

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

DSL HOSPITALITY, LLC,

Plaintiff,

v.

RONCO CONSTRUCTION COMPANY,
INC., and ZAK OLSEN,

Defendants.

CASE NO: CI 19-8449

AMENDED COMPLAINT

Plaintiff DSL Hospitality, LLC ("DSL") states and alleges the following for its claims for relief against Defendants Ronco Construction Company, Inc. ("Ronco") and Zak Olsen:

PARTIES

1. DSL is a Nebraska limited liability company which owns real estate in Douglas County, Nebraska.
2. Ronco is a Nebraska corporation with its principal place of business in Omaha, Douglas County, Nebraska.
3. Zak Olsen is an individual residing in Douglas County, Nebraska, and acted as the president of Ronco during all times relevant hereto.

JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court pursuant to Neb. Rev. Stat. §§ 24-302 and 25-536.
5. Venue is proper in this Court pursuant to Neb. Rev. Stat. § 25-403.01.

THE HOTEL PROJECT

6. DSL owns the real estate and all improvements thereon, located at 4440 Douglas Street, Omaha, Douglas County, Nebraska 68131, and described as Lot 1, Block 0 Saddle Creek Midtown (the "Property").

7. DSL and general contractor Ronco entered into a cost for the work plus fee AIA A103 – 2007 contract on July 2, 2018 (the “Hotel Contract”), for the construction of the Home2 Suites Hotel at and on the Property (the “Hotel Project”). Ronco began work on the Hotel Project shortly after, with a scheduled completion date 310 days after commencement of the component wall framing.

8. The Hotel Project was not completed by the set substantial completion date of May 31, 2019, and Ronco became obligated to pay liquidated damages per the Hotel Contract.

9. In addition to its general contractor services, Ronco was to provide certain limited direct work and equipment rental for the Hotel Project subject to the monetary caps and other terms and conditions of the Hotel Contract.

10. There were certain change orders approved and signed by Ronco and DSL (e.g., EIFS, drywall) relating to the Hotel Contract.

11. The Hotel Project was not completed on time, and Ronco became obligated to pay liquidate damages, per the Hotel Contract.

12. Ronco also provided certain defective work for the Hotel Project including without limitation, masonry and carpentry work and various other defective work items (collectively, the “Defective Hotel Work”).

13. Ronco became obligated to cure or to pay to cure the Defective Hotel Work, per the Hotel Contract.

14. Ronco refused to perform such corrective work, refused to cure the Defective Hotel Work, refused to pay the liquidate damages, and failed to present a reasonable plan and schedule to address these issues and to timely complete the Hotel Project.

15. Thus, DSL refused payment on certain payment application(s) from Ronco.

16. On August 31, 2019, Ronco and Zak Olsen signed under oath and notary seal and delivered to DSL an Application and Certificate for Payment (the "Fee Application") listing the original Hotel Contract amount of \$7,912,651.00, that \$6,692,311.11 had been paid by DSL to Ronco (including retainage), that \$660,050.10 was due and owing, and that \$1,554,955.50 worth of work under the Hotel Contract that has yet to be completed, roughly 20% of the total Hotel Contract amount.

17. In the Fee Application, Zak Olsen and Ronco swore under oath that "The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief the work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due."

18. As of September 26, 2019, Ronco sent a written notice to DSL that Ronco was suspending work on the Hotel Project.

19. On September 30, 2019, DSL then notified Ronco and Zak Olsen that DSL terminated the Hotel Contract because of Ronco's and Zak Olsen's conduct, and DSL took over the general contractor responsibilities and strived to pay subcontractors and suppliers and to complete the Hotel Project as quickly as possible. Ronco and Zak Olsen intentionally interfered with DSL's efforts in this regard by, among other things, (a) demanding, under threat of withholding work from them, that the subcontractors and suppliers (i) refuse to accept payment from DSL and (ii) refuse to provide any services

or materials to DSL; (b) converting and hiding custom masonry materials that DSL had paid for and needs to complete the Hotel Project (Ronco told Craig Oberholtzer, Vice President of Glen-Gery, that Ronco had removed the brick from the job site and had taken it to Ronco's yard; Jake Hurst of Forest City verified the Ronco stole the brick); (c) blocking access to the Hotel Project; (d) making false statements to DSL's lenders; and (e) falsifying billings (e.g., identifying subcontractors as having issued invoices on the Hotel Project, when in fact such subcontractor provide no work or worked on other projects and including charges for equipment and Ronco personnel that provide no work or worked on other projects).

20. On September 30, 2019, Ronco and Zak Olsen recorded a construction lien with the Douglas County Register of Deeds (Instrument No. 2019081804), encumbering DSL's Property (the "Construction Lien") , and a true and correct copy of Ronco's construction lien is attached as Exhibit A. The Construction Lien stated an amount of \$3,235,780.29 was unpaid, whether due or not.

21. There were no further Applications and Certificates for Payment or Change Orders issued and delivered by Ronco and Zak Olsen to DSL or to the Hotel Project Architect after August 31, 2019, and through the September 30 recording of Ronco's Construction Lien.

22. The Hotel Project Architect confirms under oath that the Hotel Project has never achieved substantial completion.

23. As an owner of the Property, DSL has a statutory right under Neb. Rev. Stat. § 52-142(2), to place a cash deposit or bond with the Clerk of this Court of 115% of the amount Ronco properly and in good faith claims is due and owing under the Hotel

Contract, and thus transfer the Construction Lien off of the Property and on to the cash deposit or bond.

24. Transfer of the Construction Lien off of the Property and on to the cash deposit or bond, would allow DSL to finish the Hotel Project, secure and draw on loans to pay subcontractors and supplier, obtain a certificate of occupancy, close permanent financing, operate and/or sale the Hotel, among other things.

25. Moreover, Ronco and DSL can thereafter litigate the amount claimed due and how the cash deposit or bond (held by the Clerk of this Court) should be distributed.

26. Ronco and Zak Olson were aware and had reason to know that DSL had an agreement to sell the Hotel on or about September 30, 2019, and had secured various loans and loan commitment to pay for the work on the Hotel Project.

27. Ronco and Zak Olson were aware and had reason to know that DSL has secured a PACE loan commitment for \$2mm with City of Omaha approval (granted October 21, 2019) to pay for certain work on the Hotel Project.

28. Ronco and Zak Olson were aware and had reason to know that DSL did not have sufficient pledgeable assets, funds or loan commitments to pay 115% of \$3,235,780.29 and to pay subcontractors and supplier to complete and sell the Hotel Project.

29. Ronco and Zak Olson were aware and had reason to know that if DSL was not allow to exercise its statutory right to make the appropriate cash deposit or bond in November 2019, the Construction Lien would remain on the Property, and the DSL's purchaser would cancel the purchase offer and DSL's lender(s) would neither loan more funds nor permit any further draws, which means many subcontractors and supplier will not be paid; all work will stop on the Hotel Project; no certificate of

occupancy; DSL would lose its \$2mm PACE loan; DSL would lose its permanent financing (including Omaha City Pace financing of just over \$2mm granted October 21, 2019); the Hotel would not open, operate or be available for sale; many investors and stakeholders will lose millions of dollars; and the Hotel would not be able to service the general public including for patients and their families relating to medical treatment at the Buffet Stem Cell Center and UNMC.

30. So, DSL made multiple attempts to set the correct amount of money due and owing to Ronco under its Construction Lien, so that DSL could transfer the Construction Lien off of the Property and on to the cash deposit or bond, secure financing, and accomplish the goals set forth above. Ronco opposed such efforts.

31. Just before the hearing on one of DSL's motions, on November 7, 2019, Ronco and Zak Olsen recorded an amended construction lien with the Douglas County Register of Deeds (Instrument No. 2019097086), encumbering DSL's Property (the "Amended Construction Lien"), and a true and correct copy of Ronco's construction lien is attached as Exhibit B. The Amended Construction Lien stated an amount of \$3,019,791.29 was unpaid, whether due or not.

32. After Ronco's and Zak Olsen's September 30 lien recording, DSL paid and secured lien waivers from several of Ronco's subcontractors relating to the Property who Ronco failed to pay, and which Ronco claims due and owing under its lien recordings, as follows:

Subcontractors	Payments Made by DSL
Freedom Specialty Contracting	\$14,302.59
Freedom Specialty Contracting	\$13,353.00
Freedom Specialty Contracting	\$29,845.82
Standard Heating and Air Conditioning	\$90,607.50
Standard Heating and Air Conditioning	\$100,000.00
Standard Heating and Air Conditioning	\$30,000.00
TSI Mechanical LLC	\$55,839.60
Mack Electric	\$42,617.00
Katelman Steel Fabrication	\$11,021.00
Keystone Glass Company	\$120,000.00
Atlas	\$24,320.00
Stephens & Smith Const. Co., Inc.	\$5,771.70
Nebraska Building Products	\$5,906.19
Grand Total	\$543,584.40

33. Moreover, after Ronco's and Zak Olsen's September 30 lien recording, DSL assumed the remaining balance of certain subcontracts of Ronco relating to the Property, including the following pursuant to written Assumptions of Subcontracts:

Subcontractors	Amounts Assumed
Freedom Specialty Contracting, Inc.	\$233,476.08
Freedom Specialty Contracting, Inc.	\$36,666.10
TSI Mechanical LLC	\$431,443.88
Standard Heating and Air Conditioning (after Payment of \$100,000)	\$289,313.00
Titanium Fire	\$13,411.60
Katelman Steel Fabrication, Inc.	\$112,549.88
Keystone Glass (After payment of \$120,000)	\$75,900.00
Nebraska Building Products	\$171,000.00
Titanium Garage	\$70,000.00
TSI Mechanical LLC	\$30,380.60
Grand Total	\$1,293,141.14

34. After Ronco's and Zak Olsen's September 30 lien recording, a Ronco Keystone Glass Company ("Keystone"), recorded a construction lien by and through Ronco on the Hotel Project and the Property in the amount of \$239,950.00, and a true and correct copy of Keystone's construction lien is attached as Exhibit D. DSL made payment arrangement with Keystone and as a direct result, on November 22, 2019, Keystone recorded a release of its construction lien by and through Ronco on the Hotel Project and the Property, and a true and correct copy of Keystone's release of construction lien is attached as Exhibit E.

35. After Ronco's and Zak Olsen's September 30 lien recording, a Ronco supplier Sioux City Brick & Tile, LLC ("SC Brick"), recorded a construction lien by and through Ronco on the Hotel Project, the Parking Garage Project and the Property in the amount of \$65,434.31, and a true and correct copy of SC Brick's construction lien is attached as Exhibit F. On December 16, 2019, SC Brick recorded an amended construction lien by and through Forest City Group, LLC dba Hurst Masonry ("Forest City"), on the Hotel Project, the Parking Garage Project and the Property in the amount of \$65,434.31, and a true and correct copy of SC Brick's construction lien is attached as Exhibit G.

36. After Ronco's and Zak Olsen's September 30 lien recording, a Ronco subcontractor Forest City recorded a construction lien by and through Ronco on the Hotel Project, the Parking Garage Project and the Property in the amount of \$85,925.79, and a true and correct copy of Forest City's construction lien is attached as Exhibit J. Forest City has filed suit to foreclose its construction lien, which has harmed and damaged DSL by way of clouded title, costs to transfer the lien, attorney fees and

other costs, fees, expenses and damages, all of which could have been avoided had Ronco and Zak Olsen timely fulfilled their obligations to pay Forest City.

THE PARKING GARAGE PROJECT

37. On or about September 9, 2017, DSL and Ronco also entered into a lump sum contract (an AGC No. 200 contract with general conditions) (the "Parking Garage Contract"), to construct a parking garage (the "Parking Garage Project") for the Hotel located on the DSL's Property.

38. Disputes arose between the parties concerning defective work, Ronco's falsified and meritless change order requests, and Ronco's nonpayment to its subcontractors and suppliers for the Parking Garage Project.

39. The Parking Garage Project was not being completed at a reasonable pace, and still has not achieved substantial completion after over 800 days of construction service.

40. Ronco also provided certain defective work for the Parking Garage Project (collectively, the "Defective Parking Garage Work"). An example of the Defective Parking Garage Work, Olsson conducted a survey scan and site visit to observe the dimensions for the first floor of the Parking Garage. Based on the 10 locations noted from the field walk, Olsson measured, utilizing a tape measure, floor to ceiling dimensions of the first-floor Parking Garage. The measurements taken range from just under 7'-1" to 7'-3". As noted on the Architectural Plans, seal date 09/26/17, the applicable Parking Garage elevation is designed for a floor to ceiling height of 7'-9".

41. Ronco became obligated to cure or to pay to cure the Defective Parking Garage Work, per the Parking Garage Contract.

42. Ronco refused to perform such corrective work, refused to cure the Defective Parking Garage Work, and failed to present a reasonable plan and schedule to address these issues and to timely complete the Parking Garage Project.

43. Some of the Defective Parking Garage Work are incurable and will result in a partial or full loss of one level of the two levels of the Parking Garage, and will require such Parking Garage to be heated, decrease the value of the Hotel and Parking Garage, increasing the operation costs of the Parking Garage over its useful life.

44. As of September 26, 2019, Ronco sent a written notice to DSL that it was suspending work on the Parking Garage Project.

45. On September 30, 2019, DSL notified Ronco and Zak Olsen that DSL's terminated the Parking Garage Contract because of Ronco's and Zak Olsen's conduct, and DSL took over the general contractor responsibilities and strived to pay subcontractors and suppliers and to complete the Parking Garage and Hotel Projects as quickly as possible. Ronco and Zak Olsen intentionally interfered with DSL's efforts in this regard by, among other things, (a) demanding, under threat of withholding work from them, that the subcontractors and suppliers (i) refuse to accept payment from DSL and (ii) refuse to provide any services or materials to DSL; (b) converting and hiding custom masonry materials that DSL had paid for and needs to complete the Parking Garage and Hotel Projects; and (c) blocking access to the Parking Garage and Hotel Projects.

46. On September 30, 2019, Ronco and Zak Olsen recorded a construction lien (relating to the Parking Garage Project) with the Douglas County Register of Deeds (Instrument No. 2019081805), encumbering DSL's Property (the "PG Construction Lien") , and a true and correct copy of Ronco's construction lien is attached as Exhibit

H. The PG Construction Lien stated an amount of \$58,014.82 was unpaid, whether due or not.

47. As an owner of the Property, DSL has a statutory right under Neb. Rev. Stat. § 52-142(2), to place a cash deposit or bond with the Clerk of this Court of 115% of the amount Ronco properly and in good faith claims is due and owing under the Parking Garage Contract, and thus transfer the PG Construction Lien off of the Property and on to the cash deposit or bond.

48. Transfer of the PG Construction Lien off of the Property and on to the cash deposit or bond, would allow DSL to finish the Parking Garage Project, draw on the loan to pay subcontractors and supplier, obtain a certificate of occupancy, close permanent financing, operate and/or sale the Hotel with the Parking Garage.

49. Moreover, Ronco and DSL can thereafter litigate the amount claimed due and how the cash deposit or bond (held by the Clerk of this Court) should be distributed.

50. Ronco and Zak Olson were aware and had reason to know that DSL had an agreement to sell the Hotel and Parking Garage on or about September 30, 2019, and had secured various loans and loan commitment to pay for the work on the Hotel and Parking Garage Projects.

51. Ronco and Zak Olson were aware and had reason to know that DSL had an agreement to sell the Hotel and Parking Garage on or about September 30, 2019, and had secured various loans and loan commitment to pay for the work on the Hotel and Parking Garage Projects.

52. Ronco and Zak Olson were aware and had reason to know that DSL did not have sufficient pledgeable assets, funds or loan commitments to pay 115% of

\$3,235,780.29 and to pay subcontractors and supplier to complete and sell the Hotel Project and Parking Garage Project.

53. Ronco and Zak Olson were aware and had reason to know that if DSL was not allow to exercise its statutory right to make the appropriate cash deposit or bond in November 2019, the Construction Lien and the PG Construction Lien would remain on the Property, and the DSL's purchaser would cancel the purchase offer and DSL's lender(s) would neither loan more funds nor permit any further draws, which means many subcontractors and supplier will not be paid; all work will stop on the Hotel and Parking Garage Projects; no certificates of occupancy; DSL would lose it \$2mm PACE loan; DSL would lose its permanent financing (including Omaha City Pace financing of just over \$2mm granted October 21, 2019); the Hotel and Parking Garage would not open, operate or been available for sale; many investors and stakeholders will lose millions of dollars; and the Hotel and Parking Garage would not be able to service the general public including for patients and their families relating to medical treatment at the Buffet Stem Cell Center and UNMC.

54. So, DSL made multiple attempts to set the correct amount of might be due and owing to Ronco under its PG Construction Lien, so that DSL could transfer the PG Construction Lien off of the Property and on to the cash deposit or bond, secure financing, and accomplish the goals set forth above. Ronco opposed such efforts.

55. Just before the hearing on one of DSL's motion, on November 7, 2019, Ronco and Zak Olsen recorded with the Douglas County Register of Deeds (Instrument No. 2019097085), an amended construction lien relating to the Parking Garage Project, encumbering DSL's Property (the "PG Amended Construction Lien"), and a true and

correct copy of Ronco's construction lien is attached as Exhibit I. The PG Amended Construction Lien stated an amount of \$58,014.82 was unpaid, whether due or not.

56. After Ronco's and Zak Olsen's September 30 lien recording, a Ronco subcontractor Forest City Group, LLC dba Hurst Masonry ("Forest City"), recorded a construction lien by and through Ronco on the Hotel Project, Parking Garage Project and the Property in the amount of \$85,925.79, and a true and correct copy of Forest City's construction lien is attached as Exhibit J. Forest City has filed suit to foreclose is construction lien, which has harmed and damaged DSL by way of clouded title, costs to transfer the lien, attorney fees and other costs, fees, expenses and damages, all of which could have been avoid had Ronco and Zak Olsen timely fulfilled their obligations to pay Forest City.

57. After Ronco's and Zak Olsen's September 30 lien recording, a Ronco subcontractor Stephen's & Smith Construction, Inc. ("SSC") recorded a construction lien by through Ronco on the Parking Garage Project and the Property in the amount of \$119,665.93, and a true and correct copy of SSC's construction lien is attached as Exhibit K. Ronco violated the Nebraska Prompt Pay Act regarding SSC, and SSC has filed suit to foreclose is construction lien, which has harmed and damaged DSL by way of clouded title, costs to transfer the lien, attorney fees and other costs, fees, expenses and damages, all of which could have been avoid had Ronco and Zak Olsen timely fulfilled their obligations to pay SSC.

58. After Ronco's and Zak Olsen's September 30 lien recording, Doll Construction, LLC. ("Doll"), a subcontractor of Ronco recorded a construction lien by and through Ronco on the Parking Garage Project and the Property in the amount of \$47,690.40, and a true and correct copy of Doll's construction lien is attached as Exhibit

C. On information and belief, Doll recorded its lien, at the direction of Ronco, on January 27, 2020, one day before DSL's PACE loan was scheduled to close, further delaying that closing and to the further harm of DSL.

59. After Ronco's and Zak Olsen's September 30 lien recording, DSL assumed the subcontract for Titanium Fire in the amount of \$73,675.00 for work on the Parking Garage, and a true and correct copy of the Assumption of Contract is attached as Exhibit L.

60. DSL is entitled to have the PG Construction Lien and the Amended PG Construction Lien reduced by total amount of all of DSL's payments and lien waivers, the assumed subcontracts against the amount claimed in the Garage Construction Lien, and the construction liens recorded by the subcontractors.

61. Ronco and Zak Olsen knowing falsified change orders, payment applications and billings on the Hotel and Parking Garage Projects, as described herein.

62. Ronco and Zak Olsen knowing falsified sworn statement the Hotel and Parking Garage Projects, as described herein.

63. On both the Hotel and Parking Garage Projects, Ronco and Zak Olsen has caused DSL damages in excess of \$28,729,028.00, including without limitation (a) lost profits; (b) increased financing costs and holding costs; (c) increased construction costs; (d) reduced value of the improvements, of which over \$12mm has already paid on the Hotel and Parking Garage Projects; (e) increased operational costs of the improvements over their useful life; (f) over \$5mm in cash investments and TIF financing benefits; (g) over charged and fraudulently charged expenses; (h) liens against the Property; (i) loss of a purchase of the Hotel in 2019; (j) corrective work costs; (k) converted stored materials; (l) increased general contractor fees; (m)

liquidated damages; (n) attorney fees and costs; (o) clouded title damages and fees and costs to clear such title; and (p) other damages and losses.

FIRST CLAIM FOR RELIEF

Set Cash Deposit or Bond Amount under Neb. Rev. Stat. § 52-142(2).

64. DSL incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

65. In its Construction Lien and Amended Construction Lien, Ronco fails to identify what amounts are due or whether the Hotel Project achieved substantial completion.

66. As such, there is no correct and accurate statement of the amount due to Ronco in the Construction Lien and Amended Construction Lien that would allow the DSL to deposit 115% of that amount to transfer the Construction Lien and Amended Construction Lien off of the Property and on to the cash deposit or bond, as is the DSL's right under Neb. Rev. Stat. § 52-142(2).

67. Under Nebraska law, a lien claimant can only claim the full contract amount in a construction lien *when that contract has been substantially performed*. *Tilt Up Concrete, Inc. v. Star City/Federal, Inc.* 255 Neb. 138, 154 (1998).

68. By Ronco's own admissions in the Hotel Fee Application and its Construction Lien and Amended Construction Lien, the Hotel Project has not achieved substantial completion. Therefore, Ronco can only claim in its Construction Lien and Amended Construction Lien, the amounts due and owing for work that has already been completed on the Hotel and the Parking Garage Projects. *Id.*

69. In its Fee Application, Ronco swore that only \$660,050.10 was due and owing for all completed work on the Hotel Project. There have been no further proper Applications and Certificates for Payment or Change Orders issued and delivered by

Ronco to DSL or to the Hotel Project Architect from and after August 31, 2019. Thus, the most the Construction Lien amount could be is the amount due and owing for work that has already been completed on the Hotel Project, namely \$660,050.10.

70. Next, DSL is entitled to certain credits against amounts claimed due, because subsequent to the Construction Lien and Amended Construction Lien being recorded, DSL paid and secured lien waivers from several of Ronco's subcontractors who Ronco failed to pay and whose amounts are contained in the amounts Ronco claims due and owing.

71. As Ronco is the general contractor under the Contract (Articles 5, 7 and 10, in particular), a substantial amount of the funds DSL pays or may owe to Ronco will enable Ronco to in turn pay its subcontractors and suppliers on the Hotel Project.

72. DSL's direct payments to Ronco's subcontractors after the recording of the Construction Lien relieved Ronco's obligation to make payments to those subcontractors, thus reducing any amount claimed due and owing to Ronco on the Hotel and the Parking Garage Projects.

73. According to the lien waivers, a total of **\$543,584.40** has been paid to various Ronco subcontractors, and DSL should therefore be given payment credits against amounts claimed due and owing by Ronco on the Hotel and the Parking Garage Projects. *Ritchie Const. Co. v. Hoffman*, 8 A.D.2d 633 (1959) (Supreme Court of New York held that an owner is entitled to credits under a construction lien for payments made to sub-contractors).

74. Taking into account (i) Ronco's Construction Lien and Amended Construction Lien defectively fail to identify the amount due and owing to Ronco, (ii) the actual amount that Ronco claimed under oath was due and owing of \$660,050.10 in its

most recent Fee Application, (iii) DSL's post-lien payments to and assumptions of Ronco's subcontractors and suppliers, and (iv) Ronco's subcontractors' and suppliers' lien filings against the Property, Ronco has wrongfully and in bad faith overstated the amount due under the Hotel and Parking Garage agreements in its Construction Lien and Amended Construction Lien.

75. Thus, this Court should set the true and correct amount that possibly is due and owing to Ronco under its Construction Lien and Amended Construction Lien at the true amount due and owing, if any, after credits for payments, assumptions and lien filings, and if DSL wishes to deposit or bond 115% of that amount to transfer the Construction Lien and the Amended Construction Lien off of the Property and on to the cash deposit or bond, as is the DSL's right under Neb. Rev. Stat. § 52-142(2).

76. Moreover, after the Hotel Contract was terminated and the Construction Lien was recorded, DSL assumed the remaining balance of certain subcontracts of Ronco, totaling **\$1,293,141.14**.

77. Under these Assumption Contracts, Ronco no longer has the obligation under the subcontracts to pay those Ronco subcontractors, per the consent of those subcontractors and the assumption of DSL. Thus, in addition to payments already made to the various Ronco subcontractors, DSL is entitled to have these assumed amounts credited against the Construction Lien and the Amended Construction Lien.

78. In its PG Construction Lien and PG Amended Construction Lien, Ronco fails to identify the correct and accurate amounts are due or to become due, if any, on the Hotel and the Parking Garage Projects.

79. As such, there is no correct and accurate statement of the amount due to Ronco in the PG Construction Lien and PG Amended Construction Lien that would

allow the DSL to deposit 115% of that amount to transfer the PG Construction Lien and PG Amended Construction Lien off of the Property and on to the cash deposit or bond, as is the DSL's right under Neb. Rev. Stat. § 52-142(2).

80. DSL is entitled to certain credits against amounts claimed due, because subsequent to the PG Construction Lien being recorded, DSL paid and secured lien waivers from several of Ronco's subcontractors on the Hotel and the Parking Garage Projects, who Ronco failed to pay and whose amounts are contained in the amounts Ronco claims due and owing.

81. As Ronco is the general contractor under the Hotel and Parking Garage agreements, a substantial amount of the funds DSL pays or may owe to Ronco will enable Ronco to in turn pay its subcontractors and suppliers on the Hotel and the Parking Garage Projects.

82. DSL's direct payments to Ronco's subcontractors after the recording of the PG Construction Lien relieved Ronco's obligation to make payments to those subcontractors, thus reducing any amount claimed due and owing, if any, to Ronco and the Hotel and the Parking Garage Projects.

83. DSL should therefore be given payment credits against amounts claimed due and owing by Ronco on the Parking Garage Project. *Ritchie Const. Co. v. Hoffman*, 8 A.D.2d 633 (1959) (Supreme Court of New York held that an owner is entitled to credits under a construction lien for payments made to sub-contractors).

84. Taking into account (i) Ronco's PG Construction Lien and Amended PG Construction Lien defectively fail to identify the amount due and owing to Ronco, (ii) DSL's post-lien payments to and assumptions of Ronco's subcontractors and suppliers, and (iv) Ronco's subcontractors' and suppliers' lien filings against the Property, Ronco

has wrongfully and in bad faith overstated the amount due under the Hotel and Parking Garage agreements in its PG Construction Lien and Amended PG Construction Lien.

85. Thus, this Court should set the true and correct amount that is possibly due and owing to Ronco under its PG Construction Lien and Amended PG Construction Lien at the true amount due and owing, if any, and if DSL wishes to deposit or bond 115% of that amount to transfer the PG Construction Lien and Amended PG Construction Lien off of the Property and on to the cash deposit or bond, as is the DSL's right under Neb. Rev. Stat. § 52-142(2).

86. DSL may make further payments and assumptions of subcontract and supply contracts, and subcontractors and suppliers may record additional liens, for which DSL would be entitled to further credits.

87. The Clerk of this Court should be directed to place any cash deposit in an interest bearing account.

WHEREFORE, DSL requests that this Court enter an Order setting the true and correct amount that is possibly due and owing to Ronco under the various liens, so that DSL may deposit or bond 115% of that amount to transfer the such liens off of the Property and on to the cash deposit or bond, as is the DSL's right under Neb. Rev. Stat. § 52-142(2); resolving other lien filings consistent with the requests herein; awarding DSL its general damages, pre and post judgment interest, attorney fees, costs; directing the Clerk to place any cash deposit in an interest bearing account, until further order of the Court; and awarding DSL its and such other, further and different relief as this Court deems just and equitable.

SECOND CLAIM FOR RELIEF
Declaratory Judgment

88. DSL incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

89. As set forth above, an actual, live, and justiciable controversy exists between DSL and Ronco concerning, among other things, the amount Ronco can properly claim due on its various liens and other construction liens that Ronco or its subcontractors and suppliers has or will file, as well as the nature and extent of construction defects and delays and the resulting damages.

WHEREFORE, Plaintiff DSL respectfully prays for a declaratory judgment in its favor and against Defendant Ronco, setting the true and correct amount that is possibly due and owing to Ronco under the various liens, so that DSL may deposit or bond 115% of that amount to transfer the such liens off of the Property and on to the cash deposit or bond, as is the DSL's right under Neb. Rev. Stat. § 52-142(2); resolving other lien filings consistent with the requests herein; awarding DSL its general damages, pre and post judgment interest, attorney fees, costs; directing the Clerk to place any cash deposit in an interest bearing account, until further order of the Court; and awarding DSL its and such other, further and different relief as this Court deems just and equitable.

THIRD CLAIM FOR RELIEF
Breach of the Hotel Contract

90. DSL incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

91. Ronco materially breached the Hotel Contract in one or more of the ways described above, including in addition, the following:

a. Failing to timely make full payments of amounts due to subcontractors and suppliers, and allowing liens to be recorded against the Property;

b. Failing to timely and correctly perform or to have work performed;

c. Failing to timely and correctly correct or cure defective work performed;

d. Over charging for work;

e. Converting materials from the Hotel Project that DSL paid for, and refusing to return such materials;

f. Blocking the access of DSL and its representative to access the Hotel Project;

g. Recording falsified and bad faith liens against the Property; and

h. Falsifying billings (e.g., identifying subcontractors as having issued invoices on the Hotel Project, when in fact such subcontractor provide no work or worked on other projects and including charges for equipment and Ronco personnel that provide no work or worked on other projects).

92. As a direct cause of such breaches and wrongful conduct, DSL suffered actual damages for the Hotel Project portion of the total damages which exceed \$28,729,028.00 in an amount to be determined more precisely at trial, based on the breaches of Ronco and its wrongful conduct.

WHEREFORE, Plaintiff DSL respectfully prays for a judgment in its favor and against Defendant Ronco, as follows:

- a. Awarding DSL at least \$28,729,028.00;
- b. Awarding DSL its pre and post judgment interest, attorney fees and costs; and
- c. Awarding DSL such other, further and different relief as this Court deems just and equitable.

FOURTH CLAIM FOR RELIEF
Breach of the Parking Garage Contract

93. DSL incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

94. Ronco materially breached the Parking Garage Contract in one or more of the ways described above, including in addition, the following:

- a. Failing to timely make full payments of amounts due to subcontractors and suppliers, and allowing liens to be recorded against the Property;
- b. Failing to timely and correctly perform or to have work performed;
- c. Failing to timely and correctly correct or cure defective work performed;
- d. Over charging for work;
- e. Converting materials from the Hotel Project that DSL paid for, and refusing to return such materials;
- f. Blocking the access of DSL and its representative to access the Hotel Project;

- g. Recording falsified and bad faith liens against the Property; and
- h. Falsifying change orders.

95. DSL suffered actual damages for the Parking Garage Project portion of the total damages which exceed \$28,729,028.00, in an amount to be determined more precisely at trial, based on the breaches of Ronco and its wrongful conduct.

WHEREFORE, Plaintiff DSL respectfully prays for a judgment in its favor and against Defendant Ronco, as follows:

- a. Awarding DSL at least \$28,729,028.00;
- b. Awarding DSL its pre and post judgment interest, attorney fees and costs; and
- c. Awarding DSL such other, further and different relief as this Court deems just and equitable.

FIFTH CLAIM FOR RELIEF
Accounting

96. DSL incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

97. DSL is entitled to inspect the relevant records and communications with Ronco, its subcontractors and suppliers, Zak Olsen, the architect and DSL.

98. Despite DSL's requests, Ronco and Zak Olsen have failed, refused, and have neglected to provide a full and accurate accounting and continues to fail, refuse, and neglects to do so.

99. DSL is therefore entitled to a forensic accounting of Ronco and Zak Olsen's records and communications for the Hotel and the Parking Garage Projects, which is just and reasonable under the circumstances.

100. DSL is further entitled to the amount of any damages identified from such audit of the misconduct of Ronco and Zak Olsen.

101. Unless enjoined, Ronco and Zak Olsen will continue to conceal their misconduct, which will further proximately caused harm to DSL, and against such future misconduct DSL has no adequate remedy at law.

WHEREFORE, DSL respectfully request (i) an accounting of the books, records, documents, and electronically stored information in the possession, custody, or control of Ronco and Zak Olsen regarding their misconduct on the Hotel and the Parking Garage Projects; and (ii) a judgment in DSL's favor and against Defendants Ronco and Zak Olsen, jointly and severally, awarding DSL damages in an amount to be determined at trial (including the amount of any revealed damages for such misconduct), pre and post-judgment interest, injunctive relief, costs, pre and post judgment interest, attorney fees and such other, further, and award DSL such further and different relief as to this Court seems just and equitable.

SIXTH CLAIM FOR RELIEF
Fraud

102. DSL incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

WHEREFORE, Plaintiff DSL respectfully prays for a judgment in its favor and against Defendants Ronco and Zak Olsen, jointly and severally, as follows:

- a. Awarding DSL at least \$28,729,028.00;
- b. Awarding DSL its pre and post judgment interest, attorney fees and costs; and
- c. Awarding DSL such other, further and different relief as this Court deems just and equitable.

SEVENTH CLAIM FOR RELIEF
Bad Faith Lien Recordings Neb. Rev. Stat. § 52-157

103. DSL incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

WHEREFORE, Plaintiff DSL respectfully prays for a declaratory judgment in its favor and against Defendants Ronco and Zak Olsen, jointly and severally, as follows:

- a. Awarding DSL at least \$28,729,028.00;
- b. Awarding DSL its pre and post judgment interest, attorney fees and costs; and
- c. Awarding DSL such other, further and different relief as this Court deems just and equitable.

EIGHTH CLAIM FOR RELIEF
Tortious Interference With Business Relationships Or Expectancies

104. DSL incorporate the allegations of the foregoing paragraphs as if fully set forth herein.

105. DSL has valid business relationships and/or expectancies as described above.

106. Ronco and Zak Olsen knew the valid business relationships or expectancies existed.

107. Ronco and Zak Olsen interfered with the valid business relationships or expectancies by engaging in at least the conduct described herein.

108. Ronco and Zak Olsen's interference was intentional because it engaged in the interference with the purpose of causing the interference and with knowledge that the interference was substantially certain to occur.

109. Ronco and Zak Olsen's interference was unjustified because their motive was to deprive and wrongfully interfere with DSL's business relationship and/or expectancies.

110. Ronco and Zak Olsen's interference is the proximate cause of damage to DSL in an amount to be determined at trial.

111. Unless enjoined, Ronco and Zak Olsen will continue to tortiously interfere, which will further proximately caused harm to DSL, and against such future misconduct DSL have no adequate remedy at law.

WHEREFORE, Plaintiff DSL respectfully prays for a judgment in its favor and against Defendants Ronco and Zak Olsen, jointly and severally, as follows:

- a. Awarding DSL at least \$28,729,028.00;
- b. Awarding DSL its pre and post judgment interest, attorney fees and costs; and
- c. Awarding DSL such other, further and different relief as this Court deems just and equitable.

JURY DEMAND

Plaintiff DSL hereby demands a jury on all issues triable to a jury.

DATED this 30 day of January 2020.

DSL HOSPITALITY, LLC, Plaintiff,

By: _____


Gregory C. Scaglione, #19368
Brady H. Godbout #26753
KOLEY JESSEN P.C., L.L.O.
1125 South 103 Street
Suite 800
Omaha, NE 68124
(402) 390 9500
(402) 390 9005 (facsimile)
Greg.Scaglione@koleyjessen.com
Brady.godbout@koleyjessen.com

Attorneys for Plaintiff.

CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 30 day of January 2020, a true and correct copy of the foregoing was served upon the following by email, upon the following:

Jacob Enenbach
Engles, Ketcham, Olson & Keith PC
1700 Farnam Street, Suite 1350
Omaha, NE 68102

Attorney for Sioux City Brick & Tile, LLC

Diana J. Vogt
Sherrets Bruno & Vogt LLC
260 Regency Parkway Drive, Ste. 200
Omaha, NE 68114
law@sherrets.com
dvogt@sherrets.com

*Attorney for Ronco Construction Co.,
Inc. and likely Zak Olsen*

Brian S. Koerwitz
Endacott Peetz Timmer
444 South 10th Street
Lincoln, NE 68508
bkoerwitz@eptlawfirm.com

*Attorney for Stephens & Smith Const. Co.,
Inc.*

Jonathan Brown
Walentine O'Toole LLP
11240 Davenport Street
PO Box 540125
Omaha, NE 68154

Attorney for Forest City Group, LLC



Gregory C. Scaglione



CONSTRUCTION LIEN

1. The real estate subject to this lien is located at 4440 Douglas Street, Omaha, Nebraska 68131, and legally described as follows:

SADDLE CREEK MIDTOWN LOT 1 BLOCK 0 LT 1 0.88 AC --EXCESS VALUE--

2. The person against whose interest in the real estate the lien is claimed is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
3. The name and address of the claimant is Ronco Construction Company, Inc., located at 1717 North 74th Street, Omaha, Nebraska 68114.
4. The name and address of the person with whom the claimant contracted is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
5. A general description of the claimants services performed or to be performed or materials furnished or to be furnished for the construction of a hotel. The contract price for the services and materials is \$7,912,651.00.
6. The amount unpaid, whether due or not, to the claimant for the services or materials is \$3,235,780.29.
7. The time the last service or materials were furnished was September 24, 2019.
8. Claimant is entitled to record this lien.

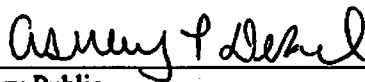
Return: Brad Key, Cuddigan, et al 10855 W. Dodge Rd, Suite 100, Omaha, NE 68154


Zak Olsen, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 27 day of September, 2019, before me the undersigned, notary public in for said county, personally came Zak Olsen, President of Ronco Construction Company, Inc., a domestic corporation duly registered in the State of Nebraska, to me personally known to be the President and identical person and whose name is affixed to the above Construction Lien, and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of said Ronco Construction Company, Inc.

WITNESS MY HAND and notarial seal at Omaha in said county on the date first above written.


Notary Public





AMENDED CONSTRUCTION LIEN

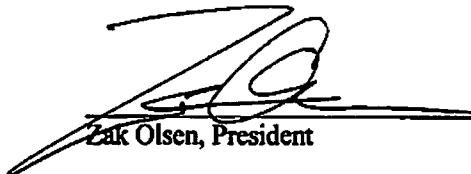
Instrument # 2019081804

1. The real estate subject to this lien is located at 4440 Douglas Street, Omaha, Nebraska 68131, and legally described as follows:

SADDLE CREEK MIDTOWN LOT 1 BLOCK 0 LT 1 0.88 AC – EXCESS VALUE—

2. The person against whose interest in the real estate the lien is claimed is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
3. The name and address of the claimant is Ronco Construction Company, Inc. located at 1717 North 74th Street, Omaha, Nebraska 68114.
4. The name and address of the person with whom the claimant contracted is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
5. A general description of the claimants services performed or to be performed or materials furnished or to be furnished for the construction of a parking garage. The contract price for the services and materials is \$7,912,651.00.
6. The amount unpaid, whether due or not, to the claimant for the services or materials is \$3,019,791.29.
7. The time the last service or materials were furnished was September 24, 2019.
8. Claimant is entitled to record this lien.

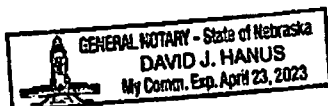
Return Sherrets Bruno & Vogt LLC, 260 Regency Parkway Drive, Suite 200, Omaha, NE 68114

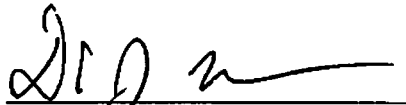

Zak Olsen, President

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On this 7 day of November, 2019, before me the undersigned, notary public in for said county, personally came Zak Olsen, President of Ronco Construction Company, Inc., a domestic corporation duly registered in the State of Nebraska, to me personally known to be the President and identical person and whose name is affixed to the above Construction Lien, and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of said Ronco Construction Company, Inc.

WITNESS MY HAND and notarial seal at Omaha in said county on the date first above written.




Notary Public



After Recording Return to:

Troy F. Moyesron, Fraser Stryker PC LLO, 500 Energy Plaza, 409 S. 17th Street, Omaha, NE 68102

CONSTRUCTION LIEN

Keystone Glass Company asserts a good and valid Construction Lien against the real property described herein for materials furnished and services performed as described herein.

1. The real property against which this Construction Lien is asserted is:

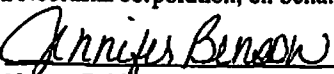
LOT 1 SADDLE CREEK MIDTOWN, AN ADDITION TO THE
CITY OF OMAHA IN DOUGLAS COUNTY, NEBRASKA.
2. DSL Hospitality, LLC, 306 Delaware, Kansas City, Missouri 64105, was then and is now the owner of said real estate.
3. The Claimant is Keystone Glass Company, 4330 South 87th Street, Omaha, Nebraska 68127.
4. Ronco Construction Company Inc., 1717 N. 74th Street, Omaha, Nebraska 68114-1805, was the general contractor of said construction project.
5. Claimant contracted with Ronco Construction Company Inc., 1717 N. 74th Street, Omaha, Nebraska 68114-1805.
6. A general description of the services performed are as follows: rendering all services necessary or incidental to providing aluminum entrances, aluminum storefront and glass and glazing work.
7. The amount remaining unpaid to Claimant is: **\$239,950.00**.
8. The last day services or materials were furnished under the contract was September 27, 2019.
9. Dated: October 15, 2019

STATE OF NEBRASKA)
)ss
COUNTY OF DOUGLAS)

Keystone Glass Company

By: 
Jason Epstein, President

The foregoing instrument was acknowledged before me this 15th day of October, 2019, by Jason Epstein, President of Keystone Glass Company, a Nebraska corporation, on behalf of the corporation.


Notary Public





CLIEN Inst. # 2019102419, Pg: 1 of 1 Rec Date: 11/22/2019 07:01:13.570

Fee Received: \$10.00 Electronically Recorded By: PN

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

After Recording Return to:
Troy F. Meyerson
Fraser Stryker PC LLO
500 Energy Plaza
409 South 17th Street
Omaha NE 68102-2663
(402) 341-6000

RELEASE OF CONSTRUCTION LIEN

On this 21 day of November, 2019, Keystone Glass Company hereby releases the construction lien that was recorded on or about October 15, 2019 at Instrument No. 2019087898 with the Register of Deeds of Douglas County, State of Nebraska, covering the following described real estate:

LOT 1 SADDLE CREEK MIDTOWN, AN ADDITION TO THE
CITY OF OMAHA IN DOUGLAS COUNTY, NEBRASKA.

KEYSTONE GLASS COMPANY

By: 
Jason Epstein, President

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 21st day of November, 2019, by Jason Epstein, President of Keystone Glass Company, a Nebraska corporation, on behalf of the corporation.


Notary Public

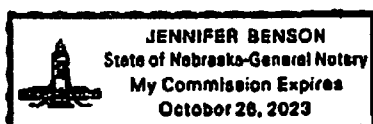


EXHIBIT E




Return to: Engles, Ketcham, Olson, & Keith PC 1700 Farnam St. #1350 Omaha, NE 68102

1. The real estate subject to this lien is Saddle Creek Midtown Lot 1 Block 0 LT 1 0.88AC – Excess Value – also known as 4440 Douglas St, Omaha NE 68131
2. The person against whose interest in the real estate the lien is claimed is DSL Hospitality LLC
3. The name and address of the claimant is: Sioux City Brick & Tile LLC 501 4th St. Sergeant Bluff, IA 51054
4. The name and address of the person with whom the claimant contracted Ronco Construction Company Inc.; 1717 N 74th St Omaha, NE 68114 and Dicon Corporation 11506 Nicholas St Ste 200 Omaha, NE 68154
5. A general description of the claimant's services performed or to be performed or materials furnished or to be furnished for the improvement of Furnished Brick materials to the subject property.
6. The total contract price is: \$ 65,434.31
7. The amount unpaid, whether due or not, to the claimant for services or materials is \$ 65,434.31
8. The date the last services or materials were furnished was August 19, 2019

Claimant: Sioux City Brick + Tile, LLC JOHN Joe Hanson / General Counsel

State of Iowa, County of Woodbury. The foregoing instrument was acknowledged before me this 4th day of November 2019 by Joe Hanson.

of November 2013 by 
Notary Public Signature

— Joe Hanson

Dwight Glen Pence
Printed Notary Name



My Commission Expires: 3/7/2021

State of Nebraska, County of _____. The foregoing instrument was acknowledged before me this _____ day of _____ 20____, by _____
of _____ a corporation, on behalf of said corporation.

Notary Public Signature

Printed Notary Name

My Commission Expires:



CONSTRUCTION LIEN

AMENDED CONSTRUCTION LIEN Inst # 2019097690

Return to: Jacob Enenbach, Engles, Ketcham, Olson & Keith PC 1700 Farnam St. #1350 Omaha, NE 68102

1. The real estate subject to this lien is Saddle Creek Midtown Lot 1 Block 0 LT 1 0.88AC - Excess Value - also known as 4440 Douglas St, Omaha, NE 68131
2. The person against whose interest in the real estate the lien is claimed is DSL Hospitality LLC 22052 WEST 66, STE 221SHAWNEE, KS 66226
3. The name and address of the claimant is: Sioux City Brick & Tile LLC 501 4th St. Sergeant Bluff, IA 51054
4. The name and address of the person with whom the claimant contracted Forest City Group, LLC 233 S 13th Street, Suite 1900 Lincoln, NE 68508 also known as Hurst Masonry
5. A general description of the claimant's services performed or to be performed or materials furnished or to be furnished for the improvement of Furnished brick materials to the subject property. The contract price was \$65,434.31
6. The total contract price is: \$65,434.31
7. The amount unpaid, whether due or not, to the claimant for services or materials is \$ 65,434.31
8. The date the last services or materials were furnished was August 19, 2019

Claimant: Sioux City Brick & Tile, LLC

J.A. Mitchell Attorney for Sioux City Brick

State of Nebraska, County of Douglas. The foregoing instrument was acknowledged before me this 16th day of December 2019, by Jacob Enenbach, Attorney for Sioux City Brick & Tile LLC

Judith A. Mitchell
Notary Public Signature

Judith A. Mitchell
Printed Notary Name



My Commission Expires: June 30, 2023

State of Nebraska, County of _____, The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of _____ a corporation, on behalf of said corporation.

Notary Public Signature

Printed Notary Name

My Commission Expires: _____



THE ABOVE SPACE IS FOR RECORDING PURPOSES ONLY

Return to: Jonathan M. Brown, Valentine, O'Toole, LLP, 11240 Davenport Street, P.O. Box 540125, Omaha, NE 68154-0125

CONSTRUCTION LIEN

1. The real estate subject to this lien is 4440 Douglas St. Omaha, Nebraska 68131 legally described as follows (the "Property"): **LOT 1, SADDLE CREEK MIDTOWN, AN ADDITION TO THE CITY OF OMAHA IN DOUGLAS COUNTY, NEBRASKA.**
2. The name and address of the person against whose interest in the real estate this lien is claimed are: DSL Hospitality, LLC, A Nebraska limited liability company, 306 Delaware, Kansas City, Missouri 64105.
3. The name and address of the Claimant are: Forest City Group, LLC dba Hurst Masonry, 11803 S 234 St. Gretna, NE 68028.
4. The name and address of the persons with whom the Claimant contracted are: Ronco Construction Company, Inc., 1717 N. 74th St. Omaha, NE 68114.
5. A general description of the Claimant's services performed, to be performed, or the materials furnished, or to be furnished, for the improvements and the contract price is: labor and materials related to masonry construction on the real estate described herein. The contract price was for \$856,099.00, subject to change orders increasing or decreasing the contract price.
6. The amount unpaid, whether due or not, to the Claimant for the services or materials is: \$85,925.79.
7. The time the last services or materials were furnished was: September 20, 2019.

FOREST CITY GROUP, LLC dba HURST MASONRY,

By: _____

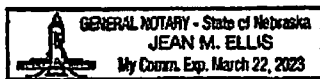
Jacob T. Hurst, Its Member

STATE OF NEBRASKA)

) ss.

COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 20th day of September 2019, by Jacob T. Hurst, as Member of Forest City Group, LLC dba Hurst Masonry, a Nebraska limited liability company, for and on behalf of said limited liability company with due authority.



Notary Public



CONSTRUCTION LIEN

1. The real estate subject to this lien is located at 4440 Douglas Street, Omaha, Nebraska 68131, and legally described as follows:

SADDLE CREEK MIDTOWN LOT 1 BLOCK 0 LT 1 0.88 AC --EXCESS VALUE--

2. The person against whose interest in the real estate the lien is claimed is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
3. The name and address of the claimant is Ronco Construction Company, Inc., located at 1717 North 74th Street, Omaha, Nebraska 68114.
4. The name and address of the person with whom the claimant contracted is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
5. A general description of the claimants services performed or to be performed or materials furnished or to be furnished for the construction of a parking garage. The contract price for the services and materials is \$3,154,021.18.
6. The amount unpaid, whether due or not, to the claimant for the services or materials is \$58,014.82.
7. The time the last service or materials were furnished was September 24, 2019.
8. Claimant is entitled to record this lien.

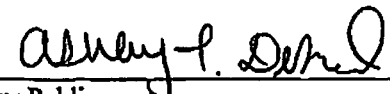
Return: Brodkey, Cuddigan, et al 10855 W. Dodge Rd, Suite 100 Omaha, NE 68154


Zak Olsen, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 27 day of September, 2019, before me the undersigned, notary public in for said county, personally came Zak Olsen, President of Ronco Construction Company, Inc., a domestic corporation duly registered in the State of Nebraska, to me personally known to be the President and identical person and whose name is affixed to the above Construction Lien, and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of said Ronco Construction Company, Inc.

WITNESS MY HAND and notarial seal at Omaha in said county on the date first above written.


Notary Public





AMENDED CONSTRUCTION LIEN

Instrument #2019081805

1. The real estate subject to this lien is located at 4440 Douglas Street, Omaha, Nebraska 68131, and legally described as follows:

SADDLE CREEK MIDTOWN LOT 1 BLOCK 0 LT 1 0.88 AC – EXCESS VALUE—

2. The person against whose interest in the real estate the lien is claimed is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
3. The name and address of the claimant is Ronco Construction Company, Inc. located at 1717 North 74th Street, Omaha, Nebraska 68114.
4. The name and address of the person with whom the claimant contracted is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
5. A general description of the claimants services performed or to be performed or materials furnished or to be furnished for the construction of a parking garage. The contract price for the services and materials is \$3,212,036.00.
6. The amount unpaid, whether due or not, to the claimant for the services or materials is \$58,014.82.
7. The time the last service or materials were furnished was September 24, 2019.
8. Claimant is entitled to record this lien.

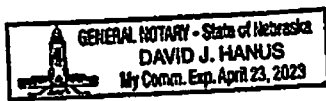
Return: Sherrets Bruno & Vogt LLC, 260 Regency Parkway Drive, Suite 200, Omaha, NE 68114


Zak Olsen, President

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On this 7 day of November, 2019, before me the undersigned, notary public in for said county, personally came Zak Olsen, President of Ronco Construction Company, Inc., a domestic corporation duly registered in the State of Nebraska, to me personally known to be the President and identical person and whose name is affixed to the above Construction Lien, and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of said Ronco Construction Company, Inc.

WITNESS MY HAND and notarial seal at Omaha in said county on the date first above written.

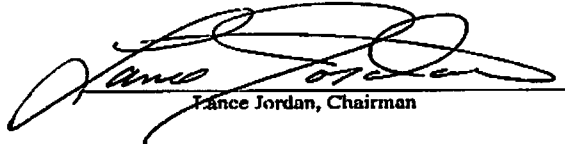



Notary Public



CONSTRUCTION LIEN

1. THE REAL ESTATE SUBJECT TO THIS LIEN IS:
 LOT 1 SADDLE CREEK MIDTOWN, AN ADDITION TO THE CITY OF OMAHA IN DOUGLAS COUNTY, NEBRASKA
2. THE PERSON AGAINST WHOSE INTEREST IN THE REAL ESTATE THE LIEN IS CLAIMED IS:
 DSL HOSPITALITY LLC., 22052 W. 66TH STREET, #221, SHAWNEE, KS. 66226
3. THE NAME AND ADDRESS OF THE CLAIMANT IS:
 Stephens & Smith Construction Co., Inc., 5711 So. 60th St., Omaha, NE 68117
4. THE NAME AND ADDRESS OF THE PERSON WITH WHOM THE CLAIMANT CONTRACTED IS:
 RONCO CONSTRUCTION COMPANY, INC., 1717 N. 74TH STREET, OMAHA, NE. 68114-1805
5. A GENERAL DESCRIPTION OF THE CLAIMANT'S SERVICES PERFORMED, TO BE PERFORMED, OR MATERIALS FURNISHED OR TO BE FURNISHED
 CONCRETE WORK AND GYPRETE UNDERLAYMENT
6. THE AMOUNT UNPAID, WHETHER DUE OR NOT, TO THE CLAIMANT FOR THE SERVICES OR MATERIALS IS:
 \$119,665.93
7. THE TIME THE LAST SERVICES OR MATERIALS WERE FURNISHED WAS:
 08/24/2019

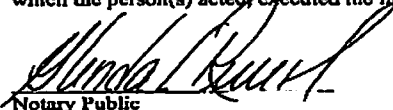

 Lance Jordan, Chairman

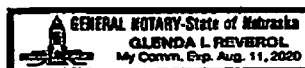
Subscribed and sworn to before me this 21st day of October 2019

State of Nebraska)
 SS
 County of Douglas)

STATE OF NEBRASKA
 COUNTY OF DOUGLAS

On Oct. 21st, 2019, before me, Glenda Reverol, a Notary Public in and for the County of Douglas, State of Nebraska, personally appeared Lance Jordan, Vice President of Stephens & Smith Construction Co., Inc., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/ their signature on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.


 Notary Public





CONSTRUCTION LIEN

1. The real estate subject to this lien is located at 4440 Douglas Street, Omaha, Nebraska 68131, and legally described as follows:

SADDLE CREEK MIDTOWN LOT 1 BLOCK 0 LT 1 0.88 AC --EXCESS VALUE--

2. The person against whose interest in the real estate the lien is claimed is DSL Hospitality, LLC located at 306 Delaware, Kansas City, Missouri 64105.
3. The name and address of the claimant is Doll Construction, LLC. located at 4343 S. 67th Street, Omaha, Nebraska 68117.
4. The name and address of the person with whom the claimant contracted is Ronco Construction, Inc. located at 1717 North 74th Street, Omaha, Nebraska 68114.
5. A general description of the claimant's services performed or to be performed or materials furnished or to be furnished for the Grading and Concrete for Construction of a Parking Garage and Hotel. The contract price for the services and materials is \$198,087.00.
6. The amount unpaid, whether due or not, to the claimant for the services or materials is \$47,690.40.
7. The time the last service or materials were furnished was October 2, 2019.
8. Claimant is entitled to record this lien.

Return to: Doll Construction, LLC., 4343 S. 67th Street, Omaha, NE 68117



Nicholas Doll, President

IOWA
STATE OF ~~NEBRASKA~~)
 ~~ASTORIA~~)
COUNTY OF ~~DOUGLAS~~)

On this 20 day of January, 2020, before me the undersigned, notary public in for said county, personally came Nicholas Doll, President of Doll Construction, LLC., a domestic corporation duly registered in the State of Nebraska, to me personally known to be the President and identical person and whose name is affixed to the above Construction Lien, and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of said Doll Construction, LLC.

WITNESS MY HAND and notarial seal at Omaha in said county on the date first above written.



MANDY L. MCKEE
Commission No. 760499
My Commission Expires
October 19, 2021



Notary Public

GARAGE

ASSUMPTION OF SUBCONTRACT

THIS ASSUMPTION OF SUBCONTRACT ("Agreement") is made as of October 17, 2019 (the "Effective Date"), by and between Titanium Fire ("Subcontractor") and DSL Hospitality, LLC ("Replacement Contractor").

RECITALS

Subcontractor and Ronco Construction Company ("Contractor") have previously entered into that certain Subcontract dated 7/14/2018, a true and complete copy of which together with all appendices, alternates, revisions, executed or requested change orders, plans, drawings, specifications, notices of default, invoices, pay applications, lien waivers, RIF's and all other related documents and records relating to the **Home 2 Suites Hotel – 4440 Douglas Street, Omaha, NE 68131** (collectively the "Subcontract"), and Replacement Contractor desires to assume all of Contractor's obligations, duties, rights, titles and interests in the Subcontract from and after the Effective Date of this Agreement, and Subcontractor desires to consent to such assumption, upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the foregoing recitals (which are incorporated herein by this reference) and the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Subcontractor hereby certifies that it has already been paid \$ 73,675.00 under the Subcontract, that Subcontractor is currently due \$ See Note 1 pursuant to the Subcontract, that there are no other amounts currently due or owing under the Subcontract, and that Subcontractor is ready, willing and able to immediately commence or continue work under the Subcontract, and complete all such work on schedule.
2. Subcontractor hereby certifies that attached are true, correct and complete copies of all of the documents constituting the Subcontract as defined above. Other than the executed or requested change orders which are attached, if any, Subcontractor hereby certifies that there are no other executed or requested change orders.
3. Subcontractor represents and warrants that there are no other agreements (written, oral or implied) between Subcontractor and Contractor with respect to any matters set forth in or relating to the Subcontract, that no previous assignments of the Subcontract have been made, that the Subcontract remains in full force and effect, that there are no claims against Subcontractor, and that neither Subcontractor nor Contractor is in default of any of its obligations and duties under the Subcontract.
4. Subject to payment for its services rendered and materials supplied, Subcontractor hereby certifies that it will issue and deliver all standard warranties for its work and any manufacturer's material warranties to Replacement Contractor.
5. In reliance of the certifications, representations and warranties of Subcontractor herein, Replacement Contractor hereby assumes all rights, titles, interests, duties and obligations of Contractor in and to the Subcontract, from and after the

Effective Date of this Agreement, and Subcontractor hereby consents to such assumption of the Subcontract.

6. This Agreement supersedes all prior proposals, promises, agreements, understandings, and representations made by the parties, whether oral, written or implied, with regard to the matters herein resolved. This Agreement is contractual and not a mere recital, and it embodies the entire agreement and understanding between the parties concerning the matters herein resolved and settled. This Agreement may not be changed, modified, supplemented or amended except in writing signed by the parties. After the Effective Date, the Subcontract may only be changed, modified, supplemented or amended in writing signed by Subcontractor and Replacement Contractor.
7. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or electronic mail shall be as effective as delivery of a manually executed counterpart thereof. For proof purposes, it shall not be necessary to produce or account for all counterparts, and copies, facsimile copies, and/or email copies of original signatures may be used.
8. This Agreement and the Subcontract shall be construed and enforced in accordance with the laws of the State of Nebraska. Each party agrees that any action by either party to enforce the terms of this Agreement and the Subcontract may only be brought by the other party in an appropriate state or federal court located in Douglas County, Nebraska and waives all objections based upon lack of jurisdiction or improper or inconvenient venue of any such court. No party to this Agreement and the Subcontract or any assignee or successor of a party shall seek a jury trial, and hereby irrevocably, unconditionally, knowingly and voluntarily waive and agree to cause their affiliates to waive any right to trial by jury in any suit, proceeding, counterclaim or any other litigation procedure, or to consolidate with an action in which a jury trial cannot or has not been waived, relating to or arising out of this Agreement and the Subcontract.

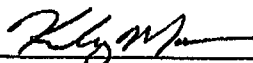
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COUNTERPART SIGNATURE PAGE TO THIS ASSUMPTION OF SUBCONTRACT.

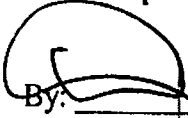
THE FOREGOING ASSUMPTION OF SUBCONTRACT HAS BEEN READ AND FULLY UNDERSTOOD BEFORE THE SIGNING OF SUCH AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures effective as of the date first above written.

Titanium Fire Sprinkler Co., Subcontractor,

By: 
Name: Kelly Malone
Title: Vice President

DSL Hospitality, LLC, Replacement Contractor,

By: 
Name: Dan Maman
Title: Manager DSL Hospitality LLC

Note 1

<u>Garage (Both LL & 1st)</u>	
Original Contract	\$51,625.00
Dry 1st Level	\$5,900.00
Antifreeze LL	\$11,500.00
Additional Design	\$4,650.00
ASSUMPTION OF CONTRACT VALUE	\$73,675.00
PAID TO DATE	\$0.00
REMAINDER DUE AT COMPLETION	\$73,675.00

Certificate of Service

I hereby certify that on Thursday, January 30, 2020 I provided a true and correct copy of the Amended Complaint to the following:

Ronco Construction Company, Inc. represented by Vogt,Diana,J (Bar Number: 19387)
service method: Electronic Service to law@sherrets.com

Ronco Construction Company, Inc. represented by Jared Olson (Bar Number: 25288)
service method: Electronic Service to law@sherrets.com

Stephens & Smith Const. Co., Inc. represented by Brian Koerwitz (Bar Number: 23655)
service method: Electronic Service to bkoerwitz@eptlawfirm.com

DSL Hospitality, LLC represented by GODBOUT, BRADY H. (Bar Number: 26753) service
method: Electronic Service to brady.godbout@koleyjessen.com

Forest City Group LLC represented by Jonathan M Brown (Bar Number: 25021) service
method: Electronic Service to jbrown@womglaw.com

Signature: /s/ Scaglione,Greg, (Bar Number: 19368)