, 2019.)

2 THE COURT: All right. Next is 2017-CP-26-3562, Carolina
3 Cool, Inc. versus Garrard Construction Group, Inc., Dave &
4 Buster's of South Carolina, Inc., and Broadway at the Beach,
5 Inc. According to my roster, the matter is before the Court
6 on two motions to compel by the Plaintiff. Is that correct?

7 MR. NEILL: Yes, Your Honor.

8 MR. COUNTRYMAN: Yes, sir.

9 THE COURT: All right. Please give the court reporter
10 your names and who you represent.

11 MR. NEILL: Yes, Your Honor. My name is Mark Neill. I
12 represent the Plaintiff, Carolina Cool.

13 THE COURT: All right.

14 MR. COUNTRYMAN: Andrew Countryman. I represent the
15 Defendants.

16 THE COURT: All right. Mr. Neill, yeah, both of these
17 are your motions?

18 MR. NEILL: They are, Your Honor.

19 THE COURT: All right. Can we argue them at the same
20 time or are they two different?

21 MR. NEILL: Actually, I think we've got the first one
22 resolved. We just got to put a very brief thing on the record
23 to resolve that and that'll take care of one of them.

24 THE COURT: All right. What is that?

25 MR. NEILL: The first motion dealt with discovery

1 responses that were served back in November of last year. In
2 March I received responses to those. We had a couple of
3 follow-up items that we addressed in the last week. The only
4 thing we had left was the production of the lease agreement
5 that existed between Dave & Buster's and Broadway at the
6 Beach, Inc. We have agreed that the Defendants will produce
7 that subject to that we will keep that lease confidential and
8 not use it for any other purposes outside of these
9 proceedings.

10 THE COURT: All right. Mr. Countryman, is that your
11 understanding?

12 MR. COUNTRYMAN: Yes, sir. That's been my position from
13 the beginning. I just want a confidentiality order entered
14 because my clients are, I think, understandably afraid of
15 having those lease terms go public and be on public record.

16 THE COURT: All right. We'll go ahead and I'll mark the
17 first motion to compel is resolved with the proposed
18 resolution placed on the record. All right. The second
19 motion to compel.

20 MR. NEILL: All right. Your Honor, the second motion has
21 to deal with depositions in this matter. This matter was
22 filed back in June of 2017. Just as a really brief overview
23 of what we're looking at, Carolina Cool was hired as a
24 plumbing contractor who was hired to do the work when they
25 were building the Dave & Buster's building out at Broadway at

1 the Beach. There is a dispute now because they have not been
2 paid for the work that they've performed on that building and
3 this lawsuit ensued.

4 The issue that we've had is with the difficulty in
5 obtaining the depositions of Garrard Construction Group's
6 witnesses. When we got started with this case, of course, it
7 is -- there's an enormous amount of paperwork involved with
8 it, but back in June of 2018 we started the process of trying
9 to depose their witnesses. They basically have three
10 witnesses. They have Bill Bromley, Shawn Gill and Pat Watson
11 who were involved with this project and my client.

12 There is an enormous amount of emails back and forth --
13 and can I approach, Your Honor?

14 THE COURT: Yeah. Thank you.

15 MR. NEILL: -- regarding the scheduling of these
16 depositions, and like I said, this starts in June of 2018. It
17 kind of goes to this effect -- I'm not going to go through
18 every email because that would be ridiculous and tedious, but
19 basically we agree that in October of 2018 we're going to try
20 and set it up so that we can get all these depositions out of
21 the way. Carolina Cool is going to produce their people.
22 Garrard Construction Group is going to produce their people.
23 We'll get them lined up, we'll get the depositions done and we
24 can move on, and this was important because under the
25 scheduling order that was in effect at that particular time,

1 these depositions were supposed to be done by October 19th of
2 2018.

3 Carolina Cool, we get dates, produce our witnesses, those
4 depositions go without a hitch. We even make some additional
5 accommodations during that week to make sure that we can get
6 those in.

7 The problem we have is with Garrard's witnesses. Prior
8 to Carolina Cool depositions there are emails asking for dates
9 for their witnesses. We're not getting any responses. When
10 we actually have the depositions we talk about, "Hey, we
11 really need to get these depositions done. We're under a
12 scheduling order." So it's then decided that October was kind
13 of out of the question for Garrard, that we look at some
14 November dates. So that day after the depositions we send
15 email to Mr. Countryman asking for dates in November. He
16 basically says, "Well, what do you have in mind?" We give him
17 some dates. The dates are okay with him, got to check with
18 his clients.

19 We don't hear anything. We send some numerous other
20 follow-up emails, don't hear anything. We finally get a
21 response sometime later. "All right. November no longer
22 works. We got to do December. What dates do you have in
23 mind?" Give them dates in December. "Those dates look good
24 with me, got to get up with my clients." Don't hear anything,
25 continually following up asking for responses.

1 Again, we get a response, December doesn't work. Now we
2 got to do January. So we give them, "Okay. Well, January 7th,
3 let's do it that week." That week, "Let me get, let me get up
4 with my clients." Gets back with his clients, that week
5 doesn't work. "We can do January 15th." Less than two hours
6 later we got a follow-up email saying, "No, January 15th won't
7 work. Now we need February," and this is all going on in
8 October and November.

9 Well, when we get to February it's like, "Okay, just get
10 with your clients and give us their dates. We're way past the
11 scheduling order at this time for getting these depositions
12 done, get us some dates." Several follow-up emails. Finally,
13 November 20th we get an email that says, "We can do depositions
14 February 12th, 13th and 14th." Literally, I think within five
15 minutes my office responds and says, "That's great, those will
16 work." We then get a reply email within like six minutes that
17 says, "Well, can we do them in two days instead of three?" We
18 say, "Fine. That's fine. Okay. We'll do them February 12th,
19 13th." They chose the date. We'll do it at his office. They
20 chose the place, and at this point, November 20th, we are
21 almost three months out from having these depositions taking
22 place.

23 Mr. Countryman apologizes, says, "I'm very sorry about
24 how hard this has been to get these depositions scheduled,
25 just email me the notices," and we do that. Everything

1 appears to be great. Okay. In fact, he even acknowledges
2 receipt of those notices and thanks us for sending them to
3 him.

4 At that point, we decide, well, we're so far past the
5 initial scheduling order we need to get another scheduling
6 order done. So there is a second scheduling order that was
7 done in this case, and that scheduling order provides that
8 discovery is supposed to be done by June 1st of this year, and
9 of course, that was all based on the fact that we would be
10 taking Garrard's witnesses depositions in February as they had
11 agreed because there are some other depositions that have to
12 be taking place, but we really need to get the Garrard
13 witnesses done before we can move on to the others.

14 January 29th, about two weeks before the deposition, I get
15 an email from Mr. Countryman saying that Bill Bromley, whose
16 deposition was scheduled for February 12th, was no longer going
17 to be available, that he is working in Massachusetts for
18 Garrard and that he cannot make his deposition date that they
19 had agreed on, that they had set three months in advance.
20 Also, Mr. Countryman informs me at that time that he has been
21 scheduled to appear in court in Dorchester County on February
22 13th, and that those depositions would not be able to take
23 place because he had motion hearings in that court. I sent
24 Mr. Countryman a letter with my frustrations about not being
25 able to, once again, schedule these depositions that we have

1 been trying to get done for seven months.

2 At that time, there was a motions roster conflict, okay.
3 I'm concerned about the deadline that's coming up in July. As
4 a result, now they want the depositions done in Atlanta, not
5 at his office, but in Atlanta, and they give me some more
6 additional dates. They say, "Oh, we can do it in March. Give
7 me a couple of dates." Actually, I think there was four dates
8 in March and then they give us a couple of more dates in
9 April. So and after the, the depositions did not take place
10 in February, that's when I filed this motion. Okay. Not
11 knowing when this motion was going to come up, I'm against
12 this discovery deadline, let's go ahead and let's notice these
13 depositions, fine. We're going to do them in Atlanta, let's
14 go to Atlanta, let's do the depositions in Atlanta. Let's
15 just get them over with.

16 Well, we have a secondary issue that's going on that
17 actually has to deal with the motion we just dealt with, and
18 that was these discovery responses, the supplemental discovery
19 responses that had been sent in November, had still not been
20 replied to, and I had gotten -- we had sent the 10-day letter
21 I think it was back in December, along those lines, maybe it
22 was January. Mr. Countryman said, "Hey, I want to give -- can
23 I give them to you on the 15th?" I'm like, "No, the 15th won't
24 work because we have to have -- we have depositions on the 12th
25 and the 13th." Then he said, "Well, I'll get them to you by

1 the 1st of February. So we re-noticed the depositions in
2 Atlanta for March, but I still don't have any documents
3 pursuant to those supplemental proceedings. I'm concerned
4 because I'm not going to go all the way to Atlanta, take these
5 depositions, not have the documents that they were going to
6 give me, try and leave them open and then start this whole
7 scenario all over again with trying to close out their
8 depositions. So what we do is we're right up against the 10-
9 day time period for sending out notices of depositions. We
10 said, "Well, they gave us April dates," and in the meantime,
11 this motion came up on the roster along with the discovery
12 motion. "So let's just do it on the April dates that they
13 gave us."

14 So we send out notices, subpoenas to do the depositions
15 in Atlanta on those April dates. Now those dates are
16 unavailable. They can't be there for that.

17 Now, the problem is they're always unavailable, but
18 they're unavailable because they have something better they
19 want to do, not because somebody's sick or somebody's hurt or
20 there's a funeral or something, it's just they have somewhere
21 else they want to be instead. So for the last, as I stand
22 here today, nine months, we have been trying to get these
23 depositions done. They set the place, the time, the date for
24 these depositions to occur in February. Bill Bromley just
25 flat out decides he doesn't want to come. He's working up in

1 Massachusetts for them. He doesn't want to be there. The
2 part that's unusual about the rest of this are those motion
3 hearings that Mr. Countryman had a conflict with. In my
4 process of getting prepared for this motion, because Mr.
5 Countryman sent me the roster that day, we went back and
6 looked at that case. Apparently just a few days after he sent
7 me that notice saying that he couldn't be there because of
8 motion conflicts, those motions got canceled, and they were
9 rescheduled until March 4th, and no notice was given to me. So
10 they could have called me and said, "Hey, we do have those
11 dates open now. I don't have to be in court," but nobody
12 called me and the answer was simple, it's because they had
13 already told him they weren't coming to their deposition in
14 February.

15 So, what I'm looking for here, Judge, is really a couple
16 of things. One, we have given them every opportunity in the
17 world to give their testimony in this action. They totally
18 blew off the first scheduling order. We did a revised one.
19 We've set up dates that they agreed to at a place that they
20 chose for their depositions and decided not to attend that one
21 either. At this point I think these witnesses need to be
22 stricken from this action, their testimony not be allowed and
23 that we just move on without their testimony, and if the Court
24 doesn't feel like enforcing that, I really need to get an
25 order requiring these people to give their depositions, and I

1 need it to be done before that June 1 date, earlier the
2 better.

3 THE COURT: All right.

4 MR. NEILL: You know, so that's what I'm looking for, and
5 I'm looking for attorney's fees associated with filing this
6 motion.

7 THE COURT: What kind of attorney's fees are you asking
8 for?

9 MR. NEILL: I've got attorney's fee affidavit for Your
10 Honor which actually was done this morning. I haven't given
11 this to Mr. Countryman yet. So this is the first time he's
12 seen it.

13 THE COURT: All right.

14 MR. NEILL: But our attorney's fees in filing the motion,
15 reviewing everything for our hearing today and then our
16 attendance and the filing fee is \$3,261.74.

17 THE COURT: All right. All right, Mr. Countryman.

18 MR. NEILL: Thank you, Your Honor.

19 MR. COUNTRYMAN: May it please the Court, Your Honor?
20 Andy Countryman, I represent the Defendants, including
21 Garrard, and I do need to note for the Court that I think that
22 was a pretty gross mischaracterization of the discovery issues
23 in this case.

24 Garrard is a pretty large contracting firm based in
25 Atlanta. They did the Dave & Buster's project here in Myrtle

1 Beach and that's what this case is about, problems between
2 Garrard and Mr. Neill's client, Carolina Cool, and I've worked
3 with Mark this entire time to try to set up these depositions.
4 I certainly don't object to my folks being deposed. I want
5 them to be deposed. It's just been difficult to get these
6 three witnesses on the books, and I also need to note that I'm
7 a sole practitioner. My assistant, who does my scheduling, is
8 my wife. She had our first child on November 21st. So all
9 during the holiday time period I'm dealing with these
10 scheduling issues, trying to get everything lined up, and for
11 Mr. Neill to say that I didn't present witnesses when they
12 were supposed to be there is simply not true. Every time
13 something came up we discussed it, I provided new dates
14 immediately and I cannot help that the court scheduled a
15 hearing for that February date, and I didn't notify him of
16 that after the court canceled the hearing because by that
17 point we'd already discussed new dates and I'd already told my
18 folks that those dates aren't going to go forward, and as to
19 the date immediately prior to that hearing, we discussed March
20 deposition dates because I gave him new dates basically the
21 same day I said we can't do it in February, and he did not
22 actually notice the depositions for March 26th and 27th which
23 were two of the dates that I gave him that day as being
24 available. Instead, he said, "Yeah, we'll do them those days
25 in Atlanta," but he didn't notice them. Instead he sent blind

1 notices to have these witnesses deposed on April 16th and 17th.
2 He served me with subpoenas for those witnesses because as a
3 matter of courtesy I told him, "Yeah. I'll accept subpoenas
4 for these guys even though they're in Atlanta."

5 I have bent over backwards to try to schedule these
6 depositions. I'll continue to do so. Again, I want these
7 guys to be deposed. It doesn't benefit me or anyone else to
8 have it be delayed, but there are two other caveats. The
9 first is Mr. Neill just filed a motion to amend the complaint
10 to which I consented, which I think is before Your Honor on
11 Wednesday or Thursday, and there may be a consent order in the
12 process there. Under Rule 30(a), a deposition can't take
13 place prior to 30 days of service of a summons and complaint
14 on a Defendant. I've also been in touch with Billy's lawyer,
15 and Billy's lawyer has indicated he wants to participate in
16 any depositions that take place, and if my folks get deposed
17 before Billy's is involved he wants to reserve the right to
18 depose my folks again. I can't let that happen either. So I
19 need to make sure that the depositions of my folks take place
20 so that Billy's can get involved and participate if it so
21 deems fit and proper, which it says it wants to do.

22 The other issue here is I indicated to Mr. Neill early on
23 that as a matter of courtesy and convenience I would have the
24 witnesses come to South Carolina because it happened to work
25 on the dates that we discussed. When the initial depositions

1 couldn't go forward I provided new dates, but these folks do
 2 big projects all over the East Coast, and having them come to
 3 South Carolina was not feasible, and we started discussing the
 4 issue, and he vehemently objected to that, and I said, "What's
 5 the -- I'm not sure what the big deal is. The rules say you
 6 have to go to where the witnesses are unless the witness is a
 7 party, and if a witness -- regardless of whether a witness is
 8 a party, the person noticing the deposition has to pay for the
 9 witness's travel costs or mileage to get to the deposition,"
 10 and Mr. Neill objected to that and made the claim that I
 11 somehow waived that, which I never did, and I've discussed
 12 that with him since he initially brought that up, and I said,
 13 "Mr. Neill, I'm happy to try to get my folks to come here, but
 14 if, if they do, your client is responsible under the rules for
 15 their mileage or travel costs," and he said, "No, either they
 16 come here for free or we go to Atlanta and depose them and you
 17 pay for all of our attorney's fees," and so that's what's
 18 behind part of this motion.

19 THE COURT: I mean, what's in Atlanta? Is that the base?

20 MR. COUNTRYMAN: That's, that's where the company is
 21 located.

22 THE COURT: And that's where these witnesses are located?

23 MR. COUNTRYMAN: Yes, sir.

24 THE COURT: Okay. All right. Go ahead.

25 MR. COUNTRYMAN: In the general vicinity of Atlanta.

1 THE COURT: All right. Go ahead.

2 MR. COUNTRYMAN: Well, that's basically it. I'm --
3 certainly I want to have these folks deposed. There's no
4 basis for sanctions. I, I don't understand where that comes
5 from, and it frankly disappoints me. I've worked with him
6 since day one, and I'm sorry that things come up, but again,
7 I'm a sole practitioner, and I've been extremely busy with
8 personal and work things, and these folks are busy, and I was
9 under the impression that we were trying to work together to
10 schedule these depositions. I certainly would never evade
11 that, and again, I want to have the depositions take place.
12 We've just had difficult times getting them lined up, and I
13 thought that we were on the same page with respect to having
14 the depositions on a certain number of days in a certain
15 location, worked together on that, but apparently not, and I
16 haven't had any success since these motions were filed
17 resolving that issue with Mr. Neill primarily because he has
18 not agreed that he will pay for my folks to come here and says
19 if we go to Atlanta to take the depositions then my client's
20 responsible for his attorney's fees, which there's no basis in
21 the rules for either one of those things. So that's an issue
22 we need to have clarified today.

23 So my request to the Court would be I'm fine if you want
24 to enter an order saying these folks need to be deposed by "X"
25 date. That's great. I just want to make sure that Billy's

1 has enough time to get involved and participate in the
2 depositions, and I suppose we need some kind of direction on
3 travel costs, location and those types of things, and again,
4 I'm happy to talk to my folks about coming here if they can
5 all do that. If we need to go to Atlanta, that's fine, but I
6 need everything to go according to the rules, which, again,
7 provide that a witness who testifies, even if it's a party, is
8 entitled to recover their travel costs or mileage by the
9 deposing party.

10 THE COURT: All right.

11 MR. COUNTRYMAN: And Mark, correct me if I'm wrong, but I
12 think you submitted a proposed consent order amending the
13 complaint.

14 MR. NEILL: That's for Wednesday's motions.

15 MR. COUNTRYMAN: Okay.

16 MR. NEILL: Uh-huh.

17 MR. COUNTRYMAN: But that is submitted?

18 MR. NEILL: Yes.

19 MR. COUNTRYMAN: All right.

20 THE COURT: All right. I'm going to grant the motion to
21 compel. Mr. Neill, you're to just schedule the deposition on
22 such dates as you deem appropriate. The Defendants must
23 appear for those depositions. Given the length of time,
24 there's been more than enough time for them to give their
25 depositions. I'm going to leave it up to you, Mr. Neill,

1 where you want to schedule it. If you make them come here and
2 the rules require you to pay the fees, you've got to pay the
3 fees. If you want to set them up in Atlanta, you can set them
4 up in Atlanta, but you set them up on the date you desire,
5 where you desire, granting Plaintiff judgment against the
6 Defendants for 32-61-74 in attorney's fees in bringing this
7 motion to compel, and then we'll just leave it at that. So
8 you go ahead and pick the dates you want to take the
9 depositions. You're just going to have to tell them they got
10 to be available on those dates and times and at that place and
11 then we'll just proceed from there.

12 MR. COUNTRYMAN: And could I ask if we could make sure
13 that it's at least 30 days after.

14 THE COURT: No. I mean, given it's been going on since
15 last -- what'd you say -- October? That's been more than
16 enough time, October, November, December, January, February,
17 March and now we're into April. No. They -- he's going to
18 set a -- he's got to give -- what is it -- the 10-day notice.
19 So whatever the 10-day notice is they're going to --

20 MR. NEILL: And we'll certainly make Billy's Plumbing
21 aware of the dates, too.

22 THE COURT: That'll be fine, and we'll do it that way.
23 All right.

24 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the hearing held in the case of Carolina Cool, Inc. versus Garrard Construction Group, Inc., et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on April 1, 2019.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley, CVR-CM-M
Official Reporter

August 13, 2020.

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO. 2018-CP-26-03562
3
4

5 December 18, 2019

6 BEFORE: The Honorable Benjamin H. Culbertson
7

8 -----
9 CAROLINA COOL, INC.,
10 Plaintiff,
11 vs.
12 GARRARD CONSTRUCTION GROUP, INC.,
13 DAVE & BUSTER'S OF SOUTH CAROLINA, INC.,
14 and BROADWAY AT THE BEACH, INC.
15 Defendants.
16

17 -----
18 GARRARD CONSTRUCTION GROUP, INC.,
19 Third-Party Plaintiff,
20 vs.
21 RLI INSURANCE COMPANY,
22 Third-Party Defendant.
23

24 -----
25 APPEARANCES:

Mark David Neill, Esquire
Mary Anna Neill, Esquire
Attorneys for the Plaintiff.

Andrew Countryman, Esquire
Attorney for the Defendant.

Official Court Reporter
Cynthia D. Weaver

P-R-O-C-E-E-D-I-N-G-S

THE COURT: All right. First up is
2017-CP-26-3562, Carolina Cool, Inc., versus Garrard
Construction Group, Inc., Dave & Buster's of South Carolina,
Inc., Broadway at the Beach, Inc., and Billy's Plumbing
Company, LLC. Closed. Garrard Construction Group, Inc.,
Third-Party plaintiff Versus RLI Insurance Company.

According to my roster, the matter is before the
Court on a motion for sanctions. Please give the Court
Reporter your name and who you represent.

MR. NEILL: Yes, Your Honor, I represent -- Mark
Neill and I represent the -- I'm Mark Neill and I represent
the Plaintiff, Carolina Cool.

THE COURT: All right.

MR. COUNTRYMAN: I'm Andrew Countryman, I
represent the Defendants, Garrard Construction Group, Dave &
Buster's of South Carolina and Broadway at the Beach.

THE COURT: All right. Mr. Neill, this is your
motion?

MR. NEILL: Thank you, Your Honor.

Your Honor, we were actually here a little less
than a year ago for a sanctions motion regarding this case.
Originally, this started out as a problem with scheduling
depositions of the Defendants. We have tried for months and
months and months and couldn't get those scheduled.

1 The Court, in that instance, ended up awarding
2 sanctions to the Plaintiff plus attorneys fees of \$3,200.
3 Which basically provided that the Defendants were to show up
4 for their depositions when and where we designated them to
5 do so.

6 Unfortunately, since that time, the discovery
7 abuses that have taken place in this case kind of pale in
8 comparison to what we were here about a year ago.

9 There's a number of instances that have come to
10 light while these depositions were being taken regarding the
11 production of documents.

12 And just to kind of give you just a little brief
13 background in this case, this is basically a breach of
14 contract case. My client, Carolina Cool, was hired to do
15 the plumbing project work for the new Dave & Buster's they
16 were building at Broadway at the Beach.

17 We allege that they wrongfully terminated us, sued
18 them for breach of contract for monies they did not pay.
19 They, in turn, have countersued us on breach of contract, as
20 well, and are claiming additional costs that they incurred
21 as a result of having to hire another contractor to complete
22 that work.

23 This should be a very simple case to conduct
24 discovery in. These were both sophisticated parties. You
25 know, this is your typical case where these type of

1 things -- basically, the story is told in the documents.
2 You know, and we're basically just looking for a few things.
3 We're looking for the contracts. What are the contracts
4 between the parties? What are the communications that the
5 parties had between each other and between the subsequent
6 contractor that was brought on to complete the work. And,
7 just so that you know, that contractor is a company called
8 Billy's Plumbing.

9 We're looking for daily status reports that kind
10 of tell us what was going on those projects on a day-to-day
11 basis, so we can gauge who was in the right and who was in
12 the wrong.

13 We're also looking for schedules. Because in
14 their counterclaim, they're claiming that we delayed their
15 schedules, so we're looking for schedules of those type of
16 things. And we're looking for any notes they might have
17 regarding the project.

18 Back in October, 2017, so we're going back more
19 than two years at this point. We start off with initial
20 discovery in this pro -- in this case. And I'm sorry I'm
21 going to do so much back and forth here, Judge, but there's
22 so much documentation with this and I'm going to try and
23 keep it as brief as I possibly can.

24 But we start off with the initial discovery. We
25 got our initial requests, which are your basics, "Hey give

1 us communications, give us contract documents, give us
2 payments," those types of things.

3 And we get a response from the Defendants about a
4 month and a half, two months later. Those responses, I have
5 for you here, which, basically, the gist of these responses
6 is, "Here's everything we have." In fact, just to kind of
7 be extremely accurate with you, all responsive material in
8 Defendant's possession, control, is included in its
9 production with these responses. So, basically, they're
10 saying, "Hey, this is what we have, all of what we have."

11 We get these responses. It's 500-and-some
12 documents. It's very evident that there is no possible way
13 that this is all the documents that they have. Of those 500
14 documents, I think about half of those are just pictures of
15 the project.

16 So, as a result of that, we send them a
17 supplemental request, in which we try to get even more
18 detailed with regards to the daily job progress reports,
19 those type of things. You know, the idea is we're trying to
20 get what we don't have. We get responses from those, it's
21 clear again, we probably don't have it. We do a third set.
22 I think in the end we up with 70-some requests for
23 production, getting more and more specific as we go along,
24 asking for all those six categories that I just told you
25 about a minute ago.

1 Now, in this same time period, we're also trying
2 to get the documents from Billy's Plumbing.

3 And, actually, you've been involved with that,
4 too. We have numerous motions with Billy's Plumbing,
5 because we're having the same difficulty getting any type of
6 documents from them. And made an initial production of like
7 40 documents and, over a course of a year, we finally got
8 them to produce those items.

9 So we get into the deposition phase. And one of
10 the things that's really important, Judge, is they give us
11 some contracts. And they basically don't give us any email
12 communications, whatsoever. Which is kind of like one of
13 number one things that we asked for in that initial set of
14 October 2017 discovery. Saying, "Give us communications
15 that you have with Billy's Plumbing. The company that
16 replaced us so we can have a better understanding of what
17 work they did, what costs they incurred, you know, when did
18 they come into the project, those types of things."

19 So we get through that part and one thing that is
20 interesting, Judge, and I don't know if I really made sense
21 of it at the time, but we're in this battle with Billy's
22 Plumbing to get their documents under a subpoena. And
23 there's numerous court hearings coming up. And at one point
24 there's a court hearing that's coming up, and Mr. Countryman
25 basically sends an email to their attorney saying, "Hey

1 here's a copy of our file." Which, at the time, I really
2 didn't think all that about it, but now I kind of find it
3 interesting that they're basically saying, "Hey, here's a
4 copy of our stuff just in case you need it, this is what
5 we've given them."

6 Now, this isn't the entirety of the records of
7 what we got, but it kind of sets the stage for where we're
8 going next with this. So we finally get those deposition
9 scheduled which Your Honor forced them to do. Those
10 depositions start up in April of this year 2019.

11 The part that kind of starts putting us on edge
12 about all of this is, a few days prior to that deposition,
13 we get a letter from Mr. Countryman. The purpose of this
14 letter is simple, it's to let us know what the cost will be
15 for these people to appear here. Now, Garrard Construction
16 is a company that is located out of Atlanta. Okay. We had
17 three depositions set up. There was two superintendents
18 that were monitoring the project and one project manager.

19 Two of those witnesses have their address listed
20 as Atlanta, Georgia. Where it becomes interesting, and this
21 was the first deposition we're taking, this guy was named
22 William Bromley, he was one of the superintendents on the
23 project, his address is listed as Massachusetts.

24 So we get into taking his deposition, and this is
25 kind of the first thing that we're going to start addressing

1 with Mr. Bromley.

2 And if you look, Judge, if you look on Page 6, it
3 starts with Line Number 18, the question is:

4 "Q. What is your current address?

5 A. My current address 34 Bob White Circle,
6 Osterville, Massachusetts.

7 Q. Is that your temporary or your permanent?"

8 He doesn't really answer it, he just says, two
9 years.

10 "Q. Where did you live prior to that?

11 A. 527 Little Refuge Road, Weleska, Georgia
12 30183. That is my permanent home address."

13 Now, if you turn to the next page, looking up on
14 Page 212 of the deposition, starting at question Number 8:

15 "Q. Do you own your home at Weleska, Georgia?

16 A. Yes.

17 Q. Where is that located? What's the street
18 address?

19 A. 527 Little Refuge Road.

20 Q. What's the zip? Do you still have your
21 driver's license in Georgia?

22 A. Yes.

23 Q. You haven't switched it to Massachusetts?

24 A. No.

25 Q. After this job in Cape Cod is completed, where

1 do you go next?

2 A. I have no idea.

3 Q. You don't plans to move to Massachusetts
4 permanently?

5 A. No. God, no.

6 Q. I don't blame you, you don't want to go
7 anywhere colder than there."

8 And he basically says, it is my home.

9 "Q. I think earlier today you said that that was
10 your permanent address, and you said, 'Yes'."

11 Now, in the end, this isn't really all that
12 important, because I did refuse to pay his mileage coming
13 from Massachusetts. I actually paid his mileage coming from
14 his real permanent address. But it kind of sets the stage
15 for what we have coming next.

16 So we continue on with his deposition. And one
17 of -- like I said, one of the huge issues we have in this
18 case has to do with communications, emails. Because there
19 is this tremendous lack of communication in this case. And
20 these cases are built on communication. Between the
21 contractors and sub-contactors, they email back and forth
22 almost on a constant basis. Yet the production that we have
23 has zero of these communications, particularly between
24 Garrard Construction and Billy's Plumbing, who is replacing
25 now Carolina Cool.

1 So, as we get a little bit farther into his
2 deposition, we're going to start talking about emails. And
3 this time we're going to start on Page 164, and we're going
4 to start on Line Number 17.

5 "Q. I'll show you what is Bates stamped Billy's
6 Plumbing 1762" -- and just so you know this is part of the
7 document production we get from Billy's Plumbing pursuant to
8 the subpoena once we get that worked out over the course of
9 a year. Also an email we do not have from Garrard
10 Construction.

11 "It's an email dated January 6, from Shawn" --
12 Shawn is an employee of Garrard -- "to Billy's Plumbing
13 which you're cc'd on, and Shawn is giving them a link to the
14 project plans. Do your recall receiving an email and
15 thinking, Oh, wow, there's a new plumber about to take over?

16 A. No, I do not recall that. (sic)

17 Q. Do you recall getting emails regarding Billy's
18 Plumbing?

19 A. An email like this I wouldn't even look at
20 twice.

21 Q. Do you get a lot of emails?

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

25 Q. It just seems like you're supervising the

1 subcontractors ---

2 A. But they were not hired as a subcontractor at
3 this time.

4 Q. But it's discussing replacing a current
5 subcontractor.

6 A. Okay, but I do not recall that.

7 Q. Have you gone back to look at what emails you
8 might have regarding this project?

9 A. No, I have not.

10 Q. Have you asked to go back and look at emails
11 you may have? (sic)

12 A. No, I have not.

13 Q. Is there a possibility that you have more
14 emails regarding this project that have not been" -- then he
15 interrupts.

16 "A. There's a possibility, yes.

17 Q. So from this email it appears as early as
18 January 6th, plans are being emailed to Billy's Plumbing.
19 Is that correct?"

20 This email is really important, Judge, this is a
21 background, because it's been contended by the contractor
22 Garrard, that they hired Billy's Plumbing after they had
23 terminated Carolina Cool. This email suggests otherwise,
24 they were actually in contact with them almost immediately
25 upon us showing up on the job site.

1 So I'm going to skip them. Page 167 of the
2 deposition, you'll see the questions again:

3 "Q. I will give you a copy of an email, again,
4 from Scott Gasque" -- we're talking about those emails we
5 have from Billy's -- "Do you know who Scott Gasque is from
6 Billy's Plumbing?

7 A. Possibly.

8 Q. Billy's Plumbing Bates stamp 66."

9 This is where the point in this deposition, this
10 gets very interesting. Because these are emails, of course,
11 that involved Garrard. They're from their employees.
12 They've been asked for in discovery, but never been
13 produced. Okay. For over two years -- for almost two years
14 they haven't been produced.

15 This is where Mr. Countryman gets involved. He
16 said:

17 "Mr. Countryman: Y'all didn't produce this or
18 identify this before the deposition. Right?

19 "Ms. Neill" -- who's my wife -- "No. You actually
20 provided this." That was actually wrong, because it was
21 from Billy's, like we just talked about.

22 "Mr. Countryman: Did you identify it as a
23 potential deposition exhibit for the deposition as Rule 318
24 (sic) requires?

25 Ms. Neill: This is not a deposition exhibit yet.

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

4 Ms. Neill: Well, it's something that you had and
5 it came from Scott to Shawn Gill, but it's something that
6 apparently you (sic) have not produced in discovery even
7 though you had it in your records."

8 They also had a copy of it, because they were
9 copied on the production responses from Billy's Plumbing, as
10 well. So this isn't some big shock or surprise. It's a
11 surprise to them, because they never bothered to look at the
12 documents that were sent to them.

13 "Mr. Countryman: That has nothing to do with the
14 rule, which says deposing Counsel shall provide the opposing
15 Counsel a copy of all documents shown to the witness during
16 the deposition, either before the deposition begins or
17 contemporaneously with the showing of the documents to the
18 witness."

19 Which you obviously have not done, which is
20 exactly what she's doing. That's why they're upset, because
21 we're talking about this document that conflicts with
22 they're story.

23 "Ms. Neill: We provided this to you before" --
24 and he interrupts.

25 "Mr. Countryman: That's not what the rules says,

1 does it? I'm just asking if you specifically identifying
2 (sic) the document as something that you would use in the
3 deposition before."

4 The bottom line is he's upset because we're
5 questioning his witness about a document that he's involved
6 with that they didn't produce to us. So they don't like the
7 fact that now we have the document that conflicts with the
8 story that he's given.

9 Now, as we move along through the deposition --
10 like I said, Judge, I'm sorry to keep doing this to you, but
11 there's really no other way to do it.

12 We start talking about job reports and timelines.
13 Timelines are also very important here because there's a big
14 difference between Carolina Cool's timelines, their
15 timelines, and, of course, they're asking for damages,
16 because they're saying that we delayed their project.

17 And, again, starting on that Page 31 of that
18 deposition that I handed up:

19 "A. I would have to look at data reports and also
20 the timeline that I submitted.

21 Q. When you say "timeline," what document are you
22 talking about?

23 A. I provided a timeline during this whole period
24 of what was moved and when. It was part of the discovery.

25 Q. Okay. And what would that timeline look like?

1 Is it entitled 'Timeline'?"

2 A. Yeah. It's entitled 'Timeline'. I believe
3 it's a three-page document.

4 Mr. Countryman: That may be work product. I'm
5 not sure of the context of this production. If we produced
6 it, you're welcome to ask him about it, but I need to look
7 at it and see if it's attorney work product.

8 Ms. Neill: I'm not familiar with having a
9 timeline."

10 And, of course, in their discovery, they never
11 identified anything as being privileged or work product.

12 "Q. Do you recall when you made the timeline?

13 A. I do not remember.

14 Q. Was it within the last couple of years?

15 A. It was during this time to basically document
16 what was going specifically in relation to the project and
17 the Carolina Cool situation.

18 Q. And when you say, 'this time' you're talking
19 about -- you were kind of motioning towards the calendar.
20 During January?

21 A. Yes, in January.

22 Q. So sometime in -- gosh, it's amazing that was
23 two years ago. So sometime in January of 2017, that was the
24 timeline?"

25 And that's when Carolina Cool is on the job and

1 they're performing their work. So that's why these
2 timelines are so important.

3 "A. It's probably would have been late
4 January 2017, yes.

5 Q. Is that something that will be created under
6 the 360 software?

7 A. No. It was an independent document that I
8 created just to document.

9 Q. Like a Word document?

10 A. Yes, (sic) it is a Word document."

11 So we have another document outlining --
12 specifically asked for in discovery, asking them to document
13 what was going on with the job at that time.

14 Now, eventually we get to Deposition Number 2.
15 This a gentleman by the name of Shawn Gill. Shawn Gill is
16 the project manager for this project. And this is where
17 things start to really get interesting. And Mr. Gill was
18 actually present when we were doing Mr. Bromley's deposition
19 the day before.

20 So now we're looking at Mr. Gill's deposition
21 starting at Line 12.

22 "Q. Yesterday I talked to Bill Bromley during his
23 deposition and you were here as well. And we went over the
24 daily reports that he generated. And we also looked at the
25 typewritten and the handwritten notes that he provided to

1 document what was going on. Are you aware of any other type
2 of source of documentation as to job process there would be
3 other than what Bill Bromley would have documented or Pat
4 Watson?

5 A. That would be the daily reports that they
6 generated. Progress photos, the two-week look aheads (sic)
7 that we discussed yesterday, or that you discussed with Bill
8 yesterday.

9 Q. That was taking place at those meetings?

10 A. Correct. And then whatever emails that would
11 have been sent out."

12 So we, again, have this reference to these emails,
13 none of which have been produced.

14 "Q. That would be -- that would be kind of --
15 that would kind of encompass all of the communication,
16 written communication. And when you say the emails, between
17 who?

18 A. You know, there was always emails from him to
19 subcontractors, subcontractors to him, as well as myself
20 between me and my superintendent, me and Bill or Pat on the
21 project."

22 Now, this is where it starts to get very
23 interesting.

24 "Q. And have you gathered those emails related to
25 this project?

1 A. To the best of my knowledge, I've
2 submitted and we did a -- when you get that many emails, you
3 did a search for that whole thing and turned them over to
4 Rebekah".

5 Rebekah is their office manager. In fact, the
6 Defendants have submitted an affidavit from her today which
7 is interesting relating to all of this -- "and then she
8 submitted them to Andrew with his discovery request.

9 Q. And when what would that have taken place?

10 A. Um, there were -- I believe there were some
11 emails on the first discovery request and then we figured
12 out to go in and consolidate them and print them the PDF,
13 and so there were more that were sent with the second
14 discovery request."

15 Now, remember these are all emails. We have
16 received none of these emails. Okay. Next page.

17 "Q. Okay. And approximately when was the second
18 discovery request?

19 A. Two months ago.

20 Q. Did you -- how did you communicate with Seth
21 McCoy with Broadway?"

22 Seth McCoy was the representative for Broadway at
23 the Beach, who was dealing with the project.

24 "A. Via phone and email.

25 Q. And how did you communicate with Dave &

1 Buster's folks?

2 A. Both phone and email and through" -- I don't
3 know what Expedite (sic) is -- "when we submit the planned
4 RDFs (sic) or change requests or submittals. I guess that
5 would be considered communication as well."

6 Mr. Countryman then chimes in, "Mary Anna, I
7 didn't withhold anything from that. I'm looking at what I
8 produced to y'all recently. I don't see emails, other than
9 the ones that were between -- it looks like stuff that was
10 between Garrard and Burroughs & Chapin. But if there's
11 something we missed, that's fine. But I was not withholding
12 anything."

13 And Ms. Neill says, "Thank you".

14 If you turn to the next page, Page 182, we
15 continue on with this, Line Number 20, it starts:

16 "Q. Did you tell Billy's Plumbing that?

17 A. I did. I believe I also told them in an email
18 to hold tight, you know."

19 This is what we're talking about at this point is,
20 Billy's Plumbing is actually trying to show up on the job
21 when Carolina Cool is still performing their work, you know.
22 Because Carolina Cool hasn't been told that they're
23 terminated yet and Billy's Plumbing is already showing up
24 trying to start work.

25 "Q. And from this period of time January 2017" --

1 this is where this gets good -- "Where are all of your
2 emails stored?

3 A. In Office 360, our email server, I guess you
4 would call that (sic).

5 Q. And have you looked for emails you may have
6 had with anyone at Billy's Plumbing?

7 A. Yes.

8 Q. And have you found emails?

9 A. Yeah. So we did -- it was requested through
10 the second discovery request. Rebekah and I went into
11 emails and did a search for anything that was Scott Gasque's
12 or Billy's Plumbing. And anything that came up on that,
13 Rebekah printed a PDF and provided it to our attorney.

14 Q. And you've provided those documents?

15 A. Yes."

16 Mr. Countryman chimes in again: "I don't recall
17 there being any emails in that production in April.

18 Ms. Neill: I have not received any emails
19 regarding Billy's Plumbing except for what Billy's Plumbing
20 just gave us in response to our subpoena.

21 Mr. Countryman: Let me check that again. I
22 didn't receive anything (sic) -- I didn't receive something
23 and failed to give it to you in that regard. Let me see if
24 there's something that I overlooked.

25 Witness: Me and Rebekah did that, and I assumed

1 she got that to you. I can't (sic) check with Rebekah, but
2 we did do a search for that.

3 Ms. Neill: So there are more emails possibly out
4 there from you to Billy's Plumbing?

5 A. In addition to what?"

6 The question is, the zero that I have.

7 "A. There were some, and I served all those up.
8 We printed them to PDF, and I'll circulate (sic) back with
9 Rebekah and make sure that those are part of -- but there
10 were emails between me and Billy's Plumbing."

11 So not only do we have acknowledgment that there
12 are various emails. We have a witness who has gone through
13 the process of actually searching for these emails on two
14 different occasions in response to requests that we have
15 sent them.

16 I'm going to try to skip some of this stuff, just
17 to kind of highlight it for you, to make it a little
18 quicker. But then there's a back and forth regarding the
19 job report. Job reports are really big on this, because
20 they describe exactly what work was going on from week to
21 week. There was a job report that was missing. And, oddly
22 enough, the job report that's missing is the crucial week
23 that Carolina Cool was there.

24 They actually go searching for it and this is the
25 one where, later on in the deposition, not only do they find

1 the job report, but they are looking at it on
2 Mr. Countryman's computer. But it has not been released to
3 us in discovery, it has been held back for whatever reason
4 there might be.

5 The other interesting thing that comes up with
6 Mr. Gill is there are these numerous job reports where they
7 are compiling, on a daily basis, the work that gets done on
8 that particular day. Those job reports get produced to us.
9 However, when they're produced to us, they're not dated, so
10 there is absolutely no way to tell which reports go with
11 which day.

12 There's a line of questioning that involves
13 Mr. Gill, and Mr. Gill admits that when he produced those
14 documents to his attorney, they were filed in individual
15 files that all had a date on them. However, when they're
16 produced to us, now they're produced in one lump sum, no
17 dates, we cannot figure out -- in fact, the witness himself
18 can't even figure out which dates go with which job reports,
19 without having to look on the computer and actually pull up
20 those individually documents, so we can look at what those
21 dates are.

22 So it's just another example of the discovery
23 abuse designed to confuse and to cause us more work.

24 There's another conversation with Mr. Gill
25 regarding schedules. We talked about it. They're blaming

1 us. They said we screwed up your schedule. They didn't
2 provide a single schedule past January 19th, which was the
3 day that we were kicked off the job.

4 And he says, "They have those schedules." Has
5 anybody asked you to look for them? No, nobody has ever
6 asked me to look for them. We specifically asked for them
7 in discovery again. So they have numerous job schedules.
8 No one's bothered to even take a look for them although
9 they're blaming us for delaying their project.

10 Now, this is where we kind of reach into a whole
11 'nother (sic) realm. The emails bad enough. We got tons of
12 testimony, there's a ton of emails out there, none of them
13 have been produced. But this is where it gets to a whole
14 'nother level.

15 At the heart of this dispute are contracts. These
16 are, without question, covered in the initial set of
17 discovery that was sent to Garrard Construction. And the
18 really heart of this deals with what contract does Billy's
19 Plumbing have and what did they get paid for the work that
20 they did?

21 I'm going to read this part because it's just so
22 important to what we're talking about here today. If you
23 look at Page 186, Shawn Gill, same deposition, and we're
24 referencing a document that is received, Billy's Plumbing
25 1787, okay.

1 "And it looks like a doc" -- and this is what it
2 says -- "And it looks like a document from Billy's Plumbing
3 and it's dated January 3rd (sic). Do you remember receiving
4 that?

5 A. Yes.

6 Q. And is that your signature on the document?

7 A. It is.

8 Q. And would this be the document that you would
9 keep a record of in your file?"

10 And he basically says, "It would."

11 Later on down the page at Line 24.

12 "Q. And this looks like a contract to me,
13 correct?

14 A. Correct. It's an hourly rate agreement and is
15 what it is.

16 Q. An hourly rate agreement? And you maintained
17 that in your file from the Myrtle Beach Dave & Buster's
18 project?

19 A. Yes. It was would have been -- yes.

20 Q. And are there any other documents that you
21 would have had with Billy's Plumbing, any other agreements?

22 A. We had a subcontract with them at a later date
23 to do the -- everything from the slab up. This was
24 specifically for the underslab. And then we had a formal
25 subcontract agreement similar to what our subcontract was

1 with Carolina Cool for all the work with slab.

2 Q. And during the course of the lawsuit, did you
3 look for your agreements you had with Billy's Plumbing?

4 A. Yeah. When we were asked for discovery, we
5 were asked for their subcontract, their checks, their pay
6 applications and all that.

7 Q. And would this document be regarding their
8 subcontract?

9 A. It would be (sic)?

10 Q. A subcontract that you would have had with
11 Billy's Plumbing?

12 A. Yes. This should be -- in our files, yes.

13 Q. Because Billy's Plumbing, they didn't contract
14 directly with their owner, right?

15 A. No.

16 Q. They contracted with Garrard?

17 A. That's correct.

18 Q. And do you have idea why Garrard wouldn't have
19 produced this document in discovery?

20 A. I don't know why we wouldn't have. I mean, if
21 it wasn't provided -- if it wasn't provided, it wasn't
22 intentional."

23 You're going to see this word "intentional" about,
24 it feels like 50 times in these depositions. But this is
25 where this gets very important.

1 In all the discovery we received from Garrard, we
2 have never gotten a copy of that January 23rd contract. And
3 the reason is, is because about four months later, after it
4 was clear that they were going to be involved in litigation
5 in this matter, they changed that contract. That contract
6 was a time and materials contract for Billy's Plumbing to
7 finish the work that Carolina Cool had.

8 In May, four-and-a-half months later, they
9 actually convert this to a fixed-price contract. And then
10 they add it, as an addendum, to the other large contract
11 that they had. So they're basically trying to change what
12 would be a cost plus to a fixed price and doing it to
13 deceive us.

14 Now, the reason this is really critically
15 important has to do with the discovery that we had with
16 Billy's. Remember, we're trying to subpoena their
17 documents. One of the biggest concerns they have through
18 their attorney is they're concerned about the proprietary
19 information they have with regards to what they paid for
20 materials and what they paid for their employees.

21 So, in having all of these multiple hearings to
22 produce that information, I entered into an agreement with
23 Billy's that says, "Listen, it's a fixed-price deal, I don't
24 really need to know what you pay your employee and what you
25 pay for materials."

1 So, in the end, what we end up getting from
2 Billy's Plumbing is a redacted version of their contract.
3 And, of course, this is really big deal right now because,
4 unbeknownst to me, this isn't a fixed-price contract, this
5 is a time and materials contract -- which, by the way, the
6 balance of that they ended up just converting to the fixed
7 price.

8 So they're trying to keep me from going back and
9 looking to see how it is they came up with that fixed priced
10 number. In fact, they also produced with it the invoice
11 that goes with that fixed price contract also which is
12 completely redacted.

13 While, all at the same time, portraying this,
14 making it look like this is all operating under a
15 fixed-price contract when, in the beginning, this contract of
16 January 23rd, which has never been produced, as I stand here
17 today -- and you're going to be -- it's really interesting
18 where this goes next -- that contract has never been
19 produced to me by Garrard Construction. Never. Even as we
20 stand here today. Thousands and thousands of documents
21 later. The only reason I have it is because we ended up
22 adding Billy's Plumbing as party to this suit, and that's
23 how we ended up getting it.

24 So we've been deceived from the very beginning
25 from October, when we filed this case and sent that first

1 thing, and asked you give us copies of the contracts you
2 have with Billy's, they have deceived us from the beginning
3 as to what the real contract was. So that's very important.

4 Now, we have another deposition of Patrick Watson
5 that takes place. We ask them the same thing, "How did you
6 communicate? We had several phone calls everyday, emails
7 back and forth a lot." Not a single email from them. "How
8 did you stay in contact with Shawn Gill regarding this
9 property? We had several phone calls a day, emails back and
10 forth."

11 More -- this is their witnesses. Their witnesses
12 are testifying to this. There's -- there's a notebook that
13 comes up that Shawn (sic) Watson has that details the day to
14 day activities. Not produced. Never looked for. Never
15 given to us, even though we specifically asked for it.

16 So we get to the proverbial straw that breaks the
17 camel's back. So these depositions get done in May, the
18 last one is done in May. For four months, despite the fact
19 that we have had all these depositions, all these documents
20 have come up in the depositions that their own witnesses are
21 talking about, none of which have been produced. None of
22 this material gets produced to us.

23 So we actually take the time in August of 2019 to
24 do a very detailed letter in which we go through all of the
25 depositions. We specify the page and line number on which

1 those documents are discussed and ask them to specifically
2 produce those to us. We don't get a response.

3 We actually gave them -- at that point, it had
4 been four months since the depositions, so I think we gave
5 them 10 days to give it to us, because, you know, obviously,
6 we had asked for it at the deposition. So on September 16th
7 we sent them a letter saying, "Listen, if I don't have it in
8 the next 10 days, I'm going to file a motion to compel."

9 Now, what happens next is truly mind blowing. On
10 September 25th, before the 10 days runs out on my letter, I
11 get a discovery response from Garrard Construction. That
12 discovery response, two years after the first one, consists
13 of 4,201 documents. Well, actually the letter says 4,401
14 documents, but the disc itself only had 4,201 documents.

15 Which is mind blowing in and of itself that you
16 would receive this amount of documents two years into the
17 litigation. But what makes it a hundred times worse is
18 that, 90 percent of these documents are documents that have
19 already been produced before. Now, Bates -- now completely
20 given a different Bates stamp number and reproduced to us as
21 being new.

22 So, of course, it takes us hours -- tens, twenties
23 of hours to go through 4,400 documents. Number one, to
24 figure out what's in there. But also to find out that what
25 we've already been given to see if this is different than

1 what we've been given before, because this document was
2 Bates stamped a different number than when we got it the
3 first time.

4 Well, of course, in this 4,200 set of documents,
5 we do find some very interesting documents. And what's
6 interesting about this too, is this document dump, that I
7 call it, basically occurs right before Billy's Plumbing is
8 required to produce their discovery now that they're a
9 party, just days before. So I'm sure what they're concerned
10 about is what is Billy's now going to give them now that
11 they're a party.

12 In the 4,400 documents there are three emails.
13 Three. All that testimony from their own witnesses, how
14 they spent all that time searching for it. How some of them
15 never looked for it at all. We have three emails. They
16 didn't even produce to me the emails that Billy's gave us.
17 So it's just to show you how incredibly outrageous all of
18 this has begun.

19 Now, to go even further -- oh, one thing that we
20 do get, buried at document number 4,009, for the first time
21 in this lawsuit, I get the unredacted invoice for the
22 contract that was hidden from us. The one that actually
23 gives me the real numbers for how they came about paying
24 Billy's Plumbing for the work that they did. 4,009. And
25 there's no rhyme or reason to these 4,200 documents that are

1 produced. They are in completely random order. Some
2 documents are 100, some related documents are 4,000.
3 They're all over the place.

4 So the idea here is, let's dump 4,200 documents on
5 them and let's see if we can hide what we don't want them to
6 see. That's really -- now, like I said, everybody -- and
7 I'm sure Mr. Countryman is going to stand up again and say
8 this wasn't done intentionally. Once, twice. Okay. We're
9 on like time 9, 10, 11, 12, where things aren't being
10 produced.

11 We sent them a detailed letter telling them the
12 line and the page that those documents are referenced and
13 this is what I get -- 4,200 documents in response?

14 Now what is interesting, too, is that some of
15 these documents were to come from the deposition that we
16 took of Dave & Buster's, because they had a representative
17 whose 30(b)(6) we took, as well. And in his deposition he
18 also acknowledged -- because we didn't have this either, we
19 had none of the payment applications or the payments that
20 were made to Garrard Construction from Dave & Buster's.
21 Even though it is specifically asked for in the request to
22 produce.

23 He admits, We can easily generate those. We can
24 give it to you, no problem. And, guess what, we do get a
25 response from Dave & Buster's. It's not 4,000 documents.

1 It's the exact same documents that we asked for. But here's
2 the problem, within receiving that production and getting
3 the information that we have been asking for for two years,
4 within one week of getting that information, it is so
5 damning to their case, that they withdraw their request for
6 profits under their counterclaim. Because it conclusively
7 shows that they were paid every penny they incurred. They
8 never lost a dime as a result of it. Even if Carolina Cool
9 breached, it shows that they never lost a penny, because
10 they were paid for all of it.

11 It's gotten so extreme that, not only have they
12 sent me a supplemental response, that supplemental to their
13 damages -- this is a week after we get the documents that
14 we've asked them for from Dave & Buster's. Now, all of a
15 sudden they don't want anymore profits.

16 So it took us all this work, all this time, all
17 this money, to get stuff that we should have had back in
18 October of 2017. And, to be honest with you, we'd probably
19 never even have all of it if we hadn't made Billy's Plumbing
20 a party. Because we were never going to get that invoice.
21 We never -- we still haven't gotten the contract, Billy's
22 gave it to us, but Garrard's never given it to us. We never
23 had any of it. We've never had any of the unredacted
24 numbers. We've never had any of the information that we
25 needed to properly pursue this case.

1 I've been practicing law for 22 years. I've filed
2 three sanction motions for discovery. All three of them
3 were in this case. Every single one of them.

4 This is not just one violation, this is every rule
5 in the book. You want to teach a class in law school how
6 not to answer your discovery, this is it. His own witnesses
7 are testifying they looked for documents they didn't
8 produce. Or they didn't look for documents that they knew
9 they were supposed to look for. They've hidden documents
10 that they clearly had to produce. And then when they
11 finally get caught, because we've been so diligent (sic) at
12 trying to get this stuff, then they, "Oh, forget that cause
13 of action."

14 You know, this isn't about one discovery abuse.
15 This is about many discovery abuses. I mean, we start with
16 the depositions and then it just gets worse as we go through
17 this process. So, you know, unfortunately in a case like
18 this, this warrants the most harshest of punishments. If
19 you're going to play this game and you get caught, you need
20 to be punished.

21 So what I'm asking the Court for today is I would
22 ask the Court to strike their answer and counterclaim.
23 Because the bottom line is they've held back all this
24 information that is extremely relevant to not only our
25 claims, but to their counterclaims, as well.

1 I've also prepared an Attorney's Affidavit, Your
2 Honor, and in that we have expanded, approximately -- well,
3 and this is probably under, anyhow. But going through the
4 4,400 documents, going through those depositions, so that we
5 can specifically state what documents they didn't provide,
6 preparing this motion, attending this motion, we've got a
7 little over 41 hours in this.

8 So I'm asking the Court to provide us with
9 attorney's fees and the filing fees of \$9,301. Now, to be
10 fair, I have not provided that to Mr. Countryman yet. I
11 didn't know really what that number was going to be until I
12 left the office to head over here.

13 So that is what we're asking the Court to do
14 today, Your Honor. Impose sanctions, strike their answer,
15 counterclaim, and then award us attorney's fees for the time
16 that we've spent.

17 THE COURT: All right.

18 MR. NEILL: Thank you, Your Honor.

19 THE COURT: Thank you. Mr. Countryman?

20 MR. COUNTRYMAN: May it please the Court, Your
21 Honor. Andy Countryman for the Defendants: Garrard, Dave &
22 Buster's and Broadway at the Beach.

23 I take sanctions motions very seriously,
24 personally, and as a lawyer. And this has been a very big
25 disappointment to me. And to hear these things today,

1 frankly, this is for the first time, for almost all of these
2 individual allegations. And I can address each one. And I
3 can address discovery from a big-picture standpoint,
4 whichever Your Honor pleases.

5 One thing of note that was just blatantly untrue
6 is that the recent production of 4,200 pages of material,
7 90 percent of that stuff was new. Most of it was emails.
8 There are over 1,000 pages of emails. I spent most of
9 Mr. Neill's production going over the stuff that I have
10 produced in discovery. Almost half of the material produced
11 recently was emails.

12 So I'm really not sure where some of this is
13 coming from. But what I can tell you, Your Honor ---

14 THE COURT: Wait a minute, this is a big
15 difference. So you're saying you produced over 2,000 emails
16 and he said he got three.

17 MR. COUNTRYMAN: Correct. I can show you the
18 Bates numbers, Your Honor. That's why this caught me
19 completely off guard. I'm not really sure of what the issue
20 is.

21 MR. NEILL: Let's clarify. I'm talking about
22 three emails between them and Billy's Plumbing. I'm not
23 talking about the other emails. All the -- the other emails
24 that have nothing to do with it, I'm talking about the three
25 emails that we got, the ones discussed in the depositions

1 between them and Billy's Plumbing. Not all the rest of it,
2 just Billy's Plumbing.

3 THE COURT: Okay. Got it. Okay go ahead.

4 MR. COUNTRYMAN: I'm not even sure where to begin
5 Your Honor. These parties have obviously disagreed
6 substantively about the issues in the case. But I do want
7 the Court to know that Carolina Cool's involvement in the
8 case was one of the first stages in the project. They
9 did -- they were supposed to do some of the first phases of
10 work. So, when they were terminated, the majority of the
11 project took place after Carolina Cool left.

12 Initially, in discovery, Carolina Cool did request
13 all your emails related to the entire project. We objected
14 and said there's no reason that you need all of that, here
15 are the emails related to your scope of work. And I think
16 at some point we had a motion to compel. We resolved that
17 issue, and I think we probably resolved some other issues,
18 prior to these depositions. And then in the depositions my
19 witnesses were asked questions about material and I produced
20 the material. I produced every single thing that they asked
21 for in over 72 requests -- the 15 or so requests that were
22 made after these depositions took place.

23 I did not produce them in any type of hap -- type
24 of haphazard way. I want to show the Court, when I receive
25 material -- may I approach, Your Honor?

1 THE COURT: Yes.

2 MR. COUNTRYMAN: When I received Mr. Neill's
3 letter, I got with my client and discussed what he was
4 asking for. Some of the items we thought, those don't
5 relate to Carolina Cool's scope of work, whatever, we're
6 going to give it to them, that's fine. We're just going to
7 give the stuff to them.

8 So you can see what I've handed you is a screen
9 shot of the folders in which I received these items. Each
10 one is organized and corresponds to the items in Mr. Neill's
11 letter. I had to take the information in those folders and
12 put them into PDFs and bind them and Bates label them. I
13 did that in the order that they are here, if it's not,
14 that's inadvertent, but that's what it is. You can look at
15 the 4,000 documents and they correspond with these grouped
16 headings.

17 With regard to Mr. -- to the notebook that was
18 referenced, we produced every page in the notebook, even
19 though 80 or 90 percent of it didn't relate to Carolina
20 Cool's scope of work.

21 We produced all the schedules they requested.
22 Even though most of those were for work that took place way
23 after Carolina Cool was gone. Everything that we discussed
24 in the depositions that they've asked for we provided them.
25 There's nothing that they needed in the depositions that

1 they did not have. I took time during the depositions to
2 find things that I could locate and provide it to them so
3 the lawyers could ask my witnesses those questions.

4 I don't play games in discovery. And I don't let
5 my clients play games in discovery. I make that very clear.
6 This case is about the issues, which all the witnesses
7 today, except for Carolina Cool, have said that Carolina
8 Cool's work wasn't quick enough and it wasn't good and it
9 had to be corrected.

10 And the parties can disagree on that, that's fine.
11 There's nothing I'm hiding. I'm not hiding any contract.
12 My client's not hiding any contract. No, we don't think we
13 have to give them every piece of the project file, they
14 wouldn't want that. That would probably encompass a million
15 documents.

16 So this case does involve some nuance in terms of
17 figuring out what is related to the issues in the case. And
18 so I took time to specifically respond to each one of those
19 bulleted points in Mr. Neill's letter. I didn't get a call
20 or anything, all I got was six weeks later this motion for
21 sanctions. And I immediately called Mark, he didn't answer,
22 I left a message, and said, "Mark, this is bothering me,
23 what's going on? I didn't hear anything from you about any
24 questions about the documents, about any lack of emails.
25 Where's this? Where's that?" As my letter serving the

1 materials invited him to do. He didn't respond.

2 So I sent a letter the next day saying, "Mark, I
3 didn't withhold anything, give me a call and let me know
4 what's going, we can discuss this, I'll get you what you
5 need." No response. I had to send another letter. And
6 then I also sent the material from Dave & Buster's, which I
7 guess he didn't object to.

8 I finally was able to discuss with it with him on
9 the phone and he still would not tell me what the specific
10 issues were. What material he didn't receive. What he
11 allegedly thinks was hidden. I begged him, "Let me know
12 what's going on so we can try to work this out. I don't
13 have any interest in arguing a sanctions motion. I'm not
14 hiding anything, my client's not hiding anything." And he
15 said, "Ah, we'll see." I don't know what to do with that
16 and I think it violates Rule 11, and I let him know that.

17 And I don't file sanctions motions, but I think
18 what this has turned into is a characterization of me and my
19 client being bad actors in discovery because some of the
20 substantive facts haven't lined up with what the Plaintiff
21 wants. And that's -- I'm not here to argue the facts of the
22 case, because that's not the purpose of this motion, but I
23 am here to defend my name and my practice. And the way that
24 these discovery issues have developed is not at all in line
25 with what Counsel said.

1 But the key issues, Your Honor, are the material
2 he's discussing and the material that he discussed with the
3 witnesses, he had for their depositions regardless of where
4 it came from. He had the material from Billy's. He was
5 able to question the witnesses about that stuff. And this
6 happens in almost every case. Material comes to light in
7 depositions, you get that after the depositions, if you ask
8 for it.

9 THE COURT: So you're because somebody else
10 produced it, it relieves you from having to comply with the
11 discovery?

12 MR. COUNTRYMAN: No, Your Honor. What I'm saying
13 is, I did comply with the discovery. I assumed there would
14 be no prejudice to the extent -- first of all, the stuff
15 that he wanted before the depositions, we had to argue about
16 the scope of the material. After the depositions, I just
17 said, "You know what, I don't want to argue about that
18 anymore, that's fine. I'll give you all of Bill Bromley's
19 emails related to the entire project. I'll give you all of
20 Shawn Gills emails related to the entire project, 90 percent
21 of those have nothing to do with this case. But, that's
22 fine, I'll give it to you." And it's all in order and I'm
23 happy to let Your Honor review the material.

24 This was no document dump. To the contrary, I
25 wanted to make sure I avoided some argument that we didn't

1 comply with discovery, in light of the prior sanctions issue
2 which related to my client's depositions. We're not going
3 to be in this position again. Lo and behold, we are.

4 If there are things that were missed, I will, as
5 an officer of the Court and a member of the Bar, do my very
6 best to produce it. I don't play games with these kinds of
7 things. I don't create the facts in my cases, but I do
8 create and maintain my name. And to have it behind a
9 sanction, especially in this situation, would be completely
10 inappropriate.

11 Sorry, those things get me a bit worked up. And
12 if there still remains something I need to produce, I
13 certainly will. Until today, I didn't know what that was.
14 Even though I've asked him multiple times, in writing, in
15 person, in emails and on the phone. I don't know unless I'm
16 told what is missing.

17 If I could beg the Court's indulgence, Your Honor.

18 Counsel also indicated that in our first
19 production we didn't provide any emails whatsoever, that's
20 not true. We did provide emails between Garrard and
21 Carolina Cool. And in the second production, we expanded
22 that scope of emails, and provided a larger scope. There's
23 600 pages in that material, we can go through it, if you
24 wish. But to say that we didn't provide any emails is just
25 completely wrong.

1 Each step in discovery involved a different scope.
2 And those were things that Counsel and I had to argue about
3 and we resolved motions that are related to that stuff. And
4 then to the extent that issues arose in my client's
5 depositions, I didn't object, I gave him everything that he
6 asked for. And, again, if there was something that he
7 didn't get that he thinks he should have gotten, he needs to
8 address it with me and I will deal with it.

9 Related to Mr. Bromley's deposition, I didn't
10 fight that issue about his residence. He came from
11 Massachusetts. He's there for two years. And if you want
12 to say his permanent residence is Atlanta, that's fine.
13 It's not a big deal. But that's where he was coming from,
14 so that's what I put in the letter, as far as, that's how
15 you calculate the mileage, where's the witness coming from?
16 That's not a game, that's legitimate. He came from
17 Massachusetts.

18 Again, going back to the emails, he questioned my
19 client regarding all of these emails in their depositions.
20 So there's no -- if I was supposed to produce them, which I
21 say I wasn't, because we agree on the scope for production,
22 and they've been produced since, that even if what he is
23 saying is true, he had the material and was allowed to
24 question my witnesses regarding them.

25 One other thing I wanted to reference, the

1 timeline that was referenced was, I believe, a two- or
2 three-page document that my client, Shawn Gill, created when
3 this Carolina Cool issue arose. And I produced that in
4 discovery and was used as an exhibit in his deposition. I
5 didn't object to them asking him questions about it. So I
6 don't know what the issue could be with respect to that.

7 But at the end of the day, Your Honor, throwing
8 around sanctions motions is something that should not be
9 done lightly. And it certainly shouldn't be done before
10 even a phone call to opposing Counsel.

11 If you're going to accuse somebody of withholding
12 things, at least let them know what you're withholding. I
13 can assure you, as an officer of the Court, I don't do that.
14 I don't let my clients do that. My client would not do that
15 here, especially after it was already sanctioned regarding
16 the deposition issues.

17 If there is material that needs to be produced, I
18 will get it and I will produce it. I think everything has
19 been produced. But, again, if it's not, that's something
20 that we as lawyers should be able to address between each
21 other. And I did file an affidavit of my client, that
22 details -- absolutely nothing was withheld intentionally.
23 We don't know what documents they're talking about, as far
24 as, what was hidden or what we failed to produce.

25 We worked with our lawyer to prepare discovery.

1 We've done that in good faith in an effort to comply with
2 the rules. That's an affidavit on file with the Court that
3 is with my brief. And I tell the Court, the same on my own
4 personal behalf. It's not something that I would do. And,
5 frankly, it just doesn't make any sense.

6 And I also have filed an affidavit requesting
7 attorneys fees for me and my client having to deal with this
8 motion. Especially in the context of not even being able to
9 have a substantive discussion about it or address these
10 individual issues until being ambushed in Court today
11 regarding them, and that's on file with the Court.

12 THE COURT: Anything in reply?

13 MR. NEILL: Just very quickly, Your Honor.

14 This is all contained in the depositions. I mean,
15 there's no surprise here. We did depositions, we did a
16 letter, give us this stuff. The problem is, he just says,
17 "Well, just let me know what I haven't given you."

18 That's the problem. I don't know what they
19 haven't given me. All I know is that I just keep finding
20 out that there's all kinds of stuff that they haven't given
21 me. We're on our third scheduling order in this case.
22 Discovery expires again Friday, you know. And this is why.
23 Because we can just never get the stuff. And it's always
24 the same response, "Tell me what I'm not giving you."

25 It's not my job to tell you what I'm not giving

1 you, it's your job to give me what you have. And, clearly,
2 they haven't done that by their own witness's testimony.

3 Thank you, Your Honor.

4 THE COURT: All right. I'm going to grant the
5 motion for sanctions. I'm not going to strike the whole
6 answer and counterclaim. I will strike the Defendant's
7 counterclaims. That would be Garrard's Construction Group's
8 counterclaims against Carolina Cool. But I'm going to let
9 the answer to the complaint stand in there.

10 I'm also granting attorneys fees -- granting
11 judgment against Garrard Construction Group, Inc., for
12 attorneys fees in the amount of \$9,301. All right.

13 MR. NEILL: Thank you, Your Honor.

14 THE COURT: Thank you.

15 I guess, Mr. Neill, if you would prepare an order?

16 MR. NEILL: We will, Your Honor. Thank you.

17 THE COURT: Thank you.

18 (WHEREUPON, the foregoing proceedings concluded at
19 2:10 p.m.)

20 END OF TRANSCRIPT

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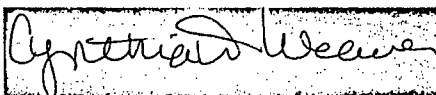
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Cynthia D. Weaver, Official Court Reporter for the
Fifteenth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the Court of Common Pleas for Horry
County, South Carolina, on the 18th of December, 2019.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

January 30, 2020



Cynthia D. Weaver,
Official Court Reporter
State of South Carolina