

IN THE CIRCUIT COURT OF
THE NINTH JUDICIAL
CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

VALIDUS CONSTRUCTION
SERVICES LLC, a Florida limited
liability company,

Plaintiff,

CASE NO.:

v.

DISNEY VACATION CLUB
MANAGEMENT, LLC, a Florida
limited liability company, f/k/a
DISNEY VACATION CLUB
MANAGEMENT CORP.,

Defendant.

COMPLAINT

Plaintiff, VALIDUS CONSTRUCTION SERVICES LLC, a Florida limited liability company (“Validus”), sues Defendant, DISNEY VACATION CLUB MANAGEMENT, LLC, a Florida limited liability company, f/k/a DISNEY VACATION CLUB MANAGEMENT CORP. (“Disney”), and alleges:

INTRODUCTION

1. When Validus won the \$48 million contract to renovate Disney’s Saratoga Springs Resort (“Saratoga Springs”), this achievement marked another step in the successful rise of one of Central Florida’s most heralded woman-owned construction businesses. Led by Nicole Wickens—the 2018-19 Orlando Business

COMPLAINT

Journal's woman-owned business person of the year, and the woman executive who Disney's Supplier Diversity Group had featured in the "Gallery Walk" of successful Disney vendors at its 2019 International Women's Day Conference—Validus had enjoyed over a decade of successful construction work for Disney. All of that came to an abrupt halt when Validus commenced work at Saratoga Springs. The project, which should have netted Validus millions of dollars in construction management profits, deteriorated into a dysfunctional construction mess brought about by a multitude of contract breaches by Disney, which fatally interfered with the project.

2. Worse still, the crescendo of abusive behavior by Disney's project manager, John Gavin, most of which was directed at Ms. Wickens personally, reached such a hostile and vindictive level that a professional and productive relationship became impossible. The project—marred by Disney's dramatic changes in project scope for which it unreasonably refused to approve change orders, by significant project delays, the effects of which were exacerbated by unreasonable project acceleration, by impaired site conditions, and by unjustified work supplementation, all punctuated with personal epithets and insults repeatedly directed at Ms. Wickens—foundered.

3. After impairing Validus's performance, withholding approval on change orders, delaying payments, and attempting to sow insurrection with Validus's employees and subcontractors, Disney—at Gavin's direction—delivering

the *coup de grace*, terminated the Validus contract without cause, and handed the project to a Validus subcontractor with whom Gavin enjoyed a close personal relationship. In fact, Disney signed a letter of intent with its new contractor for a total contract price worth approximately \$13 million more than the contract originally executed with Validus. Because Disney caused millions of dollars in damage, Validus brings this action.

JURISDICTION, PARTIES, AND VENUE

4. This is an action that includes claims for damages that exceed \$30,000.00, exclusive of interest, costs, and attorneys' fees.

5. At all times material to this action, Plaintiff, Validus, has been a Florida limited liability company.

6. At all times material to this action, Defendant, Disney, has been a Florida limited liability company. In 2017, Disney Vacation Club Management Corp., a Florida corporation, converted itself to Disney Vacation Club Management, LLC, a Florida limited liability company.

7. Under Section 47.011, Florida Statutes, venue is proper in Orange County, Florida because the cause of action accrued in Orange County, and because the parties contractually agreed to litigate all disputes in Orange County.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

8. Validus performs construction services led by its owner, Nicole Wickens. Ms. Wickens has enjoyed a decorated career, including having been named the enterprising woman of the year in 2015 and 2016, the business owner of the year by Orlando Business Journal in 2017, and having led Validus to receive awards for the top woman-owned business in Central Florida by the Orlando Business Journal in 2018 and 2019.

9. The Walt Disney Company owns, operates, and manages Disney Vacation Club Management, LLC (formerly known as Disney Vacation Club Management Corp.), as part of the Disney Vacation Club timeshare program, which includes Saratoga Springs. The Walt Disney Company owns and operates a subsidiary, referred to as Facility Asset Management, to manage construction and renovations operations at Disney resorts, including Saratoga Springs, on behalf of The Walt Disney Company and Disney Vacation Club Management, LLC.

10. Defendant, Disney, oversees construction, maintenance, and renovations of Disney timeshare resorts, including Saratoga Springs.

11. On or about September 19, 2018, Validus and Disney negotiated and entered into a Fixed Fee Plus Guaranteed Maximum Cost Agreement (“Agreement”), to provide “New Room” construction and full bathroom renovation services, renovating 432 studio units, 432 one bedroom villas, 360 two bedroom

villas, and 36 grand villas (“Project”). The Agreement designated John Gavin as “Owner’s Representative.” A true and correct copy of the Agreement is attached hereto as **Exhibit “A.”** The executed Agreement did not include any attached exhibits.

12. The Agreement, *inter alia*, provided that Validus would receive:

a. “Preconstruction Services Fee” of **\$88,425.00**, to cover “all preconstruction services necessary to provide for the complete preconstruction management of the Project ...”;

b. “Fixed Fee” of **\$1,288,829.50**, to include “the contractor’s profit and all of the Contractor’s home office general administrative, direct and indirect overhead and general expense as required and all costs and expenses of any nature whatsoever (including, without limitation, taxes, labor and materials), foreseen or unforeseen ...”;

c. “General Conditions fee” of **\$2,018,906.50**, to include, “all costs and expenses of any nature whatsoever, foreseen or unforeseen, incurred by the Contract in connection with the performance of the work ...”; and

d. “Estimated Direct Construction Costs” of **\$44,13,000.00**, to cover “all ‘hard’ or direct costs of construction”

13. Validus began construction management services in October 2018. Under the original Project schedule, construction was to have commenced in April 2019, and to have been completed by November 2020.

14. From the inception of the Agreement until Disney terminated the Agreement without cause, Disney: (a) interfered with Validus's performance of its obligations under the contract; (b) issued scope changes that dramatically altered the approved project; (c) unreasonably refused to accommodate fixing life-safety issues; (d) unreasonably refused to approve change orders; (e) caused significant project delays; (f) issued wrongful back-charges; and (g) harassed and abused Validus and its principal, Nicole Wickens.

A. Disney's interference with Validus's performance of its obligations under the contract

15. In keeping with the Agreement, Validus prepared a "Contractor Mock-Up Room" to show Disney the exact form in which contracted room renovations would be delivered. Disney, including Saratoga Springs Resort, Facility Asset Management, and all stakeholders, approved the model room.

a. Despite this pre-approval, Disney continually refused to accept completed room renovations matching the approved model room.

b. In fact, Disney continually demanded renovations and modifications exceeding the scope and materials of the approved model room.

c. When Validus voiced any dissent, despite Disney's obvious departure from the obligations of the Agreement, Disney told Validus, "[Y]ou will give us what we want until the resort is happy."

16. Disney interfered with Validus's management of its subcontractors, by, *inter alia*, publicly undermining Validus's contractual authority regarding its subcontractors. As one example: during a meeting with Disney, Validus, and its subcontractors, John Gavin stated, "*Validus is a bad contractor. You are no longer to take direction from Validus, you are to take direction from us.*" This was unwarranted and interfered with Validus's ability to perform under the Agreement.

B. Disney's scope changes that dramatically altered the approved project

17. Validus had been engaged to renovate rooms in 18 separate buildings. The Agreement stated work would proceed, "taking two buildings down at a time." The planned workflow would have allowed Validus to renovate an entire building at one time, with renovation of the next building commencing approximately halfway-through the progress of renovation of the prior building, with a 19-day overlap.

18. Prior to the commencement of field construction operations, Disney advised Validus that, instead of shutting down one entire building at a time for the building under renovation (as planned, scheduled, and budgeted), buildings would be only partially shut down, causing Validus to work around occupying guests.

19. This change of plans caused significant schedule and overhead changes and rendered compliance with resort restrictions (to accommodate guests on the half of the building not then under renovation) significantly more complex than initially budgeted and scheduled. Disney refused to accept any change order, change of budget, change of plan, or change of schedule to accommodate their unilateral change to the original plan.

C. Disney's unreasonable refusal to accommodate fixing life-safety issues

20. When Validus commenced field construction operations, Validus encountered an unforeseen site condition regarding fire-rating/life-safety issues.

a. Specifically, during an inspection of the air conditioning and vent systems in the first building on which Validus worked, that the shaft wall assembly (space between the floors for the HVAC system) was not fire rated. Validus reasonably believes, and therefore alleges on information and belief, this life-safety issue existed at the property for more than fifteen (15) years, without having previously been corrected by Disney.

b. When Validus brought this issue to the attention of Disney's assigned representative, John Gavin, he responded, "*I assume you guys led him there.*" In so many words, Mr. Gavin accused Validus of refusing to maintain a conspiracy of silence.

c. The unforeseen condition and life-safety issues should have resulted in, at a minimum, a pause of or extension to the project timeline. Instead, Disney denied all change orders for alternate means, methods & materials (to address the fire-rating/life-safety issue) submitted by Validus and forced Validus to keep to the original schedule.

d. Despite the unforeseen site condition and life-safety issues, Disney advised Validus that the *“appearance of progression needs to continue.”*

e. These fire-rating/life-safety issues, including Disney’s utter refusal to approve change orders based thereupon, had a cascading effect on all subsequent performance under the Agreement. Specifically, correcting these unforeseen fire-rating/life-safety issues required additional time and expense, and pushed back all subsequent schedule milestones.

D. Disney’s unreasonable refusal to approve change orders

21. Throughout the course of the Project, Disney continually changed the scope of the Project and required Validus to perform work outside of the contracted scope. To accommodate Disney’s decisions, Validus issued change orders to Disney (selected examples are provided below), many of which went unaddressed or which Disney denied, resulting in more than \$2 million of damage to Validus. For example:

a. Validus submitted a change order (PCO 4) in excess of \$1.9 million based on costs associated with a change of schedule (this relates to subsection C.,

above); Disney denied this change order, resulting in substantial cost and damage to Validus;

b. Validus submitted a change order (DIR 85) regarding power at certain outlets; Disney denied this change order, resulting in substantial cost and damage to Validus;

c. Validus submitted a change order (PCO 40) regarding certain kitchen sink valves; Disney denied this change order, resulting in substantial cost and damage to Validus; and

d. Validus submitted a change order (PCO 56) regarding a gate guard at the project laydown yards; this guard was required because of Disney's post-contract material change in project scope and scheduling; Disney denied this change order, resulting in substantial cost and damage to Validus.

22. Disney's unreasonable refusal to approve change orders for direct construction expenses resulted in significant cash flow problems for Validus.

23. After repeated actions and demands by Disney which delayed the Project, Disney then compounded the negative impact on Validus by changing the project scope to require Validus to accelerate its work, which in turn required Validus to bring on additional manpower. At the same time, Disney repeatedly demanded that Validus remove certain workers. These changes resulted in an increase in Validus's budgeted overhead from \$80,000 per month to \$300,000 per

month, for total losses exceeding \$1 million. Disney provided no consideration for or compensation to accommodate these cost increases.

E. Disney's significant project delays

24. Disney mandated a swift project timeline, yet Disney's architect provided incorrect answers, incomplete answers, vague answers, and untimely answers, in response to Validus's Requests for Information. To meet Disney's deadlines, Validus needed timely and accurate information from Disney's architect, which Validus did not receive.

25. In addition to changes of scope, Disney caused unforeseen and uncompensated project delays, resulting in approximately \$1.2 million of damage to Validus. Selected examples include:

a. Project discussions regarding alternate means and methods should have resulted in time extensions granted (this issue resulted in more than eighteen (18) months' worth of versions and negotiations, and in direct project delays in excess of eight (8) weeks) (this relates to subsection C., above); Disney denied all requested time extensions;

b. Disney required certain light fixtures, without enough time for delivery and installation of the fixtures prior to an inspection for a temporary certificate of occupancy; in addition, the provided light fixtures did not include required electrical whips for power, resulting in additional delay;

c. Disney required certain specification for power cords, but did not notify Validus so that Validus could timely address and meet these specifications;

d. Disney required certain lights and kitchen equipment, but failed to timely supply the lights and equipment to Validus so that Validus could timely address and meet these specifications; in addition, the provided lights and kitchen equipment did not include required mounting clips, resulting in additional delay;

e. Disney provided dishwashers without electrical whips for power; this resulted in weeks of delay while Validus sought to confirm delivery of the power components from Disney's vendor;

f. Disney provided mis-labeled bathroom vanities for installation; this resulted in additional delay;

g. Disney provided the wrong model of refrigerator for 37 units/rooms, resulting in substantial additional cost and delay;

h. Disney delayed the hiring and deployment of Disney's coax and phone vendor; this resulted in additional delay; and

i. Disney provided the wrong type of glass for installation in unit/room showers; this resulted in a three-week delay while Validus worked to correct this issue.

F. Disney's wrongful back-charges

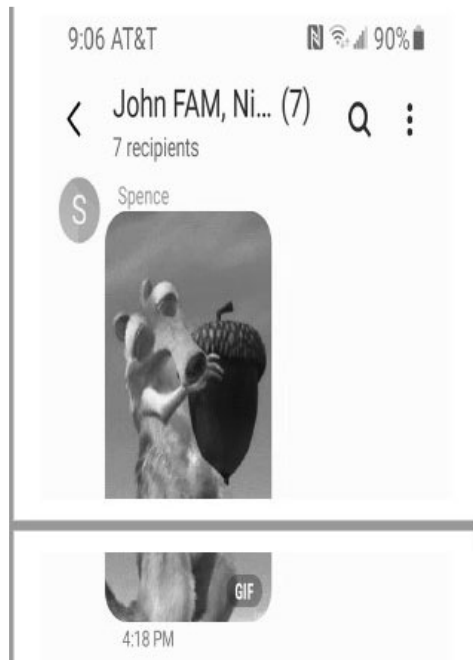
26. Disney has issued more than \$700,000 in wrongful back-charges or supplemental work charges regarding work completed at Saratoga Springs Resort. These charges resulted from, *inter alia*, delays without extension during discussions on alternate means and methods, incorrect and mislabeled furniture per specifications, missing hardware, delays caused by Disney's selected coax and phone contractor, revisions to project drawings required by Disney, Disney's warehouse delays, manufacturing problems with Disney's shower glass vendor, and incorrect specifications for HVAC exhaust piping. Disney mandated field supervision, but the personnel provided by Disney lacked field/rehab experience and provided no value to the project. Disney declined a requested scope change/change order, regarding jetting of plumbing lines, but later required same. Disney mandated certain scheduling milestones, despite certain damage to the property caused by handling of Disney's milestones in Disney's arbitrary but preferred and required order. All of these "back-charges" and more were caused by Disney. Disney's attempt to blame Validus for these problems is harassing and abusive.

G. Disney's harassing and abusive behavior

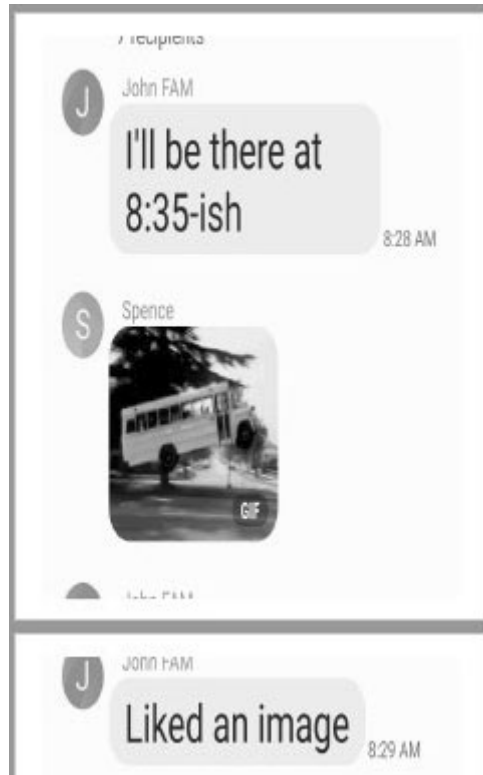
27. The conditions placed upon Validus were exacerbated by Disney's senior project manager, John Gavin, who refused to cooperate with Validus, instead focusing his efforts on harassing, embarrassing, and bullying Validus and its team,

specifically its owner, Nicole Wickens. Selected excerpts of Disney’s mocking and derisive harassment, at Validus’s and at Nicole Wickens’ expense, and which constrained Validus’s ability to perform under the Agreement, are included below. None of the below-excerpted screen shots could be considered normal construction-related banter. This campaign of abuse had an intended effect to intimidate, demean, and eventually drive Validus off of the Project.

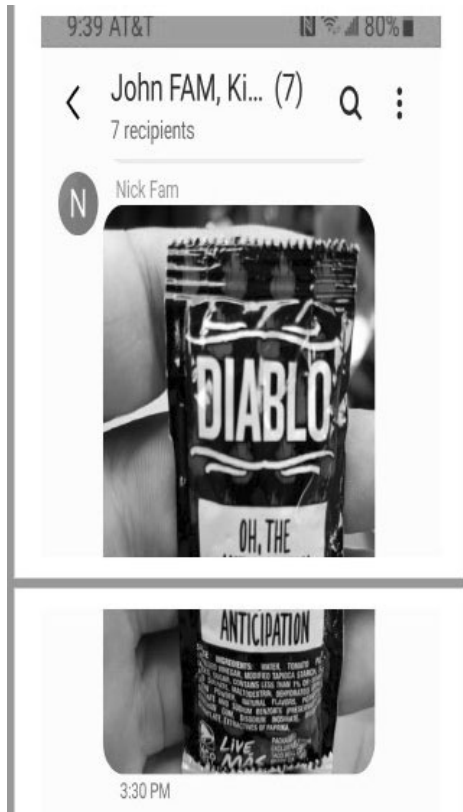
28. In response to an inquiry from the field team, Disney joked that Validus did not know what it was doing (hence, the imagery of a prehistoric squirrel finding a nut while falling) and would never catch up to its goal, using the following meme:



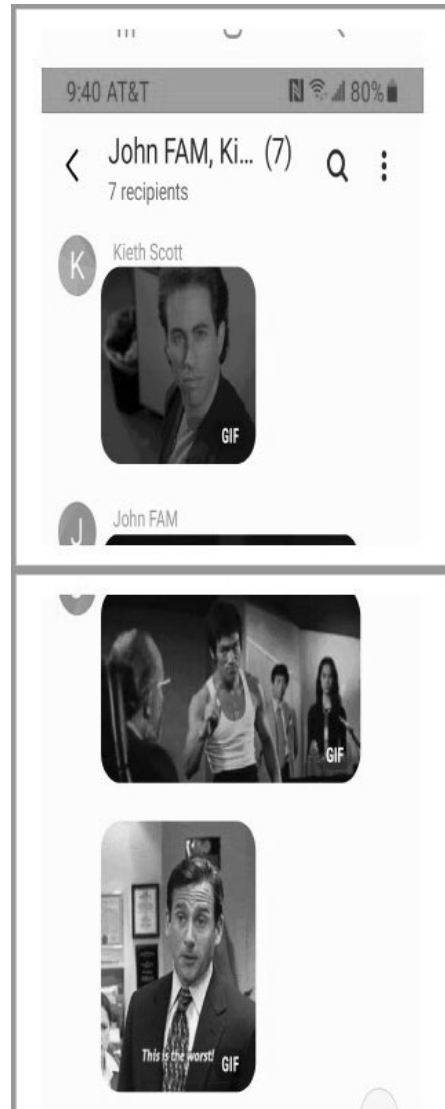
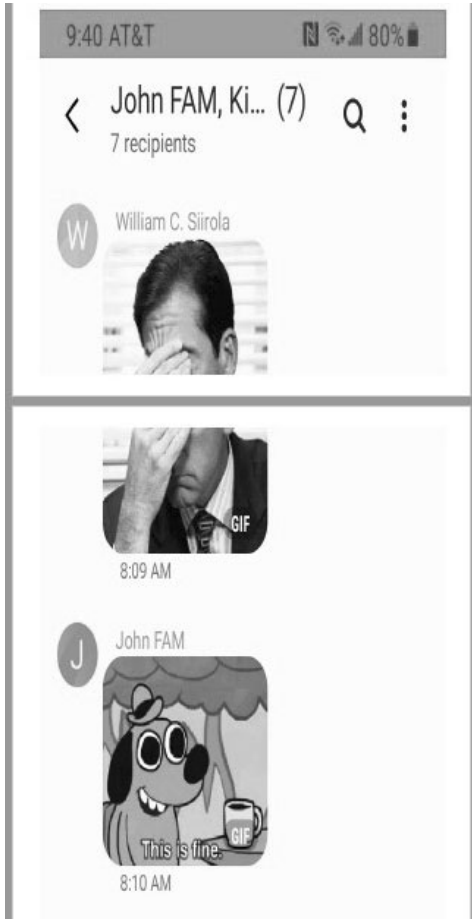
29. In response to an inquiry from the field team regarding an onsite meeting, Disney mocked Validus with Disney's perception of current state of the Project (hence, the imagery of "crashing"):



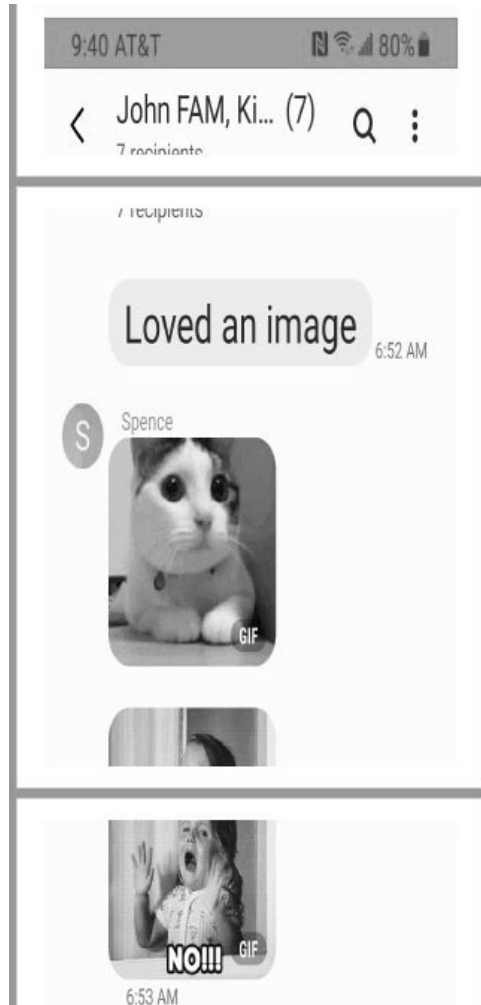
30. In response to a message about completion of rooms on a particular day, Disney mocked Validus using images of a hot sauce packet, implying that Disney did not expect Validus to follow through (Disney routinely used hot sauce packet images in its text communications with Validus’s personnel), and to emphasize that Disney would put the “heat” on Validus:



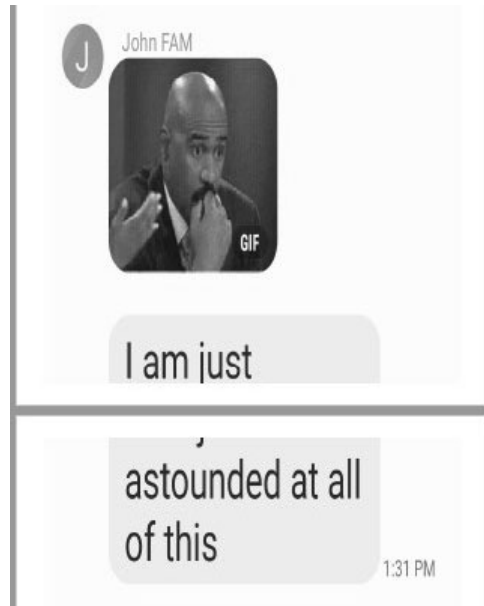
31. Disney's project management team communicated via meme their perception that the job site was a disaster. Disney personnel, on a text chain including Validus's personnel, routinely made fun of and mocked Validus:



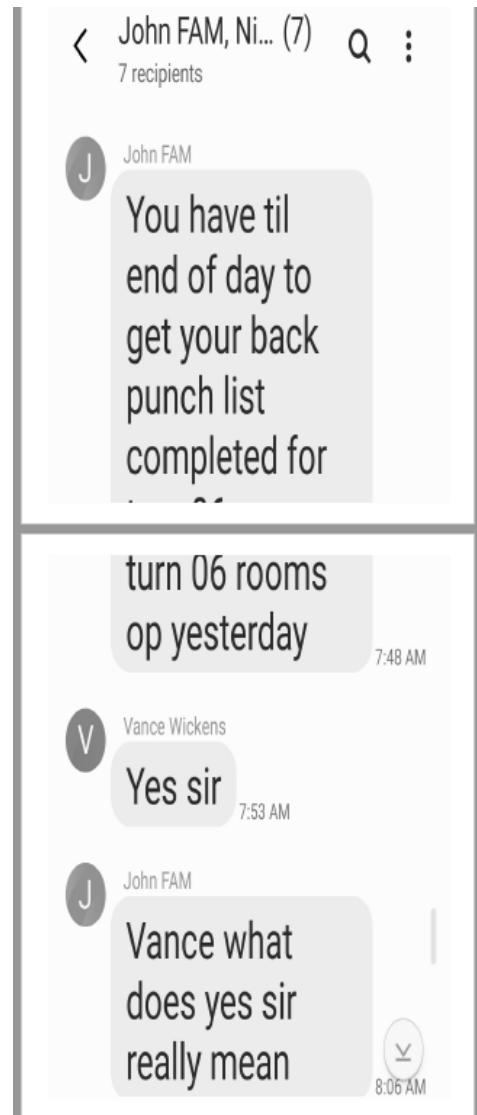
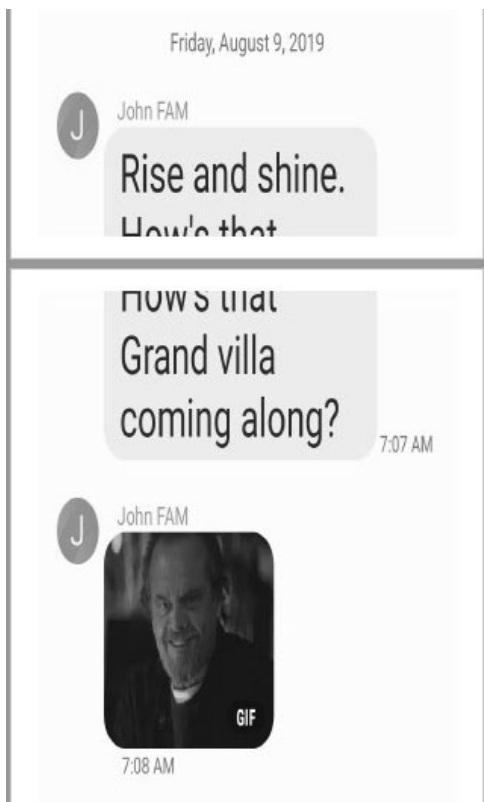
32. In relation and response to a communication from Validus about site access, Disney again mocked Validus, and responded with the following message



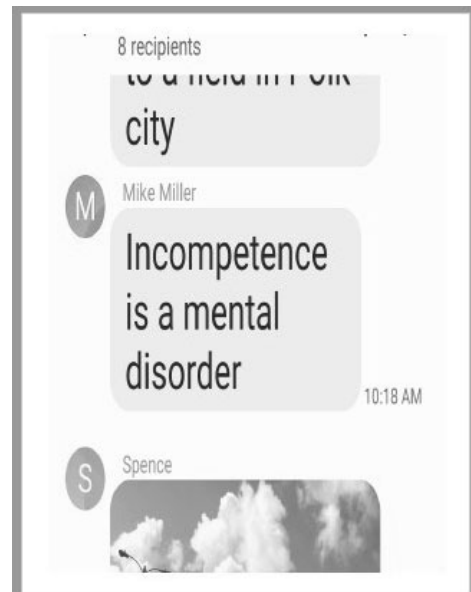
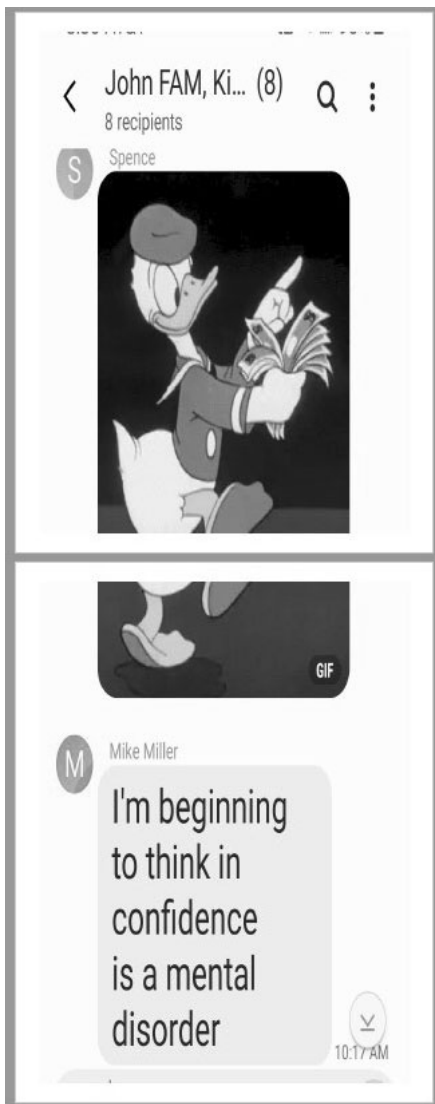
33. Much later during the course of the Project, Validus's site supervisor notified John Gavin of a site issue regarding the delivery of furniture, which resulted from a backup at Disney's warehouse involving Disney-supplied furniture, and John Gavin mocked Validus with the following meme and message:



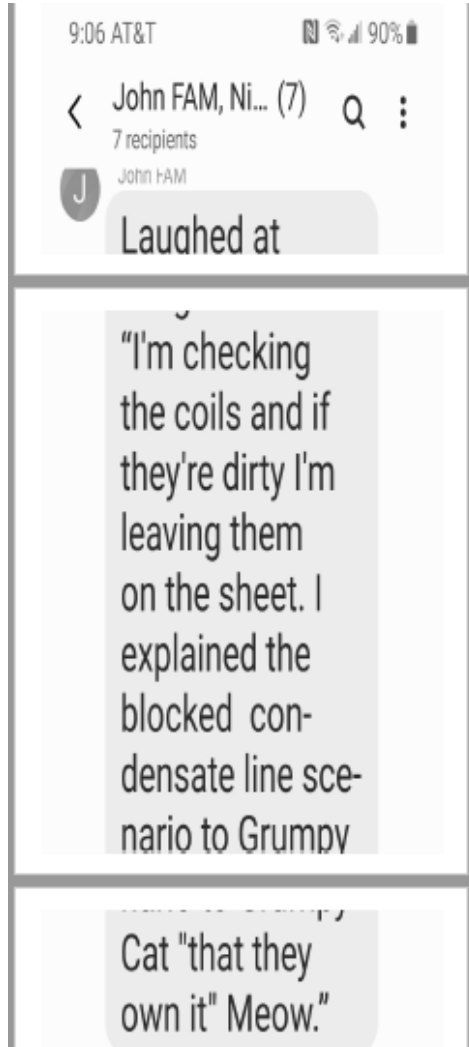
34. Although Disney ignored the bigger-picture issues (such as the fire-rating/life-safety issues Validus uncovered), John Gavin took micro-management to a new and abusive level, as shown in the following messages. Following this interchange, in which Validus responded respectfully, Mr. Gavin sought the removal of Validus's superintendent:

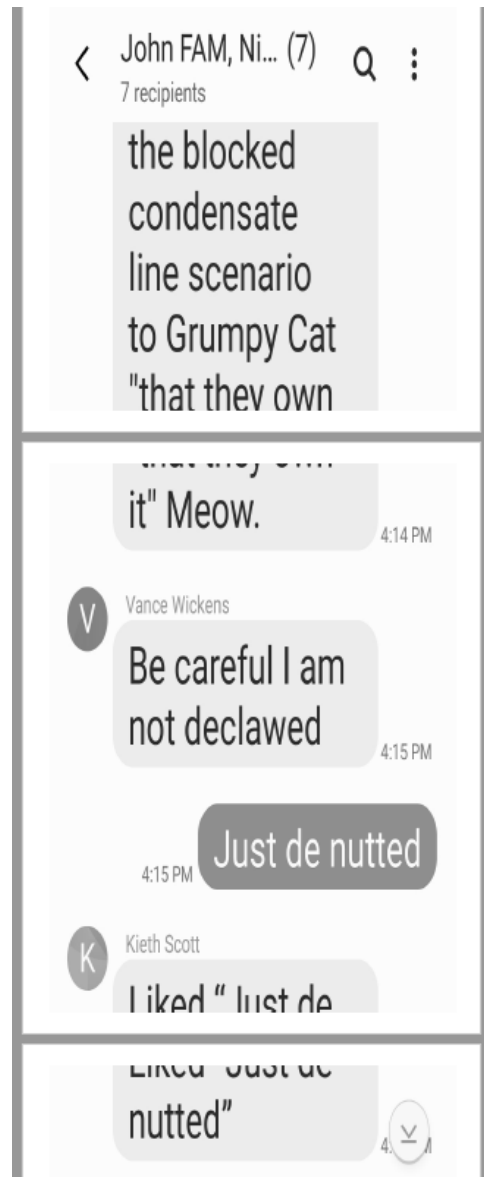


35. After Disney, through John Gavin, mandated additional Disney supervision, referred to as “supplementation” (which itself resulted from problems caused by Disney’s refusal to approve alternate means and methods), Disney personnel, embracing John Gavin’s “abuse Validus” approach, mocked the additional financial and logistical burden this would cause to Validus with the following message:



36. In relation to cleaning coils on air conditioning units, and discussion of this work, which was outside of Validus’s original scope, Disney mocked Validus, and its owner, with a series of messages. John Gavin and his team called Nicole Wickens, “*grumpy cat*,” a demeaning and sexist reference.





37. As shown above, John Gavin and his team made additional sexist remarks regarding Vance Wickens, the husband of Nicole Wickens and a Validus superintendent.

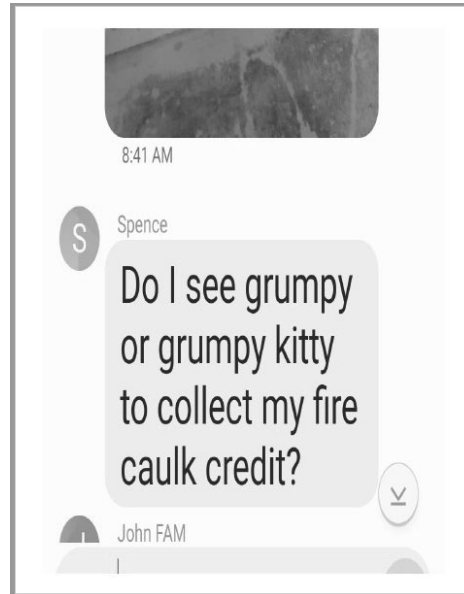
38. When Validus pointed out to Disney that the air conditioner coils were not maintained properly, and that the required cleaning was not in the scope of the

Agreement, John Gavin responded, “*I don’t care*” and mandated that Validus complete the work at its own expense.

39. In relation to a Validus request for a response regarding guest noise complaints about work during the workday (which itself resulted from Disney’s change regarding the full building/half-building schedule), Disney did not help at all to mitigate the complaints, but instead mocked everything that was going on. One example of Disney’s mocking is below, in which Disney compared the valid complaints of its guests, and the valid concerns and resolution attempts of its general contractor, to a “horses winnie” [sic]:



40. In a certain room, Validus scheduled the application of fire caulking. One of Disney's team members inspected the room before this work was complete. Disney attempted to back charge this finding against Validus, and continued to use demeaning references:



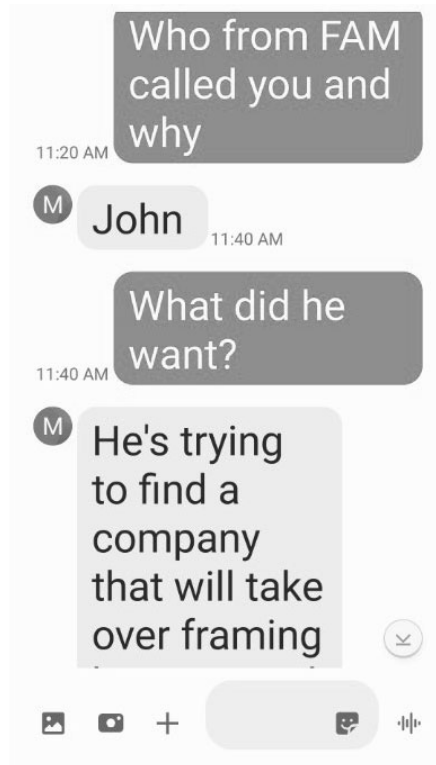
41. In August 2019, John Gavin threatened to “*terminate our contract*” if Validus did not have a certain owner's punch ready by the following morning. John Gavin routinely threatened and bullied Validus's employees when anything was not completed precisely as he requested, down to the smallest immaterial detail.

42. In February 2020, Validus's employees witnessed John Gavin pulling Validus's subcontractors off their assigned tasks to talk to them privately, without a Validus superintendent on hand. This caused delays on site.

43. On or about February 14, 2020, John Gavin held a conversation with one of Validus's assistant superintendents regarding an issue with a fire inspection.

John Gavin advised the superintendent that he should work for another general contractor and said, “F**k Validus they don’t know what they’re doing.” Mr. Gavin further stated, under his breath, “F**k that fat b**ch.” The superintendent did not respond but got back to work.

44. On or about February 15, 2020, John Gavin contacted Validus’s subcontractor (framers) and solicited them to complete the scope of work, without notifying Validus. This was before any notice from Disney to Validus regarding Disney’s termination of the Agreement. Validus’s subcontractor notified Validus of this phone call and attempted circumvention:



45. On approximately February 18, 2020, John Gavin told Disney’s contract management office that Validus’s granite and marble subcontractor had

called him (Gavin) to report not being paid. Validus contacted this subcontractor and confirmed that John Gavin's statement was not true.

46. On or about February 21, 2020, John Gavin held a coordinating meeting with subcontractors at 5 pm, to discuss manpower for the following workday. At the end of the meeting, John Gavin stated that the subcontractors "*were good subs but had been subjected to bad leadership on Validus's part*" and that "*Validus has failed you.*" John Gavin stated, "*if the sub needed leadership or had questions to go directly to [FAM] who was there to 'teach [Validus] a lesson.'*" Mr. Gavin spoke aggressively, and following his statement left in an angry manner. Validus's employees were present for and heard this exchange, and perceived Mr. Gavin as trying to turn Validus's subcontractors against Validus.

47. During an executive meeting in February 2020, with Validus and with Disney executives (Dave Ellis, Richard Wertsching, and Rebecca Wight), Validus provided evidence of the harassment of John Gavin and his team. Disney's sourcing and procurement executive (Richard Wertsching) responded to his colleague, "*Does this behavior surprise you?*" and the contracting executive (Rebecca Wight) responded, "*No not at all.*"

48. On or about March 14, 2020, after Disney's partial termination of the Agreement (discussed below), John Gavin tried to poach one of Validus's employees to work for one of Mr. Gavin's preferred subcontractors (specifically, for New

Horizons Contracting Services, one of Validus's subcontractors and now the Project general contractor). Mr. Gavin advised, "*Validus is not the place for [the employee] and that NHCS was the way to go.*" Mr. Gavin advised that if Validus's employee wanted to work for the subcontractor (that is, for the company that would be designated as the new general contractor), "*I could make that happen for you.*" When the employee advised Mr. Gavin that he would stay with Validus, Mr. Gavin responded, "*So you want to work for that f**king b**ch.*"

H. Disney's termination of the contract

49. To date, Disney has refused to accept any responsibility for its own project management problems. Together, Disney's: (a) interference with Validus's performance of its obligations under the contract; (b) scope changes that dramatically altered the approved project; (c) unreasonable refusal to accommodate fixing life-safety issues; (d) unreasonable refusal to approve change orders; (e) significant project delays; (f) wrongful back-charges; and (g) harassing and abusive behavior, caused significant financial hardship to Validus and delay in Validus's payments to its respective subcontractors.

50. On March 9, 2020, Disney advised Validus that, in accordance with Disney's General Conditions of the Contract for Construction, Disney "will be exercising our right to pay Subcontractors directly for Saratoga. This will begin with the latest Pay App for February." Disney refused to acknowledge any payment delay

to subcontractors was caused by Disney's own project management problems, including refusal to approve required change orders. Prior to March 10, 2020, Validus did not have a copy of the General Conditions of the Contract for Construction (purportedly Exhibit E of the executed contract).

51. On or about March 11, 2020, Disney issued a Notice of Partial Termination, and notified Validus of its intent to terminate the Agreement and provided approximately 30 days for Validus to finish its progress work, ending April 11, 2020.

52. On March 17, 2020, Disney notified Validus that it was temporarily suspending work on the Project. Despite this suspension, Disney did not extend Validus's time frame to finish its progress work, causing further damage. Disney did not cooperate with Validus or its subcontractors regarding access to the Project to retrieve equipment, causing still more damage to Validus and its subcontractors.

53. On April 8, 2020, Disney issued a Notice of Termination to Validus, terminating Validus for "the Contractor's refusal, failure, or inability to make prompt payment to Subcontractors."

54. In June 2020, Disney, recognizing that the work Disney demanded required more resources than they refused to approve and provide for Validus, issued a letter of intent to Validus's prior subcontractor, NHCS, LLC, for a total contract price worth approximately \$13 million more than the Agreement with Validus.

55. As a direct and proximate cause of Disney's acts and omissions, Validus has suffered, and continues to suffer, direct and consequential damages.

56. Validus has retained the law firm of Byrd Campbell, P.A., agreeing to pay a reasonable fee for its services.

57. Validus is entitled to the recovery of its attorneys' fees and costs.

COUNT I
BREACH OF CONTRACT

58. Validus sues Disney for damages that exceed \$30,000.00 for breach of the Agreement.

59. Validus realleges and restates the allegations in paragraph 1 through 57 above.

60. Validus and Disney entered the Agreement on or about September 19, 2018.

61. Disney: (a) interfered with Validus's performance of its obligations under the contract; (b) issued scope changes that dramatically altered the approved project; (c) unreasonably refused to accommodate fixing life-safety issues; (d) unreasonably refused to approve change orders; (e) caused significant project delays; (f) issued wrongful back-charges; and (g) harassed and abused Validus and its principal, Nicole Wickens.

62. Disney breached the Agreement by changing the scope of the work under the Agreement, causing Validus to incur back charges and increased overhead charges.

63. Disney breached the Agreement when it refused to approve and pay for change orders which were required to accommodate Disney's change in scope.

64. Disney breached the Agreement by causing project delays, and at the same time accelerating the Project, all resulting in increased Project cost, and refusing to compensate Validus accordingly.

65. Disney breached the Agreement by attempting to back-charge Validus for damages caused by Disney's own malfeasance.

66. As a direct and proximate result of Disney's breaches, Validus suffered direct and consequential damages.

WHEREFORE, Plaintiff, VALIDUS CONSTRUCTION SERVICES LLC, demands judgment against Defendant, DISNEY VACATION CLUB MANAGEMENT, LLC, for damages, attorneys' fees, and costs.

COUNT II
NEGLIGENT MISREPRESENTATION

67. Validus sues Disney for damages that exceed \$30,000.00 for negligent misrepresentation.

68. Validus realleges and restates the allegations in paragraph 1 through 57 above.

69. Disney created a schedule and a project budget for the Saratoga Springs Resort project. Validus created a bid, and agreed to enter into a contract, regarding the schedule and project budget initially created by Disney.

70. The original schedule and project budget were incomplete, incorrect, unreliable, and false.

71. Disney knew or should have known that its original schedule and project budget were incomplete, incorrect, unreliable, and false. Disney knew or should have known that it had no intention to authorize reasonable and required schedule adjustments and change orders submitted by Validus.

72. Disney intended that its original schedule and project budget would induce Validus to submit a bid for construction management services.

73. Validus, a local construction company, justifiably relied on the original schedule and project budget produced by Disney, a subsidiary of a multi-billion-dollar conglomerate.

74. Validus justifiably expected that, should issues with the original schedule and project budget produced by Disney arise, that Disney would accommodate reasonable and required schedule adjustments and change orders submitted by Validus.

75. Validus suffered damages in reliance on Disney's false original schedule and project budget.

WHEREFORE, Plaintiff, VALIDUS CONSTRUCTION SERVICES LLC, demands judgment against Defendant, DISNEY VACATION CLUB MANAGEMENT, LLC, for damages, attorneys' fees, and costs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2020, a copy of the foregoing has been filed with the Florida Courts E-Filing Portal.

/s/ Tucker H. Byrd

Tucker H. Byrd

Florida Bar No. 381632

Thomas C. Allison

Florida Bar No. 35242

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Attorneys for Plaintiff

PROJECT: **WALT DISNEY WORLD® Resort – Disney’s Saratoga Springs Resort & Spa Guestroom Renovation**

CONTRACT NUMBER: **4505561366**

PROJECT REFERENCE NUMBER: **18RW-0473**

**FIXED FEE PLUS GUARANTEED
MAXIMUM COST AGREEMENT**

THIS FIXED FEE PLUS GUARANTEED MAXIMUM COST AGREEMENT (“**Agreement**”), made effective as of the 19th day of September, 2018, between **Disney Vacation Club Management Corp.**, (herein referred to as the “**Owner**”), whose mailing address is P.O. Box 10000, Lake Buena Vista, FL 32830, and **Validus Construction Services, LLC** (herein referred to as the “**Contractor**”), whose mailing address is 14129 Town Loop Blvd., Suite 100, Orlando, FL 32837.

W I T N E S S E T H

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

Article 1
DEFINITIONS; THE CONTRACT DOCUMENTS

- 1.1. The capitalized terms used herein shall have the meanings set forth in the General Conditions of the Contract (herein referred to as the “**General Conditions of the Contract for Construction**” or “**GCCs**”) unless a specific definition therefor is provided herein. Unless otherwise specified, references herein to numbered articles and paragraphs are to those in this document. This Agreement shall be referred to throughout the Contract Documents (as defined below) as the “**Agreement**”.
- 1.2. The Contract Documents consist of this Agreement, the conditions of the Contract (General, Special, Supplementary and other conditions), the Drawings, the Specifications, all Addenda (except portions thereof relating purely to any of the bidding forms or bidding procedure), all Modifications and all other documents comprising the Contract as specified in Article 2. In addition all other work product produced by the Contractor and approved by the Owner shall become Contract Documents upon such approval. Such documents form the Contract and all are as fully a part thereof as if attached to this Agreement or repeated herein.

Article 2
STATEMENT OF THE WORK

- 2.1 The Contractor shall provide and pay for all materials, tools, equipment, labor, supervision, permits, fees and professional and nonprofessional services, and shall perform all other acts and supply all other things necessary to fully and properly perform, construct and complete the following as provided in the Contract Documents listed below:

Exhibit A – Scope of Work:

Contractor shall perform a “New Room” and full bathroom renovation of Disney’s Saratoga Springs Resort & Spa, a 1260 key Disney Vacation Club Resort. The guestrooms consist of 432 Studio units, 432 One Bedroom Villas, 360 Two Bedroom Villas, and 36 Grand Villas. The Studio units consist of a small kitchenette, One and Two bedroom units include a living/dining room and full kitchen and the Grand Villas include a separate living and dining room, full kitchen and an additional bedroom (3 bedrooms in total). The 1260 rooms are

accessed from an exterior corridor. The Work will take place in 18 buildings, taking two buildings down at a time.

Scope for accessible guestrooms will be similar to the standard room scope, plus modifications to those accessible elements to meet ADAAG and Florida Accessibility Requirements.

The following is a general description of the renovation scope with tentative responsible party designations of OFCI (Owner-Furnished/Contractor-Installed) or CFCI (Contractor-Furnished/Contractor-Installed).

GUESTROOM SOFTGOODS:

- LVT/Underlayment System Installation / OFCI
- Carpet in bedroom / OFCI
- New Decorative Throw Pillows @Sofa and Loveseat / OFCI
- Mattress Replacement / OFCI
- Overdrape & Valance Replacement / Fabric – OFI, Fabrication –CFCI
- New Sheers with Wall Mounted Hardware/ Sheer Fabric – OFI, Fabrication and Hardware – CFCI

GUESTROOM HARDGOODS

- Install Dresser with Stone Top / OFCI, Stone Fabrication and Install – CFCI
- Replace Framed Wall Mounted Mirror at Banquette / OFCI
- Replace Framed Artwork / OFCI
- New headboards /OFCI
- Replace Crown Molding/CFI
- Tables in Dining and Living Rooms and Bedrooms / OFCI
- Replace Nightstands / OFCI
- Replace Sleeper Sofa Flip Bed /OFCI
- New Platform Bed / OFCI
- New Inova Bed / OFCI
- New Lounge Chairs / OFCI
- Replace Ottoman / OFCI
- Install New Closet Millwork and Shelving / CFCI
- Television Replacement including Wall Mount and Cord Cover / OFCI
- Install new Convenience Outlet at Dresser and Nightstands / OFCI
- Install new Wall-E Box (Housing modems, routers, repeaters, TV cable supply, power receptacles etc.) /OFCI
- Install new Pocket Door/ OFI – Frame and Hardware System, CFCI – Pocket Door
- Replace Entry and Connector Door Hardware / CFCI
- Strip and Repaint Existing Doorframes / CFI
- Install new Entry Door Threshold /CFCI
- Strip and repaint existing Connector Door and Frame / CFCI
- Balcony Door Frame clean and refinish /CFCI

- Sliding Door Hardware Replacement /OFCI

GUESTROOM ENTRY:

- New Entry Cabinet / OFCI
- New wall mounted mirror / OFCI
- Studio Entry - Table and Shelving / OFCI

GUESTROOM LIGHTING:

- Floor Lamp / OFCI
- Ceiling Mounted Light Fixture / OFCI
- Wall Mounted Bed Sconces /OFCI
- LED Reading Lights (2 per headboard) / OFCI
- Recessed Ceiling Downlight Fixture at Entry Hallway /OFCI
- Kitchen Lighting including under counter lighting / OFCI

KITCHEN:

- New Appliances / OFCI
- Stackable Washer and Dryer / OFCI
- Touch-up existing kitchen sink including studio kitchenette / CFCI
- Counter Modifications / CFCI
- Back Splash Tile / OFCI
- New Faucets / OFCI
- Kitchen Cabinetry / CFCI

STUDIO KITCHENETTE:

- Existing Millwork - Prep, prime and two coats of paint /CFCI
- Base Cabinetry – Prep, prime and two coats of paint / CFCI
- New Stone Counter Tops / OFCI, Installation / CI
- Counter Top Microwave / OFCI
- Under Counter Refrigerator / OFCI

BATH/VANITY:

- Replace tile floor /OFCI
- Replace wall tile, tub surround, shower surround / OFCI
- Paint Vanity and Bathroom Walls /CFCI
- Install GFCI Duplex Power Receptacle at Nightlight at Vanity /CFCI
- Replace Vanity Mirror, lighted mirror /OFCI
- Replace Vanity Assembly/base – OFCI, Stone Counter Top – CFCI
- Replace Lavatory Bowls – CFCI, Faucets – CFCI, Sink Drains and Taps – CFCI
- Replace Towel Bars, Towel Ring, Robe Hook, TP Holder, Clothes Line, Shower Rod / OFCI
- Replace Toilet and Seat / CFCI
- Replace Angle Stops, Escutcheons and Braided Lines / CFCI
- Install New Sliding Glass Tub Enclosure / OFCI

- Install New Hinged Hardware for Glass Shower Enclosure / OFCI
- Replace Standard Tub/Cast Iron Tub – OFCI, Tub Surround – OFCI
- Install New Showers / CFCI, Cast Iron Shower Pan – OFCI, Shower Surround – OFCI
- Install New Recessed Solid surface Amenity Niche / OFCI
- Replace Tub and Shower Controls / CFCI
- Replace Grab Bars / CFCI, Fold Up Grab Bar in FL Specials / CFCI
- Replace Toilet Room Exhaust Fan / CFCI
- Recessed Ceiling Downlight Fixture at Bathroom and Vanity / CFCI
- Telescopic Door Frame and Hardware – OFCI, Doors – CFCI

BALCONY:

- Pressure Wash Only – Balcony Rail and Columns / CFCI
- Replace Balcony Furniture /OFCI
- Remove Existing Caulk and apply new caulk : Ceiling to Wall Joints, Wall to Floor Joints, Slider Door Frame Joints / CFCI

ACCESSIBLE GUESTROOM MODIFICATIONS: (Dispersion not completed yet for # of locations)

- Conversion of Existing Standard Tub to Tub and Transfer Showers
- Upgrade Existing Tub and Showers to Code
- Upgrade Existing Roll-In Showers to Code
- Conversion of Standard Guestroom to Florida Specials
- Conversion of Florida Specials to Stand Guestroom
- Upgrade Existing Florida Specials to Current Code
- Conversion of Standard Guestroom to Guestroom with Communication Features
- Upgrade Guestroom with Communication Features
- Tile Floor and Wall Fixtures / OFCI
- Grab Bars / CFCI

MISCELLANEOUS

- Install Furniture Glides / OFCI
- Replace Interior Sprinkler Heads in Guestrooms / CFCI
- Replace Fire Safety Devices (Smoke Detectors, Annunciators, etc.) / CFCI
- Prep, prime and two coats of paint all painted surfaces / CFCI
- New Baseboards in Guestrooms / CFCI
- Caulk junctions and dissimilar materials / CFCI
- Replace corner guards / CFCI
- Replace all Electrical Receptacles, Switches and Covers / CFCI
- Convert existing Duplex Receptacle behind Nightstand to Quadraplex / CFCI
- Replace Thermostat / CFCI
- Replace In-Room FCU Return Air Grille / CFCI

- Replace Supply Air Grille / CFCI
- Remove, store and reinstall FF&A scheduled for reuse – Contractor
- Manage and coordinate attic stock fabrication and delivery - Contractor

PRECONSTRUCTION SERVICES:

Contractor's Preconstruction Services shall include, but are not limited to, the following:

- Quantification/Verification
 - Confirm CFI material lead times.
 - Provide a full and complete Room Matrix that identifies all furniture, fixtures, and equipment (FF&E) quantities and requirements per the Contract Documents and field verification.
 - The Contractor shall provide to the Owner quantification of all OFI that the Contractor shall be responsible to install.
 - The Contractor shall provide to the Owner quantification of all CFI that the Contractor shall be responsible to furnish and install.
 - Site visit(s) to become familiar to the resort and guestroom types. The person responsible for creating the sub-trade bid packages and facilitating the bid process is required for this activity.
- Design Review
 - Review plans and specifications and provide written recommendations concerning improvements that will enhance bidability and constructability. Provide demolition permit and labor for design research, if required.
 - Include 24 hours of design review meetings.
- Bid Document Development
 - Coordinate with the Owner to develop an overall detailed project schedule covering all preconstruction, construction, and close-out phase activities. The schedule will reflect bidding, bid review, contract award, permitting, submittals, fabrication/delivery, mobilization, construction and other related items for each component of the project. The schedule will identify and integrate the activities of each entity in the delivery of the project.
 - Develop bid form trade package scope assignment recommendations and associated detailed written scope definitions. Owner shall modify the bid form for the Contractor to then distribute.
 - With Owner, establish a list of potential anticipated additional Work that may be performed by the Subcontractors during the course of the project in accordance with Unit Prices established with the Contractor during the Subcontractor bidding phase. These Unit Prices shall exclude the Contractor's profit and overhead and all costs and expenses of any nature whatsoever (including, without limitation, taxes, labor, and materials) to perform the Work. Unit Prices will be included in the Agreement as a Change Order and tracked on a per sequence basis.
 - With Owner, establish a list of potential Bid Alternates. These Bid Alternates shall include only the Subcontractor's pricing as submitted during the bid

process and include all costs and expenses of any nature whatsoever, including without limitation, taxes, labor, and materials to perform the Work. Bid Alternates will be accepted by Owner either during original Subcontractor award or at any point during the implementation of the project. Contractor will not be allowed to markup any Bid Alternate pricing regardless of when Owner accepts.

- Provide detailed guestroom task list with appropriate trade breakdown and timing and sequence task lists including breakdown of intrasequence groupings
- Develop detailed graphic logistic plans and narratives addressing site access, circulation, staging, storage, construction/visual intrusion barriers, material and debris and labor movement, noise containment/reduction, dust containment/reduction, landscape removal/restoration and other necessary requirements.
- Contractor shall be responsible to complete Owner specified sections of the Project Manual with concurrence of the Owner. A sample typical Project Manual shall include, but is not limited to the following:
 - Technical Specifications (Owner)
 - Project Directory (Owner)
 - Project Schedule (Owner)
 - Detailed Task Cards for Project by sequence (Contractor)
 - Property Map (Owner)
 - Lay Down Area(s) Location and Plan (Owner)
 - Site Fence Details (Owner)
 - Standard Scope (Owner)
 - Policies & Procedures (Owner)
 - Responsibility Matrix- Standard Guestroom Renovation Items (Owner/Contractor)
 - Responsibility Matrix- Project Specific Items (Owner/ Contractor)
 - Standard Mirror and Artwork Detail (Owner)
 - Standard Attachment Cable Detail (Owner)
 - Standard Curtain Rod and Cornice Attachment Detail (Owner)
 - Standard Ceiling Fan Installation Detail (Owner)
 - Guidelines for Attachment of Overhead Objects (Owner)
 - Submittal Board Details (Owner)
 - Schedule of Submittals (Contractor)
 - Punch List Master Sheet (Owner)
 - Unit Cost Summary Form (Owner)
 - OFI Inventory Report (Owner)
 - Pull Request Form (Owner)
 - FF&E Specifications (Owner)
 - Construction Barricade Details (Owner)
 - Drawings (Owner)
- All Bid Documents will be watermarked with “For Bidding Purposes Only Not for Construction ‘Bid Date’”.

- Subcontractor Bid Process

- Develop bid list of suggested Subcontractors for Owner's review. Owner (at its sole discretion) has the right to reject any Subcontractors and add any Subcontractors. Ensure adequate number of Subcontractors for each trade package in order to obtain the required minimum three (3) bids for each trade. Perform bidder qualification as required.
- Plan, schedule, and conduct the Pre-Bid Meetings and site visits with the invited Subcontractors. The Pre-Bid Meetings will be held on the Owner's property in a conference room provided by the Owner. The expectation for the Pre-Bid Meetings is to have the first Pre-Bid Meeting with all Subcontractors to provide a broad overview of the project. Site visit to the associated guestrooms shall be separate of the Pre-Bid Meeting and trades scheduled in a fashion to disperse the number of visitors throughout the day. Within the following few days, separate Pre-Bid Meetings may be held with each trade, as deemed necessary by Owner, to further outline the specific scope and requirements for each trade. The Owner anticipates these separate meetings will occur within three (3) days of base Pre-Bid Meeting and expects each to be between one-half hour and one hour depending on the trade. The expectation is that at the end of these Pre-Bid Meetings each Subcontractor has a full and complete understanding of the requirements and expectations for their specific scope of Work.
- Prepare and transmit all necessary invitations to bid, bid addenda and post-bid addenda and copy the Owner.
- If the Contractor is able to self-perform certain Trade Package scopes and desires to compete for such Trade Package, the Contractor shall notify the Owner in writing at the time the bid list is established for that trade or scope package. The Owner's expectation is that the Contractor has a full and complete understanding of each trade scope of work and therefore, should be able to provide a complete and accurate bid during the initial Subcontractor bid process. If the Contractor chooses to bid on a scope of work and notifies the Owner appropriately, the original submitted bid pricing will need to stand throughout the post bid process. The Contractor will not be allowed a post bid conference and will not be allowed to revisit their original bid. The Contractor must submit their bid to the Owner 24 hours prior to the bid date for the Subcontractors. Once the original bids have been submitted, the Contractor has gained an unfair advantage over the Subcontractors and therefore cannot be allowed to resubmit any pricing. In addition, the Owner's expectation for self-performed is that the manpower that will be implementing such self-performed Work will be direct employees of the Contractor.
- Bids solicited by the Contractor shall be submitted by the bidders/Subcontractors directly to the Contractor with a copy provided to Walt Disney World Strategic Sourcing via email. The Contractor shall perform the diligence to ensure all original bids are complete and address all bid addenda.
- Within five (5) working days of receipt of bids the Contractor will provide the bid analysis spreadsheet of all original bids and provide recommended post-bid schedule and subcontractors in accordance with specific format provided by the Owner. All spreadsheets and bid responses shall be provided to the Owner electronically. During this time frame Contractor will ensure that all original

bids are completely filled out by subcontractors. It is Owner's expectation that all communication with subcontractors during this time frame is via email with Owner copied.

- Contractor shall request any subcontractor(s) who decline to bid, provide such notice in a written format versus phone conversion.
 - Plan, schedule and conduct post bid meetings with, at a minimum, the two (2) lowest price, qualified subcontractors (or as directed by Owner). Post bid process will occur as mutually agreed between Owner and Contractor. Unless agreed otherwise, post bid meetings with the Subcontractors shall be held at the Owner's facility at times agreeable to Owner. Owner intends to participate in the post bid meetings with the potential Subcontractors but is not obligated to do so. At Owner's option, additional post-bid meetings with subcontractors specified by the Owner may be required. Contractor shall provide copies of all subcontractor bids to Owner prior to scheduled post-bid meetings. Contractor shall develop post-bid scope questions and provide detailed notes of all subcontractor post-bid meetings to the Owner as well as all revised subcontractor bids as a result of post-bid discussions. Contractor shall direct that all subcontractor post-bid responses be sent via email to both the Contractor and to Owner's Strategic Sourcing Representative. The Contractor will provide a revised bid analysis spreadsheet with all bid and post-bid data included, plus the recommended award spreadsheet in the specific format provided by the Owner. All spreadsheets, bid responses and post bid notes shall be provided to the Owner electronically.
 - Once a Trade Package is awarded, the cost and obligations stated therein shall constitute Direct Construction Costs. All Direct Construction Costs shall be considered "all Inclusive" and will be incorporated into the Contract as a lump sum amount via Change Order.
- Submittal Process
 - The Contractor shall provide and gain Owner's approval of a complete submittal schedule prior to subcontractor bid that will demonstrate the ability to provide and gain approval of all submittals prior to Contractor Mock-Up Room commencement. The submittals include all individual submittals, plus required submittal boards.
 - Based on approved submittal schedule, provide all submittals and gain approvals prior to the commencement of the Contractor's Mock-Up Room.
 - Contractor's Mock-Up Room: All individual items that Contractor is responsible for must be individually submitted and approved prior to installation of the Contractor's mockup room. Once all items have been approved, the Owner's approval of the mockup room as a whole can be acquired. The Contractor's mockup room will represent the approved standard of quality for the guestroom renovation project. Any changes that occur during the renovation project must be made and Owner's approval received in the mock up room prior to implementation in the renovation sequences.
 - Permits

- Building permit fees, as determined by Reedy Creek Improvement District (RCID), are not to be included within the General Conditions amount with the bid. The actual permit fee(s) (without markup) will be added to the Agreement via Change Order.
- Contractor is expected to file for building permits immediately upon receipt of Signed and Sealed Drawings.
- Contractor shall inform the Owner's Representative within one (1) business day of any changes or revisions requested by RCID.
- Post Subcontractor Award
 - Verifying CFI orders and lead times.
 - Finalizing scheduling tools and task cards and gaining concurrence from subcontractors and Owner.
 - Preconstruction meetings with subcontractors
 - Site Logistics
 - Weekly Contractor/Owner Project Status Meeting
 - Manage/critic subcontractors OFI/FF&E handling
 - Manage cleanliness of laydown yard and verification of waste diversion guidelines are being performed as outlined
- MISCELLANEOUS SCOPE OF WORK:
 - End-of-Day Site Verification
 - Contractor shall be responsible to submit a report to the Owner's Representative at the end of each working day verifying the site is secured, all doors are locked, all lights are turned off, all thermostats are set, and any other site verification information requested by Owner.
 - Pull Process - for Pulling OFI Materials from the Warehouse
 - Subcontractors shall fill out the Pull Request Forms no later than one week prior to needing OFI material on site. Contractor shall be responsible for checking Pull Request Forms before sending to Owner. Owner shall receive Forms no later than three (3) working days prior to the Pull Request Date listed on the form. Contractor shall be responsible for prompt responses on any issues impeding the approval of Pull Requests.
 - End of Sequence Process
 - Subcontractors shall submit the End of Sequence (EoS) Report no later than one week after finishing in a Sequence. Contractor shall be responsible for reviewing the reports before sending to Owner. Owner shall then schedule review meetings if necessary.
 - Close-Out Process
 - Where Operations & Maintenance (O&M) manuals and as-built drawings are submitted, the Contractor shall obtain appropriate permission or license from relevant beneficial owners of intellectual property rights to allow the Owner and all parties responsible for the operation and maintenance of the Work free from all fees to make additional copies of the manuals and drawings.

- All Close-Out requirements detailed in Section 01 10 10 and in the General Conditions of the Contract for Construction.
- Recovery Plan
 - Whenever there is an impact to the Task Card including, but not limited to: Owner-directed Schedule changes, missed task items, material availability, unforeseen conditions, etc. an updated Task Card shall be provided to Owner within 24 hours. The updated Task Card shall detail the recovery plan to maintain turnover dates.
- Contractor shall not be responsible for building the Functional Model Room (FMR), this shall be done by others. However, the Contractor shall be engaged in the FMR construction process to understand and apply any learnings and/or changes to the Work. After the FMR is complete, Contractor shall provide a narrative of all of the discrepancies between the construction of the FMR and the 60 and 90% design documents. Contractor shall meet with the Owner to discuss these findings.
 - Anticipated duration of the FMR construction is 3 – 6 weeks.
 - Those putting together the sub-trade bid packages shall attend the site visits to the FMR and are expected to attend the sub-trade post-bids.
 - Contractor will have full availability to visit the FMR construction site.
 - Contractor shall notify the Owner's Field Representative before visiting the site.

PRE-CONSTRUCTION DELIVERABLES:

- Estimate
 - Contractor shall provide a detailed estimate for the Scope of Work after receipt of the 60% design documents. The Schedule of Values shall be developed with the Owner.
 - Contractor shall update the estimate upon receipt of the 90% design documents.
- Procurement Plan
 - Procurement Plan shall include, but is not limited to:
 - Bidders by trade package
 - Initial bid results, including declinations
 - Final bid results incorporating post-bid responses
 - MWVBE participation
 - Recommended subcontractor award
- Task Card
 - Contractor shall develop a Task Card for each Sequence and Room Type.
 - Task Cards shall include detailed guestroom task list with appropriate trade breakdown and timing and sequence task lists including breakdown of intrasequence groupings.
 - Task Cards shall be posted on each guestroom during production.
 - Contractor shall be responsible to sign off on the Task Card for each room when the activities for that room have been completed.
 - Note: Reedy Creek Improvement District has limited availability for inspections on Fridays. This should be accounted for in the development of the Task Card.

- Task Card should reflect working days from Monday through Friday, with available working hours (including noisy work) from 9 AM to 9 PM.
- See Attachment B for a sample Task Card with expected layout.
- Resource Plan
 - In conjunction with the Task Card, Contractor shall provide a resource plan detailing the anticipated crew size for each sub-trade, as well as confirming the Contractor's staffing.
- Pull Plan
 - In conjunction with the Task Card, Contractor shall provide a Pull Plan including: when materials will be needed to complete each task, what materials are needed, and what days the submission dates are (to the Contractor, to the Owner, and to the Warehouse).
- Inventory Management Preparation
 - Sequence and Turn Plan outlining what room numbers are included in which turn of the sequence.
 - Room Matrix
 - Pull List, for each subcontractor of what they will be pulling.
 - EoS Report Total Project Quantities Estimates from each subcontractor.
- Damages Plan
 - In conjunction with damage reporting procedures a plan will be developed for each subcontractor who is handling OFI specific to the subcontractor's trade.
- Logistics Plan
 - Develop detailed graphic logistic plans and narratives addressing site access, circulation, staging, storage, construction/visual intrusion barriers, material and debris and labor movement, noise containment/reduction, dust containment/reduction, landscape removal/restoration and other necessary requirements.
- Schedule of Submittals
 - Per the Submittal Process detailed in the Scope of Work above.
- QA/QC Plan
 - To be submitted per Section 01 10 10 requirements.
 - Bidders shall detail their process to maintain the expected quality of construction based off of the completed Contractor Mock-Up Room in all guestrooms during production.
- Safety Plan
 - To be submitted per Section 01 10 10 requirements.

MILESTONES:

See Exhibit P for construction milestones.

Contractor shall be responsible to have all preconstruction activities completed **one week prior to construction commencement of the Contractor Mock-Up Room**. Below is a tentative outline of the preconstruction process with suggested and/or historic timelines. This outline is a reference only as the actual schedule of preconstruction shall be determined by the Contractor in conjunction with the Owner.

A. Preliminary Document Review and Site Reviews by Contractor: (TBD)

- B. Preliminary set of documents for preconstruction review:
 - Intent is to provide documentation at 90% level.

- C. Procurement Plan provided to Owner: (D minus 7 days)

- D. Bid Documents and Specifications to Contractor: (E minus 7)

- E. Sub-Trade Bid Packages Issued by Contractor: (F minus 7)

- F. Pre-Bid for Subcontractors: (G minus 14) and (O minus 140)
 - Owner's expectation is for Subcontractor Pre-Bid Meeting to occur four months prior to Contractor Mock-Up Room start.

- G. Subcontractor Bid Due Date: (H minus 7)

- H. Bid Review Package Provided to Owner by Contractor: (I minus 7)
 - Owner's expectation is for the Contractor to facilitate an initial sub-contractor bid review with Owner one week after bids are due.

- I. Post-Bids: (J minus 14 to J minus 0)

- J. Post-Bid Review Package to the Owner: (K minus 35)

- K. Change Order issued by Owner to Contractor: (L minus 7)

- L. Submittals & Pull Plan: (O minus 60 to O minus 14)
 - All submittals, including submittal boards, shall be approved by Owner prior to start of Contractor Mock-Up Room.
 - Assume minimum one month duration required for entire submittal process.
 - Owner will not allow any non-approved items to be placed in rooms.

- M. Sub-Trade Permits Received: (O minus 7)

- N. Contractor Mock-Up Room:
 - Refer to project outage schedule.
 - Must be completed and approved by Owner prior to start of first room outage sequence.

- O. Room Outage:

- Refer to project outage schedule.

P. Close-Out of Project and Contract

- To complete within three months of last room turnover.

Exhibit B – Drawings: To be incorporated via Change Order

Exhibit C – Specifications: Section 01 10 10 – General Requirements for Florida Projects, 24 pages, dated August 18, 2017

Exhibit D – Special Conditions: 21 pages, dated May, 2018 ed.

Exhibit E – General Conditions of the Contract for Construction: 32 pages, dated January 2018 ed.

Exhibit F – Contractor’s Guarantee To Owner: 2 pages, dated June, 2012 ed.

Exhibit G – Change Order: 2 pages, dated June, 2012 ed.

Exhibit H – Close-Out Change Order: 11 pages, dated June, 2012 ed.

Exhibit I – Schedule of Unit Prices: To be incorporated via Change Order

Exhibit J – *Not Applicable*

Exhibit K – Information Security Requirements: 2 pages, dated April 2017 ed.

Exhibit L – *Not Applicable*

Exhibit M – General Conditions Listing: 2 pages, dated September 19, 2018

Exhibit N – *Not Applicable*

Exhibit O – Lump Sum Contract for Construction: 6 pages, dated February 22, 2018

Exhibit P – DVC Saratoga Springs Room Outage Plan CY’19 – Rev. 6, 3 pages, dated February 19, 2018

- 2.2 The Contractor shall provide and pay for all related facilities described in any of the Contract Documents or required to provide the Owner with a fully functional facility including, without limitation, all work expressly specified in the Contract Documents and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the Contractor by this Article and by all other provisions of the Contract and the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the “**Work**”.
- 2.3 Contractor acknowledges that Owner has delivered to Contractor for Contractor’s review and approval Exhibits “D”, “E”, “F”, “G”, “H”, “I”, “J”, “K”, “M”, “N” and “O” in the bid package received by Contractor. Contractor has read and accepts all such Exhibits as if attached hereto and made a part hereof. If Contractor desires to obtain additional copies of any or all of such Exhibits, Contractor shall request from Owner, in writing, the specific requested Exhibits.

Article 3
OWNER'S REPRESENTATIVE

The Owner's authorized representative (herein referred to as the "**Owner's Representative**") shall be John Gavin, whose mailing address is P.O. Box 10000, Lake Buena Vista, FL 32830; provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its representative and so advising the Contractor in writing, at which time the person or organization so designated shall be the Owner's Representative for purposes of the Contract.

Article 4
THE ARCHITECT/ENGINEER

The Architect/Engineer for the Project (herein referred to as the "A/E") is WG Pitts Architecture, Inc. (**Architect**), whose mailing address is 9250 Baymeadows Road, Suite 350, Jacksonville, FL 32256.

Article 5
TIME OF COMMENCEMENT AND COMPLETION

- 5.1. The Contractor shall commence the Work promptly upon Owner's execution of the Contract unless a notice to proceed is specifically required and shall complete all Work in accordance with the Contract Milestones described in Exhibit "P" (such period of time is herein referred to as the "**Contract Time**") and in accordance with such interim milestone dates (herein referred to as the "**Milestones**") as may be specified in the Contract Documents. The Contract Time and any such Milestones are of the essence of the Contract.
- Contractor Mock-Up Room Start Date: March 23, 2019
 - Construction Start Date: April 20, 2019
 - Construction Completion Date: November 1, 2020
- 5.2. If any Work is performed by the Contractor prior to the execution of this Agreement based on receipt of written notice to proceed, all such Work performed shall be in accordance with and governed by the Contract Documents.
- 5.3. The Contractor acknowledges that the Owner has made no warranties to the Contractor, expressed or implied, that the Contractor will be able to follow a normal, orderly sequence in the performance of the Work or that there will be no delays in, or interference with, the Work.

Article 6
PRECONSTRUCTION SERVICES FEE, FIXED FEE, GENERAL CONDITIONS FEE AND
DIRECT CONSTRUCTION COSTS

- 6.1. Preconstruction Services Fee:
- (a) The nature and scope of services to be performed by the Contractor under the Contract, to the satisfaction of the Owner, shall include all preconstruction services necessary to provide for the complete preconstruction management of the Project from the effective date of the Contract through all phases of design and until such time as Owner makes its election pursuant to Paragraph 7.4 of this Agreement, and shall specifically include project management, concept estimating, preliminary scheduling, constructability review, and any other tasks requested by the Owner in order to establish certain base working assumptions for the Project.

- (b) Provided the Contractor has performed to the satisfaction of the Owner, Owner shall pay to Contractor for its preconstruction services and in consideration of the terms, conditions and obligations of the Contract, a fixed fee in the amount of **EIGHTY-EIGHT THOUSAND FOUR HUNDRED TWENTY-FIVE AND 00/100 DOLLARS (\$88,425.00)** (such amount being hereinafter called the “**Preconstruction Services Fee**”). Contractor shall be entitled to no further compensation under the Contract except as provided in Paragraph 6.1(c). below.
- (c) Contractor shall be compensated for any additional preconstruction services in accordance with Article 12 of Exhibit E.

6.2. Fixed Fee:

- (a) Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, a fixed fee of **ONE MILLION TWO HUNDRED EIGHTY-EIGHT THOUSAND EIGHT HUNDRED TWENTY-NINE AND 50/100 DOLLARS (\$1,288,829.50)** (such amount being hereinafter called the “**Fixed Fee**”) to cover the Contractor’s profit and all of the Contractor’s home office general administrative, direct and indirect overhead and general expense as required and all costs and expenses of any nature whatsoever (including, without limitation, taxes, labor and materials), foreseen or unforeseen, incurred by the Contractor in connection with the performance of the Work, other than the Preconstruction Services Fee (as provided in Section 6.1 above) General Conditions Fee (as provided in Section 6.3) or Direct Construction Costs (as provided in Section 6.4(d)); Contractor shall be entitled to no further compensation for Fixed Fee under the Contract except as provided in Paragraph 6.2(b) below.
- (b) Contractor shall only be compensated for any additional Fixed Fee in accordance with the standard allowable mark-ups specified in Article 12 of Exhibit E.
- (c) The Fixed Fee amount is based on the Estimated Direct Construction Costs, as provided in Paragraph 6.4(d) excluding Preconstruction Services Fee, Fixed Fee, and General Conditions Fee. Contractor specifically acknowledges that the Fixed Fee, as specified herein, was calculated based upon the Estimated Direct Construction Costs as set forth in Paragraph 6.4(d) and shall not be affected by Change Orders which might impact or amend the Contract Schedule. In the event that the actual Direct Construction Costs exceed **\$44,138,000.00**, Contractor shall not be entitled to any increase in the Fixed Fee for the first **\$4,413,800.00** of additional Direct Construction Costs. For authorized changes which cause the Direct Construction Costs to exceed **\$48,551,800.00**, the Contractor will receive a 6% mark-up for Fixed Fee and General Conditions Fee on any Subcontractor costs, plus a mark-up of 1.08% for GL insurance.
- (d) All costs for or in connection with the following items in connection with the Work only are included in and covered by the Fixed Fee and are not included in the General Conditions Fee:
 - (1) Cost of any bonuses, stock options, profit sharing and similar incentive programs;
 - (2) Any required contingency costs;
 - (3) Cost of capital employed or money borrowed;

- (4) Home office overhead or general expenses of any kind;
- (5) Travel and subsistence expenses of Contractor's employees;
- (6) Services of any officer, department head or general executive manager of the Contractor.
- (7) Services of any persons employed during the execution of the Work in the main or branch office of the Contractor.
- (8) Cost of or rental for small tools. In the Contract, the term "**Small Tools**" shall mean tools of the nature of, but not limited to, hammers, shovels, hard hats, wheelbarrows, etc. Small Tools shall include manually powered, pneumatically powered, mechanically powered, and electrically powered tools. A tool will not be considered a Small Tool if its original cost is greater than \$150.00.
- (9) Services and expenses of the Contractor's main office or any regularly established branch office including estimating, purchasing, and accounting departments.
- (10) Any costs, expenses or damages resulting directly or indirectly from the breach of any guarantee or warranty contained in the Contract Documents (including those contained in the attached Exhibit E), Contractor's failure to properly and fully perform its obligations under the Contract, or the act or omission of Contractor, its officers, executives, principals, agents, employees, subcontractors or Sub-subcontractors, whether incurred for making good defective work, disposal of material wrongly supplied, making good damage to property, or otherwise;
- (11) Any other costs which are not specifically and expressly described in this Article and stated to be payable to Contractor under the Contract or which are to be borne by Contractor under any other provision of the Contract Documents.

6.3. General Conditions Fee:

- (a) Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the fixed price amount of **TWO MILLION EIGHTEEN THOUSAND NINE HUNDRED SIX AND 50/100 DOLLARS (\$2,018,906.50)** (such sum being hereinafter called the "**General Conditions Fee**") to cover all costs and expenses of any nature whatsoever, foreseen or unforeseen, incurred by the Contractor in connection with the performance of the Work as detailed in Exhibit M. Contractor shall be entitled to no further compensation under the Contract except as provided in Paragraph 6.3(b) below.
- (b) Contractor shall only be compensated for any additional General Conditions Fee in accordance with the standard allowable mark-ups specified in Article 12 of Exhibit E.
- (c) The fixed General Conditions Fee included within the Contract is based upon the current Scope of Work and schedule for Disney's Saratoga Springs Resort & Spa Guestroom Renovation Work. Should the Scope of Work and schedule remain as currently indicated within the Contract, the fixed General Conditions Fee shall remain the same even if the total Direct Construction Costs (excluding Preconstruction Services Fee, Fixed Fee and General Conditions Fee) ends below and/or exceeds the

Estimated Direct Construction Costs. In the event that the Scope of Work and/or schedule is increased and/or revised and the Contractor identifies the need for additional personnel and/or support, the Contractor shall submit, in writing to the Owner, a request for approval of additional personnel and/or support and the budget associated with these additional General Conditions Fee. The Contractor shall not add additional staff, above and beyond the base amount, without the written approval of the Owner.

- (d) All costs for or in connection with the following items (as further detailed in Exhibit M) are included in and covered by the General Conditions Fee and are not included in the Preconstruction Services Fee, Fixed Fee costs or in the Direct Construction Costs:
- (1) Salaries or wages of all of Contractor's labor (hereinafter, "**Direct Labor**"), including the services of project manager, superintendent, project engineers, foremen, timekeepers, clerks, expeditors, watchmen, teamsters, truck drivers, mechanics, laborers, estimators, accountants, schedulers, contract administration, and all others necessary for the proper conduct of the Work employed by Contractor (whether at the Job Site or elsewhere) for the time spent working under the Contract, together with any Social Security and unemployment insurance taxes (State and Federal) in connection with such labor, the costs of all fringe benefits (which shall include any and all paid employee benefits, including, but not limited to, holiday and vacation pay, sick leave, retirement plans and group medical and life insurance benefits), pension fund, profit sharing, Social Security and unemployment insurance and worker's compensation costs (hereinafter, "**Labor Burden**" collectively).
 - (2) The construction, equipment, maintenance and dismantling of temporary offices, sheds or other such structures of Contractor at the Job Site and replacement of asphalt to its original condition including striping;
 - (3) Office equipment and furniture to accommodate and support the project staff, including, but not limited to, computers, printers, telephone(s), fax machine(s), copy machine(s), service agreements for office equipment, desks, chairs, conference room furniture, telephones, file cabinets, plan rakes, plan tables, book shelves, desk, other office supplies, shredders, any and all other items the Contractor requires to support the Work;
 - (4) Preparation, maintenance and updating of all Schedules as required in Exhibit C, Section 01 10 10. Scheduling consultants (if required);
 - (5) Temporary sanitary facilities and servicing as required for the duration of the Work to support all the construction workers/trades;
 - (6) Job Site security for Contractor's purposes;
 - (7) Project signage and related work (except as contracted for within a Subcontract as a Direct Construction Cost);
 - (8) Fees and royalties (payable to entities other than Contractor or its affiliates);
 - (9) Bussing workers to and from Owner designated parking area(s) to Job Site;

- (10) Performance and Payment Bond Costs, any other bonding costs, or any other costs required for the performance of the Work whether from the Contractor or any of its Subcontractors/Suppliers;
- (11) Cost of fuel, power, light, and water used during construction; cost of progress photographs and flash or solid state storage devices; cost of temporary fences, guard rails, scaffolds; and cost of removal of all debris;
- (12) Rental charges of necessary equipment and tools;
- (13) Such travel expenses of the Contractor's Project employees as may be necessary and specifically approved by the Owner in advance;

6.4 "Direct Construction Costs" shall be defined as the totality of all "**hard**" or direct costs of construction as reflected in each Trade Package as bid and awarded below.

- (a) The Contractor shall procure and negotiate any or all contracts, subcontracts and purchase orders with prospective contractors, subcontractors and suppliers required to construct the Project as described in Paragraph 7.5 and in accordance with the Contract Documents. As the Direct Construction Costs are identified and approved by the Owner, the Contract Sum shall be increased to add the Direct Construction Costs.
 - (1) Contractor agrees to competitively bid all elements of the Direct Construction Costs ("**Trade Package**") unless otherwise agreed by Owner or as otherwise provided in (a) (1) (i) below. Contractor to prepare the scope documents, solicit, review and make recommendations for the award of all specialty trade work, long-lead materials, rental equipment, etc., associated with each Trade Package. Owner reserves the right to approve or designate proposed subcontractors, materialmen and suppliers for bidding. Contractor acknowledges that Owner (or its affiliates) may be able to obtain better pricing on some elements of the Work (e.g., certain equipment, fixtures and personal property), and Owner reserves the right to purchase certain items directly, and Contractor and Owner agree to cooperate in this and other matters to obtain the best possible pricing for the Work.
 - (i) If the Contractor is able to self-perform certain Trade Package scopes and desires to compete for such Trade Package, Contractor shall submit a bid, accompanied by a detailed labor estimate and competitive bid pricing from material suppliers for such Trade Package. Further, Contractor shall submit competitive bids from prospective contractors, subcontractors and suppliers on such Trade Packages for Owner to compare such competitive bids and Contractor's bid. Contractor shall ensure that each Trade Package scope of Work is complete and without scope overlaps and duplicates.
 - (2) Once a Trade Package is awarded, the cost and obligations stated therein shall constitute Direct Construction Costs. All Direct Construction Costs shall be considered "all-inclusive" and will be incorporated into the Contract as a lump sum amount via Change Order.
 - (3) No Direct Construction Costs shall be duplicative of any of the Preconstruction Services Fee, Fixed Fee or General Conditions Fee specified above, and vice versa.

- (b) Provided the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Change Order or as otherwise provided in Article 12 of Exhibit E, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the fixed price amount for the Direct Construction Costs described in Paragraph 6.4(a) above (such sum to cover all costs and expenses of any nature whatsoever, foreseen or unforeseen, incurred by the Contractor in connection with the performance of the Work). Contractor shall be entitled to no further compensation under the Contract except as provided in Paragraph 6.4(c) below.
- (c) Contractor shall only be compensated for additional Direct Construction Costs in accordance with Paragraph 6.2(c).
- (d) The Estimated Direct Construction Cost is **FORTY-FOUR MILLION ONE HUNDRED THIRTY-EIGHT THOUSAND AND 00/100 DOLLARS (\$44,138,000.00)** excluding Preconstruction Services Fee, Fixed Fee and General Conditions Fee (such amount hereinafter called the “**Estimated Direct Construction Costs**”). No guarantee is made by the Owner that the actual total Direct Construction Costs shall either reach and/or exceed the estimated total cost.

Article 7
GUARANTEED MAXIMUM COST TO
BE REIMBURSED TO CONTRACTOR

- 7.1. Subject to the provisions herein, the Contractor guarantees that the costs incurred in performing the Work which are to be reimbursed to Contractor, including Preconstruction Services Fee, Fixed Fee, and General Conditions Fee, shall not exceed **THREE MILLION THREE HUNDRED NINETY-SIX THOUSAND ONE HUNDRED SIXTY-ONE AND 00/100 DOLLARS (\$3,396,161.00)** plus the total Direct Construction Costs described in Section 6.4 (such amount hereinafter called the “**Guaranteed Maximum Cost Reimbursement**”). The Contractor shall bear all costs of any nature whatsoever in excess of the Guaranteed Maximum Cost Reimbursement which may be necessary to incur to complete the Work in conformity with the Contract Documents.
- 7.2. If the Owner shall make any Changes in the Work pursuant to Article 12 of Exhibit E which shall result in the increase or decrease of the Direct Construction Costs, the Owner shall issue a Contract Directive describing the change in scope and the standard allowable mark-ups specified in Article 12 shall apply. No additional Fixed Fee or General Conditions Fee will be paid for Contract Directive work other than the allowable percentages specified in Paragraphs 6.2(b) and 6.3(b), unless warranted and agreed to by Owner.
- 7.3. Also included within the Guaranteed Maximum Cost Reimbursement is ZERO AND 00/100 DOLLARS (\$0.00) to be paid by the Owner to the Contractor as the specific consideration for full compliance with the Florida Trench Safety Act (the “**Act**”) and the Occupational Safety and Health Administration excavation safety standards, 29 C.F.R. 1926.650 Subpart P.
- 7.4. At such time, in the Owner’s sole discretion, as the Owner shall declare the plans and specifications for the Project to be sixty percent (60%) complete, and at any time beyond sixty percent (60%) completion, the Owner shall have the option to make its election as to whether and in what manner the Project shall proceed (“**Owner’s Election**”). In accordance with such option, the Owner may notify the Contractor to render its price for the total compensation of the Project beyond which the Contractor shall guarantee to the Owner a lump sum price (the “**Lump Sum Price**”). The Contractor shall submit its Lump Sum Price within fifteen (15)

days after receipt of such notice from the Owner and shall guarantee such price for ninety (90) days while the Owner considers such proposals. Thereafter, the Owner may, in its sole discretion, elect to proceed under the Lump Sum Contract attached hereto as Exhibit "O" and incorporated herein by reference and all of its attendant Contract Documents.

- 7.5 Regardless of the nature of Owner's Election, Contractor agrees that the Owner may participate to the extent it so chooses in the procurement and negotiation of any or all contracts, subcontracts, and purchase orders with prospective consultants, contractors, subcontractors, and suppliers including, but not limited to, the rights to approve or reject bidders, solicit additional bidders and procure and receive bids. However, in the event of any such procurement involvement by Owner, provided Owner has given Contractor the opportunity to concur with procedures and award in advance, Contractor is estopped from and hereby waives any rights it may have to claim Owner responsibility for any problems of any type that may develop with any such subcontractor or supplier which could result in a claim for an increase in the Guaranteed Maximum Cost or an increase to the Contract Time related to any such situation. The provisions of this Paragraph shall survive the Owner's Election and execution of the new agreement pursuant to Paragraph 7.4 above.
- (a) Before awarding a subcontract or purchase order, Contractor shall submit a summary of the Direct Construction Costs for Owner's review showing the total lump sum amount as it exists as of that date for each Trade Package ("**Initial Costs**"). Upon Owner's approval of this summary and the Initial Costs contained therein, and the actual award of the subcontracts and purchase orders, Owner will incorporate into the Contract as a lump sum amount, via one or more Change Orders, the total amount of the Initial Costs.
 - (b) It is expressly understood and agreed that in the event that the Initial Costs exceed the estimated total Direct Construction Cost, Contractor shall not be entitled to any increase in the Fixed Fee or General Conditions Fee by virtue thereof.

Article 8
APPLICATIONS FOR PAYMENT

- 8.1. The Contractor shall, on the twenty-fifth (25th) day of each calendar month (herein referred to as the "**Payment Application Date**"), deliver to the Owner an "**Application for Payment**" showing in detail those items of cost (including, without limitation, those on account of labor, materials, tools and/or equipment) for which the Contractor is entitled to reimbursement under the provisions of Articles 6 and 7, incurred by the Contractor and incorporated or used in the Work or suitably stored at the Job Site, if approved in writing by Owner as provided in Section 9.1.2 of Exhibit E, during the period from and including the twenty-sixth (26th) day of the preceding calendar month through and including the Payment Application Date, together with waivers of mechanics and/or materialmen's liens of the Contractor, Subconsultants, Subcontractors and suppliers and such other evidence of performance of the Work, the costs thereof and payment therefor satisfactory to the Owner.
- 8.2. Applications for payment are to include all back up to justify the amounts on the billing.

Article 9
PAYMENT OF COSTS TO BE REIMBURSED AND FIXED FEE

- 9.1. Based upon the Contractor's Application for Payment and approval of said Application for Payment as issued by the Owner's Representative pursuant to Article 9 of Exhibit E, the Owner shall make monthly progress payments to the Contractor on account of the costs for which the

Contractor is entitled to reimbursement under Articles 6 and 7 of this Agreement. Each monthly payment shall be in an amount equal to Ninety percent (90%) of the amount shown on the applicable approved Application for Payment and shall be paid on or before the twenty-fifth (25th) day of each calendar month or the thirtieth (30th) day after receipt by the Owner of the Contractor's Application for Payment, whichever is later.

- 9.2. Final payment, constituting the entire unpaid balance of the amounts shown on all approved Application for Payment shall be paid by the Owner to the Contractor in accordance with Section 9 of Exhibit E and execution by the Contractor of the Close-out Change Order, the form of which is attached hereto as Exhibit H, in accordance with Exhibit E; provided, however, that final payment shall in no event be due unless and until the Contractor shall have complied with all provisions of the Contract Documents, including without limitation, those contained in Subparagraph 9.4.2. of Exhibit E.
- 9.3. At the time that each monthly payment to the Contractor for certain costs is due pursuant to Paragraph 9.1 of this Agreement, the Owner shall in addition pay to the Contractor a pro rata share of the Fixed Fee determined by multiplying the Fixed Fee by the fraction whose numerator is the amount certified in the applicable approved Application for Payment issued by the Owner's Representative evidencing the authorized and approved total reimbursable costs for such month, and whose denominator is the Guaranteed Maximum Cost Reimbursement, until ninety percent (90%) of the Fixed Fee has been so paid. Thereafter no further payments on account of the Fixed Fee shall be due and payable until the remainder of the reimbursable costs are due and payable to the Contractor pursuant to the provisions of Paragraph 9.2 of this Agreement, at which time the unpaid balance of the Fixed Fee shall also be paid to the Contractor subject, however, to the same retainages, limitations and conditions provided in Paragraph 9.2.

Article 10 CONTRACTOR'S RECORDS AND ACCOUNTING; AUDIT

- 10.1. The Contractor shall retain records of all bids received by it, shall keep same available to the Owner and shall deliver copies thereof, certified as accurate by the Contractor.
- 10.2. The Contractor shall submit, prior to starting the Work, a job organization chart and the salary rates and bonus structure, if any, of supervisory personnel to be employed on the Work, which shall be subject to the Owner's approval. The Contractor shall carefully check all material, equipment, supplies and labor entering into the Work and shall keep such full and detailed accounts as may be necessary to the best financial interests of the Owner. Invoices shall be secured in duplicate by the Contractor, checked by the Contractor, and subject to the periodic review and audit of the Owner. The original invoice shall be retained by the Contractor and the duplicate copy shall be forwarded to the Owner as required by Article 7.
- 10.3. The Contractor shall permit the Owner's auditors to have access at all reasonable times to all records, correspondence, account books, invoices, canceled checks, payrolls and other records relating to the Contract Documents and to the Work as specifically provided in Section 12.5 of Exhibit E.

Article 11 TERMINATION

Termination of the Contract by the Owner, with or without cause, and by the Contractor are provided for in Article 15 of the GCCs. If the Owner terminates the Contract pursuant to Paragraph 15.2. of the GCCs, and the costs and expenses incurred by or on behalf of the Owner in finishing the Work,

including compensation for any additional architectural, engineering, management and administrative services exceed the remaining balance of the Guaranteed Maximum Cost Reimbursement plus the remaining balance of the Fixed Fee, then the Contractor shall pay the difference to the Owner upon demand. If such costs are less than the remaining balance of the Guaranteed Maximum Cost Reimbursement plus the balance of the Fixed Fee, then the Contractor shall only be entitled to recover from the Owner all Reimbursable Costs plus that portion of the Fixed Fee earned by the Contractor as of the date of termination, and shall not be entitled to any additional payments or unearned Fixed Fee.

Article 12 USE OF OWNER'S NAME/CONFIDENTIALITY

The Contractor, by virtue of the Contract, shall acquire no right to use, and shall not use, the name of the Owner or the name "Disney", "ABC", "ESPN", "Pixar", "Lucasfilm" or "Marvel" (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of The Walt Disney Company or any of its related, affiliated or subsidiary companies: in any advertising, publicity or promotion; to express or imply any endorsement of the Contractor's Work or services; or in any other manner whatsoever (whether or not similar to the foregoing uses hereinabove specifically prohibited). The Contractor may, during the course of its engagement hereunder, have access to, and acquire knowledge of or from, material, data, strategies, systems or other information relating to the Work, the Project or the Owner, or its parent, affiliate, or related companies, which may not be accessible or known to the general public. Any such knowledge acquired by the Contractor shall be kept confidential and shall not be used, published or divulged by the Contractor to any other person, firm or corporation, or in any advertising or promotion regarding the Contractor or its Work or services, or in any other manner or connection whatsoever without first having obtained the written permission of the Owner, which permission the Owner may withhold in its sole discretion. In the event Owner grants Contractor permission as aforesaid to disclose confidential information to any other person, firm or corporation, Contractor agrees that it will; (i) bind such party to an obligation of confidentiality on terms substantially similar to the terms contained in this Article; and (ii) be liable to Owner for any disclosure or use of confidential information by such party. In addition, Contractor agrees that it will be liable to Owner for any disclosure or use of confidential information by any of its employees or representatives.

Article 13 LEGAL PROCEEDINGS

- 13.1. The Contract Documents shall be construed and interpreted in accordance with the laws of the State of Florida without giving effect to any choice of law or rule of conflict that would cause the application of the laws of any other jurisdiction, and shall constitute the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.
- 13.2. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under the Contract, or arising out of any matter pertaining to the Contract or the Work to be performed hereunder, shall be submitted for trial, without jury, before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division); or if neither of such courts shall have jurisdiction, then before any other court sitting in Orange County, Florida, having subject matter jurisdiction. The parties consent and submit to the jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto, and expressly waive all rights to trial by jury regarding any such matter.
- 13.3. In the event that any provision of any of the Contract Documents is judicially construed to be invalid by a court of competent jurisdiction, such provisions shall then be construed in a

manner allowing its validity or, if this leads to an impracticable result, shall be stricken but, in either event, all other provisions of the Contract Documents shall remain in full force and effect.


Article 14
FACSIMILES, ELECTRONIC IMAGES, ELECTRONIC
SIGNATURES, COUNTERPARTS AND AMENDMENTS

- 14.1 This Agreement (or any Modification to the Contract) may be executed in as many counterparts as necessary or convenient, including both counterparts that are executed on paper and counterparts that are electronic records and executed electronically and each executed counterpart shall be deemed an original. All such counterparts together shall constitute one and the same instrument. Delivery of a manually executed paper counterpart of this Agreement (or any Modification to the Contract) by telecopy or other electronic imaging means shall be as effective and enforceable as delivery of such manually executed paper counterpart of this Agreement.
- 14.2 Notwithstanding anything to the contrary contained in the GCCs, a Modification that amends the terms of this Agreement may only be executed by a writing signed by the parties hereto, or by an electronic record that has been electronically signed by the parties hereto and has been rendered tamper-evident as part of the signing process. The exchange of email or other electronic communications discussing a Modification (including a Modification that amends the terms of this Agreement), even if such communications are signed, does not constitute a signed electronic record agreeing to such a Modification.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the day and year first above written.

OWNER:
DISNEY VACATION CLUB MANAGEMENT CORP.


CONTRACTOR:
VALIDUS CONSTRUCTION SERVICES, LLC

Authorized Signature  _____
FCD687CE1DF544B

Name Rick Wertsching

Title Authorized Signatory

Date 9/20/2018

Authorized Signature  _____
707DA0B038AD4F1...

Name Nicole Wickens

Title CEO

Date 9/20/2018

Exhibit "M" - General Conditions Listing
 Walt Disney World® Resort
 Disney's Saratoga Springs Resort Spa
 Guestroom Renovation
 18RW-0437
 September 19, 2018

**Exhibit M General Conditions Listing
 Disney's Saratoga Springs Resort & Spa Guestroom Renovation**

"In Cost of Work" shall signify that the item shall be contracted within a subcontract as a Direct Construction Cost.

ITEM	AMOUNT
Permits	In Cost of Work
Insurance (Contractor-Provided based on Project Budget)	\$286,897
Bonds	Exclude
Project Staff (including burden) (include complete listing)	\$1,567,867
Contractor's Field Offices, Supplies, & Equipment (including computers, utilities, utility hook-ups, and maintenance)	\$65,955
Jobsite Security	In Cost of Work
Hoisting	In Cost of Work
Scaffolding	In Cost of Work
Safety, temporary protection, fire protection	In Cost of Work
Fencing (including maintenance & removal)	In Cost of Work
Storage of Owner-Furnished Items as Required	In Cost of Work
Cleanup (Daily)	In Cost of Work
Cleanup (Final)	In Cost of Work
Trash removal (including dumpster(s) and dump fees)	In Cost of Work
Vehicles, Equipment, and Fuel	\$98,188
Temporary Toilets	In Cost of Work
Survey and Layout	In Cost of Work
Radios and Communication	In Cost of Work
Surface Water Management & Erosion Control as Required	In Cost of Work
As-Builts/Coordinated Drawings	In Cost of Work
Rodent and Pest Control	In Cost of Work
Traffic Control as Required	In Cost of Work
TOTAL:	\$2,018,907

Exhibit "M" - General Conditions Listing
 Walt Disney World® Resort
 Disney's Saratoga Springs Resort Spa
 Guestroom Renovation
 18RW-0437
 September 19, 2018

**Project Organization
 List of Key Employees
 Disney's Saratoga Springs Resort & Spa Guestroom Renovation**

Contractor shall provide the following project staff (as applicable).

POSITION	NAME	RATE (\$/HR)	TOTAL
Project Executive	Nicole Wickens	\$59.00	\$52,956
Project Manager	Lazaro Diaz	\$50.00	\$176,320
Superintendent	Vance Wickens and TBD	\$55.00	\$357,820
General Superintendent	Todd Rylands	\$51.00	\$89,964
Assistant Project Manager	Julie Romero	\$42.00	\$150,472
Estimator	Nicole Wickens	\$0.00	\$0
Scheduler	N/A	\$0.00	\$0
Night Superintendent	Luiggi Garcia	\$50.00	\$164,800
Risk Manager	Todd Rylands	\$48.00	\$53,760
Project Engineer	Adele Todesco	\$25.00	\$80,000
Document Control	Lizette Gonzalez	\$36.00	\$115,200
Field Accountant	N/A	\$0.00	\$0
Admin/Clerical Support	Elsie Benitez and TBD	\$31.00	\$198,400
Safety Coordinator	N/A	\$0.00	\$0
3-D Design Modeler	N/A	\$0.00	\$0
Quality Control	Luiggi Garcia	\$37.00	\$55,575
CFO	Orlando Martinez	\$75.00	\$72,600
TOTAL:			\$1,567,867

END OF EXHIBIT M

Certificate Of Completion

Envelope Id: 949AE4A4A42F45B3830360F73E5EA5A9	Status: Completed
Subject: Contract for Execution: 18RW-0437 / 4505561366, Saratoga Guestroom Renovation	
Source Envelope:	
Document Pages: 25	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Rebecca Wight
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	500 S Buena Vista St, Burbank, CA 91521-0007 Rebecca.G.Wight@disney.com IP Address: 192.195.66.4

Record Tracking

Status: Original 9/19/2018 8:44:58 AM	Holder: Rebecca Wight Rebecca.G.Wight@disney.com	Location: DocuSign
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Signer Events

Nicole Wickens
nicole@validuscs.net
CEO
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:
Nicole Wickens
707DA0B03BAD4F1...
Signature Adoption: Pre-selected Style
Using IP Address: 173.170.170.214

Timestamp

Sent: 9/19/2018 8:50:11 AM
Viewed: 9/20/2018 4:55:03 AM
Signed: 9/20/2018 4:55:58 AM

Electronic Record and Signature Disclosure:
Accepted: 9/20/2018 4:55:03 AM
ID: 535c562e-dfe0-4c4d-8cb4-99cb6e058a48

Rick Wertsching
Richard.Wertsching@disney.com
VP, Strategic Sourcing
TWDC - eSignature Standard
Security Level: Email, Account Authentication (None)

DocuSigned by:
Rick Wertsching
FED687CE1DF644B...
Signature Adoption: Pre-selected Style
Using IP Address: 192.195.66.5

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Signed: 9/20/2018 6:29:39 AM

Electronic Record and Signature Disclosure:
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Diana Griffin
Diana.M.Griffin@disney.com
TWDC - eSignature Standard
Security Level: Email, Account Authentication (None)

COPIED

Sent: 9/19/2018 8:50:12 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
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Karen McArthur Karen.Mcarthur@disney.com TWDC - eSignature Standard Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 9/19/2018 8:50:11 AM
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John Gavin John.T.Gavin@disney.com TWDC - eSignature Standard Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 9/19/2018 8:50:11 AM
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	9/20/2018 4:56:00 AM
Certified Delivered	Security Checked	9/20/2018 5:54:16 AM
Signing Complete	Security Checked	9/20/2018 6:29:39 AM
Completed	Security Checked	9/20/2018 6:29:39 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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CONSENT TO ELECTRONIC COMMUNICATIONS

You have indicated that you wish to enter into an agreement ("Contract") with us electronically. In connection with the Contract, you will receive Communications (defined below) electronically by entering into the terms and conditions of this consent agreement ("Agreement") by clicking the 'I agree' box as indicated below. We may be required by law to give you certain information "in writing" - which means you are entitled to receive it on paper. Therefore we need your consent in order to provide you Communications electronically, instead.

The words "we," "us," and "our" mean Disney Enterprises, Inc. and its affiliates and subsidiaries. The words "you" and "your" mean the person giving consent and entering into this Agreement.

"Communications" means each disclosure, notice, contract, agreement, authorization, acknowledgement, undertaking, fee schedule, periodic statement, record, document, signature or other information we provide to you, or that you sign or submit or agree to at our request in connection with the Contract. Electronic Communications will be provided through the DocuSign, Inc. electronic signing system ("DocuSign").

1. Your Consent. You agree that any of the Communications we provide to you, or that you sign or agree to at our request, may be in electronic form through DocuSign, unless you tell us otherwise in accordance with the procedures described herein. We may also use electronic signatures and obtain them from you on any Communication. You agree that electronic delivery of any Communication will be effective delivery to you and be deemed received by you when sent or made available to you, whether or not you actually access or view the Communication. We may always, in our sole discretion, provide you with any Communication in writing or on paper, even if you have chosen to receive it electronically. Sometimes the law, or our Communication with you, requires you to give us a written notice. You must still provide these notices to us on paper, unless we tell you how to deliver the notice to us electronically.

2. How to Withdraw Consent. If you decide to withdraw consent for electronic delivery of Communications, you must use the DocuSign "Withdraw Consent" form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required Communications electronically from us and you will no longer be able to use DocuSign to receive required Communications electronically from us or to sign electronically documents from us. You may also withdraw your consent to future electronic Communications at any time by following the procedure described below. Your withdrawal of consent is only effective after we have a reasonable opportunity to act on it, and your withdrawal of consent will only apply to Communications you are entitled by law to receive "in writing." We may continue to send other Communications to you electronically even after you withdraw consent. Your withdrawal of consent with respect to the Communications does not affect any other consent you have given us at any other time to use electronic records and signatures. To inform us that you no longer want to receive future Communications in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to CORP.DL-eSignature@disney.com and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

3. How to Update Your Contact Information. It is your responsibility to provide us with an accurate and complete e-mail address and other contact information, and to maintain and update promptly any changes in this information. You understand and agree that if Disney sends you an electronic Communication but you do not receive it because your email address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic Communications, Disney will still be deemed to have provided the Communication to you. To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at CORP.DL-eSignature@disney.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address. In addition, you must notify DocuSign to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

4. Hardware and Software Requirements. To receive electronic Communications, you must have access to:

- a Current Version (defined below) of Internet Explorer (Windows only), Safari (Mac only) or Firefox,
- a connection to the Internet,
- a Current Version of a program that accurately reads and displays to you PDF files,
- a per screen resolution of 800 x 600,
- enabled security settings to allow per session cookies, and
- a computer and an operating system capable of supporting all of the above. You will also need a printer if you wish to print out and retain records on paper, and electronic storage if you wish to retain records in electronic form.

You must also have an active email address.

By "Current Version," we mean a version of the software that is currently being supported by its publisher. From time to time, we may offer services or features that require that your Internet browser be configured in a particular way, such as permitting the use of JavaScript or cookies. If we detect that your Internet browser is not properly configured, we will provide you with a notice and advice on how to update your configuration. We reserve the right to discontinue support of a Current Version of software if, in our sole opinion, it suffers from a security flaw or other flaw that makes it unsuitable for use in connection with the Communications.

If our hardware or software requirements change, and that change would create a material risk that you would not be able to access or retain electronic Communications, we will give you notice of the revised hardware or software requirements. Continuing to use this service after receiving notice of the change is reaffirmation of your consent.

5. Paper Copies. At any time, you may request from us a paper copy of any Communication provided or made available electronically to you by us. You will have the ability to download and print Communications we send to you through the DocuSign system during and immediately after a signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 60-90 days) after such Communications are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you may request delivery of such paper copies from us by following the procedure described below.

To request delivery from us of paper copies of the Communications previously provided by us to

you electronically, you must send us an e-mail to CORP.DL-eSignature@disney.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

6. Acknowledging your access and Consent to receive Communications electronically. To confirm to us that you can access this information electronically, which will be similar to other electronic Communications that we will provide to you, please verify by checking the 'I agree' box below that you were able to read this electronic Agreement and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this Agreement to an email address where you will be able to print on paper or save it for your future reference and access.

7. Termination/Changes/Other. We reserve the right, in our sole discretion, to discontinue the provision of your electronic Communications, or to terminate or change this Agreement or the terms and conditions on which we provide electronic Communications, in whole or in part. We will provide you with notice of any such termination or change as required by law. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, shall be determined in Los Angeles, California in accordance with California law without giving effect to principles of conflicts of laws. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect and be construed and enforced as if such provision had not been included or had been modified as provided above, as the case may be.

By checking the 'I agree' box, you are (i) entering into this Agreement, (ii) consenting to the use and receipt of Communications, (iii) confirming that you have the hardware and software requirements described above, (iv) are able to receive and view Communications exclusively in electronic format on the terms and conditions described above, and (v) have an active email address.