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SC Court of Appeals

THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
Appellate Case No. 2022-01224

Palmetto Construction Group, LLC	Respondent
v.	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward	Appellants

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THE RECORD ON APPEAL

Volume I of III

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10[illegible]-1143 **ORDER**

FILED
2016 APR 21 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court on the motion of Plaintiff seeking a referral to the Master in Equity and that the Defendants be declared in default.

WHEREAS an affidavit of default was filed on April 18, 2016;

WHEREAS from the affidavit of default, it appears that no pleading has been filed and no appearance on behalf of the Defendants made;

WHEREAS the Plaintiff seeks to have this matter referred to the Master in Equity and seeks a default against Defendants;

IT IS ORDERED that the Defendants are in default and this matter is referred to the Master in Equity pursuant to Rule 53(b) SCRCP for all purposes ~~including~~ entry of final judgment against Defendants.

IT IS SO ORDERED.

The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit

On this 20th day of April 2016
Charleston, SC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

FILED
2016 JUL 20 PM 12:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;
2) A damages hearing is set for October 4, 2016 at 2:00pm; and
3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

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

On this 14 day of July 2016
Charleston, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 **CP-**10-1143

Palmetto Construction Group LLC

PLAINTIFF(S)

Restoration Specialists, LLC, et al.

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED
2016 NOV -2 PM 2:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the court for argument on October 11, 2016 on Cross-Motions to Reconsider pursuant to Rule 59, SCRCP. After a review of the file and memoranda submitted by counsel, the court finds as follows: 1) Defendants' Motion to Amend is respectfully DENIED, insomuch as Defendants have not shown good cause to lift the default; and 2) the affirmative defense of arbitration has been waived and Defendant's Motion to Stay and Compel filed July 11, 2016 was not properly made.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

3062
Judge Code

10/28/16
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

The South Carolina Court of Appeals

Palmetto Construction Group, LLC, Respondent,

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, Appellants.

Appellate Case No. 2016-002096

ORDER

Appellants have served and filed a notice of appeal from the master's "effective" denial of Appellants' Rule 59(e), SCACR motion. However, because the master discussed the Rule 59(e) motion during the hearing, accepted memoranda regarding the motion, and allowed the parties to proffer information relating to the motion, it appears the master intends to issue a final, written order on the Rule 59(e) motion. *See* Rule 58(a), SCRCP (stating no order is final until it is written and entered). Accordingly, this appeal is dismissed without prejudice. *See Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 342 (1986) (requiring dismissal without prejudice when there is a pending Rule 59(e) motion filed with the lower court and providing (1) any party can appeal within ten days after the order disposing of the post-trial motions and (2) a second filing fee will not be collected from a party who previously appealed). The remittitur will be sent as required by Rule 221, SCACR.

FOR THE COURT

Columbia, South Carolina

cc:
Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire
A. Bright Ariail, Esquire

FILED
November 10, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Palmetto Construction Group, LLC, Respondent,

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, Appellants.

Appellate Case No. 2016-002308

Appeal From Charleston County
Mikell R. Scarborough, Master in Equity

Opinion No. 5661
Heard April 2, 2019 – Filed June 26, 2019

APPEAL DISMISSED

A. Bright Ariail, of Law Office of A. Bright Ariail, LLC, of Charleston, for Appellants.

Andrew K. Epting, Jr. and Jaan Gunnar Rannik, both of Andrew K. Epting, Jr., LLC, of Charleston, and Michelle Nicole Endemann, of Clarkson, Walsh & Coulter, P.A., of Mt. Pleasant, for Respondent.

LOCKEMY, C.J.: Restoration Specialists, LLC (Restoration) and its owners, Ruben Mark Ward and Lynnette Pennington Ward (collectively Appellants), appeal a master-in-equity's order denying their motion for relief from an entry of default and motion to stay and compel arbitration. We dismiss the appeal as interlocutory.

FACTS

In 2011, Restoration, a Georgia company, and Palmetto Construction Group LLC, (PCG), a South Carolina LLC, entered into an agreement to work together on multiple construction projects. In 2012, the Veteran's Administration (the VA) awarded Restoration a contract to serve as the general contractor on the completion of a parking garage at the VA facility in Augusta, Georgia (the VA Project) for $1.8 million. On September 10, 2014, Restoration and PCG entered into a subcontract agreement under which Restoration would act as the general contractor and would be responsible for hiring the other subcontractors. The subcontract provided that PCG would perform the concrete work and act in a supervisory capacity. The subcontract stated Restoration would pay PCG for the subcontract work. The subcontract also contained a provision requiring mandatory mediation or in the alternative, binding arbitration, of claims arising out of the subcontract.

PCG claims in addition to the subcontract, Mark Ward asked PCG for help in obtaining a bond from PCG's surety to cover the VA Project. Restoration and PCG entered into a surety bond agreement with Hanover Insurance Company to provide a surety bond for the VA Project. Hanover required PCG, Restoration, and their respective principals and their spouses to sign an indemnity agreement requiring them to indemnify Hanover for any claims made on the bond. As the VA Project neared completion, several subcontractors filed claims under the bond asserting they did not receive payment. PCG claims Hanover paid $1,425,144.00 to subcontractors in accordance with the bond.

On February 12, 2016, PCG filed a summons and complaint against Appellants. PCG alleged breach of contract against Restoration for failure to pay amounts owed under the subcontract. In addition, PCG alleged actual and constructive fraud and negligent misrepresentation against the Appellants. On the same day, PCG filed a motion to stay and compel arbitration as provided in the subcontract agreement.

PCG personally served the summons and complaint as well as the motion to compel on Appellants on March 14, 2016. After Appellants did not answer, PCG filed an affidavit of default on April 18, 2016, and withdrew its motion to stay and compel arbitration. The circuit court granted PCG's motion for entry of default and referred the case to the master-in-equity for final judgment against Appellants on April 20, 2016.

On June 5, 2016, the day before the damages hearing, Appellants filed a motion for a continuance and a motion to be relieved from default. At the damages hearing

before the master, Appellants submitted an affidavit from Mark Ward to support their motion to be relieved from the entry of default. The master granted Appellants' motion for a continuance and held the motion for relief from default in abeyance. On July 11, 2016, Appellants filed a motion to stay and compel arbitration. At a hearing on July 14, 2016, the master found Appellants in default and declined to address Appellants' motion to stay and compel arbitration because of their default status. The master issued an order on the same day denying Appellants' request for relief from default, ordering a damages hearing on October 4, 2016, and denying Appellants' motion to stay and compel arbitration "as [Appellants are] in [d]efault." Appellants filed a Rule 59(e), SCRCP, motion to alter or amend on July 27, 2016. Appellants asked the master to schedule a hearing on this motion prior to the damages hearing. However, the master decided to keep the damages hearing on October 4, 2016, and scheduled a hearing on the Rule 59(e) motion for October 11, 2016.

On September 30, 2016, Appellants served a notice of appeal on PCG and notified the master of their appeal of the master's July 14, 2016 order, but did not file the notice with this court until November 18, 2016. In the meantime, the master held a third hearing on October 4, 2016. The master allowed PCG to proffer evidence on damages and Appellants to argue their Rule 59(e) motion. On October 28, 2016, the master issued an order denying Appellants' Rule 59(e) motion. In his order, the master states: "After a review of the file and memoranda submitted by counsel, the court finds as follows: 1) [Appellants'] Motion to Amend is respectfully DENIED, insomuch as [Appellants] have not shown good cause to lift the default; and 2) the affirmative defense of arbitration has been waived and [Appellants'] Motion to Stay and Compel filed July 11, 216 was not properly made."

Appellants appeal both the master's July 14, 2016 order and the October 28, 2016 order denying their Rule 59(e) motion.

LAW/ANALYSIS

A. Appealablity

The denial of a motion to set aside a default judgment is immediately appealable as it is a final judgment on the merits. *See Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987). However, the denial of a motion to set aside an entry of default is not appealable until after final judgment. *Thynes v. Lloyd*, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (Ct. App. 1987). Appellants appeal from a motion to set aside an entry of default. Furthermore, the parties have not participated in a damages hearing and the master has not entered a

default judgment against Appellants. Accordingly, both the master's July 14, 2016 order and October 28, 2016 order are interlocutory and not immediately appealable.

Appellants argue that because the master's order also denied their motion to stay and compel arbitration, the entire order is appealable. In his July 14, 2016 order, the master concluded Appellants' "motion to stay and compel arbitration is denied as [Restoration] is in [d]efault." Section 15-48-200 of the South Carolina Code (2005) provides an appeal may be taken from "[a]n order denying an application to compel arbitration." Appellants cite *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001), for the proposition that "an order that is not directly appealable will be considered if there is an appealable issue before the court." Accordingly, Appellants assert that although the master's order denying them relief from an entry of default is not appealable, it became appealable when coupled with the denial of their motion to compel arbitration. However, given the procedural posture of this case, we do not find an appealable issue before this court.

Appellants failed to answer PCG's complaint in time. Accordingly, Appellants' default status is not in question. "By defaulting, a defendant forfeits his right to answer or otherwise plead to the complaint. In essence, the defaulting defendant has conceded liability." *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978) (citations omitted) (internal quotations omitted). Other than damages, the issues the parties would have decided through arbitration are settled leaving little to arbitrate. Granting a motion to compel arbitration after an entry of default would allow the party seeking arbitration to revisit liability after it has been determined. As Appellants emphasize in their brief, "'The policy of the United States and this State is to favor arbitration of disputes.'" *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct. App. 2000) (quoting *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135,136 (1995)). However, if we allow the reexamination of liability after default, we are defeating the purpose of arbitration: "to achieve streamlined proceedings and expeditious results." *Preston v. Ferrer*, 552 U.S. 346, 357 (2008) (citations omitted) (internal quotations omitted).

Our supreme court analyzed the legal status of defaulting parties in *Roche v. Young Bros., of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998). In that case, the supreme court determined a defaulting party's consent was not required to refer the case to a special referee. The supreme court explained:

> Young Brothers clearly defaulted by failing to answer Roche's complaint within the prescribed time. Young Brothers' status as a defaulting party was not vitiated simply because it later chose to challenge the default judgment rendered against it.

Id. at 82-83, 504 S.E.2d at 315. Similarly, Appellants' default should not be excused because they chose to file a claim for arbitration when they found themselves in default. If we were to allow such, then any defaulting party would simply file a motion to compel arbitration to remove their default status. Therefore, the master correctly found Appellants' motion to stay and compel arbitration was not proper due to Appellants' default status. Appellants cannot bootstrap the master's denial of their motion for relief from default to the master's refusal to consider Appellants' request for arbitration in order to create an appealable issue.

B. Waiver

In addition, we find Appellants waived their right to arbitration. "It is generally held that the right to enforce an arbitration clause may be waived." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999). "In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration. There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Id.* at 665, 521 S.E.2d at 753 (citations omitted) (internal quotations omitted).

While not specifically addressing the issue at hand, in *Wham v. Shearson Lehman Brothers, Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989), the defendants sought to set aside an entry of default or in the alternative, to stay the proceedings and compel arbitration. *Id.* We determined the master did not use the "good cause" standard, but rather applied an "excusable neglect" standard to determine whether he should grant relief and thus, we remanded the case on the issue of the entry of default. *Id.* at 465, 381 S.E.2d at 501. Concerning the motion to stay and compel arbitration, we stated:

> Because we vacate the order denying the motion by Shearson Lehman for relief from the entry of default and remand the issue raised by the motion, we need not address the master's denial of its alternative motion to stay the proceedings and compel arbitration. *See,*

> *however, Miller v. British America Assurance Co.*, 238 S.C. 94, 119 S.E.2d 527 (1961) (referring to an arbitration agreement set up in the answer as a "special defense"); 5 Am.Jur.2d *Arbitration and Award* § 51 at 556–57 (1962) (one's right to arbitrate given by contract may be waived by failing to raise the right in an answer).

Id. at 466, 381 S.E.2d at 502.

Other jurisdictions have found arbitration waived when a defaulting party seeks to compel it. In *Tri-State Delta Chemicals, Inc. v. Crow*, 61 S.W.3d 172, 173 (Ark. 2001), the Supreme Court of Arkansas considered whether a defendant's default on a suit filed in circuit court effectively waives any right to compel arbitration. Similar to our case, the trial court did not consider the defendant's motion to compel arbitration because it determined the defendant was in default. *Id*. at 173. The Supreme Court of Arkansas initially determined because the issue of damages had not been decided, the default judgment was not a final decision and accordingly, was not appealable. *Id*. at 174. Further, the court stated, "While we agree that, generally, a denial of a motion to compel arbitration is an immediately appealable order, we do not believe that an interlocutory appeal will lie under the circumstances of this case." *Id.* Instead, the court determined the defendant "waived any right it may have had to compel arbitration when it failed to timely assert arbitration as a defense to the suit." *Id*. The court cited to a New York trial court decision finding:

> Though arbitration clauses are generally enforceable, they cannot be used to bypass the statutory provisions requiring that pleadings be answered or to thwart a proper motion for a default judgment. The Defendant effectively waived its right to enforce the arbitration clause when it failed to answer or appear in response to the summons and complaint under circumstances where there was no reasonable excuse for such default.

Id. (quoting *Charming Shoppes, Inc. v. Overland Constr., Inc.*, 717 N.Y.S.2d 860 (N.Y. Sup. Ct. 2000)). Determining the plaintiffs properly served the defendant and the defendant failed to timely assert its right to arbitrate, the Supreme Court of Arkansas opined the defendant waived this right. *Id.* "The right to seek arbitration is a defense to civil litigation. Like any other defense, it may be waived by failing to timely assert it under the rules of civil procedure." *Id.* at 175.

Other jurisdictions have made similar determinations. *See Interconex, Inc. v. Ugarov*, 224 S.W.3d 523, 535–36 (Tex. Ct. App. 2007) (finding Interconex waived any right to arbitration that it may have had when it failed to file a timely answer); *LaFrance Architect v. Point Five Dev. S. Burlington*, *LLC*, 91 A.3d 364, 372 (Vt. 2013) ("The presumption in favor of arbitration, however, must be viewed within the context of its underlying purpose: to provide speedy, cost-effective resolution of disputes. To allow a party to 'cry arbitration' in order to undo the consequences of its own errors would turn the rationale of arbitration on its head."); *Woodruff v. Spence*, 883 P.2d 936, 938 (Wash. Ct. App. 1994), *as amended* (Jan. 30, 1995) ("Whether Mr. Spence knowingly waived his right to arbitration depends on whether he had notice of the action against him prior to entry of the default judgment."); *State ex rel. Barden & Robeson Corp. v. Hill*, 539 S.E.2d 106, 112 (W. Va. 2000) ("In this case, unless it is able to show good cause for its default, Robeson has waived its right to assert arbitration as an affirmative defense against continued litigation in the circuit court.").

PCG properly served Appellants with notice of its claims. Appellants failed to timely answer or respond to those claims. Thus, Appellants effectively waived their right to assert enforcement of the arbitration provision.

CONCLUSION

We find the master's July 14, 2016 and October 28, 2016 orders are not appealable. Moreover, because Appellants were in default, they waived their right to assert arbitration as a defense. Accordingly, Appellants' appeal is

DISMISSED.

SHORT and MCDONALD, JJ., concur.

The South Carolina Court of Appeals

Palmetto Construction Group, LLC, Respondent,

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, Appellants.

Appellate Case No. 2016-002308

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

C. J.

J.

J.

Columbia, South Carolina

cc:
Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire
A. Bright Ariail, Esquire
Jaan Gunnar Rannik, Esquire

FILED
November 15, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Palmetto Construction Group, LLC, Respondent,

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, Petitioners.

Appellate Case No. 2019-002052

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
Mikell R. Scarborough, Master-in-Equity

Opinion No. 28010
Heard January 12, 2021 – Filed March 10, 2021

AFFIRMED AS MODIFIED

A. Bright Ariail, Law Office of A. Bright Ariail, LLC, of Charleston for Petitioners.

Jaan Gunnar Rannik and Andrew K. Epting Jr., Epting & Rannik, LLC, both of Charleston for Respondent.

JUSTICE FEW: This is a civil action to collect a debt under a contract that contains an arbitration provision. The defendants appealed the master in equity's order refusing to set aside the entry of their default. The court of appeals dismissed the appeal on the basis that an order refusing to set aside an entry of

default is not immediately appealable. *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019). The defendants filed a petition for a writ of certiorari claiming the order is immediately appealable because it had the effect of precluding their motion to compel arbitration, and in fact, the order states, "Defendants' motion to stay and compel arbitration is denied as [the defendants are] in default." *See Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) ("An order denying arbitration is immediately appealable." (citing *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34-35, 524 S.E.2d 839, 842-43 (Ct. App. 1999))); *see also* S.C. Code Ann. § 15-48-200(a)(1) (2005). We affirm the court of appeals.

Palmetto Construction Group brought this action against Restoration Specialists, its managing member Mark Ward, and his wife Lynnette Ward for payment under a construction contract with an arbitration provision. The defendants did not answer the complaint. The circuit court found all three defendants were in default under Rule 55(a), SCRCP, and referred the case to the master in equity pursuant to Rule 53(b), SCRCP. The defendants filed a motion to set aside the entry of default. The master denied the motion, and the defendants appealed. The court of appeals held the master's order was not immediately appealable and dismissed the appeal. *Palmetto Constr. Grp.*, 428 S.C. at 266, 834 S.E.2d at 206. The court of appeals found the fact the order refusing to set aside the entry of default effectively precluded the defendants' effort to compel arbitration did not affect the immediate appealability of the order. 428 S.C. at 266-67, 834 S.E.2d at 207.

A party in default has three primary options: (1) do nothing pending the entry of judgment by default under Rule 55(b), SCRCP; (2) file an appearance under Rule 55(b)(2), SCRCP, in an attempt to protect its interests before the entry of judgment by default; or (3) request the entry of default be set aside pursuant to Rule 55(c), SCRCP. Under either option, the party has no right of appeal until after final judgment. *See Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct. App. 1987) (stating an "order refusing to grant relief from the entry of default is not appealable until after final judgment"); *but see Johnson ex rel. Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 317, 368 S.E.2d 456, 456 (1988) (stating "while the Court of Appeals reached the correct result in [*Thynes*], it improperly relied on Rule 72, SCRCP, and federal cases interpreting the appealability of orders made pursuant to Rule 55(c) . . . . We agree that the . . . denial of a Rule 55(c) motion is not directly appealable under S.C. Code Ann. § 14-3-330 (1976).").

The defendants contend the law of arbitration changes the immediate appealability of the master's order. To support their contention, they rely on language from the Supreme Court and this Court stating the law "favors" arbitration. *See, e.g.*, *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927, 941, 74 L. Ed. 2d 765, 785 (1983) ("Section 2 [of the Federal Arbitration Act] is a congressional declaration of a liberal federal policy favoring arbitration agreements . . . ."); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) ("The policy of the United States and South Carolina is to favor arbitration of disputes."). However, there is nothing in the law of arbitration that affects the immediate appealability of an order refusing to set aside an entry of default. Specifically, the fact the order effectively precludes the defaulting party's effort to arbitrate the claim does not change whether the order may be immediately appealed.

Our courts' statements that the law "favors" arbitration were never intended to elevate a contractual right of arbitration above the procedural rules of the court or other contractual provisions. *See* Richard Frankel, *The Arbitration Clause As Super Contract*, 91 Wash. U. L. Rev. 531, 533 (2014) ("Much of this arbitration favoritism is attributable to lower-court misinterpretation of thirty-year-old dicta . . . ."). Congress passed the Federal Arbitration Act in 1924 to "ensure judicial enforcement of privately made agreements to arbitrate." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219, 105 S. Ct. 1238, 1242, 84 L. Ed. 2d 158, 164 (1985). "[The Act's] purpose was to place an arbitration agreement 'upon the same footing as other contracts, where it belongs,' and to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate." 470 U.S. at 219-20, 105 S. Ct. at 1242, 84 L. Ed. 2d at 164 (quoting H.R. Rep. No. 96, at 1 (1924)). Quoting the House Report on the Act, the Supreme Court explained,

> The need for the law arises from an anachronism of our American law. Some centuries ago, because of the jealousy of the English courts for their own jurisdiction, they refused to enforce specific agreements to arbitrate upon the ground that the courts were thereby ousted from their jurisdiction. This jealousy survived for so long a period that the principle became firmly embedded in the English common law and was adopted with it by the American courts. The courts have felt that the precedent was too strongly fixed to be overturned without legislative enactment, although they have frequently criticised the rule and recognized its illogical nature and

> the injustice which results from it. *This bill declares simply that such agreements for arbitration shall be enforced*, and provides a procedure in the Federal courts for their enforcement.

470 U.S. at 219-20 n.6, 105 S. Ct. at 1242 n.6, 84 L. Ed. 2d at 164-65 n.6 (quoting H.R. Rep. No. 96 at 1-2) (emphasis added).

The Supreme Court of South Carolina first discussed a "federal policy favoring the arbitration of disputes" in *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 103, 333 S.E.2d 781, 784-85 (1985), relying on cases interpreting the Federal Arbitration Act. Referring to a similar "policy" in South Carolina, we cited cases that simply recognized the right to contract for limited arbitration. 286 S.C. at 103-04, 333 S.E.2d at 785 (citing *Harwell v. Home Mut. Fire Ins. Co.*, 228 S.C. 594, 599, 91 S.E.2d 273, 275 (1956) (stating as to a limited arbitration agreement, "where the policy expressly or by necessary implication forbids the insured from bringing suit until after the amount of the loss has been submitted to arbitration or appraisal, compliance with such provision . . . is a condition precedent to the right of insured to maintain an action on the policy"); *Bollmann v. Bollmann*, 6 S.C. 29, 42-43 (1875) ("An arbitration proceeds from the consent of the parties. The Court is but the instrument through which . . . effect can be given to their will. It contemplates an adjustment of their controversy by a forum not bound by the strict rules of law, but permitted within certain limits to substitute their own mode of investigation in the place of that through which alone Courts of justice are allowed to exercise their functions.")).

Before *Trident Technical College*, South Carolina practiced a reluctance similar to that of the federal courts to enforce arbitration agreements because they deprived the courts of jurisdiction. In *Episcopal Housing Corp. v. Federal Insurance Co.*, 269 S.C. 631, 239 S.E.2d 647 (1977), for example, we stated, "It is well established in South Carolina that general arbitration agreements which oust the South Carolina circuit court from jurisdiction are unenforceable as against public policy." 269 S.C. at 636, 239 S.E.2d at 649; *see also Childs v. Allstate Ins. Co.*, 237 S.C. 455, 460, 117 S.E.2d 867, 869-70 (1961) (stating "an [arbitration] agreement is upheld when it provides for arbitration of the amount of the loss" (a limited arbitration agreement) but is "not binding upon the parties" if it "undertakes to require arbitration of the question of liability"); *Jones v. Enoree Power Co.*, 92 S.C. 263, 267, 75 S.E. 452, 454 (1912) ("An agreement to submit to arbitration all questions of law and fact that may arise under a contract is contrary to the public

policy and void, as an attempt to oust the courts of their jurisdiction and establish in their place a contract tribunal.").

In *Episcopal Housing Corp.*, however, we finally accepted the supremacy of federal law permitting general arbitration agreements. "It is equally true," we stated, referring to the previously quoted statement that general arbitration agreements were unenforceable, "that under the supremacy clause of the United States Constitution . . . , this Court must recognize that federal statutes enacted pursuant to the United States Constitution are the supreme law of the land." 269 S.C. at 636, 239 S.E.2d at 649. In *Trident Technical College*, only eight years after *Episcopal Housing Corp.* and two years after the Supreme Court made its first "policy" statement in *Moses H. Cone*, we followed the federal courts by stating "this policy favoring the arbitration of disputes is also well established in South Carolina." 286 S.C. at 103, 333 S.E.2d at 785.

Neither the Supreme Court nor this Court, however, meant to give the law of arbitration such a special status that it would supplant state procedural law. Rather, these statements must be read in the context in which the Courts made them: overruling a longstanding, policy-based rule that arbitration agreements are unenforceable. In *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989), the Supreme Court explained, "There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate." 489 U.S. at 476, 109 S. Ct. at 1254, 103 L. Ed. 2d at 498; *see also Dean Witter Reynolds*, 470 U.S. at 219-20, 105 S. Ct. at 1242, 84 L. Ed. 2d at 164 ("The [Federal Arbitration] Act, after all, does not mandate the arbitration of all claims, but merely the enforcement . . . of privately negotiated arbitration agreements."). Therefore, when considered in the proper context, our statements that the law "favors" arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is, however, no public policy—federal or state—"favoring" arbitration. *See Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co.*, 355 S.C. 605, 611, 586 S.E.2d 581, 584 (2003) ("There is no federal policy favoring arbitration under a certain set of procedural rules and the federal policy is simply to ensure the enforceability of private agreements to arbitrate." (citing *Volt Info. Scis.*, 489 U.S. at 476, 109 S. Ct. at 1254, 103 L. Ed. 2d. at 498)).

In this case, the simple fact the master refused to set aside the entry of default, thereby preventing the defendants from requesting the court to compel arbitration,

does not mean the order was immediately appealable. In a case like this, the circuit court should proceed to a determination of damages and the entry of judgment under Rule 55(b). From the final order of judgment, the aggrieved party may file an appeal challenging the circuit court's finding there was not good cause to set aside the entry of default, and may address any Rule 60, SCRCP, issue such as whether the aggrieved party demonstrated excusable neglect. *See ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487, 494-95, 713 S.E.2d 335, 338-39 (Ct. App. 2011) (considering—after default judgment—whether the defaulting party's neglect was excusable pursuant to Rule 60, SCRCP); *Thynes*, 294 S.C. at 154, 363 S.E.2d at 123 (stating "the denial of a motion" to set aside an entry of default for good cause "is not appealable until after final judgment" (citation omitted)).

Therefore, the court of appeals correctly determined the order refusing to set aside the entry of default was not immediately appealable. The court of appeals erred, however, in addressing the defendants' argument they did not waive their right to arbitration. *See Palmetto Constr. Grp.*, 428 S.C. at 267-70, 834 S.E.2d at 207-08. In the context of default, the concept of waiver is bound up in the Rule 55(c) determination of good cause and Rule 60(b) determinations such as excusable neglect. On appeal from a final judgment, the defendants may challenge any such determinations, and if that challenge is successful, may claim they did not in fact waive their contractual right to arbitration.

The decision of the court of appeals to dismiss the appeal is

AFFIRMED AS MODIFIED.

BEATTY, C.J., KITTREDGE, HEARN and JAMES, JJ., concur.

The Supreme Court of South Carolina

Palmetto Construction Group, LLC, Respondent,

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, Petitioners.

Appellate Case No. 2019-002052

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

C.J.

J.

J.

J.

J.

Columbia, South Carolina
April 20, 2021

cc: Andrew K. Epting Jr.
Michelle Nicole Endemann
Jaan Gunnar Rannik
A. Bright Ariail

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF CHARLESTON)**	**COURT OF COMMON PLEAS** **NINTH JUDICIAL CIRCUIT**
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, v. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD, Defendants.	Case No. 2016-CP-10-01143 **ORDER DENYING DEFENDANTS' MOTION TO DISMISS** **- and -** **ENTERING DEFAULT JUDGMENT**

This matter came before the Court on January 31, 2022, for a default damages hearing and on Defendants' motion to dismiss. The matter had previously been scheduled for a default damages hearing on October 4, 2016, but was delayed by an appeal. That interlocutory appeal having been dismissed and the case remitted to this Court, I now rule as follows.

I. Motion to Dismiss

Defendants Restoration Specialists, Inc., Mark Ward, and Lynette Ward ("Restoration") moved for a dismissal of this action on April 21, 2021, contending that Plaintiff Palmetto Construction Group, LLC ("Palmetto") had been terminated and therefore lacked the ability to pursue this action.[1] Articles of termination were filed as to Palmetto by Joanne Eaddy on March 22, 2019. It appears from the evidence before me, however, that the termination (i) was not filed by Palmetto or anyone with authority to bind Palmetto, (ii) was filed in error by a third-party who believed they were terminating the ability of a dissolved Delaware entity to perform business (*see* **Eaddy Affidavit**), and (iii) Palmetto has been reinstated by the Secretary of State

[1] The Court assumes that this motion was properly brought despite (i) the default status of the movant and (ii) the filing of the motion prior to remittitur from the appellate courts. As this appears to be a question of subject matter jurisdiction, the Court addresses it herein.

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retroactive to its original creation date (October 30, 2000) with the filing of Articles of Correction by Palmetto on December 8, 2021, notably with a name change to Palmetto Construction Group of SC, LLC. Moreover, as there is no record from the Secretary of State that Palmetto was ever dissolved as an entity, which is a pre-requisite for termination (*see* S.C. Code § 33-44-805(a) ("At any time *after dissolution* and winding up, a limited liability company may terminate its existence . . . .")), the termination would be improper on that ground also. But this does not end the Court's inquiry.

The Court has also considered whether a termination is irreversible, and whether Restoration can rely on the termination and estop Palmetto from contesting its motion. I find the answer in both cases to be no. S.C. Code § 33-44-207 permits a filed record to be corrected "if the record contains a false or erroneous statement or was defectively signed." In this case, both are true, and the filer of the articles of termination erroneously stated that she was a fiduciary of Palmetto and signed as a fiduciary. The articles of correction are effective retroactively to the date of the record being corrected "except as to persons relying on the uncorrected record and adversely affected by the correction." It is not clear to the Court that Restoration was entitled to rely on the filing given the pendency of this litigation (stayed while on appeal) and the absence of articles of dissolution, nor that it was adversely affected by the correction of the erroneous filing. But regardless, the correction would at the very least be retroactive to the December 8, 2021 date of the filing. As this motion was heard by the Court after that date, there is no basis for the Court to hold Palmetto as a terminated entity for purposes of this motion.

The Motion to Dismiss is **DENIED**.

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II. Damages and Judgment

Palmetto requests $2,618,508.55 in damages in the following categories (i) amounts due under the subcontract, (ii) share of profits due to Palmetto, (iii) amounts owed as indemnity from claims by surety, (iv) lost profits, (v) attorneys' fees incurred as a consequence of Restoration's conduct unrelated to the fees and costs of this action, and (vi) prejudgment interest.

At the January 31, 2022 damages hearing, Palmetto's witness, Mrs. Kassy Peterson,[2] presented testimony and evidence that this Court found highly credible and reliable, establishing the damage to Palmetto. Counsel for Defendants was afforded the opportunity to cross-examine Palmetto's witness and object to evidence per *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978).

After the hearing, Defendants filed a Motion to Exclude or Strike Evidence submitted to the Court; the Defendants' objection however was not contemporaneously made as the evidence was offered and therefore is waived. In any event, the Court finds the evidence to be relevant and admissible. *See State v. Pagan*, 357 S.C. 132, 591 S.E.2d 646 (S.C. Ct. App. 2004).

Having fully considered the testimony and documentary evidence presented to the Court, Palmetto is awarded damages of **$2,338,958.64** as detailed below.

A. Background

On November 28, 2011, Palmetto entered into a teaming agreement with Restoration Specialists, LLC, hoping to be awarded the contract for the construction of a parking garage for the VA Hospital in Augusta, Georgia. **Tab 2**.[3] Restoration lacked the ability to obtain the

[2] Palmetto's controller of many years, including during the VA parking garage project.

[3] The "Tab" numbers referenced in this Order correspond with the tabs of the binder of exhibits offered by Plaintiff during the damages hearing and filed with the Court.

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requisite performance and payment bonds to be awarded the project, and so teamed with Palmetto who could obtain the bonds. In exchange for obtaining the bonds, Palmetto would receive a share of the project profits, estimated at around $500,000-600,000. Restoration Specialists were to administer the project and interface with the federal government; Palmetto was to manage the construction. Subsequently, on September 10, 2014, Palmetto and Restoration Specialists entered into a subcontract agreement relating to concrete work for the project and memorializing the 50-50 profit share agreement. **Tab 3**.

As the job neared completion, Restoration Specialists stopped paying the subcontractors, despite having received payment from the federal government. The subcontractors then made claims against the payment bond (issued by The Hanover Insurance Group, **Tab 4**) in excess of $1,000,000, and the surety then sought reimbursement from the guarantors, namely Palmetto, Restoration Specialists, the owners of Palmetto (John Kendle and Jay Handegan), Mr. Handegan's wife, and Defendants Mark and Lynnette Ward.

Palmetto filed suit against Restoration on March 7, 2016. Defendants were all personally served on March 14, 2016 and were placed in default on April 21, 2016 after failing to timely answer the complaint, and the case was referred to this Court for a damages hearing. A damages hearing was scheduled for June 6, 2016, but Defendants filed a motion for a continuance of the damages hearing as well as a motion to be relieved from default on June 3, 2016. In granting Defendants' motion for a continuance, the Court instructed Defendants' counsel to provide financial and banking records to Plaintiff sufficient to show what funds Defendants received from the VA and how those funds were used. Defendants produced certain financial records, but Plaintiff states, and the Court accepts, that no materials have been provided that demonstrate what amounts were received by Defendants from the VA and how those amounts were disposed

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of. On July 11, 2016, Defendants filed a motion to compel arbitration.

Restoration's motion to be relieved from default was denied July 20, 2016. A damages hearing was then scheduled for October 4, 2016. Prior to the hearing, Defendants noticed an appeal of the order denying the motion to be relieved from default and the court's refusal to compel arbitration given Defendants' default status. The matter was then on appeal until remittitur to this Court on April 26, 2021.

Ultimately, Palmetto lacked the financial strength to pay on the guaranty; and, after claims were made on the bond, Palmetto could no longer obtain bonding and lost the majority of its work. Palmetto was forced out of business and its owners invested their personal assets into the company so it could finish the remaining projects it had started.

B. Amount Due on Subcontract

Palmetto claims amounts as due and owing for subcontract work Palmetto performed on the project, work for which Palmetto was never paid. Mrs. Peterson testified that this amounted to $184,858.69 and was due as of September 15, 2015. Her testimony was supported by business records of Palmetto demonstrating that its total compensable costs were $1,281,427.88, and it was paid only $1,096,858.69. **Tab 8**. The Court finds this evidence credible and reliable and based on personal knowledge.

Restoration argues that the subcontract did not provide for payments to Palmetto above the original subcontract amount of $1,082,342.10; however, that amounts were due under the subcontract was alleged in Palmetto's complaint, was admitted when Defendants went into default, and cannot now be contested. Further, the Court finds that the parties conduct indicates an agreement that Palmetto was due its total costs of the work. Accordingly, the Court awards Palmetto the balance of **$184,858.69** due under the subcontract.

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C. Share of Profits

The subcontract between Palmetto and Restoration includes a page entitled "PCG Subcontract Breakdown,"[4] establishing that Palmetto would be entitled to 50% of the profits earned by the project. The testimony during the hearing established that the initial estimated profit on the job was in the $500,000-600,000 range, because of changes in the work that expanded the scope of the work and increased the contract sum by over $2,000,000, the estimated profit grew to around $1,000,000.

Palmetto, using the records produced by Restoration in this action (**Tab 7A**), calculated a total job cost to be $7,748,504.34. **Tab 7**. Palmetto used two separate approaches to calculate the job cost, both methods arriving at the same cost to the cent. *Id.* The Court finds Palmetto's methods and calculation credible and reliable and based on both personal knowledge and Defendants' own records. Further, the Court finds the calculation of job cost to be conservative (*i.e.*, erring on the side of greater cost and therefore less profit), because in reaching this number, Palmetto included $531,980.80 of costs Restoration claimed it incurred, despite the absence of any evidence that Restoration actually paid those costs or that those costs related to this project.

Defendants' counsel cross-examined the witness and objected to Plaintiff's evidence and, during summation, argued that the lack of specificity about the amount of damages in the complaint was an obstacle to this Court awarding the requested damages. However, Mrs. Peterson testified that Defendants refused to provide accounting records during or after the job from which Palmetto could determine the financial status of the job or of Defendants. It is hard for this Court to imagine penalizing Palmetto when documents that were ordered produced were

[4] Section 16.1.4.2.1 of the subcontract establishes that the "PCG Subcontract Breakdown" formed part of the subcontract itself.

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not produced, and when any uncertainty about the job's profitability stems from the failure to produce those documents in compliance with the Court order and a lack of discovery given Defendants' default status. Defendants cannot now benefit from this uncertainty. *See Champion v. Whaley*, 280 S.C. 116, 121–22, 311 S.E.2d 404, 407 (1984) ("The defendant cannot take advantage of the uncertainty created by his own wrongdoing.").

The Court therefore finds as follows: the total contract price for the job was $8,199,283.96. **Tab 7B**, page 2**.** Subtracting the job costs of $7,748,504.34 yields a profit of $450,779.62. Palmetto is awarded 50% of that profit, or **$225,389.81**.

D. Indemnity From Claims by the Surety

The Indemnity Agreement signed by the bond guarantors states that "[p]ayment shall be made to the Surety by the Indemnitors *as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefor*." (emphasis added). Palmetto alleged an entitlement to legal and equitable relief as a result of the myriad subcontractor claims against the surety bond in its complaint.

Plaintiff introduced into the record two letters sent to it by the surety, one from September 30, 2016, and another from January 24, 2022, demanding payment from the indemnitors. **Tab 9**. The Court finds this evidence credible and reliable. As of the September 30, 2016 letter, the surety had paid $1,186,501.71 in claims; as of the January 24, 2022 letter, that amount had grown to $1,307,978.71.

The Court awards Palmetto **$1,307,978.71**.

E. Lost Profits

Palmetto requests $250,000 in lost profits (other than on this project) as a result of being forced out of business by the conduct of Restoration. Mrs. Peterson testified that Palmetto lost

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profits as the natural consequence of Restoration's conduct, and that the requested amount of lost profits was extremely conservative, because (i) Palmetto lost out on over $500,000 in profits on three specific projects in 2016-2017, projects Palmetto did or would have won outright in the bid market but, because it could not get a bond following Restoration's failure to pay subcontractors, had to team with other contractors and share the profits with them; (ii) Palmetto, whose overhead was that of a company doing approximately $20mm in annual business but could obtain bonds only up to $17mm in 2016, was poised to break into the $20mm-23mm bonding range, which would not require an increase in overhead and therefore would significantly increase profits; and (iii) the construction market in Charleston, South Carolina has boomed since 2016, whereas it was still in recovery in the years 2014-2016. Instead of asking for lost profits based on these factors, however, Palmetto instead requested a smaller amount, representing the average of its 2014 and 2015 profits (approximately $50,000, **Tab 11**) for each of the last five years, or $250,000.

The Court finds that the calculation of lost profits is too speculative and finds insufficient evidence in the record regarding the timing and other potential causes for the failure of Palmetto's business. Accordingly, the Court declines to award these lost profits.

F. Consequential Legal Costs

Palmetto requests $29,564.91 in attorneys' fees and costs in matters unrelated to this one stemming from its failure as a business as a result of Restoration's conduct. **Tab 10**. For the same reasons as stated above regarding lost profits, the Court declines to award these damages.

G. Interest

Palmetto requests prejudgment interest on only two categories of its damages, as follows: $83,674.28 as to the amounts due on the subcontract, and $537,057.15 on the amount to

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indemnify Palmetto from claims by the surety. **Tab 12**. The Court finds Palmetto is entitled to these amounts, which are both conservative calculations of interest due on sums that were demandable and certain for at least the five-and-a-half years since the date of the original scheduled damages hearing.[5]

As to the subcontract, the Court finds that Palmetto was owed $184,858.69 as of September 15, 2015, with payment being late after October 15, 2015. However, Palmetto asks for interest beginning only as of the date of the original damages hearing, set for October 4, 2016 and using the current rate of judgment interest in South Carolina of 7.25%. The Court finds the amount due on the subcontract was a sum certain, demandable as of at least October 4, 2016. Palmetto is therefore awarded **$83,674.28** in interest relating to the amount due under the subcontract.

The Court also finds that, as of September 30, 2016, the Surety demanded $1,425,122 from its indemnitors and had paid claims in the amount of $1,186,501.71. (**Tab 9**). Palmetto requests interest on this latter amount from the date of the original damages hearing. The Court finds the amount paid by the surety as of October 4, 2016 was a sum certain, demandable as of at least October 4, 2016. Palmetto is awarded **$537,057.15** in interest relating to the amount owed to indemnify Palmetto for claims by the surety.

III. Summary

Accordingly, the Court awards Palmetto the following sums:

- $184,858.69 owing under the subcontract;
- $225,389.81 owing in share of the project profit;

[5] A hearing delayed by Defendants' filing of multiple notices of appeal of an Interlocutory Order divested this Court of jurisdiction.

- $1,307,978.71 owing in indemnity from claims by the surety; and
- $620,731.43 in interest on the subcontract amount and indemnity from claims by the surety.

Palmetto is awarded a total of **$2,338,958.64**, and judgment shall be and hereby is entered in that amount. **IT IS SO ORDERED.**

This ___ day of _____, 2022

_____
The Hon. Mikell R. Scarborough
Master in Equity, Charleston County

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Charleston Common Pleas

Case Caption: Palmetto Construction Group LLC VS Restoration Specialists LLC , defendant, et al

Case Number: 2016CP1001143

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-01143

PALMETTO CONSTRUCTION GROUP, LLC	RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD,
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Jaan G. Rannik, Esquire	**Attorney for :** ☒ Plaintiff ☐ Third-Party Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other See attached Order

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Defendants' Motion to Dismiss is DENIED and Default Judgment is entered as stated below.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
PALMETTO CONSTRUCTION GROUP, LLC	Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	$ 2,338,958.64
		$
		$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Mikell R. Scarborough	3062	
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR DEFENDANTS

CLERK OF COURT

Court Reporter:

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

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

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

ELECTRONICALLY FILED - 2022 Feb 28 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

ELECTRONICALLY FILED - 2022 Feb 28 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

ELECTRONICALLY FILED - 2022 Feb 28 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

ELECTRONICALLY FILED - 2022 Feb 28 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

Charleston Common Pleas

Case Caption: Palmetto Construction Group LLC VS Restoration Specialists LLC , defendant, et al

Case Number: 2016CP1001143

Type: Master/Order/Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2022-02-28 11:50:35 page 5 of 5

ELECTRONICALLY FILED - 2022 Feb 28 10:38 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1001143

Palmetto Construction Group LLC
PLAINTIFF(S)

Restoration Specialists LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

After careful consideration, this Court DENIES the Defendants' Motion to Exclude and Strike Evidence, filed February 22, 2022. See the Court's Order Denying Defendants' Motion to Dismiss and Entering Default Judgment.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/25/2022 .

Michelle Nicole Endemann for Palmetto Construction Group LLC
Jaan Gunnar Rannik for Palmetto Construction Group LLC
A. Bright Ariail for Restoration Specialists LLC,Reuben Mark Ward,Lynnette Pennington Ward

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

ELECTRONICALLY FILED - 2022 Feb 28 10:38 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

ELECTRONICALLY FILED - 2022 Feb 28 10:38 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

Charleston Common Pleas

Case Caption: Palmetto Construction Group LLC VS Restoration Specialists LLC , defendant, et al

Case Number: 2016CP1001143

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1001143

Palmetto Construction Group LLC
PLAINTIFF(S)

Restoration Specialists LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Following the Return of the Remittitur from the Court of Appeals on April 26, 2021, Defendants filed a Motion to Reconsider/Alter/Amend the Court's Order Denying Defendants' Motion to Dismiss on March 20, 2022, a Motion to Reconsider/Alter/Amend the Court's Order Denying Defendant's Motion to Exclude on March 10, 2022, and a Motion For Stay of Enforcement of Judgment on March 15, 2022. The Court was never provided with a copy of the motions as required by Rule 59 (g), SCRCP and first received notice of these filings from Plaintiff's counsel on July 20, 2022. Having reviewed the motions, this Court DENIES each motion filed on substantive and procedural grounds.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/01/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Aug 01 2:46 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

Court Reporter:

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

ELECTRONICALLY FILED - 2022 Aug 01 2:46 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

ELECTRONICALLY FILED - 2022 Aug 01 2:46 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

Charleston Common Pleas

Case Caption: Palmetto Construction Group LLC VS Restoration Specialists LLC , defendant, et al

Case Number: 2016CP1001143

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

PALMETTO CONSTRUCTION GROUP, LLC.,)
Plaintiff(s))

CIVIL ACTION COVERSHEET

2016 -CP - 10- 1143

vs.)

RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD,)
Defendant(s))

Submitted By: ANDREW K. EPTING, JR, ESQUIRE and MICHELLE N. ENDEMANN, ESQUIRE
Address: ANDREW K. EPTING, JR., LLC
46A State Street
Charleston SC 29401

SC Bar #: SC Bar 01908 and 79894
Telephone #: 843-377-1871
Fax #: 843-377-1310
Other: ake@epting-law.com
E-mail: mne@epting-law.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION *(Check all that apply)*

***If Action is Judgment/Settlement do not complete**

- [x] **JURY TRIAL** demanded in complaint. [ ] **NON-JURY TRIAL** demanded in complaint.
- [ ] This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [ ] This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [ ] This case is exempt from ADR. (Proof of ADR/Exemption Attached)

FILED
2016 MAR -7 PM 12:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NATURE OF ACTION *(Check One Box Below)*

Contracts
- [ ] Constructions (100)
- [ ] Debt Collection (110)
- [ ] General (130)
- [x] Breach of Contract (140)
- [x] Fraud/Bad Faith (150)
- [ ] Failure to Deliver/ Warranty (160)
- [ ] Employment Discrim (170)
- [ ] Employment (180)
- [ ] Other (199) _____

Torts - Professional Malpractice
- [ ] Dental Malpractice (200)
- [ ] Legal Malpractice (210)
- [ ] Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____

- [ ] Notice/ File Med Mal (230)
- [ ] Other (299) _____

Torts – Personal Injury
- [ ] Conversion (310)
- [ ] Motor Vehicle Accident (320)
- [ ] Premises Liability (330)
- [ ] Products Liability (340)
- [ ] Personal Injury (350)
- [ ] Wrongful Death (360)
- [ ] Assault/Battery (370)
- [ ] Slander/Libel (380)
- [ ] Other (399) _____

Real Property
- [ ] Claim & Delivery (400)
- [ ] Condemnation (410)
- [ ] Foreclosure (420)
- [ ] Mechanic's Lien (430)
- [ ] Partition (440)
- [ ] Possession (450)
- [ ] Building Code Violation (460)
- [ ] Other (499) _____

Inmate Petitions
- [ ] PCR (500)
- [ ] Mandamus (520)
- [ ] Habeas Corpus (530)
- [ ] Other (599)

_____

Administrative Law/Relief
- [ ] Reinstate Drv. License (800)
- [ ] Judicial Review (810)
- [ ] Relief (820)
- [ ] Permanent Injunction (830)
- [ ] Forfeiture-Petition (840)
- [ ] Forfeiture—Consent Order (850)
- [ ] Other (899)

_____

Judgments/Settlements
- [ ] Death Settlement (700)
- [ ] Foreign Judgment (710)
- [ ] Magistrate's Judgment (720)
- [ ] Minor Settlement (730)
- [ ] Transcript Judgment (740)
- [ ] Lis Pendens (750)
- [ ] Transfer of Structured Settlement Payment Rights Application (760)
- [ ] Confession of Judgment (770)
- [ ] Petition for Workers Compensation Settlement Approval (780)
- [ ] Other (799) _____

Appeals
- [ ] Arbitration (900)
- [ ] Magistrate-Civil (910)
- [ ] Magistrate-Criminal (920)
- [ ] Municipal (930)
- [ ] Probate Court (940)
- [ ] SCDOT (950)
- [ ] Worker's Comp (960)
- [ ] Zoning Board (970)
- [ ] Public Service Comm. (990)
- [ ] Employment Security Comm (991)
- [ ] Other (999)

_____

Special/Complex /Other
- [ ] Environmental (600)
- [ ] Automobile Arb. (610)
- [ ] Medical (620)
- [ ] Other (699) _____
- [ ] Sexual Predator (510)
- [ ] Pharmaceuticals (630)
- [ ] Unfair Trade Practices (640)
- [ ] Out-of State Depositions (650)
- [ ] Motion to Quash Subpoena in an Out-of-County Action (660)
- [ ] Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 02/12/2016

9

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10- 1143 **SUMMONS**

FILED
2016 MAR -7 PM 12:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com
ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-_114 3 **COMPLAINT**

FILED
2016 MAR -7 PM 12: 36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The above-named Plaintiff, subject to its simultaneously filed Motion to Stay and to Compel, states as follows:

1. Plaintiff Palmetto Construction Group, LLC ("Palmetto"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

2. Defendant Restoration Specialists, LLC ("Restoration"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

3. Defendant Reuben Mark Ward ("Mr. Ward") is an individual residing in the State of South Carolina at 1042-A East Montague Avenue, Charleston, SC 29405 and doing business in Charleston County, South Carolina as the Managing Member of Restoration.

4. Defendant Lynnette Pennington Ward ("Mrs. Ward") is an individual residing in the State of South Carolina and doing business in Charleston County, South Carolina.

5. Palmetto entered into a contract with Restoration on or about September 10, 2014 for the construction of facilities for the United States government on a project located in Augusta, Georgia.

6. That venue is proper in this court and this court has jurisdiction over the parties.

7. Attached as Exhibit A is the contract between Palmetto and Restoration together with a Teaming Agreement, Exhibit B, dated November 28, 2011.

8. That Palmetto has performed its contract and has completed all of its work on the project aforesaid.

9. Restoration has failed to pay the contract balances due under the contract and furthermore has failed to account for the profit sharing funds. As a consequence, Restoration has defaulted under its agreements with Palmetto.

10. Palmetto, Restoration, and, individually, Mr. Ward and Mrs. Ward, all signed an indemnity agreement with a surety in relation to a Payment Bond for this project (Exhibit C). Accordingly, Restoration, Mr. Ward, and Mrs. Ward must indemnify the surety and Plaintiffs to the extent that they are required to pay.

11. Claims have been made by other subcontractors upon the Payment Bond and as a consequence subcontractors are making claims against Palmetto and its surety.

FOR A FIRST CAUSE OF ACTION
BREACH OF AGREEMENTS

12. Palmetto restates each and every allegation above.

13. Restoration has received funds from the United States of America and has not paid those funds as required by its agreements with Palmetto as well as other subcontractors performing services for Restoration.

14. As a consequence of Restoration's default under its agreements with Palmetto and other subcontractors, Palmetto has been damaged in a sum to be determined.

FOR A SECOND CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

15. Palmetto restates each and every allegation above.

16. Mr. Ward represented that he would manage this project and that all monies from the project would be used to pay for material and work supplied to or performed on the project.

17. Mr. Ward has a pecuniary interest in the project.

18. The representations of Mr. Ward were material and were relied upon by Palmetto. Mr. Ward is personally liable for his own tortious conduct.

19. Palmetto's justifiable reliance upon Mr. Ward has resulted in damages in a sum to be determined.

FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE AND ACTUAL FRAUD

20. Palmetto restates each and every allegation above.

21. Mr. Ward knew or should have known that his statements were material and would be relied upon by Palmetto.

22. Mr. Ward intended and induced Palmetto to rely upon his representations.

23. Palmetto's justifiable reliance has damaged Palmetto in a sum to be determined.

24. Palmetto, in addition to requesting actual damages, requests punitive damages.

FOR A FOURTH CAUSE OF ACTION
OTHER LEGAL AND EQUITABLE RELIEF

25. Plaintiff restates each and every allegation above.

26. All Defendants are contractually bound to pay funds if there are claims on the surety bond.

27. There are claims on the surety bond.

28. Plaintiff requests legal and equitable relief against the Defendants.

FOR A FIFTH CAUSE OF ACTION
INJUNCTIVE RELIEF

29. Palmetto restates each and every allegation above.

30. Palmetto requests that this court enter its order mandating that any funds held or to be received by Restoration be utilized to pay Palmetto the sums due.

31. Upon information and belief, given Restoration and Mr. Ward's financial viability, an award of monetary damages would not protect Palmetto from injury.

FOR A SIXTH CAUSE OF ACTION
ACCOUNTING

32. Palmetto restates each and every allegation above.

33. Because Palmetto does not know all funds Mr. Ward has received and what has been distributed Palmetto asks for an accounting.

WHEREFORE, Palmetto requests actual and punitive damages, injunctive relief, an accounting, and such other relief as is just and proper.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

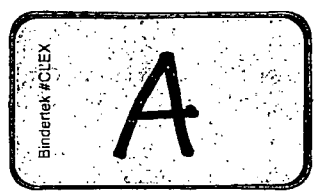
Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.



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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. **Note:** It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	**Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	**SUBCONTRACTOR** *(Signature)*
Mark Ward – Managing Member	Jay Hannegan - Vice President
(Printed name and title)	*(Printed name and title)*

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TEAMING AGREEMENT

This Agreement is made and entered into as of the **28th** day of **November**, **2011**, by and between **Restoration Specialists, LLC**, a **Georgia** limited liability company (hereinafter called "RS"), and **Palmetto Construction Group, LLC**, a **South Carolina** limited liability company (hereinafter called "PCG"), each a "Party" and together the "Parties", for the purpose of submitting a proposal for **Solicitation Number VA-247-11-RP-0211** (hereinafter the "Services") to **Department of Veteran Affairs** (the "Customer") for the **New SCIU Hospital Parking Deck Minor Project: 509-325** project (the "Project"). ***RS, cage code 5GXE1, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

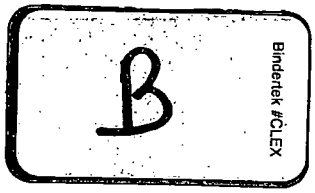
If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:



(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**
Restoration Specialists, LLC
PO Box 5352
Savannah, Ga. 31414
(912) 659-4355

Attention: **Jay Handegan**
Palmetto Construction Group, LLC
2265 Clements Ferry Rd. Suite 204
Charleston, SC 29492
(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Georgia.

RESTORATION SPECIALISTS LLC

By: _____
(Authorized Signature)
Title: Managing Member
Date: 12/01/11

PALMETTO CONSTRUCTION GROUP

By: _____
(Authorized Signature)
Title: Vice President
Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND *(See Instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*	OMB No.:9000-0045 Expires: 11/30/2012
	April 23, 2012	

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 860 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

Binderlek #CLEX

Restoration Specialists, LLC — PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) *(Typed)*	1.	2.	

The Hanover Insurance Company — CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.	

THE HANOVER INSURANCE COMPANY 1852

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

STANDARD FORM 25A (REV. 10-98)
Prescribed by GSA-FAR (48 CFR) 53.2228(c)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC. / LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) *(Typed)*	1.	2.	
SURETY C	NAME & ADDRESS		STATE OF INC. / LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) *(Typed)*	1.	2.	
SURETY D	NAME & ADDRESS		STATE OF INC. / LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) *(Typed)*	1.	2.	
SURETY E	NAME & ADDRESS		STATE OF INC. / LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) *(Typed)*	1.	2.	
SURETY F	NAME & ADDRESS		STATE OF INC. / LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) *(Typed)*	1.	2.	
SURETY G	NAME & ADDRESS		STATE OF INC. / LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) *(Typed)*	1.	2.	

INSTRUCTIONS

. This form, for the protection of persons supplying labor and material, is sed when a payment bond is required under the Act of August 24, 1935, 49 tat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the ritten approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, eir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

Bond No. 1944091

PERFORMANCE BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)* April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))* The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	PENAL SUM OF BOND MILLION(S): 5 — THOUSAND(S): 999 — HUNDRED(S): 360 — CENTS: 00 CONTRACT DATE: March 13, 2012 — CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mil[illegible] Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contra[illegible] with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — **PRINCIPAL**

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) *(Typed)*	1.	2.	

The Hanover Insurance Company — **CORPORATE SURETY(IES)**

SURETY A — NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000.00	
SURETY A — SIGNATURE(S)	1.	2.		Corporate Seal
SURETY A — NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY 1852

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $ $15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	TOTAL $61,999.00 $0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PALMETTO CONSTRUCTION GROUP, LLC., Plaintiff, vs. RESTORATION SPECIALISTS, LLC., REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD, Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney: SC, Bar No. 01908 Address: Andrew K. Epting, Jr., LLC Andrew K. Epting, Jr., Esquire SCBAR 01908 Michelle N. Endemann SCBAR 79894 46A State Street Charleston SC 29401 Phone: 843-377-1871Fax 843-377- E-mail: ake@epting-law.comOther: men@epting-law.com	Defendant's Attorney: _____, Bar No. _____ Address: Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Stay and to Compel
Estimated Time Needed: 20 Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — Date submitted: 2-12-16

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 250.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10- 1143 **MOTION TO STAY AND TO COMPEL**

FILED
2016 MAR -7 PM 12:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, Palmetto Construction Group, LLC ("Palmetto"), hereby moves this court for an order staying this matter and compelling mediation and, if necessary, arbitration by the parties to proceed as contractually required by Article 6 of their Subcontract Agreement. In support thereof, Plaintiff states as follows:

1. Palmetto entered into a Subcontract Agreement (Exhibit A) with Restoration Specialists, LLC ("Restoration") on or about September 10, 2014 for the construction of facilities for the United States government on a project located in Augusta, Georgia.

2. The Subcontract Agreement contains a provision (Section 6.1.1) requiring the submission of any claim arising out of or related to the agreement to mediation as a condition precedent to binding dispute resolution. Additionally, Section 6.1.2 sets out specifically that the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the agreement.

3. Section 6.1.2 of the Subcontract Agreement provides that a request for mediation may be made concurrently with the filing of binding dispute resolution proceedings. Under Section 6.2, any claim subject to but not resolved by mediation shall be resolved by binding arbitration pursuant to Section 6.3 of the agreement. Further, Section 6.3.1 provides that the arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the agreement.

4. Palmetto now alleges that a dispute has arisen out of and involving said Subcontract Agreement and that the Defendants are bound to mediate and arbitrate.

WHEREFORE, Palmetto prays that an order of this court be made directing that the claims asserted by Palmetto against the Defendants that arise out of the parties dealings be stayed, that mediation, and, if necessary, arbitration proceed in the manner provided for in said agreement, and for such other and further relief as to the court may seem proper.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

On this 12 day of February 2016
Charleston, SC

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

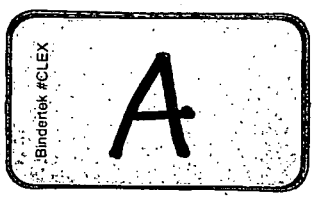
Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.



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User Notes:

Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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User Notes:
(1114130519)

Init.
/

TABLE OF ARTICLES

1 THE SUBCONTRACT DOCUMENTS

2 MUTUAL RIGHTS AND RESPONSIBILITIES

3 CONTRACTOR

4 SUBCONTRACTOR

5 CHANGES IN THE WORK

6 MEDIATION AND BINDING DISPUTE RESOLUTION

7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

8 THE WORK OF THIS SUBCONTRACT

9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

10 SUBCONTRACT SUM

11 PROGRESS PAYMENTS

12 FINAL PAYMENT

13 INSURANCE AND BONDS

14 TEMPORARY FACILITIES AND WORKING CONDITIONS

15 MISCELLANEOUS PROVISIONS

16 ENUMERATION OF SUBCONTRACT DOCUMENTS

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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User Notes:

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .

(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. **Note:** It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	**Limit of liability or bond amount ($1,000,000.00 per incident)**
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

Init.
/
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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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(1114130519)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	**Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	**SUBCONTRACTOR** *(Signature)*
Mark Ward – Managing Member	Jay Hannegan · Vice President
(Printed name and title)	*(Printed name and title)*

Init.
/

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PALMETTO CONSTRUCTION GROUP, LLC. Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney: ANDREW K. EPTING, JR., Bar No. 1908 Address: 46A STATES STREET, CHARLESTON, SC 29401 Phone: 8433771871Fax 8433771310 E-mail: ake@epting-law.comOther: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Default Judgement AND Referral to the MIE
Estimated Time Needed: 15 Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Andrew K Epting /s/ _____ _____
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **MOTION TO REFER TO THE MASTER IN EQUITY AND FOR ENTRY OF DEFAULT**

FILED
2016 APR 18 PM 3:2
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, Palmetto Construction Group, LLC ("Palmetto"), hereby moves this Court for an order referring this case to the Master in Equity and for entry of default against the Defendants. As appears from the attached affidavit of default, Plaintiff served Defendants by way of process server with a copy of the summons and complaint and discovery requests on March 14, 2016. (See Exhibit A). Defendants have filed no pleading and have made no appearance in this case. Therefore, Plaintiff respectfully requests a default and that this matter be referred to the Master in Equity pursuant to Rule 53(b) SCRCP for all purposes including entry of final judgment against Defendants.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

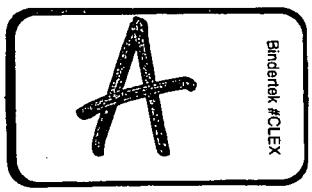
Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com; mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

DATED: April 18, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **AFFIDAVIT OF DEFAULT**

PERSONALLY APPEARED before me, Andrew K. Epting, Jr., who, being duly sworn, alleges and says as follows:

1. I am the attorney for Palmetto Construction Group, LLC. in the above captioned matter, and I have personal knowledge of the facts relating to this action.
2. On March 7, 2016, Plaintiff filed a Summons and Complaint against Defendants Restoration Specialist, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, in the Charleston County Court of Common Pleas.
3. A copy of the Summons and Complaint was served on Defendant Restoration Specialists, LLC, by personal service, as evidenced by the Affidavit of Service dated March 14, 2016, attached hereto as EXHIBIT 1.
4. A copy of the Summons and Complaint was served on Defendant Reuben Mark Ward by personal service, as evidenced by the Affidavit of Service dated March 14, 2016, and attached hereto as EXHIBIT 2.
5. A copy of the Summons and Complaint was served on Defendant Lynnette Pennington Ward by personal service, as evidenced by the Affidavit of Service dated



March 14, 2016, and attached hereto as EXHIBIT 3.

6. More than thirty (30) days have elapsed since service of Plaintiff's Summons and Complaint. Defendants Restoration Specialist, LLC, Reuben Mark Ward, and Lynnette Pennington Ward have failed to answer or otherwise respond to the Complaint. Neither the Defendants nor counsel for Defendants have made an appearance or contacted Plaintiff or counsel for plaintiff.
7. Defendant Restoration Specialists, LLC is in default.
8. Defendant Rueben Mark Ward is in default.
9. Defendant Lynnette Pennington Ward is in default.
10. Defendant Reuben Mark Ward is not a minor, incompetent or in the military service.
11. Defendant Lynnette Pennington Ward is not a minor, incompetent or in the military service.

Andrew K. Epting

ANDREW K. EPTING, JR., ESQUIRE
Andrew K. Epting, Jr.
Michelle N. Endemann
Attorneys for Plaintiff
46A State Street
Charleston, SC 29401
Phone: (843) 722-6612
Fax: (843) 377-1310
ake@epting-law.com
mne@epting-law.com

SWORN TO BEFORE ME THIS
18 day of APRIL, 2016.

ANGELA GODDARD GROSS NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 10-20-2018

Notary Public for South Carolina

AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Restoration Specialists, LLC, Reuben Mark Ward, Registered Agent, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 2016 at 8:20pm., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Reuben Ward as Registered Agent a person authorized to accept service.

( ) GOVERNMENT AGENCY: By serving _____ as _____ of the within named agency.

( ) NON SERVICE: Due to reasons detailed in Comments below.

COMMENTS: Served at: 7 Diamond Causeway, Savannah, GA 31406

Age 40 Sex (M) F Race White Height 5'10" Weight 185 Hair Bald Glasses Y (N)

Bindertek #CLEX 1

RECEIVED
MAR 22 2016
By_____

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of March, 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires

SUSAN M. CRISP NOTARY PUBLIC CHATHAM CO. GEORGIA MY COMMISSION EXPIRES OCT. 15 2019

PROCESS SERVER # _____
Appointed in accordance with State Statute

SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000516

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Reuben Mark Ward, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 2016 at 8 10p .m., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

( ) INDIVIDUAL SERVICE: Served personally to the within-named.

(X) SUBSTITUTE SERVICE: By delivering to: Lynnete Ward, as co-resident/spouse, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE:Due to reasons detailed in Comments below.

( ) MILITARY STATUS: Y N If Yes, what branch:_____

COMMENTS: _____

Age F Sex M F Race White Height 5'6" Weight 130 Hair Blond Glasses Y N

RECEIVED
MAR 23 2016
By _____

Bindertek #OLEX 2

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of March 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires: OCT. 15 2019

PROCESS SERVER # _____
Appointed in accordance with State Statutes

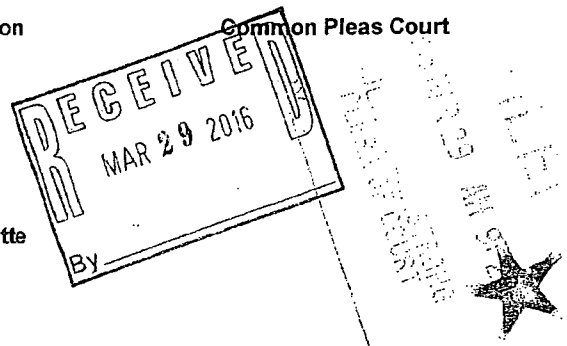
SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000515

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**



Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Lynnete Pennington Ward, 3 Bailey Reach, Savannah, GA 31411**. I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 20 16 at 8:10p.m., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served personally to the within-named.

( ) SUBSTITUTE SERVICE: By delivering to:_____, as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

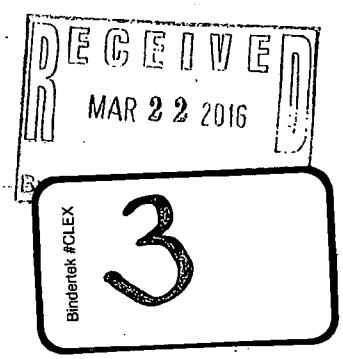
( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE:Due to reasons detailed in Comments below.

( ) MILITARY STATUS: Y N If Yes, what branch:_____

COMMENTS: _____

Age 35 Sex M F Race White Height 5'6" Weight 130 Hair Blond Glasses Y N



AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of March 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires:

JOSEPH GRASP
NOTARY PUBLIC
CHATHAM CO., GEORGIA
MY COMMISSION EXPIRES
OCT 15 2019

PROCESS SERVER # _____
Appointed in accordance with State Statutes

SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000517

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STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)) PALMETTO CONSTRUCTION) GROUP, LLC)) Plaintiff,)) v.)) RESTORATION SPECIALISTS,) LLC, REUBEN MARK WARD,) and LYNNETTE PENNINGTON) WARD)) Defendants.)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A NO. 2016-CP-10-1143 **AFFIDAVIT OF REUBEN MARK WARD**

FILED
2016 JUN -6 AM 11:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PERSONALLY APPEARED BEFORE ME, Reuben Mark Ward, who having been first duly sworn, deposes and states as follows:

1. I am the Managing Member of Restoration Specialists, LLC ("Restoration Specialists").

I was served with the Notice of Hearing for the default damages hearing on June 2, 2016 at 6:30 p.m. by process server at my home located at 3 Bailey Reach, Savannah, Ga. 31411.

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

Sworn to before me
This 3 th day of June 2016.

Notary Public for the State of Georgia

My Commission Expires 09/4/2019

REBECCA M MAZUR NOTARY PUBLIC CHATHAM COUNTY, GA Exp. Sept. 11, 2019

Law Office of A. Bright Ariail, LLC

June 6, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find the original and one copy of the *Affidavit of Reuben Mark Ward* related to the Motion for Continuance and Protection for filing in the above captioned case.

By copy of this letter, I am serving this Motion on all Counsel of Record.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc:
All Counsel

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)) PALMETTO CONSTRUCTION) GROUP, LLC)) Plaintiff,)) v.)) RESTORATION SPECIALISTS,) LLC, REUBEN MARK WARD,) and LYNNETTE PENNINGTON) WARD)) Defendants.)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A NO. 2016-CP-10-1143 **AFFIDAVIT OF REUBEN MARK WARD**

FILED
2016 JUN -6 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____ DC

PERSONALLY APPEARED BEFORE ME, Reuben Mark Ward, who having been first duly sworn, deposes and states as follows:

1. I am the Managing Member of Restoration Specialists, LLC ("Restoration Specialists").

2. On March 29, 2012, Restoration Specialists was awarded a contract to construct the Charlie Norwood VAMC Parking Garage in Augusta, Georgia (the "Project").

3. On April 23, 2012, pursuant to the terms of that contract, Restoration Specialists provided Payment Bond 1944091 (the "Bond"), which was issued by The Hanover Insurance Company ("Hanover"). The Bond is at issue in this action.

4. I received the Summons and Complaint in the above referenced action on or about March 14, 2016.

5. Prior to receipt of the Summons and Complaint, I was contacted by James E. Rudnik, Esq., the Director – Risk Mitigation|Surety for The Hanover Insurance Group regarding the Bond.

6. On or about March 10, 2016, Mr. Rudnik notified me of certain bond claims that had been made against the Bond.

7. Pursuant to my discussions with Mr. Rudnik, Restoration Specialists has made direct payment to several subcontractors deemed to have valid bond claims.

8. Further, Restoration Specialists continues to have discussions with Hanover regarding other bond claims made.

9. When I received the Summons and Complaint for the instant action, I thought that it was related to my arrangements with Hanover.

10. I am not an attorney and did not understand that the above captioned action was separate and apart from the bond claims that I have been working directly with Mr. Rudnik and Hanover to address.

11. I have no record and no recollection of receiving 1) a notice of motion hearing related to the Motion to Stay and to Compel, 2) the Motion to Refer to the Master in Equity and for Entry of Default, or 3) the Order for Entry of Default and Referral to the Master in Equity.

12. Upon receipt of the Notice of Hearing for the default damages hearing, the defendants understood for the first time that this was a separate action and immediately notified their attorney.

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

Sworn to before me
This 3 th day of June 2016.

Notary Public for the State of Georgia

My Commission Expires 09/11/2019

REBECCA M MAZUR NOTARY PUBLIC CHATHAM COUNTY, GA EXP. Sept. 11, 2019

Law Office of A. Bright Ariail, LLC

June 6, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find the original and one copy of the *Affidavit of Reuben Mark Ward* related to the Motion to Set Aside Entry of Default for filing in the above captioned case.

By copy of this letter, I am serving this Motion on all Counsel of Record.

With kindest regards, I am.

Sincerely yours,

A. Bright Ariail

Enclosures

cc:
All Counsel

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

ELECTRONICALLY FILED - 2022 Jan 27 2:02 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT OF JERRY S. HANDEGAN**
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, JERRY "JAY" S. HANDEGAN, stating as follows:

1. My name is Jerry S. Handegan, and I held the position of Vice President in Palmetto Construction Group, LLC ("Palmetto").
2. Palmetto no longer does business as a result of the conduct underlying its pending lawsuit against Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward in Charleston County, South Carolina, Case number 2016-CP-10-1143.
3. I learned through my attorney that Palmetto's existence was terminated through the filing of Articles of Termination with the South Carolina Secretary of State on March 22, 2019. **Exh. A.**
4. The Articles of Termination were not filed or authorized by me or any other officer, agent, or employee of Palmetto.
5. One JoAnn W. Eaddy, who is unknown to this Affiant, filed the Articles of Termination with the Secretary of State without the knowledge of or authorization from Palmetto.
6. Palmetto has been informed the filing of the Articles of Termination by Ms. Eaddy was in error.
7. Palmetto requests the Secretary of State reinstate its corporate position so it may continue to wind up its business.
8. Further affiant saveth naught.

SONIA MEISENBACH NOTARY PUBLIC MY COMMISSION EXPIRES 6/16/2027 SOUTH CAROLINA

JERRY "JAY" S. HANDEGAN

SWORN to before me this
3rd day of December, 2021.

Sonia Meisenbach
Notary Public for South Carolina
My Commission Expires: 6/16/2027

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Nov 02 2021
REFERENCE ID: 901434

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Filing ID: 190322-1416377

Filing Date: 03/22/2019

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF TERMINATION
LIMITED LIABILITY COMPANY - DOMESTIC

The following limited liability company, having dissolved and completed its winding up, terminates its existence by filing these articles of termination in accordance with the 1976 S.C. Code of Laws, as amended, Section 33-44-805:

1. The name of the limited liability company is:
   PALMETTO CONSTRUCTION GROUP, LLC
2. The date the articles of organization were filed is 10/30/2000.
3. The date of the dissolution of this limited liability company was 02/22/2019.
4. Has the company wound up its business and terminated its legal existence? Yes
5. Unless otherwise specified, these articles are effective when endorsed for filing by the Secretary of State. Specify the date of any delayed effective date: 03/22/2019 (Date)

Signed as Filer: joann eaddy
(Signature)

JoAnn Eaddy
(Print Name)

03/22/2019
(Date)

Capacity/Position of Person Signing (**You must check one box.**)

☐ Manager ☐ Member ☐ Organizer

☒ Fiduciary ☐ Attorney-in-Fact

Form Revised by South Carolina Secretary of State, October 2018
F0045

ELECTRONICALLY FILED - 2022 Jan 27 2:02 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Nov 02 2021
REFERENCE ID: [illegible]

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Business Name: ???????? ?????????????? ?????? ?

Signature Page for a Secretary of State Business Filing

ompleted, scanned, and attached to any business filing where one of the following is true.

y signs the digital form on behalf of official signee.

- An attorney's signature is required. (Articles of Incorporation for Corporation and Benefit Corporation)

Official Signatures

(Officer, Incorporator, Director, Agent, Partner, etc)

Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.

JoAnn Eaddy	3/22/2019
Name	Date
JoAnn W. Eaddy	Finance Director
Signature	Title / Position
Name	Date
Signature	Title / Position
Name	Date
Signature	Title / Position
Name	Date
Signature	Title / Position
Name	Date
Signature	Title / Position

Scan and Upload this document to the Business Filing System during the filing process.
File must be PDF format.

EXH A

ELECTRONICALLY FILED - 2022 Jan 27 2:02 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

ELECTRONICALLY FILED - 2022 Jan 27 2:02 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

COUNTY OF SUMTER)
)
STATE OF SOUTH CAROLINA)

AFFIDAVIT OF JOANN EADDY

PERSONALLY APPEARED BEFORE ME the undersigned JoAnn Eaddy who being duly sworn, deposes and says that:

1. I am over 18 years of age, am competent to testify, and have personal knowledge of the matters set forth herein.

2. Since 2015, I have served as the Director of Finance for Thompson Construction Group, Inc. ("Thompson"). Thompson was the Manager of a limited liability company organized in the state of Delaware known as Palmetto Construction Group, LLC. That Delaware entity had a business address of 3511 Silverside Road, Suite 105, Wilmington, Delaware, 19810 and federal EIN of 65-1248199.

3. The Delaware entity known as Palmetto Construction Group, LLC ("Delaware LLC") sold its assets and wound up its business affairs in late 2018 and early 2019. Upon winding up the Delaware LLC's business affairs, I caused to be filed a Certificate of Cancellation with respect to the Delaware, LLC with the State of Delaware, Secretary of State, Division of Corporations.

4. On March 22, 2019, I also filed Articles of Termination – Limited Liability Company Domestic, for "Palmetto Construction Group, LLC" with the South Carolina Secretary of State's Office; those Articles have Filing ID 190322-1416377. I intended for those Articles of Termination to apply to the Delaware LLC. At the time, I believed that such Articles of Termination were necessary because the Delaware LLC of the same name filed tax returns with the South Carolina Department of Revenue with regard to an asset it held and sold in the state. I did not know that there was a separate, distinct business entity formed under South Carolina law

known as Palmetto Construction Group, LLC. The subject Articles of Termination were filed by mistake on March 22, 2019 with South Carolina Secretary of State's Office. There is no relationship or affiliation whatsoever between the Delaware LLC and the South Carolina LLC known as Palmetto Construction Group, LLC. It was not my intent to file Articles of Termination for the South Carolina limited liability company known as Palmetto Construction Group, nor was I acting for or on behalf of that South Carolina LLC in doing so.

5. I request please that the South Carolina Secretary of State's Office accept this Affidavit in support of Articles of Correction being filed on behalf of Palmetto Construction Group, LLC, the South Carolina limited liability company, to revoke the Articles of Termination and allow the South Carolina LLC be reinstated.

I swear or affirm under penalty of perjury that the information in this Affidavit is true and correct to the best of my knowledge.

JoAnn Eaddy

SWORN TO before me this 1st day of December, 2021

Meagan E. Kuhlman
Notary Public for South Carolina
My Commission Expires: 9-21-2031

MEAGAN E. KUHLMAN NOTARY PUBLIC COMM. EXP. 09-21-2031 SOUTH CAROLINA

ELECTRONICALLY FILED - 2022 Jan 27 2:02 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143

ELECTRONICALLY FILED - 2022 Jan 27 2:02 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1001143



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group,	)	
	)	MOTION AND ORDER INFORMATION
Plaintiff,	)	FORM AND COVER SHEET
vs.	)	
	)	
Restoration Specialists, LLC., *et al.*,	)	
	)	
Defendants.	)	

Plaintiff's Attorney: Andrew K. Epting, Jr. and Michelle Nicole Endemann Address: Andrew K. Epting, Jr. LLC 3 State Street Charleston, SC 29401 Phone: (843) 377-1871 Email: ake@epting-law.com;men@epting-law.com Other:	Defendant's Attorney: A. Bright Ariail S.C. Bar No. 69570 Address: Law Office of A. Bright Ariail, LLC 12E Wappoo Creek Dr., Suite 202 Charleston, SC 29412 Phone: (843) 814-8805 Email: bright@brightariaillaw.com Other:

X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
PROPOSED ORDER /CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Continuance and Protection
Estimated Time Needed: 15 min Court Reporter Needed: YES

SECTION II: Motion Type

X Written motion attached.
Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached consent order.

Signature of Attorney for Defendant Date submitted

SECTION III: Motion Fee

X PAID – AMOUNT: $25.00
EXEMPT: Rule to Show Cause in Child or Spousal Support
Domestic Abuse or Abuse and Neglect
Indigent Status State Agency v. Indigent Party
Sexually Violent Predator Act Post-Conviction Relief
Motion for Stay in Bankruptcy
Motion for Publication Motion for Execution (Rule 69, SCRCP)
Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
Other: Motion Contained in Answer

JUDGE'S SECTION Motion Fee to be paid upon filing of the attached order.	JUDGE

Other:	CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

MOTION FEE COLLECTED: _____

CONTESTED – AMOUNT DUE: _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUN -3 PM 3:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

(2): The Defendants were served with the Notice of the default damages hearing on June 2, 2016 at 6:30 p.m. and; therefore, have not received timely notice of the hearing pursuant to SCRCP 6(d);

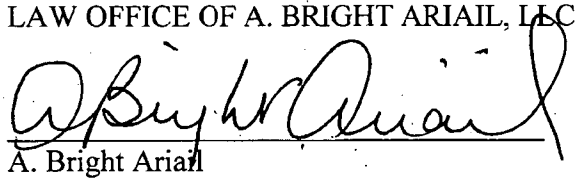
(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUN -3 PM 3:3?
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies, that on this 3rd day of June, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group,	)	
	)	MOTION AND ORDER INFORMATION
Plaintiff,	)	FORM AND COVER SHEET
vs.	)	
	)	
Restoration Specialists, LLC., *et al.*,	)	
	)	
Defendants.	)	

Plaintiff's Attorney: Andrew K. Epting, Jr. and Michelle Nicole Endemann Address: Andrew K. Epting, Jr. LLC 3 State Street Charleston, SC 29401 Phone: (843) 377-1871 Email: ake@epting-law.com;men@epting-law.com Other:	Defendant's Attorney: A. Bright Ariail S.C. Bar No. 69570 Address: Law Office of A. Bright Ariail, LLC 12E Wappoo Creek Dr., Suite 202 Charleston, SC 29412 Phone: (843) 814-8805 Email: bright@brightariaillaw.com Other:

X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
PROPOSED ORDER /CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Set Aside Entry of Default
Estimated Time Needed: 30 min Court Reporter Needed: YES

SECTION II: Motion Type

X Written motion attached – **Motion to Set Aside Entry of Default**
Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached consent order.

Signature of Attorney for Defendant — Date submitted: 30 June 16

SECTION III: Motion Fee

X PAID – AMOUNT: $25.00
EXEMPT: Rule to Show Cause in Child or Spousal Support
Domestic Abuse or Abuse and Neglect
Indigent Status State Agency v. Indigent Party
Sexually Violent Predator Act Post-Conviction Relief
Motion for Stay in Bankruptcy
Motion for Publication Motion for Execution (Rule 69, SCRCP)
Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
Other: Motion Contained in Answer

JUDGE'S SECTION Motion Fee to be paid upon filing of the attached order.	_____ JUDGE

Other:	CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

MOTION FEE COLLECTED: _____

CONTESTED – AMOUNT DUE: _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUN -3 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order setting aside the Entry of Default for good cause, pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendant have promptly and timely filed their Motion seeking relief from the Entry of Default;

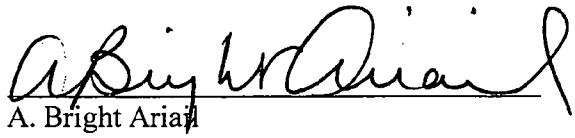
(2): The Defendants delay in responding to the Plaintiff's lawsuit was not culpable;

(3): The Defendants have a meritorious defense to the Plaintiff's lawsuit; and

(4): The Plaintiff will not suffer prejudice if Entry of Default is set aside.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Set Aside Entry of Default which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUN -3 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies, that on this 3rd day of June, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

Law Office of A. Bright Ariail, LLC

June 3, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258
Dillon, SC 29536

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

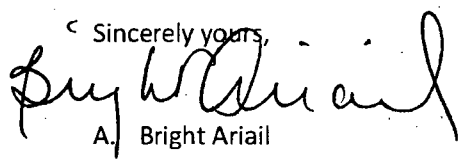
Dear Julie;

Enclosed, please find the original and one copy of the *Defendants' Notice of Motion and Motion to Set Aside Entry of Default Pursuant to SCRCP 55(c)* with the appropriate Motion Cover Sheet and Filing Fee for filing in the above captioned case.

By copy of this letter, I am serving this Motion on all Counsel of Record.

With kindest regards, I am

Sincerely yours,



A. Bright Ariail

Enclosures

cc: All Counsel (via email)

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Palmetto Construction Group, Plaintiff, vs. Restoration Specialists, LLC., et al., Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney: Andrew K. Epting and MIchelle N. Endemann, Bar No. 01908 & 79894, respectively Address: Andrew K. Epting, Jr., LLC 3 State Street Charleston, SC 29401 Phone: (843) 377-1871Fax (843) 377-1310 E-mail: ake@epting-law.comOther: mne@epting-law.com	Defendant's Attorney: A. Bright Ariail, Bar No. 69570 Address: Law Office of A. Bright Ariail, LLC 125E Wappoo Creek Dr., Suite 202 Charleston, SC 29412 Phone: (843) 814-8805 Fax(843) 266-0538 E-mail: bright@brightariaillaw.comOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Stay and to Compel
Estimated Time Needed: 30 min. Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

A Bright Ariail — 07/11/16

Signature of Attorney for ☐ Plaintiff /☒ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE CASE LAW**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 11 AM 11:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order staying this matter and compelling mediation and, if necessary, arbitration by the parties, pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and all applicable case law.

This Motion is made on the following grounds:

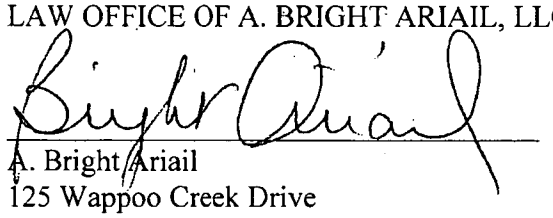
(1): The Plaintiff's Complaint, and the causes of action asserted therein, arise out of or are related to a contract containing mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and should stay this action and submit the matter to mediation, and if necessary, binding arbitration. S.C.R.C.P. 12(b)(1); *Steinmetz v American Media Services, LLC*, 393 S.C. 72, 709 S.E. 2d 708 (S.C. Ct. App. 2011); *Widner v. Fort Mill Ford*, 381 S.C. 522, 674 S. E. 2d 172 (S.C. Ct. App. 2009); *U.S. ex rel. Coastal Roofing Co., Inc. v. P.Browne & Associates, Inc.*, 585 F.Supp. 2d 708 (D.S.C. 2007).

(2): The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. The Defendants hereby join in and consent to Plaintiff's motion and the relief requested therein, including the stay of this matter and submission of

Plaintiff's claims to mediation and, and if necessary, binding arbitration.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Stay and to Compel which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

July 11, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 11 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies, that on this 11th day of July, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE LAW** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
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Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

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125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariallaaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

July 11, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC et al. C/A No. 2016-CP-10-1143***

Dear Julie:

Enclosed, please find the original and one copy of the *Defendants' Notice of Motion and Motion to Stay and to Compel Pursuant to SCRCP12(b)(1) and Applicable Law* with the appropriate Motion Cover Sheet and Filing Fee for filing in the above captioned case.

By copy of this letter, I am providing a copy of the Motion to the Honorable Mikell R. Scarborough, and I am serving this Motion on all Counsel of Record.

With kindest regards, I am

Sincerely,

A. Bright Ariail

ABA/wd
Enclosures
cc: The Honorable Mikell R. Scarborough (Via Hand Delivery)
All Counsel of Record (via email & US Mail)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 14 AM 11:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Pursuant to Rule 55(c), SCRCP, the Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion to Set Aside Entry of Default.

STATEMENT OF FACTS

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract (the "Contract") to construct the Charlie Norwood VAMC Parking Garage in Augusta ("the Project") by the Department of Veteran's Affairs. The Plaintiff entered into a Teaming Agreement with Restoration in December 2011 The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project in the amount of One Million, Eighty Two Thousand, Three Hundred Forty Two and 10/100 Dollars ($1,082,342.10). *(Exhibit A)*. Payment has been made to Plaintiff in the amount of One Million, Ninety Six Thousand, Five Hundred Sixty Nine and 19/100 Dollars ($1,096,569.19), an overpayment of Fourteen Thousand, Two Hundred Twenty Seven and 09/100 Dollars ($14,227.09). Currently, the Department of Veteran's Affairs is retaining Ninety Thousand, Eight Hundred Eighty Seven and 08/100 Dollars ($90.887.08) of contract funds due Restoration under the Contract.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balances due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward

and Lynnette Pennington Ward arising out of and involving said Subcontract Agreement.

Plaintiff filed this lawsuit on March 7, 2016. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

Plaintiff simultaneously served Defendants with both the Complaint and Motion to Stay and to Compel on March 14, 2016.

Plaintiff filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. The Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in Equity.

On June 2, 2016 at 6:30 pm, the Defendants were served with a Notice of default damages hearing. The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. Upon receipt of this Notice, the Defendants immediately retained legal counsel on June 3, 2016 and, through said counsel, filed their Motion to Set Aside Entry of Default.

LEGAL AUTHORITIES

A. Rule 55 (c), SCRCP

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E. 2d 537 (2014). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E. 2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted." *White Oak Manor*, 407 S.C. at ___, 753 S.E.2d at 542. In applying this standard, Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E. 2d 636, 638

(Ct. App. 1995).

LEGAL ANALYSIS

A. There is good cause for Defendants' brief delay in appearing in this action and vacation of the default entry will serve the interests of justice.

In the present case, the Defendants did not file a timely response to the Complaint for the reasons stated in the Affidavit of Reuben Mark Ward, dated June 3, 2016. The Defendants' omission was unintentional and the result of a good faith misunderstanding of the status of Defendants' arrangements with The Hanover Insurance Company ("Hanover") and the relation of Plaintiff's lawsuit thereto.

The Defendants are not attorneys and did not understand that Plaintiff's lawsuit was separate and apart from the bond claims that they have been working directly with Hanover to address. The Defendants' misunderstanding in this regard was innocent and carried no intention of gaining an unfair advantage over the Plaintiff or delaying legal proceedings. Upon learning of their error, Plaintiffs immediately retained legal counsel to appear and respond on their behalf in this matter.

Furthermore, the law does not favor defaults. As such, Rule 55(c) is liberally construed to promote justice and dispose of cases on the merits. *Dixon*, 320 S.C. at ___, 463 S.E. 2d at 638. The Defendants' short delay in appearing in and responding to Plaintiff's lawsuit constitutes no prejudice to the Plaintiff. The Defendants have asserted various defenses to Plaintiff's lawsuit, which if prevailed upon, would render a verdict contrary to the result reached by the entry of default.

For these reasons, and in light of the Defendants' good faith explanation for the default, vacating the entry of default would serve the interests of justice and promote disposition of the case on the merits.

B. The Defendants promptly and timely filed their motion seeking relief from the Entry of Default.

The Plaintiff filed a Motion to Refer to the Master In Equity and for Entry of Default on April 18, 2016. Thereafter, the Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in

Equity. *Affidavit of Reuben Mark Ward, dated June 3, 2016.*

On June 2, 2016 at 6:30 pm, the Defendants were served with the Notice of the default damages hearing. *Affidavit of Reuben Mark Ward, dated June 3, 2016.* The Notice scheduled the default damages hearing for the morning of June 6, 2016. The Defendants retained legal counsel on June 3, 2016, the very next day after being served with the default damages hearing Notice the night before. The Defendants' counsel immediately appeared on behalf of Defendants and filed the instant Motion to Set Aside Entry of Default on the afternoon of June 3, 2016.

As established by the above timeline, the Defendants took immediate action upon learning of the default status and receipt of notice of the damages hearing. This action included the retention of defense counsel within 24 hours of becoming aware of the default status and damages hearing followed by the immediate filing of the Motion to Set Aside Entry of Default. Thus, the Defendants satisfied the good cause timely motion filing requirement under Rule 55(c), SCRCP.

C. The Defendants have a meritorious defense to the Plaintiff's lawsuit.

The Defendants' defenses to the Plaintiff's lawsuit, include, but are not limited to the following:

(1): The contract giving rise to Plaintiff's Complaint contains mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and must stay this action and submit the matter to mediation, and if necessary, binding arbitration. Rule 55(c), SCRCP; *See also, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

(2): Plaintiff has been paid in full under the Subcontract Agreement; in fact, Plaintiff has been overpaid by Fourteen Thousand, Two Hundred Twenty Seven and 09/110 Dollars ($14,227.09).

(3) There is no agreement for profit sharing between the parties. Per the Teaming Agreement, entered into between Restoration and Plaintiff in connection with the Project, "[n]othing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties." (*Exhibit B).* There is no provision for profit sharing contained within the Subcontract Agreement.

(4) The Payment Bond delineates the obligation for payment of Project subcontractors and vendors as that of Restoration, as Principal, and The Hanover Insurance Company, as Surety. *(Exhibit C)*. Restoration disputes the claims made by many of the subcontractors which have made claims against the Payment Bond.

(5) Restoration has not paid all subcontractors and vendors in full as the Department of Veterans' Affairs is retaining funds due under the Contract.

(6) The Teaming Agreement includes a waiver of damages, specifically: "ARTICLE 9 DAMAGES – Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise."

If Defendants prevail on any of these defenses, the outcome would be contrary to the result rendered by the entry of default. Therefore, the Defendants have set forth a meritorious defense sufficient to satisfy the good cause standard of Rule 55(c), SCRCP.

D. The Plaintiff will not suffer prejudice if Entry of Default is set aside.

The Defendants responded to Plaintiff's lawsuit with the retention of counsel and filing of the instant Motion to Set Aside Entry of Default on June 3, 2016. The Defendants took these actions within 51 days of the date on which Defendants' Answer to Plaintiff's Complaint was originally due, within 43 days of the entry of default, and within 24 hours of first learning of the default status and damages hearing. The Defendants' delay was short and creates no prejudice to the Plaintiff's ability to litigate the case. This brief delay has caused no tangible harm to Plaintiff such as a loss of evidence, increased difficulties of discovery, opportunity for fraud or collusion, undue expense or damage to the Plaintiff's legal position.

In fact, the corollary to the lack of prejudice to the Plaintiff is the extreme prejudice the Defendants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this scenario, the Plaintiff will have received significant undue advantage in that a litigated result will have been achieved by the Plaintiff in a case which Plaintiff acknowledges is governed by mandatory alternative dispute resolution and in which the court has no subject matter jurisdiction. *See, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

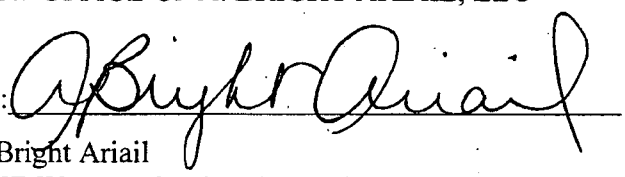
As no prejudice will result to Plaintiff in setting aside the entry of default, this good cause factor under Rule 55(c), SCRCP is satisfied.

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an Order Setting Aside the Entry of Default pursuant to Rule 55(c), SCRCP.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Set Aside Entry of Default be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: 

A Bright Ariail
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ATTORNEY FOR RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD and LYNNETTE PENNINGTON WARD

July 14, 2016
Charleston, SC 29412

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

Bindtek/CLEX

A

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .

(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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User Notes:
(1114130519)

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	SUBCONTRACTOR *(Signature)*
Mark Ward – Managing Member	Jay Hannegan - Vice President
(Printed name and title)	*(Printed name and title)*

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(1114130519)
User Notes:

Init. 15

TEAMING AGREEMENT

This Agreement is made and entered into as of the **28th** day of **November**, **2011**, by and between **Restoration Specialists, LLC**, a **Georgia** limited liability company (hereinafter called "RS"), and **Palmetto Construction Group, LLC**, a **South Carolina** limited liability company (hereinafter called "PCG"), each a "Party" and together the "Parties", for the purpose of submitting a proposal for **Solicitation Number VA-247-11-RP-0211** (hereinafter the "Services") to **Department of Veteran Affairs** (the "Customer") for the **New SCIU Hospital Parking Deck Minor Project: 509-325** project (the "Project"). ***RS, cage code 5GXE1, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

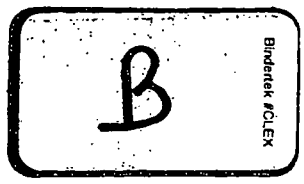
If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:



(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**
Restoration Specialists, LLC
PO Box 5352
Savannah, Ga. 31414
(912) 659-4355

Attention: **Jay Handegan**
Palmetto Construction Group, LLC
2265 Clements Ferry Rd. Suite 204
Charleston, SC 29492
(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Georgia.

RESTORATION SPECIALISTS LLC

By: _____
(Authorized Signature)
Title: Managing Member
Date: 12-01-11

PALMETTO CONSTRUCTION GROUP

By: _____
(Authorized Signature)
Title: Vice President
Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*	OMB No.:9000-0045 Expires: 11/30/2012
	April 23, 2012	

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 860 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum, for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

Binderlek #CLEX C

Restoration Specialists, LLC — PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. (Seal)	2. (Seal)		
NAME(S) *(Typed)*	1.	2.		
The Hanover Insurance Company — CORPORATE SURETY(IES)				
SURETY A — NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000	Corporate Seal
SURETY A — SIGNATURE(S)	1.	2.		
SURETY A — NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison, Attorney-in-Fact	2.		

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STANDARD FORM 25A (REV. 10-98)
Prescribed by GSA-FAR (48 CFR) 53.2228(c)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

INSTRUCTIONS

. This form, for the protection of persons supplying labor and material, is sed when a payment bond is required under the Act of August 24, 1935, 49 tat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the ritten approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, eir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

Bond No. 1944091

PERFORMANCE BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)* April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 800 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mill[illegible] Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contra[illegible] with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2.	(Seal)
NAME(S) *(Typed)*	1.	2.	

The Hanover Insurance Company — CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000.00	
	SIGNATURE(S)	1.	2.		Corporate Seal
	NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

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STANDARD FORM 25 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $ $15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	TOTAL $61,999.00 $0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Palmetto Construction Group Plaintiff, vs. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE CASE LAW**

FILED
2016 JUL 27 PM 12:3
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial Circuit at a time and place to be arranged by the Court and counsel involved for the Court to reconsider and amend its Order dated July 14, 2016 ("Order"). The Defendants will move the Court to amend its Order so as to make a final ruling on the merits of all motions filed in this matter and to lift the entry of default, stay this action and compel mandatory mediation/arbitration of this matter. The Defendants' Motion to Reconsider and to Alter or Amend ("Defendant's Motion) is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and all applicable case law.

The Defendants' Motion is made on the following grounds:

(1): The Defendants showed good cause such that the entry of default should be lifted in this matter. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(2): The Court lacks subject matter jurisdiction due to the mandatory and binding mediation/arbitration provisions contained in the contract giving rise to this action. *See, Defendants'*

Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).

(3): The contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Accordingly, the Court is required to stay this action and submit the matter to mediation, and if necessary, binding arbitration. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(3): The Plaintiff made a demand for mandatory mediation/arbitration contemporaneously with the commencement of this action pursuant to its Motion to Stay and Compel ("Plaintiff's Motion"). The Defendants joined in and consented to Plaintiff's Motion, which motion should be properly adjudicated before the court and the relief requested therein granted. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion)*;

(4): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion to Reconsider and to Alter or Amend).*

This Motion is based upon Defendants' Memorandum of Law in Support of Motion to Reconsider and to Alter or Amend which will be submitted to the Court prior to the hearing of

Defendants' Motion, the parties' prior motions and supporting memorandums of law referenced above, the complete files, exhibits, and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

July 27, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 27 PM 12:39
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies, that on this 27th day of July, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE LAW** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

LAW OFFICE OF A. BRIGHT ARIAIL, LLC
125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariaillaaw.com
A. Bright Ariail, Esquire
Telephone: (843) 814-8805
Facsimile: (843) 266-0538

July 27, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC et al. C/A No. 2016-CP-10-1143***

Dear Julie:

Enclosed, please find the original and one copy of the *Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP59(e) and Applicable Law* with the appropriate Motion Cover Sheet and Filing Fee for filing in the above captioned case.

By copy of this letter, I am providing a copy of the Motion to the Honorable Mikell R. Scarborough, and I am serving this Motion on all Counsel of Record.

With kindest regards, I am

Sincerely,

A. Bright Ariail

ABA/wd
Enclosures
cc: The Honorable Mikell R. Scarborough (Via Hand Delivery)
All Counsel of Record (via email & US Mail)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE CASE LAW**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 14 PM 1:58
JULIE J. ARMSTRONG
CLERK OF COURT

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

Pursuant to Rule 59(e), SCRCP, the Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion to Reconsider and Alter or Amend.

LEGAL AUTHORITIES

(1): **The Defendants showed good cause such that the entry of default should be lifted in this matter.**

The Defendants showed good cause such that the entry of default should be lifted. As a part of the good cause shown, the Defendants asserted their rights to mandatory mediation/arbitration under the mandatory alternative dispute resolution provisions under the contract. The Defendants' rights to mandatory mediation/arbitration are substantial rights which cannot be vitiated and foreclosed to the Defendants by the simple entry of default. *See, legal authorities cited below.*

Furthermore, these mandatory rights to mediation/arbitration are the same rights asserted and demanded by the Plaintiff in its Motion to Stay and Compel filed contemporaneously with the commencement of this action. For this reason, as well as the additional reasons cited in Defendants' Memorandum in Support of Defendants' Motion to Set Aside Entry of Default Pursuant to SCRCP

55(c), the Plaintiff cannot claim prejudice if the Entry of Default is lifted.

In fact, the corollary to the lack of prejudice to the Plaintiff is the extreme prejudice the Defendants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this circumstance, the Plaintiff will have received significant undue advantage in achieving a litigated result in a case subject to contractually agreed upon mandatory mediation/arbitration. This extreme prejudice will be further magnified by the significant limitations and restrictions imposed upon Defendants' rights to defend against Plaintiff's claims in the damages hearing forum.

On the basis of good cause shown, inclusive of the Defendants' rights to mediation/arbitration and the mandatory requirement of the Court to stay and compel mediation/arbitration, the interests of justice and the policy favoring disposition of cases on the merits dictate the vacation of the entry of default. Upon vacating the entry of default, the Court should stay the case and compel the case to mediation/arbitration consistent with the mandatory contract provisions and demands for mediation/arbitration made by all parties to this litigation.

(2): The Court lacks subject matter jurisdiction due to the mandatory and binding mediation/arbitration provisions contained in the contract giving rise to this action.

By virtue of the mandatory mediation/arbitration provisions in the contract, the Court is required to stay this litigation and submit the matter to mediation/arbitration. Under both federal and state law, when a case is sent to arbitration, the court is divested of jurisdiction over the case. *U.S. ex rel. Coastal Roofing Co., Inc. v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (2007); *Main Corp. v. Black*, 357 S.C. 179, 592 S.E. 2d 300 (2004). By virtue of the requirements of a mandatory stay and submission to mandatory mediation/arbitration, the Court shall be divested of jurisdiction over the matter.

(3): The contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Accordingly, the court is required to stay this action and submit the matter to mediation, and if necessary, binding arbitration.

The contract giving rise to this action requires mandatory mediation, and if necessary binding arbitration. The Plaintiff acknowledged this fact and the mandatory nature of the alternative dispute resolution provisions at the inception of this litigation in its Motion to Stay and Compel. In fact, the Plaintiff made a formal demand for mandatory mediation/arbitration in its Motion to Stay and Compel filed with the Court.

By virtue of the mandatory mediation/arbitration provisions in the contract, the Court is required to stay this litigation and submit the matter to mediation/arbitration. This stay of litigation requirement is mandatory under both federal and state law. *U.S. ex rel. Coastal Roofing Co., Inc. v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (DSC 2007); *Widener v. Fort Mill Ford*, 381 S.C. 522, 674 S.C. 172 (Ct. App. 2009).

(4): The Plaintiff made a demand for mandatory mediation/arbitration contemporaneously with the commencement of this action pursuant to its Motion to Stay and Compel. The Defendants joined in and consented to this motion, which motion should be properly adjudicated before the court and the relief requested therein granted.

The Defendants joined in and consented to the Motion to Stay and Compel originally filed by the Plaintiff, thus rendering the motion a joint motion of all parties to the case.

The Clerk of Court "closed out" the Motion to Stay and Compel due to the referral of the case to the Master in Equity. *See, Transcript of Hearing before the Honorable Mikell R. Scarborough on July 14, 2016.* The summary closure of this motion as an administrative matter without the Court's consideration and ruling upon the motion for all parties concerned was not a proper and valid adjudication of this motion.

The motion should be properly adjudicated before the Court and the relief requested therein granted. *See, all cases and legal authorities cited herein.*

(5): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law.

The policy of the United States and South Carolina is to favor arbitration of disputes. *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 540 S.E. 2d 864 (Ct. App. 2000). In the present case, the Defendants have not defaulted upon nor waived their right to mediation/arbitration under either state or federal law.

The Defendants have not defaulted upon nor waived their right to mediation/arbitration under state law because: (a): a substantial length of time did not transpire between the commencement of the action and the commencement of the motion to compel arbitration; (b): the Defendants did not engage in extensive discovery before moving to compel arbitration; and (3): the Plaintiff has not been prejudiced through an undue burden caused by any delay in seeking arbitration. *Toler's Cover Homeowners Ass'n v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E. 2d 581; *Carlson v. South State Plastering, LLC,* 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 544 S.E. 2d 643 (Ct. App 2001); and related cases.

The Defendants have not defaulted upon nor waived their right to mediation/arbitration under federal law because they have not so substantially utilized the litigation machinery that to subsequently permit arbitration would prejudice the party opposing the stay. *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC,* 585 F. Supp. 2d 770 (DSC 2008); *Rich v. Walsh,* 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003); and related cases.

The Court's Entry of Default against the Defendants, dated April 21, 2016 does not constitute a default upon or waiver of the Defendants' right to mediation/arbitration. *Id., see also, Cedar Surgery Center v. Bonelli,* 96 P.3d 911, 2004 UT 58 (Utah, 2004).

CONCLUSION

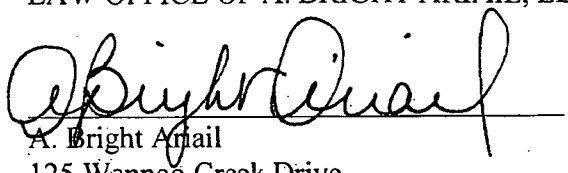
Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an order lifting the entry of default, staying this action and compelling mandatory mediation/arbitration of this matter.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and

Lynnette Pennington Ward hereby respectfully request that their Motion to Set Aside Entry of Default be granted.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

October 4, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 14 PM 1:53
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that on the 4th day of October, 2016, a true and correct copy of the Memorandum in Support of Defendants' Motion to Reconsider and to Alter or Amend Pursuant to SCRCP59(e) and Applicable Case Law was hand delivered to the following:

Andrew K. Epting, Esquire
Michelle N. Endemann, Esquire
46A State Street
Charleston, SC 29401

A. Bright Arrail

Charleston, South Carolina
October 4, 2016

Law Office of A. Bright Ariail, LLC

October 11, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find the original and one copy of Memorandum in Support of Defendants' Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law with Certificate of Service for filing in the above captioned case which was handed delivered to the Court and opposing counsel during the hearing held in this case on October 4, 2016. A SASE is also enclosed for return of the clocked copy.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: All Counsel

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	COUNTY OF CHARLESTON
	)	FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION, GROUP LLC.,	)	CASE NO. 2016-CP-10-1143
Plaintiff,	)	
vs.	)	
RESTORATION SPECIALISTS, LLC REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD,	)	**PALMETTO CONSTRUCTION'S OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER ALTER OR AMEND**
Defendants.	)	

FILED
2016 OCT 26 PM 1:13
JULIE J. ARMSTRONG
CLERK OF COURT

A. BACKGROUND

This matter arises out of Palmetto's suit against Defendants alleging, *inter alia*, that the Defendants misappropriated funds from a government construction project, failed to pay the subcontractors and suppliers, defaulted on its agreements with Palmetto and the indemnity agreement with the surety, leaving Palmetto responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Defendants on March 14, 2016, but the Defendants failed to answer. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to this Court.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Defendants and filed a motion to lift the default and compel arbitration. The motions were denied by Order dated July 14, 2016. The Order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the Court on July 18, 2016.

Defendants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Defendants wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. The Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11.

On September 30, 2016, Palmetto was served with a notice of appeal, and immediately filed a motion to dismiss. The parties appeared before this Court on October 4, and a record of the parties' positions was made as the procedural posture of the case was unusual considering there was no timely appeal of the interlocutory order denying the motion to lift the default and the Rule 59 motions remained pending.

On October 5, Palmetto's counsel received a letter from the Court of Appeals returning its motion to dismiss on the grounds that the Court had no record of such an appeal. Also on October 5, Palmetto was served by facsimile with a copy of another notice of appeal, different than the one previously served, which attached the July 14, 2016 Order and portions of the transcript of hearing. On October 6, 2016, Palmetto's counsel was served by facsimile with yet another version of the notice of appeal. On October 17, 2016, Palmetto's counsel received a letter from the Court of Appeals stating that one of the notices of appeal was being returned to Ms. Arial together with the transcript as the transcript is not an order and is not properly included with a notice of appeal **(EXHIBIT A).**

Palmetto submits the following in opposition to Defendants' Rule 59 motion.

B. THE COURT PROPERLY DENIED DEFENDANTS' MOTION TO BE RELIEVED FROM DEFAULT

The South Carolina Rules of Civil Procedure provide: "For good cause shown the court may set aside an entry of default . . ." Rule 55(c), SCRCP. "The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court." *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). In the present case, the Court correctly concluded that the Defendants failed to show good cause for why the default should be lifted. Defendants submitted an affidavit by Mr. Ward, acknowledging service of the complaint but stating that he failed to answer because he believed this litigation was part and parcel of that filed by Hanover, the surety. However, the surety has not instituted legal proceedings. Further, the Defendants do not have a meritorious defense to Plaintiff's claims as Mr. Ward acknowledges that he has failed to pay his subcontractors and suppliers, despite being paid over $8 Million dollars by the Department of Veterans Affairs. Further, Palmetto would be severely prejudiced if the default were lifted as the passage of time pushes Palmetto closer to closing their doors, and further, Palmetto has taken actions, like the withdrawal of its motion to compel arbitration and referral of the action to the Master in Equity, as a result of Defendants failure to timely answer.

C. PARTIES IN DEFAULT CANNOT ASSERT AFFIRMATIVE DEFENSES

As an initial matter, there are multiple Defendants named in this action and all are in default. Defendants have moved to compel arbitration, but arbitration is not a defense available to Mark Ward or Lynette Ward as they are not parties to the construction contract that contains the arbitration provision. *Vestry & Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Co.*, 356 S.C. 202, 207, 588 S.E.2d 136, 138 (Ct. App. 2003) (Arbitration is a matter of contract, and only parties to the agreement can be compelled to arbitrate).

1. **Arbitration is an Affirmative Defense as Specifically Defined by the South Carolina of Civil Procedure**

Rule 8(c) SCRCP states in relevant part:

> Affirmative Defenses; Reply. In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality...and any other matter constituting an avoidance or affirmative defense.

Further, South Carolina courts have consistently held that arbitration is an affirmative defense. See, e.g., *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 452, 730 S.E.2d 312, 314 (2012) (where plaintiff "opposed the motion to compel arbitration on the ground Brentwood Homes waived the right to assert the affirmative defense due to its delay in responding"; *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 490, 689 S.E.2d 602, 603 (2010) ("Upstate Auto asserted three affirmative defenses in its Answer, including an arbitration agreement with Partain.").

2. **An Affirmative Defense is Waived if Not Plead**

An affirmative defense is waived if not pled. *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 272, 750 S.E.2d 615, 623 (Ct. App. 2013) (internal citations omitted), *Howard v. S. C. Dep't of Highways*, 343 S.C. 149, 152, 538 S.E.2d 291, 294 (Ct. App. 2000); see also *RIM Assocs. v. Blackwell*, 359 S.C. 170, 182-83, 597 S.E.2d 152, 159 (Ct. App. 2004)(claims or defenses not presented in the pleadings are waived).

Specifically in the context of a party in default seeking to compel arbitration, courts in the fourth circuit have held that unless the movant is able to show good cause for its default, the defaulting party has waived its right to assert arbitration as an affirmative defense against continued litigation in the circuit court. *See State ex rel. Barden & Robeson Corp. v. Hill*, 208 W. Va. 163, 168-69, 539 S.E.2d 106, 111-12 (2000) *citing American*

Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 96 (4th Cir. 1996) (affirmative defense of arbitration must be pled in answer); *McDonnell v. Dean Witter Reynolds*, Inc., 620 F. Supp. 152, 155-56 (D. Conn. 1985) ("the affirmative defense of arbitration must appear in the answer, and 'a party's failure to plead an affirmative defense bars its invocation at later stages of the litigation.'") (internal citation omitted). *In State ex rel. Barden,* the West Virginia Supreme Court held that "[u]nexcused conduct that results in the entry of a default judgment is no less of an implicit waiver of a right to arbitration than any other procedural forfeiture".[1]

Defendants have cited one case in the context of a defaulting party moving for arbitration, the Supreme Court of Utah's opinion in *Cedar Surgery Center, LLC v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (2004). In Cedar Surgery, the Court suggests that the failure of the Bonellis to participate in the litigation evidenced their intent to enforce the parties' arbitration provision.[2] However, in this case, the Defendants failure to respond to the complaint and the accompanying motion to stay the litigation and compel arbitration evidences the opposite. Here, Palmetto served its own motion for arbitration with its complaint. If Restoration Specialists intended to enforce the arbitration provision, it could have simply answered and consented to arbitration. When the defendants chose to ignore

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[1] Facts in further support of the argument that Restoration Specialists waived its right to arbitration include the filing of an affidavit and motions with the Court unrelated to the arbitration issue as well as participating in discovery. The defendants answered written discovery on July 6, 2016 and then made three separate document productions on July 6, 11, and 13, 2016. It was only after their motion to lift the default was denied by this Court that Defendants moved to compel arbitration in search of a more favorable forum.

[2] "By declining to answer Cedar Surgery's complaint or otherwise respond to the litigation, the Bonellis were, in effect, refusing to acknowledge Cedar Surgery's efforts to circumvent the arbitration process with which it had contractually agreed to abide." *Cedar Surgery Ctr., LLC*, 96 P.3d 911, 915

the pleadings, Palmetto took steps in reliance on that inaction, including asking the circuit court to refer the case and withdrawing its own motion to compel arbitration. As the *Cedar Surgery Center* Court stated, Defendants should have "raised the contractual arbitration clause in an answer...and then brought a motion to compel arbitration, rather than simply ignoring" the litigation. *Id.* at 915. Defendants only sought to compel arbitration after they were unsuccessful before this Court in lifting the default. Defendants' motion to compel arbitration is more akin to forum shopping than preserving any contractual rights.

3. <u>The Federal Arbitration Act</u>

Where the contract documents "evidence transactions in commerce," the Federal Arbitration Act ("FAA"), enacted pursuant to the commerce clause, supersedes South Carolina law. *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977).

Ms. Arial represented that Restoration Specialists is a Georgia corporation, and the project was in fact constructed in Augusta Georgia. Therefore, there is interstate commerce and the FAA applies. The analysis under the FAA is the same as arbitration is an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure. *See, e.g., McDonnell v. Dean Witter Reynolds, Inc.*, 620 F. Supp. 152, 155-56 (D. Conn. 1985) (Holding that under Fed. R. Civ. P. 8(c), the affirmative defense of arbitration must appear in the answer, and "a party's failure to plead an affirmative defense bars its invocation at later stages of the litigation." *citing Doubleday & Company, Inc. v. Curtis*, 763 F.2d 495, 503 (2 Cir. 1985)). See also *Gen. Star Nat'l Ins. Co. v. Administratia Asigurarilor de Stat*, 289 F.3d 434, 438 (6th Cir. 2002) (finding waiver where a movant waited until after the entry of default judgment to compel arbitration).

D. CONCLUSION

Defendants' motion to reconsider should be denied as the Court properly found Defendants had not shown good cause to lift the default, and a party in default cannot assert the affirmative defense of arbitration.

ANDREW K. EPTING, JR., LLC

BY: _____

Andrew K. Epting, Jr.
Michelle N. Endemann
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P: 843-377-1871
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ATTORNEYS FOR PLAINTIFF

On this 18th day of October, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true
d correct copies of the pleading or paper to which
is certificate is affixed was served upon the party(s)
this action in accord with the applicable Court Rules
by electronic transmission or by hand delivery or by
regular U.S. Mail, postage prepaid, properly addressed
to the attorney(s) of record for such party(s).

Signed this 18 day of OCTOBER 2016 at
Charleston, South Carolina

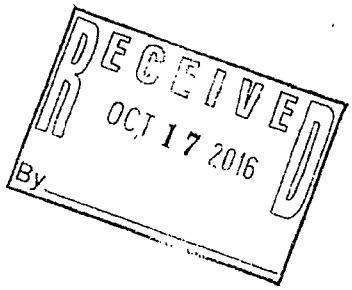
The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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October 13, 2016



Ms. A. Bright Ariail, Esquire
125E Wappoo Creek Drive
Suite 202
Charleston SC 29412

Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Counsel:

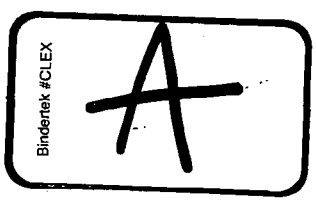
We are returning the second notice of appeal filed with this Court regarding circuit court case no. 2016CP1001143, that includes a cover letter dated October 6, 2016, as it appears to be a duplicate of the notice of appeal filed with this Court with a cover letter dated October 5, 2016. The second notice of appeal filing fee (paid by your check no. 1386) will also be returned to you.

We are also returning copies of the transcript filed with both notices of appeal as they are not a part of a notice of appeal. As the transcript has already been received, the appellants' initial brief and designation of matter are due October 31, 2016.

Very truly yours,

V. Claire Allen, Deputy

CLERK



cc: Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire

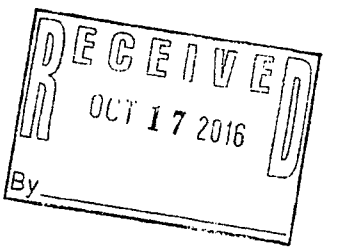
The South Carolina Court of Appeals

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October 13, 2016



Carolyn Taylor
1220 Senate St., Suite 101
Columbia, S.C. 29201

Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Ms. Taylor:

We received a duplicative notice of appeal in the above appeal. A. Bright Ariail, Esquire provided this office with a $100.00 notice of appeal filing fee in the form of a check (no. 1386) which was deposited on October 11, 2016, (receipt no. 81210). This second notice of appeal is being returned to Ms. Ariail.

Please refund the $100.00 filing fee to Ms. Ariail at the mailing address furnished below:

Ms. A. Bright Ariail, Esquire
125E Wappoo Creek Drive, Suite 202
Charleston SC 29412

Thank you for your assistance in this matter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire

ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

July 25, 2016

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street
Charleston, SC 29401

Re: *Palmetto Construction Group, LLC v. Restoration Specialist, LLC et al*
Case No.: 2016-CP-10-1143

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Palmetto Construction Group's Memorandum in Opposition to Defendants' Motion to Reconsider, Alter or Amend in the above-referenced matter.

I would greatly appreciate your filing the original Motion and returning the file-stamped copy to me in the self-addressed, stamped envelope provided. Thank you.

With kindest regards,

ANDREW K. EPTING, JR., LLC

s/*Angela*

Angela Gross
Legal Assistant to Andrew K. Epting, Jr.
and

/agg

Enclosures

cc: The Honorable Mikell R. Scarborough (w/enc.)
Bright Ariail, Esquire (w/enc.)

Andrew K. Epting, Jr. · ake@epting-law.com
Michelle N. Endemann · mne@epting-law.com
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Phone: (843) 377-1871 · Fax: (843) 377-1310

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**REPLY TO PALMETTO CONSTRUCTION'S OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER ALTER OR AMEND**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 25 AM 10:44
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider Alter or Amend.

FACTS/PROCEDURAL HISTORY

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract to construct the Charlie Norwood VAMC Parking Garage in Augusta, Georgia. ("the Norwood Parking Garage Project" or the "Project"). Prior to the contract award, the Plaintiff entered into a Teaming Agreement with Restoration in December 2011. The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project. *(Exhibit A)*.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balance due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward and Lynnette Pennington Ward ("Ward Defendants").

Plaintiff filed this lawsuit on March 7, 2016. *(Exhibit B)*. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. *(Exhibit C)*. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

Plaintiff simultaneously served all Defendants with both the Complaint and Motion to Stay and to Compel on March 14, 2016. *(Exhibit D).*

Plaintiff filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. *(Id.).* The Court entered default against the Defendants on April 21, 2016. *(Exhibit E).*

On the evening of June 2, 2016, the Defendants were served with a Notice of Hearing scheduling the default damages hearing for June 6, 2016. *(Exhibits F & G).* The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. *(Exhibit H).* Upon receipt of this Notice of Hearing, the Defendants immediately retained legal counsel on June 3, 2016. *(Id.).* Defendants' counsel immediately filed a Motion for Continuance of the damages hearing and a Motion to Set Aside Entry of Default on June 3, 2016. *(Exhibits I & J).*

At the hearing on June 6, 2016, the Master in Equity ("Master") granted Defendants' Motion for Continuance of the damages hearing and held the Motion to Set Aside Entry of Default in abeyance. *(Exhibit K).* The Master then directed the Defendants to provide the Plaintiff with financial information relative to the Project to see what could be resolved between the parties prior to reconvening the matter for a status conference on July 14, 2016. *(Id.).* Per the Master's direction, the Defendants provided certain documents and basic written discovery responses to Plaintiff.

On July 11, 206, the Defendants filed their own Motion to Stay and to Compel on the basis of the mandatory contractual mediation/arbitration provisions. *(Exhibit L).* In addition, the Defendants joined and consented to Plaintiff's Motion to Stay and to Compel, rendering that motion a joint Motion to Stay and to Compel mandatory mediation/arbitration ("Joint Motion"). *(Id.).* As such, Defendants' Motion to Stay and Compel and the Joint Motion to Stay and Compel were pending before the Master at this time.[1]

The parties reconvened before the Master on July 14, 2016. *(Exhibit M).* The Defendants also filed their Memorandum in Support of their Motion to Lift Entry of Default on July 14, 2016, including the continued assertion of their right to arbitration. *(Exhibit N).* During the reconvened hearing the Master stated that the Clerk of Court "closed out" the Plaintiff's Motion to Stay and Compel. *(Exhibit M.).* The Clerk's closure of the motion occurred despite Defendant's joinder in the motion. The Master issued a bench ruling finding that the Clerk's action constituted an adjudication of this motion. *(Id.).*

[1] While Plaintiff asserts that it withdrew its Motion to Stay and Compel, Defendants have not been provided a copy of

The Master further ruled from the bench finding Defendants in default, denying Defendants' Motion to Lift Entry of Default and scheduling a default damages hearing for October 4, 2016. *(Id.)*.

Upon completion of the reconvened hearing, the Master issued a formal order dated July 14, 2016. *(Exhibit O)*. The Master's formal order: (a): Denied Defendants' Motion to Lift Entry of Default for lack of good cause; (b): Denied Defendants' Motion to Stay and Compel on the basis of default; and (c): Set a damages hearing for October 4, 2016. *(Id.)*. Defendants received written notice of entry of these orders on July 18, 2016. *(Exhibit P)*.

The Defendants filed a timely Motion to Reconsider and to Alter and Amend the Master's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. *(Exhibit Q)*. The Master scheduled the hearing on Defendants' Rule 59(e) motion to be held on October 11, 2016, seven days after the scheduled damages hearing on October 4, 2016. *(Exhibit R.)*.

On September 7, 2016 standing on their rights to mandatory mediation/arbitration, the Defendants requested in writing that the Master schedule the hearing on Defendants' Rule 59(e) motion prior to the October 4, 2016 damages hearing. *(Exhibit S)*.

On September 7, 2106, the Master replied to Defendants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. *(Exhibit T)*. The Master asked the parties to advise if this plan was acceptable. *(Id.)* The Appellants informed the Master that this plan was acceptable. *(Id.)*. The Respondent notified the Master that it would defer to the Master, but preferred the damages hearing to proceed on October 4, 2016 and the motions hearing to be held thereafter on October 11, 2016. *(Id.)*.

After further consideration, the Master then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would proceed on October 4, 2016 and the motions hearing would be held on October 11, 2016. *(Id.)*. The Defendants received written notice of the Master's decision on September 12, 2016. *(Id.)*.

The Master's decision to proceed with the damages hearing and not hear the Defendants' Rule 59(e) motion prior thereto effectively denied this motion as proceeding with the damages hearing under these circumstances would have severely prejudiced and potentially forced a waiver of Defendants' rights to arbitration and foreclosure of any appeal therefrom. Therefore, subject to, without waiving and in fully reserving their rights to arbitration, the Defendants commenced an appeal in this matter on

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documentation reflecting such withdrawal, and, there is likewise nothing in the record to Defendants' knowledge.

September 30, 2016.

LAW/ANALYSIS

A. Good Cause exists such that the entry of default should be lifted in this matter.

In the present case, the contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Pursuant to these provisions, and contemporaneously with the commencement of this action, the Plaintiff made and served upon Defendants a demand for mandatory mediation/arbitration in its Motion to Stay and Compel ("Plaintiff's motion"). The Defendants joined in Plaintiff's motion and filed its own Motion to Stay and Compel mandatory mediation/arbitration less than four (4) months after Plaintiff's commencement of suit.

Applying the proper legal standard regarding the waiver/ default of arbitration rights to the evidence on record establishes that the Defendants have neither waived nor defaulted upon their rights to arbitration. *Toler's Cove Homeowners Ass'n v. Trident Const. Co., Inc.*, 355 S.E. 250, 586 S.E. 2d 581 (2003); *Carlson v. South State Plastering,* LLC, 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 544 S.E. 2d 643 (Ct. App. 2001) (; *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC*, 585 F. Supp. 2d 770 (D.S.C. 2008); *Rich v. Walsh*, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003); *see also, Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004) (applying default/waiver standard similar to South Carolina and federal law (Federal Arbitration Act) standard, finding defendant's failure to answer and assert arbitration defense in answer as not waiving right to arbitration, and setting aside default judgment and compelling arbitration).

Since there has been no waiver/default upon Defendants' rights to mandatory mediation/arbitration, the Court is required to stay this litigation and submit the matter to mediation/arbitration. *U.S. ex rel. Coastal Roofing Co., v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (DSC 2007); *Widener v. Fort Mill* Ford, 381 S.C. 522, 674 S.C. 172 (Ct. App. 2009). Furthermore, by virtue of this requirement to stay the litigation and compel arbitration, the Court is divested of subject matter jurisdiction. *U.S. ex rel. Coastal Roofing Co., v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (D.S.C. 2007); *Main Corp. v. Black*, 357 S.C. 179, 592 S.E. 2d 300 (2004).

Standing alone, these facts and the legal conclusions arising therefrom constitute good cause for lifting the entry of default, staying this action and compelling mandatory mediation/arbitration. *Id.*, *see also, Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004).

In addition, numerous other factors in this case further establish good cause and the propriety of granting relief from the entry of default. These factors include:

(1): Defendants' reasonable and good faith explanation for the default;

(2): The brief delay in Defendants appearance in this action;

(3): The Defendants prompt and timely filing of their motion seeking relief from the entry of default;

(4): The existence of significant meritorious defenses to Plaintiff's claims;

(5): The lack of prejudice to the Plaintiff if the entry of default is set aside[2];

(6): The extreme prejudice to the Defendants if the entry of default is not lifted;

(7): The promotion of justice and disposition of the case on the merits which will both be served by vacation of the entry of default.

SCRCP 55(c); *see also, Memorandum in Support of Defendants' Motion to Set Aside Entry of Default Pursuant to SCRCP 55(c); Memorandum in Support of Defendants' Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law.*

For these reasons, good cause exits to vacate the entry of default in this matter.

B. All Defendants, including the Ward Defendants, are entitled to mandatory mediation/arbitration in this matter.

The Plaintiff asserts that the Ward Defendants are not entitled to mediation/arbitration in this matter because they are not signatories to the contract that contains the arbitration provisions. The Plaintiff's argument lacks merit for a number of reasons.

First, the Plaintiff's Complaint, and the causes of action asserted against all Defendants, including the Ward Defendants, allegedly arise out of or are related to the contract containing the arbitration provisions. These provisions require all claims arising out of or related to the contract to be

[2] Plaintiff asserts that it would be severely prejudiced if the default were lifted "as the passage of time pushes [Plaintiff] closer to closing their doors and further, [Plaintiff] has taken actions, like withdrawal of its motion to compel arbitration and referral of the action to the Master in Equity, as a result of Defendants failure to timely answer." However, the claim of potentially having to close its doors is a bare assertion not supported by evidence in the record. Proof of prejudice must be concrete, not merely speculative. Furthermore, the remaining claims of "prejudice" refer to activities which are either not supported by the record or are nominal at best. Such claims are not sufficient to establish prejudice in this matter.

mediated, and if not resolved by mediation, to be resolved by binding arbitration.

Second, the arbitration provisions of the contract expressly allow for the joinder of non-signatories to the arbitration. Specifically, § 6.3.4 of the contract states in relevant part:

> "Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law of fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder."

The Ward Defendants consented in writing to their joinder in the arbitration in their Motion to Stay and to Compel Pursuant to SCRCP 12(b)91) and Applicable Case Law. Specifically, the Ward Defendants stated in their motion:

> "The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. *The Defendants hereby join in and consent to Plaintiff's motion and the relief requested therein, including the stay of this matter and submission of Plaintiff's claims to mediation and, if necessary, binding arbitration.*" (emphasis added).

Third, the Plaintiff is equitably estopped from denying the Ward Defendants' standing to enforce the arbitration provisions on the following grounds: (1): The Plaintiff's Motion to Stay and Compel demanded that all claims in this action, including Plaintiff's claims against the Ward Defendants, be stayed and compelled to arbitration; (2): The application of the principles of equitable estoppel espoused and enforced in *U.S. ex rel. Coast. Roofing v. P. Browne & Assoc.*, 585 F. Supp. 2d 708 (D.S.C. 2007).

C. The Plaintiff's Arguments That The Right To Arbitrate Is An Affirmative Defense Which Has Been Waived By Defendants Lack Merit.

The Plaintiff first claims that "arbitration" is an affirmative defense as specifically defined by Rule 8(c) SCRCP. However, the only arbitration related affirmative defense specified in Rule 8(c) is the defense of "arbitration and award." The defense of "arbitration and award" is an affirmative defense asserting that the subject matter of the action has already been settled in arbitration. *Black's Law Dictionary* 120 (9th ed. 2009). Thus, Rule 8(c) is limited to the situation where a dispute already has been arbitrated and an award has been obtained. *Id.*; *Lee v. Grandcor Medical Systems, Inc.*, 702 S.

Supp. 252 (D. Colo., 1988). Neither has occurred in this case and Plaintiff's reliance on Rule 8(c) is erroneous.

The Plaintiff next asserts that South Carolina courts have consistently held that arbitration is an affirmative defense. Plaintiff cites two South Carolina cases for this proposition; namely, *Bradley v. Brentwood Homes, Inc.,* 398 S.C. 447, 730 S.E. 2d 312 (2012) and *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 689 S.E. 2d 602 (2010).

The Plaintiff's reliance on these cases for this proposition is misplaced. In *Bradley*, 730 S.E. 2d at 314, the Court, in reviewing the procedural history of the case, stated:

"At the hearing before the circuit court, [Plaintiff] initially opposed the motion to compel arbitration on the ground [Defendant] waived the right to assert the affirmative defense due to its delay in responding to discovery requests."

The court's reference to Plaintiff's objection to an affirmative defense in Defendant's motion to compel arbitration was a recitation of a portion of the case procedural history and the Plaintiff's characterization of the grounds for objection.

The actual legal issue before the *Bradley* Court was whether the transaction involved interstate commerce thus rendering the arbitration agreement enforceable under the Federal Arbitration Act. The Court ultimately held that the motion to stay the proceedings and compel arbitration must be denied due to a lack of sufficient evidence of interstate commerce. The Court did not hold or otherwise rule that the right to compel arbitration is an affirmative defense in South Carolina.

Likewise, in *Partain*, 689 S.E. 2d at 603, the Court was again reviewing the procedural history of the case and Defendant's characterization of its defenses when referencing that the Defendant had "asserted three affirmative defenses in it Answer, including an arbitration agreement with [Plaintiff]." The legal issue before the *Partain* Court was whether the Plaintiff's claims were within the scope of the arbitration agreement. Once again, the Court did not hold or otherwise rule that the right to compel arbitration is an affirmative defense in South Carolina.

The remainder of Plaintiff's Opposition to Defendants' Motion to Reconsider Alter or Amend asserts that the right to compel arbitration is an affirmative defense that is waived if not plead and that a party in default cannot assert this defense. A review of the remaining cases cited by Plaintiff establish that they are distinguishable and inapposite to the present case:

(1): *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 750 S.E. 2d 615 (Ct. App. 2013) – This case does not involve an arbitration agreement and concerns the defenses of res judicata and collateral estoppel);

(2): *Howard v. S.C. Dep't of Highways*, 343 S.C. 149, 538 S.E. 2d 291 (Ct. App. 2000) – This case does not involve an arbitration agreement and concerns the defense of assumption of the risk;

(3): *RIM Assocs. V. Blackwell*, 359 S.C. 170, 597 S.E. 2d 152 (Ct. App. 2004) – This case does not involve an arbitration agreement and concerns the defense of res judicata;

(4): *State ex rel. Barden & Robeson Corp. v. Hill*, 208 W. Va. 163, 539 S.E. 2d 106 (2000) – This case is not a South Carolina case, does not apply South Carolina law and is not binding precedent in South Carolina. This is a West Virginia case with the opinion issued by the Supreme Court of Appeals of West Virginia. While acknowledging that other courts find the arbitration defense in Rule 8(c) pertains exclusively to completed arbitration proceedings, the Court specifically holds that arbitration is an affirmative defense under West Virginia law. While holding arbitration to be an affirmative defense, the court does not find that failure to assert the defense in an answer constitutes waiver of the defense as a matter of law. The court states that as an affirmative defense it must be asserted in the answer or *it may, under appropriate circumstances, be deemed waived* pursuant to W. Va. R. Civ. P. 8(c) (emphasis added). Finally, the court's review of West Virginia waiver law does not indicate a standard similar to South Carolina's arbitration waiver law.

(5): *American Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F. 3d (4th Cir. 1996) – This is a federal case with the opinion issued by the United States Court of Appeals, Fourth Circuit on appeal from the United States District Court for the Eastern District of Virginia. The court applies federal civil procedure law finding that arbitration is required to be raised as an affirmative defense in the answer under the Federal Rules of Civil Procedure. Obviously, the Federal Rules of Civil Procedure do not apply in the present case. Moreover, the court made it clear in citing *Maxum Foundations, Inc., v. Salus Corp.* 779 F.2d 974 (4th Cir. 1985) in support of its finding of no waiver, that failure to assert the right to arbitrate as an affirmative defense does not waive the defense as a matter of law. Instead, it takes additional delay, significant utilization of the litigation machinery and prejudice to the party opposing the stay to before waiver/default can be found. *See Maxum Foundations, Inc.*, 779 F.2d at 982-83 (holding that defendant had not waived its right to arbitrate when it did not raise arbitration as an affirmative defense in its answer, it delayed three months after the complaint to file a motion to dismiss because of arbitrability, and it filed the motion to dismiss after discovery had been initiated in the action).

(6): *McDonnell v. Dean Witter Reynolds, Inc.*, 620 F. Supp. 152 (D. Conn. 1985) - This is a federal

court case with the opinion issued by the United States District Court for the District of Connecticut. Likewise, the court applies federal civil procedure and makes it clear that any failure to assert arbitration as an affirmative defense must be accompanied by significant delay, substantial involvement in litigation and sufficient prejudice to the opposing party to find waiver.

(6): *Doubleday & Company, Inc. v. Curtis*, 763 F.2d 495 (2 Cir. 1985) – This is a federal case with the opinion issued by the United States Court of Appeals, Second Circuit on appeal from the United States District Court for the Southern District of New York. The case arises out of a book publishing dispute, applies federal procedural law and New York substantive law and involves the affirmative defense of waiver. The case does not in any way involve issues of arbitration.

(7): *General Star Nat'l Ins. Cp. V. Administratia Asigurarilor de Stat*, 289 F.3d 434 (6th Cir. 2002) – This case is a federal case with the opinion issued by the United States Court of Appeals, Sixth Circuit on appeal from the United States District Court for the Southern District of Ohio. The court applied federal law in finding that the Defendant waived its right to arbitrate due to its extreme delay in asserting the right to arbitrate and the prejudice incurred by the Plaintiff. Specifically, the Defendant did not assert its right to arbitration until 17 months after receiving notice of the lawsuit and 1 year after the entry of default judgment, during which time the Plaintiff incurred the costs of the action.

D. The Defendants Have Not Defaulted Upon Nor Waived Their Right To Mediation/Arbitration Under The Mandatory Alternative Dispute Resolution Provisions Of The Contract And Applicable Law.

The policy of the United States and South Carolina is to favor arbitration of disputes. *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 540 S.E. 2d 864 (Ct. App. 2000).

In South Carolina, "[i]n order to establish waiver of the right to enforce an arbitration clause, a party must show prejudice through an undue burden caused by delay in demanding arbitration." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E. 2d 749, 753 (Ct. App. 1999). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Id.* (internal quotation marks omitted).

The Court of Appeals has recognized three factors to consider when determining whether a party has waived its right to compel arbitration:

(1) whether a substantial length of time transpired between the commencement of the action and the

commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration.

Davis v. KB Home of S.C., Inc., 394 S.C. 116, 131, 713 S.E. 2d 799, 807 (Ct. App. 2011) (internal quotation marks omitted).

"To establish prejudice, the non-moving party must show something more than mere inconvenience." *Id.* (internal quotation marks omitted). In addition to the above factors, the Court of Appeals has also considered the extent to which the parties have availed themselves of the circuit court's assistance. *See id.* at 133, 713 S.E. 2d at 808.

Similarly, under federal law governing arbitration agreements subject to the Federal Arbitration Act, the party opposing arbitration bears a heavy burden of proving default or waiver. *Brown v. Green Tree Services, LLC,* 585 F. Supp. 2d 770 (D.S.C. 2008). Default or waiver only arises when the party seeking arbitration "so substantially utilize[ed] the litigation machinery that to subsequently permit arbitration would prejudice the party opposing the stay." *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *see also, Brown v. Green Tree Services, LLC,* 585 F.Supp. 2d 770 (D.S.C.); *Rich v. Walsh*, 357 S.C. 64, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003). Because of the strong federal policy favoring arbitration the federal courts do not lightly infer the circumstances constituting waiver. *Patten Grading*, 380 F. 3d 200.

In the present case, the Defendants moved to set aside the entry of default, one of the grounds for which included Defendants' right to arbitration, within 2 ½ months after commencement of this action and 1 ½ months after the entry of default. In addition, they formally moved to compel arbitration less than four (4) months after commencement of the action, within 2 ½ months after the entry of default and within 5 weeks of learning of the entry of default. No depositions have been taken in this action. The Defendants have not served and the Plaintiff has not responded to any interrogatories, requests for production or other written discovery. In fact, the only discovery engaged in is the Defendants answering of Plaintiff's basic First Set of Interrogatories and First Request for Production. Defendants answered Plaintiff's limited written discovery pursuant to the direction of the Court. The Court's assistance has been limited to two (2) brief motions hearings and one (1) brief proffering conference. Finally, the Plaintiff has not been prejudiced through an undue burden caused by any delay in the Defendants' demand for arbitration.

Applying the above standards to the facts in this case, it is clear that the Defendants have not defaulted upon nor waived their right to mandatory mediation/arbitration under either state or federal law. *See, Toler's Cover Homeowners Ass'n v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E. 2d 581; *Carlson v. South State Plastering, LLC*, 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr.*, 344 S.C. 533, 544 S.E. 2d 643 (Ct. App. 2001); *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC,* 585 F. Supp. 2d 770 (D.S.C. 2008); *Rich v. Walsh*, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003); *see also, Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004) (applying default/waiver standard similar to South Carolina and federal law (Federal Arbitration Act) standard, finding defendant's failure to answer and assert arbitration defense in answer as not waiving right to arbitration, and setting aside default judgment and compelling arbitration).

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an order lifting the entry of default, staying this action and compelling mandatory mediation/arbitration of this matter.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Reconsider and to Alter or Amend Pursuant to Rule 59(e) and Applicable Law be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC
By: _____

A Bright Ariail
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

October 24, 2016
Charleston, SC

ATTORNEY FOR RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD and LYNNETTE PENNINGTON WARD

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 25 AM 10:44
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that on the 24th day of October, 2016, a true and correct copy of the Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider, Alter or Amend was delivered via US Mail and/or electronic transmission to the following:

Andrew K. Epting, Esquire
Michelle N. Endemann, Esquire
46A State Street
Charleston, SC 29401

A. Bright Ariail

Charleston, South Carolina
October 24, 2016

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

EXHIBIT A

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification **Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC
CONTRACTOR *(Signature)*
Mark Ward – Managing Member
(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC
SUBCONTRACTOR *(Signature)*
Jay Hannegan - Vice President
(Printed name and title)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

PALMETTO CONSTRUCTION GROUP, LLC.,)
Plaintiff(s))

vs.)

RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD,)
Defendant(s))

CIVIL ACTION COVERSHEET

2016 -CP - 10- 1143

Submitted By: ANDREW K. EPTING, JR. ESQUIRE and MICHELLE N. ENDEMANN, ESQUIRE
Address: ANDREW K. EPTING, JR., LLC
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Fax #: 843-377-1310
Other: ake@epting-law.com
E-mail: mne@epting-law.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

If Action is Judgment/Settlement do not complete

- [x] **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

FILED
2016 MAR -7 PM 12:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- [x] Breach of Contract (140)
- [x] Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20___-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
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- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
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- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

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- ☐ Magistrate-Criminal (920)
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- ☐ SCDOT (950)
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- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

EXHIBIT B

Submitting Party Signature: _____ **Date:** 02/12/2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10- 1143 **SUMMONS**

FILED
2016 MAR -7 PM 12: 36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com
ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-_1143 **COMPLAINT**

FILED
2016 MAR -7 PM 12: 36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The above-named Plaintiff, subject to its simultaneously filed Motion to Stay and to Compel, states as follows:

1. Plaintiff Palmetto Construction Group, LLC ("Palmetto"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

2. Defendant Restoration Specialists, LLC ("Restoration"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

3. Defendant Reuben Mark Ward ("Mr. Ward") is an individual residing in the State of South Carolina at 1042-A East Montague Avenue, Charleston, SC 29405 and doing business in Charleston County, South Carolina as the Managing Member of Restoration.

4. Defendant Lynnette Pennington Ward ("Mrs. Ward") is an individual residing in the State of South Carolina and doing business in Charleston County, South Carolina.

5. Palmetto entered into a contract with Restoration on or about September 10, 2014 for the construction of facilities for the United States government on a project located in Augusta, Georgia.

6. That venue is proper in this court and this court has jurisdiction over the parties.

7. Attached as Exhibit A is the contract between Palmetto and Restoration together with a Teaming Agreement, Exhibit B, dated November 28, 2011.

8. That Palmetto has performed its contract and has completed all of its work on the project aforesaid.

9. Restoration has failed to pay the contract balances due under the contract and furthermore has failed to account for the profit sharing funds. As a consequence, Restoration has defaulted under its agreements with Palmetto.

10. Palmetto, Restoration, and, individually, Mr. Ward and Mrs. Ward, all signed an indemnity agreement with a surety in relation to a Payment Bond for this project (Exhibit C). Accordingly, Restoration, Mr. Ward, and Mrs. Ward must indemnify the surety and Plaintiffs to the extent that they are required to pay.

11. Claims have been made by other subcontractors upon the Payment Bond and as a consequence subcontractors are making claims against Palmetto and its surety.

FOR A FIRST CAUSE OF ACTION
BREACH OF AGREEMENTS

12. Palmetto restates each and every allegation above.

13. Restoration has received funds from the United States of America and has not paid those funds as required by its agreements with Palmetto as well as other subcontractors performing services for Restoration.

14. As a consequence of Restoration's default under its agreements with Palmetto and other subcontractors, Palmetto has been damaged in a sum to be determined.

FOR A SECOND CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

15. Palmetto restates each and every allegation above.

16. Mr. Ward represented that he would manage this project and that all monies from the project would be used to pay for material and work supplied to or performed on the project.

17. Mr. Ward has a pecuniary interest in the project.

18. The representations of Mr. Ward were material and were relied upon by Palmetto. Mr. Ward is personally liable for his own tortious conduct.

19. Palmetto's justifiable reliance upon Mr. Ward has resulted in damages in a sum to be determined.

FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE AND ACTUAL FRAUD

20. Palmetto restates each and every allegation above.

21. Mr. Ward knew or should have known that his statements were material and would be relied upon by Palmetto.

22. Mr. Ward intended and induced Palmetto to rely upon his representations.

23. Palmetto's justifiable reliance has damaged Palmetto in a sum to be determined.

24. Palmetto, in addition to requesting actual damages, requests punitive damages.

FOR A FOURTH CAUSE OF ACTION
OTHER LEGAL AND EQUITABLE RELIEF

25. Plaintiff restates each and every allegation above.

26. All Defendants are contractually bound to pay funds if there are claims on the surety bond.

27. There are claims on the surety bond.

28. Plaintiff requests legal and equitable relief against the Defendants.

FOR A FIFTH CAUSE OF ACTION
INJUNCTIVE RELIEF

29. Palmetto restates each and every allegation above.

30. Palmetto requests that this court enter its order mandating that any funds held or to be received by Restoration be utilized to pay Palmetto the sums due.

31. Upon information and belief, given Restoration and Mr. Ward's financial viability, an award of monetary damages would not protect Palmetto from injury.

FOR A SIXTH CAUSE OF ACTION
ACCOUNTING

32. Palmetto restates each and every allegation above.

33. Because Palmetto does not know all funds Mr. Ward has received and what has been distributed Palmetto asks for an accounting.

WHEREFORE, Palmetto requests actual and punitive damages, injunctive relief, an accounting, and such other relief as is just and proper.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

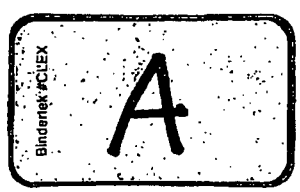
Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.



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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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User Notes: (1114130519)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification **Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC

CONTRACTOR *(Signature)*

Mark Ward – Managing Member
(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC

SUBCONTRACTOR *(Signature)*

Jay Hannegan - Vice President
(Printed name and title)

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(1114130519)
User Notes:

TEAMING AGREEMENT

This Agreement is made and entered into as of the **28th** day of **November**, **2011**, by and between **Restoration Specialists, LLC**, a **Georgia** limited liability company (hereinafter called "RS"), and **Palmetto Construction Group, LLC**, a **South Carolina** limited liability company (hereinafter called "PCG"), each a "Party" and together the "Parties", for the purpose of submitting a proposal for **Solicitation Number VA-247-11-RP-0211** (hereinafter the "Services") to **Department of Veteran Affairs** (the "Customer") for the **New SCIU Hospital Parking Deck Minor Project: 509-325** project (the "Project"). ***RS, cage code 5GXE1, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:



(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**
Restoration Specialists, LLC
PO Box 5352
Savannah, Ga. 31414
(912) 659-4355

Attention: **Jay Handegan**
Palmetto Construction Group, LLC
2265 Clements Ferry Rd. Suite 204
Charleston, SC 29492
(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Georgia.

RESTORATION SPECIALISTS LLC

By: _____
(Authorized Signature)
Title: Managing Member
Date: 12-01-11

PALMETTO CONSTRUCTION GROUP

By: _____
(Authorized Signature)
Title: Vice President
Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND *(See Instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*	OMB No.:9000-0045 Expires: 11/30/2012
	April 23, 2012	

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 860 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum, for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

Binderlek #CLEK C

Restoration Specialists, LLC — PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. (Seal)	2. (Seal)		
NAME(S) *(Typed)*	1.	2.		
The Hanover Insurance Company — CORPORATE SURETY(IES)				
SURETY A — NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000	Corporate Seal
SURETY A — SIGNATURE(S)	1.	2.		
SURETY A — NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

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STANDARD FORM 25A (REV. 10-98)
Prescribed by GSA-FAR (48 CFR) 53.2228(c)

CORPORATE SURETY(IES) *(Continued)*					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

INSTRUCTIONS

. This form, for the protection of persons supplying labor and material, is sed when a payment bond is required under the Act of August 24, 1935, 49 tat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the ritten approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, eir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

Bond No. 1944091

PERFORMANCE BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)* April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 860 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mil[illegible] Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contr[illegible] with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) *(Typed)*	1.	2.	

The Hanover Insurance Company — CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC. NH	LIABILITY LIMIT $96,082,000.00	
	SIGNATURE(S)	1.	2.		Corporate Seal
	NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY WORCESTER, MASSACHUSETTS 1852

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $	TOTAL $61,999.00
	$15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	$0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10- 1143 **MOTION TO STAY AND TO COMPEL**

FILED
2016 MAR -7 PM 12:
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, Palmetto Construction Group, LLC ("Palmetto"), hereby moves this court for an order staying this matter and compelling mediation and, if necessary, arbitration by the parties to proceed as contractually required by Article 6 of their Subcontract Agreement. In support thereof, Plaintiff states as follows:

1. Palmetto entered into a Subcontract Agreement (Exhibit A) with Restoration Specialists, LLC ("Restoration") on or about September 10, 2014 for the construction of facilities for the United States government on a project located in Augusta, Georgia.

2. The Subcontract Agreement contains a provision (Section 6.1.1) requiring the submission of any claim arising out of or related to the agreement to mediation as a condition precedent to binding dispute resolution. Additionally, Section 6.1.2 sets out specifically that the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the agreement.

EXHIBIT C

3. Section 6.1.2 of the Subcontract Agreement provides that a request for mediation may be made concurrently with the filing of binding dispute resolution proceedings. Under Section 6.2, any claim subject to but not resolved by mediation shall be resolved by binding arbitration pursuant to Section 6.3 of the agreement. Further, Section 6.3.1 provides that the arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the agreement.

4. Palmetto now alleges that a dispute has arisen out of and involving said Subcontract Agreement and that the Defendants are bound to mediate and arbitrate.

WHEREFORE, Palmetto prays that an order of this court be made directing that the claims asserted by Palmetto against the Defendants that arise out of the parties dealings be stayed, that mediation, and, if necessary, arbitration proceed in the manner provided for in said agreement, and for such other and further relief as to the court may seem proper.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

On this 17 day of February 2016
Charleston, SC

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

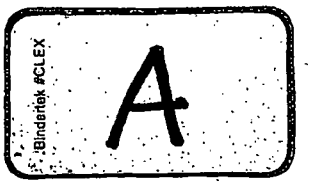
Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.



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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification **Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	**SUBCONTRACTOR** *(Signature)*
Mark Ward – Managing Member	Jay Hannegan - Vice President
(Printed name and title)	*(Printed name and title)*

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-10-1143 **MOTION TO REFER TO THE MASTER IN EQUITY AND FOR ENTRY OF DEFAULT**

FILED
2016 APR 18 PM 3:2
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, Palmetto Construction Group, LLC ("Palmetto"), hereby moves this Court for an order referring this case to the Master in Equity and for entry of default against the Defendants. As appears from the attached affidavit of default, Plaintiff served Defendants by way of process server with a copy of the summons and complaint and discovery requests on March 14, 2016. (See Exhibit A). Defendants have filed no pleading and have made no appearance in this case. Therefore, Plaintiff respectfully requests a default and that this matter be referred to the Master in Equity pursuant to Rule 53(b) SCRCP for all purposes including entry of final judgment against Defendants.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com; mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

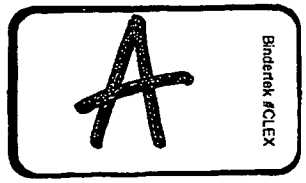
DATED: April 18, 2016
Charleston, South Carolina

EXHIBIT D

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **AFFIDAVIT OF DEFAULT**

PERSONALLY APPEARED before me, Andrew K. Epting, Jr., who, being duly sworn, alleges and says as follows:

1. I am the attorney for Palmetto Construction Group, LLC. in the above captioned matter, and I have personal knowledge of the facts relating to this action.
2. On March 7, 2016, Plaintiff filed a Summons and Complaint against Defendants Restoration Specialist, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, in the Charleston County Court of Common Pleas.
3. A copy of the Summons and Complaint was served on Defendant Restoration Specialists, LLC, by personal service, as evidenced by the Affidavit of Service dated March 14, 2016, attached hereto as EXHIBIT 1.
4. A copy of the Summons and Complaint was served on Defendant Reuben Mark Ward by personal service, as evidenced by the Affidavit of Service dated March 14, 2016, and attached hereto as EXHIBIT 2.
5. A copy of the Summons and Complaint was served on Defendant Lynnette Pennington Ward by personal service, as evidenced by the Affidavit of Service dated



March 14, 2016, and attached hereto as EXHIBIT 3.

6. More than thirty (30) days have elapsed since service of Plaintiff's Summons and Complaint. Defendants Restoration Specialist, LLC, Reuben Mark Ward, and Lynnette Pennington Ward have failed to answer or otherwise respond to the Complaint. Neither the Defendants nor counsel for Defendants have made an appearance or contacted Plaintiff or counsel for plaintiff.
7. Defendant Restoration Specialists, LLC is in default.
8. Defendant Rueben Mark Ward is in default.
9. Defendant Lynnette Pennington Ward is in default.
10. Defendant Reuben Mark Ward is not a minor, incompetent or in the military service.
11. Defendant Lynnette Pennington Ward is not a minor, incompetent or in the military service.

Andrew K. Epting

ANDREW K. EPTING, JR., ESQUIRE
Andrew K. Epting, Jr.
Michelle N. Endemann
Attorneys for Plaintiff
46A State Street
Charleston, SC 29401
Phone: (843) 722-6612
Fax: (843) 377-1310
ake@epting-law.com
mne@epting-law.com

SWORN TO BEFORE ME THIS
18 day of APRIL, 2016.

Notary Public for South Carolina

ANGELA GODDARD GROSS NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 10-20-2018

AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Restoration Specialists, LLC, Reuben Mark Ward, Registered Agent, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 2016 at 8:20pm., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Reuben Ward as Registered Agent a person authorized to accept service.

( ) GOVERNMENT AGENCY: By serving _____ as _____ of the within named agency.

( ) NON SERVICE: Due to reasons detailed in Comments below.

COMMENTS: Served at: 7 Diamond Causeway, Savannah, GA 31406

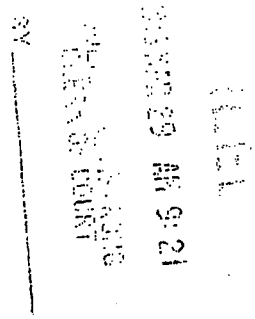
Age 40 Sex (M) F Race White Height 5'10" Weight 185 Hair Bald Glasses Y (N)

Bindertek #CLEX 1

RECEIVED
MAR 22 2016
By _____

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.



Subscribed and Sworn to before me on the 15 day of November 2018 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires



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AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Reuben Mark Ward, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 2016 at 8:10p.m., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

( ) INDIVIDUAL SERVICE: Served personally to the within-named.

(X) SUBSTITUTE SERVICE: By delivering to: Lynnete Ward, as co-resident/spouse, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE:Due to reasons detailed in Comments below.

( ) MILITARY STATUS: Y N If Yes, what branch:_____

COMMENTS: _____

Age F Sex (M) F Race White Height 5'6" Weight 130 Hair Blond Glasses (Y) (N)

RECEIVED
MAR 22 2016
By _____

Bindertek #CLEX 2

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of March 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires OCT. 15 2019

JOHN WORISP NOTARY PUBLIC CHATHAM CO., GEORGIA MY COMMISSION EXPIRES

PROCESS SERVER # _____
Appointed in accordance with State Statutes

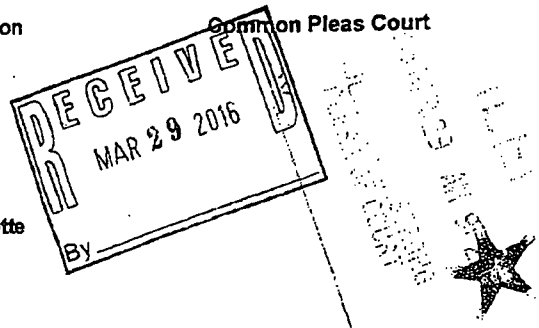
SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000515

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**



Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on Lynnete **Pennington Ward, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 20 16 at 8:10p.m., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served personally to the within-named.

( ) SUBSTITUTE SERVICE: By delivering to:_____, as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

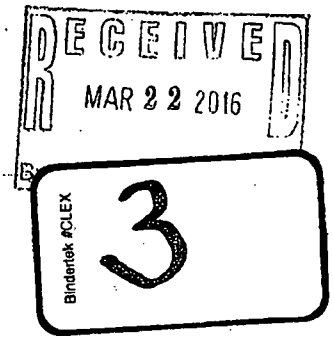
( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE:Due to reasons detailed in Comments below.

( ) MILITARY STATUS: Y N If Yes, what branch:_____

COMMENTS: _____

Age 35 Sex M (F) Race White Height 5'6" Weight 130 Hair Blond Glasses (Y) (N)



AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

FILED
2016 MAR 9 A 9:20
CLERK OF COURT
BY

Subscribed and Sworn to before me on the 15 day of March 2016 by the affiant who is personally known to me.

NOTARY PUBLIC: JOELLE BRISP

My Commission Expires: OCT 15 2019

JOELLE BRISP NOTARY PUBLIC CHATHAM CO., GEORGIA MY COMMISSION EXPIRES

PROCESS SERVER # _____
Appointed in accordance with State Statutes

SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000517

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10[illegible]-1143 **ORDER**

FILED
2016 APR 21 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court on the motion of Plaintiff seeking a referral to the Master in Equity and that the Defendants be declared in default.

WHEREAS an affidavit of default was filed on April 18, 2016;

WHEREAS from the affidavit of default, it appears that no pleading has been filed and no appearance on behalf of the Defendants made;

WHEREAS the Plaintiff seeks to have this matter referred to the Master in Equity and seeks a default against Defendants;

IT IS ORDERED that the Defendants are in default and this matter is referred to the Master in Equity pursuant to Rule 53(b) SCRCP for all purposes including entry of final judgment against Defendants.

IT IS SO ORDERED.

The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit

On this 21st day of April 2016
Charleston, SC

EXHIBIT E

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, v. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A NO. 2016-CP-10-1143 **AFFIDAVIT OF REUBEN MARK WARD**

FILED
2016 JUN -6 AM 11: 14
CHARLES E. SIMMONS
CLERK OF COURT
BY

PERSONALLY APPEARED BEFORE ME, Reuben Mark Ward, who having been first duly sworn, deposes and states as follows:

1. I am the Managing Member of Restoration Specialists, LLC ("Restoration Specialists").

I was served with the Notice of Hearing for the default damages hearing on June 2, 2016 at 6:30 p.m. by process server at my home located at 3 Bailey Reach, Savannah, Ga. 31411.

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

Sworn to before me
This 3 th day of June 2016.

Notary Public for the State of Georgia

My Commission Expires 09/4/2019

REBECCA M MAZUR
NOTARY PUBLIC
CHATHAM COUNTY, GA
Exp. Sept. 11, 2019

EXHIBIT F

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC; REUBEN MARK WARD; and LYNNETTE PENNINGTON WARD Defendants	)	CASE NO. 2016-CP-10-1143 **NOTICE OF HEARING**

PLEASE TAKE NOTICE that a default damages hearing is scheduled on Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Charleston County Court of Common Pleas located at 100 Broad Street, Charleston, SC 29401 pursuant to the enclosed Order of the Honorable Roger M. Young, Sr. dated April 20, 2016.

Respectfully submitted,

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
45A State Street, Charleston, SC 29401
P: 843.877.1871
F: 843.377.1310
ake@epting-law.com; mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

June 1, 2016
Charleston, South Carolina

EXHIBIT G

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PALMETTO CONSTRUCTION GROUP, LLC)

Plaintiff,)

v.)

RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-10-1143

AFFIDAVIT OF REUBEN MARK WARD

FILED
2016 JUN -6 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Reuben Mark Ward, who having been first duly sworn, deposes and states as follows:

1. I am the Managing Member of Restoration Specialists, LLC ("Restoration Specialists").

2. On March 29, 2012, Restoration Specialists was awarded a contract to construct the Charlie Norwood VAMC Parking Garage in Augusta, Georgia (the "Project").

3. On April 23, 2012, pursuant to the terms of that contract, Restoration Specialists provided Payment Bond 1944091 (the "Bond"), which was issued by The Hanover Insurance Company ("Hanover"). The Bond is at issue in this action.

4. I received the Summons and Complaint in the above referenced action on or about March 14, 2016.

5. Prior to receipt of the Summons and Complaint, I was contacted by James E. Rudnik, Esq., the Director – Risk Mitigation|Surety for The Hanover Insurance Group regarding the Bond.

6. On or about March 10, 2016, Mr. Rudnik notified me of certain bond claims that had been made against the Bond.

7. Pursuant to my discussions with Mr. Rudnik, Restoration Specialists has made direct payment to several subcontractors deemed to have valid bond claims.

8. Further, Restoration Specialists continues to have discussions with Hanover regarding other bond claims made.

EXHIBIT H

9. When I received the Summons and Complaint for the instant action, I thought that it was related to my arrangements with Hanover.

10. I am not an attorney and did not understand that the above captioned action was separate and apart from the bond claims that I have been working directly with Mr. Rudnik and Hanover to address.

11. I have no record and no recollection of receiving 1) a notice of motion hearing related to the Motion to Stay and to Compel, 2) the Motion to Refer to the Master in Equity and for Entry of Default, or 3) the Order for Entry of Default and Referral to the Master in Equity.

12. Upon receipt of the Notice of Hearing for the default damages hearing, the defendants understood for the first time that this was a separate action and immediately notified their attorney.

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

Sworn to before me
This 3 th day of June 2016.

Notary Public for the State of Georgia

My Commission Expires 09/11/2019.

REBECCA M MAZUR NOTARY PUBLIC CHATHAM COUNTY, GA Exp. Sept. 11, 2019

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Palmetto Construction Group Plaintiff, vs. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**

2016 JUN -3 P1 3:3

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

(2): The Defendants were served with the Notice of the default damages hearing on June 2, 2016 at 6:30 p.m. and; therefore, have not received timely notice of the hearing pursuant to SCRCP 6(d);

(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

EXHIBIT I

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-1143
)	
Palmetto Construction Group)	
)	
Plaintiff,)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
)	
vs.)	
)	
Restoration Specialists, LLC,)	
Reuben Mark Ward, and Lynnette)	
Pennington Ward)	
)	
Defendants.)	

2016 JUN -3 PM 3:

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

(2): The Defendants were served with the Notice of the default damages hearing on June 2, 2016 at 6:30 p.m. and; therefore, have not received timely notice of the hearing pursuant to SCRCP 6(d);

(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

2016 JUN -3 P 3:32

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order setting aside the Entry of Default for good cause, pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendant have promptly and timely filed their Motion seeking relief from the Entry of Default;

(2): The Defendants delay in responding to the Plaintiff's lawsuit was not culpable;

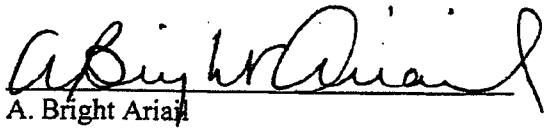
(3): The Defendants have a meritorious defense to the Plaintiff's lawsuit; and

(4): The Plaintiff will not suffer prejudice if Entry of Default is set aside.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Set Aside Entry of Default which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

EXHIBIT J

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 11:29 a.m. on June 6, 2016 at 100 Broad Street, Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

EXHIBIT K

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

Andrew K. Epting, Jr., Esq.
Michelle Endemann, Esq.
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
(843) 377-1871
Ake@epting-law.com
Mne@epting-law.com

ATTORNEYS FOR THE DEFENDANT:

A. Bright Ariail, Esq.
Law Office of A. Bright Ariail, LLC
125-E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
(843) 814-8805
Bright@brightariaillaw.com

PROCEEDINGS

THE COURT: This matter is captioned Palmetto Construction Group, LLC versus Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. The case number is 2016-CP-10-1143.

The matter is set today as a default damages hearing, and the matter was referred to the Court on April 18th, and entry of default was entered on that same date. It appears that service process was performed on Reuben Ward on or about March 14th, the case having been filed on March 7th, and also on Lynnette Ward on that same date it appears.

I believe Mr. Ward was served as the agent for the corporation, Restoration Specialists, LLC. This Court set it for a hearing in April on damages. I did receive, and I don't know -- have you got that --

MR. FISHBURNE: That is it.

THE COURT: Late last week from the Law Office of A. Bright Ariail a Motion to Set Aside the Entry of Default and also for continuance. Have you-all been provided with that as well?

MS. ENDEMANN: Yes, Judge, we were served on Friday afternoon.

THE COURT: Do you want to be heard first on

the motion before we get to the subset of the aspect of it, or where do we stand on that?

MS. ENDEMANN: Well, Judge, we were served late Friday, and we are amenable to try to come to some resolution of these motions. If I could give you a little bit of context and background for the case?

THE COURT: Sure.

MS. ENDEMANN: It's a case that arises out of a project for the VA. It was completing a hospital parking deck in Georgia. So Restoration Specialists was the general contractor on the project with the Department of Veteran's Affairs. My client, Palmetto Construction Group -- I have Mr. Kendle with me here today -- was approached by Restoration.

This was a large project for them. They needed some help getting a bond in place. In order to complete the job they needed help managing the project. They needed help completing the project. So they came to my client, Palmetto Construction Group, and asked for assistance.

A teaming agreement was entered into. So under this agreement Palmetto would manage the project, they would do other certain responsibilities, and Restoration would stay as the

general contractor. There would be a profit split as a result of this agreement. The project started -- seemingly it was going pretty well.

Towards the end of the project, we started to get some red flags. We started to get notices that some of the subcontractors, some of the suppliers, are not being paid by Restoration. Unfortunately, as part of this agreement with Restoration, Palmetto got their bonding company to write this bond. Palmetto is liable on the bond with Mr. Ward and Restoration and Ms. Ward. Mr. Kendle personally is liable on the bond. Mr. Handegan, another primary principal at Palmetto is obligated on the bond and so is his wife.

So when all of these claims start coming in from these subcontractors who say they're not getting paid from Restoration, it becomes our problem in a very large way. Hanover, the bonding company, turns to us and says, You need to pay for this. You're obligors on the bond. Now we have approximately $1.4 million dollars in claims on this bond for subcontractors and suppliers that have not been paid, and Hanover is looking to us to pay it.

It's impacting other jobs because obviously they have this issue with the bonding company, getting other bonds is becoming a problem. So

there's some real urgency on our clients' part to get this worked out as fast as we possibly can.

Mr. Ward had been making some overtures. Ms. Ariail was retained, and she filed the motions that you discussed earlier on Friday. If we could get some agreement, Judge? We need the file. We need the financials. We need the bank accounts. We need to get these documents in place, and we would like to ask him some questions about, where are these funds? You are receiving payments from the Federal Government. Where is the money going because Hanover is coming to us saying we need to pay it. We did our part but we're going to end up in a really tough spot here. So the urgency is really what we're impressing here.

We're amenable to trying to work something out on these motions, but we really need to have an agreement and exchange so that we can have these documents. We actually served the discovery with the Complaint, so it's already pretty well overdue. I actually today just served some deposition notices on Ms. Ariail. Of course she's just getting involved in the case.

We are looking to get these records as soon as possible. That's a little bit about potential

accounting that would be great. If that can't be done in the short term we would like the file. We would like the file anyway, but we would like that at least in the next seven or so days. If we can take a deposition in the next 14 days I think Ms. Ariail might have some issues with the date but as soon as possible, and maybe even get a hearing in front of Your Honor in case any other issues come up with the discovery or if we need to go to mediation. If there is any kind of order that we would like the Court's help with we could come back to you in order to work this out as quickly as we possibly can.

THE COURT: Ms. Ariail?

MS. ARIAIL: Your Honor, I learned of this matter Thursday night of last week. I have represented Restoration Specialists in other matters, so I am, unfortunately very new to this issue. I do understand from Mr. Ward, who is the managing member of Restoration Specialists, that he has been in contact with the attorney -- I guess it's an in-house attorney with the bonding company, and he has made some payments on some of these claims that are considered valid reaching back into the March timeframe of this year.

I know that he is eager to get this issue

resolved and behind him also. I've spoken to him after speaking with Palmetto's counsel on Friday, and he is willing to provide the documentation and absolutely would be willing to mediate this case. I believe there were -- per the contractors there was a mediation and then mandatory mediation as condition precedent to arbitration. So we would like to do that.

Unfortunately it's compounded by -- I'm actually leaving the country on Saturday for two weeks. I had not asked for an order of protection in this Court because I didn't have anything active in this Court. So that unfortunately is going to impact the time. I'm willing to do what I need to do to try to facilitate the exchange of information and move forward with this.

THE COURT: I think June 10th through the 24th were the dates you were requesting that you would be out?

MS. ARIAIL: Yes, sir.

THE COURT: Do you have information? Do you have documentation from your client based on your conversation you must have had last week with them? Have you gotten any of this stuff? Do you have it in hand I guess is my question?

MS. ARIAIL: I do not. The only thing I have are a couple of affidavits that are specific to the subject of the motions that I had filed.

THE COURT: I haven't seen any affidavits.

MS. ARIAIL: I just filed them this morning, Your Honor. He's out of state, so I had to have them overnighted to me on Saturday.

THE COURT: Sure.

MS. ARIAIL: I'll be happy to pass a copy up to you.

THE COURT: Okay.

MS. ARIAIL: Again, I had filed a Motion for Continuance and Protection. This is just dealing with this schedule to try to give me some time to figure out what's going on here and -- and then the Motion to Set Aside the Default. So there's two affidavits.

THE COURT: Okay. You have two affidavits from Mr. Ward: One explaining what was going on relative to the bond, and acknowledging receipt of the Summons and Complaint on or about March 14th; the other stating he's the managing member and just got notice of this hearing on June 2, which would have been last Thursday night at 6:30.

Ms. Endemann?

MS. ENDEMANN: Thank, you, Judge. I'm going to object to these just because I haven't seen them before now. One of the things I would like to point out -- we did serve Mr. Ward pursuant to the Rule last week with the notice of this hearing, and then ever since then there's sort of been a flurry of e-mail correspondence with the bonding company, and there have been some payments, but my understanding is that it's right near $20,000 on the $1.4 million that's outstanding.

So while he's making overtures, respectfully, we really need to push forward with the discovery because obviously that's not even putting a dent into what's owed. We're copied on most of this correspondence with the bonding company since they're coming to us weekly, if not daily, to get updates and try to get their money.

THE COURT: Are you-all already out the 1.4 or is that the amount of the claim.

MS. ENDEMANN: That's the amount of the claims. The bonding company has been making demand on this because they have been starting to pay these claims, and so our time is running very short. Then Ms. Ariail is going on vacation. I understand that. We can maybe work with her on the deposition dates.

I think we noticed it on the 20th. She will be back on the 26th. We can certainly move it until when she gets back, but Your Honor, I would really, really request that we can get these documents produced and the bank account information produced in advance of her going on her trip.

THE COURT: Ms. Arial, is that possible?

MS. ARIAIL: Your Honor, I will speak to my client. I can't represent to you when I can do it. I know he's out of the state today. He's in Oklahoma. I'm not sure when he's coming back, but I will absolutely do my best to make that happen.

THE COURT: All right. Here's what I'm going to do. I'm going to see if -- you-all need to get on a short timetable to see if you-all can't get a little scheduling order worked out over the next 60 days. I'm going to bring you-all back in here. I'm going to hold both of these motions under -- I'm going to essentially grant your Motion to Continue the Matter. Okay? Your Motion for Relief from the Entry of Default I'm not going to rule on yet. There's not much I saw in that affidavit that would give me indication that I would grant that motion. I can tell you that right now. Okay?

I will give you-all some time to see what

you-all can do to work out in the meanwhile, but it sounds like it needs to happen sooner than later. Okay? So I'll hold the Motion to Reopen the Entry of Default in abeyance.

As it stands now, the Defendants are in default. I'm going to give you some time because you are going on vacation, but it sounds to me like your client needs to come up with some information pretty darn quick. Okay? Let's see if you-all can't get this thing resolved. You indicated there was -- I think I read that in your correspondence. There was some sort of mandatory mediation prior to arbitration was you-all's contractual arrangement; is that what it was?

MS. ARIAIL: Yes, sir.

THE COURT: Well, we'll cross that bridge when we get to it. Okay? I would see if you-all can't set that up and get some information and get rolling with this. I'm going to bring you-all back in here. Let's get a date.

MS. BECK: We have some time July 14th.

THE COURT: Do you want to get a status about that time? July 14th? Does that give you enough time? You're going to be gone until the 24th, so back in the office -- that would be -- we ought to

find out where we're going at that time? Why don't you-all give me a response -- what does that day look like? Is it wide open?

MS. BECK: The 14th?

THE COURT: Yes.

MS. BECK: We have one at 11:00.

THE COURT: I'll put you-all down for 11:00 a.m. on the 14th of July. We'll reconvene at that time. See what you-all can resolve.

MS. ENDEMANN: Thank you, Judge.

(The proceedings were concluded at 11:43 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of July, 2016 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Palmetto Construction Group Plaintiff, vs. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE CASE LAW**

FILED
2016 JUL 11 AM 11:59
CHARLESTON COUNTY
CLERK OF COURT

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order staying this matter and compelling mediation and, if necessary, arbitration by the parties, pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and all applicable case law.

This Motion is made on the following grounds:

(1): The Plaintiff's Complaint, and the causes of action asserted therein, arise out of or are related to a contract containing mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and should stay this action and submit the matter to mediation, and if necessary, binding arbitration. S.C.R.C.P. 12(b)(1); *Steinmetz v American Media Services, LLC*, 393 S.C. 72, 709 S.E. 2d 708 (S.C. Ct. App. 2011); *Widner v. Fort Mill Ford*, 381 S.C. 522, 674 S. E. 2d 172 (S.C. Ct. App. 2009); *U.S. ex rel. Coastal Roofing Co., Inc. v. P.Browne & Associates, Inc.*, 585 F.Supp. 2d 708 (D.S.C. 2007).

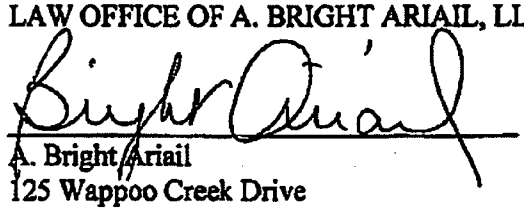
(2): The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. The Defendants hereby join in and consent to Plaintiff's motion and the relief requested therein, including the stay of this matter and submission of

EXHIBIT L

Plaintiff's claims to mediation and, and if necessary, binding arbitration.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Stay and to Compel which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

July 11, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
)
Palmetto Construction Group) Civil Action No. 2016-CP-10-1143
)
Plaintiff,)
)
vs.) **CERTIFICATE OF SERVICE**
)
Restoration Specialists, LLC,)
Reuben Mark Ward, and Lynnette)
Pennington Ward)
)
Defendants.)

FILED
2016 JUL 11 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies, that on this 11th day of July, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE LAW** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
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Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF

A. Bright Ariail, Esquire
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Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on July 14, 2016 at 100 Broad Street, Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

EXHIBIT M

APPEARANCES OF COUNSEL:

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PROCEEDINGS

THE COURT: Palmetto Construction Group versus Restoration Specialists, LLC. For the Plaintiffs is Mr. Drew Epting and Ms. Michelle Endemann. For the Defendants is Ms. Bright Ariail. Good morning, Ms. Ariail. I believe we are here on your motion, are we? Is that what got us here?

MS. ENDEMANN: Judge, I think we are here on a couple of different things that were noticed. I think you set it for sort of a general status after we were here before you about a month ago. Also, there is a Motion to be Relieved from Default that Ms. Ariail has filed, as well as a Motion to Compel Arbitration.

I can give you a little bit of an overview of sort of where we are from last time. I think it would be helpful.

THE COURT: Sure.

MS. ENDEMANN: If you recall, Judge, this is a case where my client, Palmetto Construction has sued a business associate of theirs on a project for the V.A. The agreement between Restoration Specialist and the other Defendants which are the principals of that company and Palmetto was essentially that they

would work together on a job with the V.A. Restoration was to be the general contractor. Palmetto was to aid Restoration in this job, provide their expertise on a job of this size, provide the bonds that were required in order to complete the project. There would be a split of the profits, and Mr. Ward was the one who had the contracts with the V.A., and then all the subcontractors below.

Unfortunately what happened is Mr. Ward stopped paying his subcontractors. He stopped paying them it looks like all together. We started receiving bond claims coming in toward the end of the job. We didn't know what was going on because we weren't a party to those agreements. We weren't the ones that were paying them. We weren't the ones that were receiving money from the V.A.

So Mr. Ward is getting money from the V.A. He's diverting the funds. His subcontractors filed claims on the bond for which Palmetto was liable, and personally liable, all of its principals, their wives, and now Hanover, the bonding company with surety is looking to us to pay over a million dollars in bond claims.

We were here before you last time for a damages hearing because we had served discovery with

our Complaint and the Complaint went unanswered. We're here for a damages hearing. We served Mr. Ward with notice of that hearing pursuant to the Rules, and it was then that he had hired Ms. Ariail.

She came and actually had a vacation planned, so we kind of came to an agreement. She was able to get us some of the documents that were owed. The discovery is not complete. In particular we're missing some pretty important things like the payments from the V.A. to Mr. Ward and then where that money went.

From the documents that we have received it appears that the project was pretty profitable with all the subcontractors being paid, and then still some hundreds of thousands of dollars in profit. So we're left looking at records that show there should be a surplus of funds.

Instead we're faced with the surety coming to us and saying, Hey, you owe us over a million dollars. The other problem that my client has is they do a lot of bonded work. They have a surety that says, You owe us over a million dollars. Nobody wants to bond any projects. So time is really, really of the essence here because we can't get work. If we can't get work our business goes under, and all

of our people don't have jobs, so we're really sort of in dire straits here.

THE COURT: Okay.

MS. ENDEMANN: We were served with this Motion to Compel Arbitration this week, and Your Honor has set it probably for expediency today. We don't think, Your Honor, that we can go forward on that motion. First, we don't think that he can bring the motion, period, because he's in default; and second, it's not properly before this Court as we only got notice of it a couple of days ago.

We think that the tapat here might be to try to get relief from default, get this motion heard, and get it appealed if Your Honor does not rule in their favor and ties this up for several years. If that happens, again, my client's out of business.

What we would like to see happen here today is have a damages hearing set because Mr. Ward is in default. He's not provided the Court with any reasonable explanation for being in default and is not entitled to make this Motion for Arbitration since he is in default. Thank you, Your Honor.

THE COURT: Ms. Ariail, let me hear from you on that one.

MS. ARIAIL: Your Honor, I don't totally agree

with the facts, but I think the thing that disturbs me the most is the statement that we haven't provided payments from the V.A. We have provided documentation of the amount of payments that have been made.

When we were in front of you a month or so ago there was a -- and there still is a standing Motion for Compelling Arbitration by the Plaintiff. They actually filed that. The contract requires it, and there is a motion that has not been heard that was filed by the Plaintiff for compelling arbitration.

In the meantime, despite the requirement for mediation and arbitration, and based on direction from the Court at the last hearing, we have complied with discovery. We have answered discovery. We have been continuously providing documents as we've compiled them, and at my direction my client has concentrated on the financial records rather than the voluminous information that is compiled on a two-or-three-year construction project.

That being said, I think it's proper to hear the Motion to Compel Mediation and Arbitration today. We merely joined what the Plaintiff's have already filed. For that reason I would ask that you go ahead and hear that motion.

THE COURT: You want to get out of Default first, don't you? I didn't rule on that last time I don't think?

MS. ARIAIL: You did not.

THE COURT: You're right. Mr. Epting and Ms. Endemann, it looks like there was a motion filed back in March to Compel. Is it mediation or arbitration? Is it contract specific?

MS. ENDEMANN: Your Honor, it's a standard Form AIA contract, so there is a provision in there having to do with mediation and arbitration. We did file that motion assuming that we were going to get a responsive pleading and that we would send it to arbitration. That's not what happened in this case. Instead we set aside that motion and asked for an order referring this case to you for a damages hearing which was granted by the Circuit Court.

THE COURT: I've got it. This was filed March 7th. That motion was with those -- that was as a result of the matter to referral. Mr. Ward was served on the 14th of March. The Motion to Set Aside the Entry was there. I recall we had a quick meeting and then you-all did some discovery and I haven't been able to resolve anything. Basically, it's a Motion for a Continuance which we granted. And then

Mr. Ward's affidavit. All right. That rings a bell.

Well, Ms. Ariail, I think the first thing you have to do is get out of default before you can bring affirmative relief. It does appear that the matter was referred over here. I think that took care of the -- the clerk closed out the Motion to Compel the Arbitration because of the fact that it was referred over here. So that based some adjudication on that motion is how the Court considers that.

I think what we were wrestling with last time was whether or not you-all could resolve it. That doesn't look like it's been done. I find that because it was not shown by Mr. Ward in his affidavits that that supported why he was in default I find the Defendant in default and I so order.

So this will be a question of a damages hearing to be set. How much time do you-all want?

MS. ENDEMANN: Your Honor, we probably need about an hour to two hours for the hearing, and we can hear it whenever the Court is available.

THE COURT: Okay.

MS. ARIAIL: Your Honor, I would ask since I have in good faith participated in discovery that I at least be allowed to serve some form of discovery related to damages so that I can prepare properly for

the damages hearing.

THE COURT: Ms. Endemann?

MS. ENDEMANN: I don't think we're in a position, Your Honor, to consent to that. Ms. Ariail can certainly Cross the Plaintiff on any damages that we present at the hearing as is allowed by the Rules, but she isn't allowed to present her own evidence in any event.

We're happy to try to -- most of the documents that we would use in support of our case are her clients and also Hanover's, which are the bond claims spreadsheets and everything, which Hanover is sending directly to her client and which we're happy to provide if that's not happening. I think she has everything that she would need. It would just be the testimony, and of course, she's entitled to Cross under the Rules.

THE COURT: All right. I think that's the case. All right? I'm assuming you've got what you've got. You're entitled to participate in a damages hearing. There's no doubt about that by Cross-Examination but not by putting forth in evidence.

MS. ARIAIL: Right, Your Honor, but to properly prepare to Cross-Examine their witnesses,

I've seen nothing they have. They have discussed an indemnity agreement in the Complaint. I don't have that. My client doesn't have that.

THE COURT: Well, it may expedite the matter to move forward so everybody's talking with the same thing. We don't have to read documents when we're here. I would ask that you-all share what you can in that regard. I'm not going to mandate it because I don't think that's proper. If we don't get it worked out we'll have a hearing in the next, what, 60 days or so?

MS. BECK: I didn't know if this might be something you might want to put on the trial term as a possibility. If not, we've got some time the first week in October.

THE COURT: I can bring you-all back -- I've got some trials coming up. I've been squeezing stuff in there. I've got a trial term in August and one in September. The last week of September?

MS. BECK: Yes, sir, or if they prefer a date certain we can do the first week of October.

MS. ARIAIL: Your Honor, I have a Court-ordered mediation the last week of September, so if we could move it to the first week of October that would be helpful.

THE COURT: Okay.

MS. BECK: The afternoon of the 5th, after those allocation hearings that you set, we can do the rest in the afternoon.

THE COURT: What's going on on the 4th?

MS. BECK: Nothing. That would be fine, too.

THE COURT: Why don't we set this for October 4th at 2:00 p.m. Let's just set it up. That's a Tuesday afternoon the first week of October. Okay?

MS. ENDEMANN: Thank you, Judge.

MR. EPTING: Thank you, Judge.

THE COURT: Very good. I'm just going to do a Form 4, and I'll put that in there. If you-all want to follow up with an order you can. 2:00 p.m.

MS. ENDEMANN: Thank you.

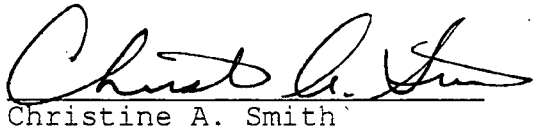
(The proceedings were concluded at 11:11 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of July, 2016 at Charleston, Charleston County, South Carolina.



Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Palmetto Construction Group Plaintiff, vs. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**

2016 JUL 14 AM 11:21

Pursuant to Rule 55(c), SCRCP, the Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion to Set Aside Entry of Default.

STATEMENT OF FACTS

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract (the "Contract") to construct the Charlie Norwood VAMC Parking Garage in Augusta ("the Project") by the Department of Veteran's Affairs. The Plaintiff entered into a Teaming Agreement with Restoration in December 2011 The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project in the amount of One Million, Eighty Two Thousand, Three Hundred Forty Two and 10/100 Dollars ($1,082,342.10). (*Exhibit A)*. Payment has been made to Plaintiff in the amount of One Million, Ninety Six Thousand, Five Hundred Sixty Nine and 19/100 Dollars ($1,096,569.19), an overpayment of Fourteen Thousand, Two Hundred Twenty Seven and 09/100 Dollars ($14,227.09). Currently, the Department of Veteran's Affairs is retaining Ninety Thousand, Eight Hundred Eighty Seven and 08/100 Dollars ($90.887.08) of contract funds due Restoration under the Contract.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balances due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward

EXHIBIT N

and Lynnette Pennington Ward arising out of and involving said Subcontract Agreement.

Plaintiff filed this lawsuit on March 7, 2016. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

Plaintiff simultaneously served Defendants with both the Complaint and Motion to Stay and to Compel on March 14, 2016.

Plaintiff filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. The Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in Equity.

On June 2, 2016 at 6:30 pm, the Defendants were served with a Notice of default damages hearing. The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. Upon receipt of this Notice, the Defendants immediately retained legal counsel on June 3, 2016 and, through said counsel, filed their Motion to Set Aside Entry of Default.

LEGAL AUTHORITIES

A. Rule 55 (c), SCRCP

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E. 2d 537 (2014). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E. 2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted." *White Oak Manor*, 407 S.C. at ___, 753 S.E.2d at 542. In applying this standard, Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E. 2d 636, 638

(Ct. App. 1995).

LEGAL ANALYSIS

A. There is good cause for Defendants' brief delay in appearing in this action and vacation of the default entry will serve the interests of justice.

In the present case, the Defendants did not file a timely response to the Complaint for the reasons stated in the Affidavit of Reuben Mark Ward, dated June 3, 2016. The Defendants' omission was unintentional and the result of a good faith misunderstanding of the status of Defendants' arrangements with The Hanover Insurance Company ("Hanover") and the relation of Plaintiff's lawsuit thereto.

The Defendants are not attorneys and did not understand that Plaintiff's lawsuit was separate and apart from the bond claims that they have been working directly with Hanover to address. The Defendants' misunderstanding in this regard was innocent and carried no intention of gaining an unfair advantage over the Plaintiff or delaying legal proceedings. Upon learning of their error, Plaintiffs immediately retained legal counsel to appear and respond on their behalf in this matter.

Furthermore, the law does not favor defaults. As such, Rule 55(c) is liberally construed to promote justice and dispose of cases on the merits. *Dixon*, 320 S.C. at ___, 463 S.E. 2d at 638. The Defendants' short delay in appearing in and responding to Plaintiff's lawsuit constitutes no prejudice to the Plaintiff. The Defendants have asserted various defenses to Plaintiff's lawsuit, which if prevailed upon, would render a verdict contrary to the result reached by the entry of default.

For these reasons, and in light of the Defendants' good faith explanation for the default, vacating the entry of default would serve the interests of justice and promote disposition of the case on the merits.

B. The Defendants promptly and timely filed their motion seeking relief from the Entry of Default.

The Plaintiff filed a Motion to Refer to the Master In Equity and for Entry of Default on April 18, 2016. Thereafter, the Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in

Equity. *Affidavit of Reuben Mark Ward, dated June 3, 2016.*

On June 2, 2016 at 6:30 pm, the Defendants were served with the Notice of the default damages hearing. *Affidavit of Reuben Mark Ward, dated June 3, 2016.* The Notice scheduled the default damages hearing for the morning of June 6, 2016. The Defendants retained legal counsel on June 3, 2016, the very next day after being served with the default damages hearing Notice the night before. The Defendants' counsel immediately appeared on behalf of Defendants and filed the instant Motion to Set Aside Entry of Default on the afternoon of June 3, 2016.

As established by the above timeline, the Defendants took immediate action upon learning of the default status and receipt of notice of the damages hearing. This action included the retention of defense counsel within 24 hours of becoming aware of the default status and damages hearing followed by the immediate filing of the Motion to Set Aside Entry of Default. Thus, the Defendants satisfied the good cause timely motion filing requirement under Rule 55(c), SCRCP.

C. The Defendants have a meritorious defense to the Plaintiff's lawsuit.

The Defendants' defenses to the Plaintiff's lawsuit, include, but are not limited to the following:

(1): The contract giving rise to Plaintiff's Complaint contains mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and must stay this action and submit the matter to mediation, and if necessary, binding arbitration. Rule 55(c), SCRCP; *See also, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

(2): Plaintiff has been paid in full under the Subcontract Agreement; in fact, Plaintiff has been overpaid by Fourteen Thousand, Two Hundred Twenty Seven and 09/110 Dollars ($14,227.09).

(3) There is no agreement for profit sharing between the parties. Per the Teaming Agreement, entered into between Restoration and Plaintiff in connection with the Project, "[n]othing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties." (*Exhibit B).* There is no provision for profit sharing contained within the Subcontract Agreement.

(4) The Payment Bond delineates the obligation for payment of Project subcontractors and vendors as that of Restoration, as Principal, and The Hanover Insurance Company, as Surety. *(Exhibit C).* Restoration disputes the claims made by many of the subcontractors which have made claims against the Payment Bond.

(5) Restoration has not paid all subcontractors and vendors in full as the Department of Veterans' Affairs is retaining funds due under the Contract.

(6) The Teaming Agreement includes a waiver of damages, specifically: "ARTICLE 9 DAMAGES – Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise."

If Defendants prevail on any of these defenses, the outcome would be contrary to the result rendered by the entry of default. Therefore, the Defendants have set forth a meritorious defense sufficient to satisfy the good cause standard of Rule 55(c), SCRCP.

D. The Plaintiff will not suffer prejudice if Entry of Default is set aside.

The Defendants responded to Plaintiff's lawsuit with the retention of counsel and filing of the instant Motion to Set Aside Entry of Default on June 3, 2016. The Defendants took these actions within 51 days of the date on which Defendants' Answer to Plaintiff's Complaint was originally due, within 43 days of the entry of default, and within 24 hours of first learning of the default status and damages hearing. The Defendants' delay was short and creates no prejudice to the Plaintiff's ability to litigate the case. This brief delay has caused no tangible harm to Plaintiff such as a loss of evidence, increased difficulties of discovery, opportunity for fraud or collusion, undue expense or damage to the Plaintiff's legal position.

In fact, the corollary to the lack of prejudice to the Plaintiff is the extreme prejudice the Defendants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this scenario, the Plaintiff will have received significant undue advantage in that a litigated result will have been achieved by the Plaintiff in a case which Plaintiff acknowledges is governed by mandatory alternative dispute resolution and in which the court has no subject matter jurisdiction. *See, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

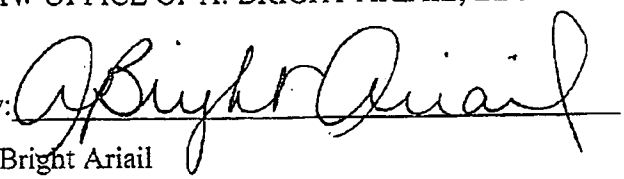
As no prejudice will result to Plaintiff in setting aside the entry of default, this good cause factor under Rule 55(c), SCRCP is satisfied.

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an Order Setting Aside the Entry of Default pursuant to Rule 55(c), SCRCP.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Set Aside Entry of Default be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: 

A Bright Ariail
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ATTORNEY FOR RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD and LYNNETTE PENNINGTON WARD

July 14, 2016
Charleston, SC 29412

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

Bindertek/CUEX
A

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	SUBCONTRACTOR *(Signature)*
Mark Ward – Managing Member	Jay Hannegan - Vice President
(Printed name and title)	*(Printed name and title)*

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TEAMING AGREEMENT

This Agreement is made and entered into as of the 28th day of November, 2011, by and between Restoration Specialists, LLC, a Georgia limited liability company (hereinafter called "RS"), and Palmetto Construction Group, LLC, a South Carolina limited liability company (hereinafter called "PCG"), each a "Party" and together the "Parties", for the purpose of submitting a proposal for Solicitation Number VA-247-11-RP-0211 (hereinafter the "Services") to Department of Veteran Affairs (the "Customer") for the New SCIU Hospital Parking Deck Minor Project: 509-325 project (the "Project"). ***RS, cage code 5GXE1, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:



(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**
Restoration Specialists, LLC
PO Box 5352
Savannah, Ga. 31414
(912) 659-4355

Attention: **Jay Handegan**
Palmetto Construction Group, LLC
2265 Clements Ferry Rd. Suite 204
Charleston, SC 29492
(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Georgia.

RESTORATION SPECIALISTS LLC

By: _____
(Authorized Signature)
Title: Managing Member
Date: 12-01-11

PALMETTO CONSTRUCTION GROUP

By: _____
(Authorized Signature)
Title: Vice President
Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*	OMB No.:9000-0045 Expires: 11/30/2012
	April 23, 2012	

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 860 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

Binderlek #CLEX C

Restoration Specialists, LLC — PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. (Seal)	2. (Seal)		
NAME(S) *(Typed)*	1.	2.		
The Hanover Insurance Company — CORPORATE SURETY(IES)				
SURETY A — NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000	Corporate Seal
SURETY A — SIGNATURE(S)	1.	2.		
SURETY A — NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY CORPORATE SEAL 1852

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Previous edition is usable

STANDARD FORM 25A (REV. 10-98)
Prescribed by GSA-FAR (48 CFR) 53.2228(c)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

INSTRUCTIONS

. This form, for the protection of persons supplying labor and material, is sed when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the ritten approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, eir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

BOND NO. 1944091

PERFORMANCE BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)* April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))* The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	**PENAL SUM OF BOND** MILLION(S): 5 — THOUSAND(S): 999 — HUNDRED(S): 360 — CENTS: 00 CONTRACT DATE: March 13, 2012 — CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mil[illegible] Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contra[illegible] with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — **PRINCIPAL**

	1.	2.	3.	
SIGNATURE(S)	(Seal)	(Seal)	(Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

	1.	2.
SIGNATURE(S)	(Seal)	(Seal)
NAME(S) *(Typed)*	1.	2.

The Hanover Insurance Company — **CORPORATE SURETY(IES)**

SURETY A	NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000.00	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

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STANDARD FORM 25 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $ $15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	TOTAL $61,999.00 $0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;

2) A damages hearing is set for October 4, 2016 at 2:00pm; and

3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

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

On this 14 day of July 2016
Charleston, SC

EXHIBIT O

Law Office of A. Bright Ariail, LLC

July 19, 2016

FILED
2016 JUL 22 PM 2:2[illegible]

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records related to the Order executed on July 14, 2016 in the above referenced action for filing. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

EXHIBIT P

bright@brightariaillaw.com

125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

843/814-8805

Bright Ariail

From: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Sent: Monday, July 18, 2016 8:42 AM
To: 'Michelle Endemann'; Bright Ariail; 'Andrew K. Epting'
Subject: Palmetto Construction Group v. Restoration Specialists et al.
Attachments: 201607180829.pdf

Dear All -

As to the last hearing in this matter, please see the attached order Judge Scarborough executed last week. I am forwarding it to the clerk right now for processing.

Best Regards,

Barnwell

--
J. Barnwell Fishburne, Jr., Esq.
Judicial Law Clerk to The Honorable Mikell R. Scarborough
100 Broad Street, Suite 266
Charleston, South Carolina
29401
Tel: 843-958-5053
jfishburne@charlestoncounty.org

Bright Ariail

From:	Barnwell Fishburne <JFishburne@charlestoncounty.org>
To:	Bright Ariail
Sent:	Monday, July 18, 2016 8:35 AM
Subject:	Read: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Your message

To:
Subject: Palmetto Construction Group c. Restoration Specialists, et al;
Sent: Monday, July 18, 2016 5:35:12 AM (UTC-08:00) Pacific Time (US & Canada)

was read on Monday, July 18, 2016 5:35:02 AM (UTC-08:00) Pacific Time (US & Canada).

Bright Ariail

From:	Microsoft Outlook
To:	Barnwell Fishburne
Sent:	Friday, July 15, 2016 12:32 PM
Subject:	Relayed: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Barnwell Fishburne (JFishburne@charlestoncounty.org)

Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Bright Ariail

From: Bright Ariail
Sent: Friday, July 15, 2016 12:32 PM
To: Barnwell Fishburne
Cc: Andrew K. Epting; 'Michelle Endemann'
Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

I have reviewed the proposed order and request that the Court also address its ruling/disposition of Plaintiff's Motion to Stay and Compel (filed on March 7, 2016) in the order when issued. Thanks for your assistance in this matter.

I have copied all counsel of record by this email.

VR. Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Michelle Endemann [mailto:mne@epting-law.com]
Sent: Thursday, July 14, 2016 12:10 PM
To: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Cc: Bright Ariail <bright@BRIGHTARIAILLAW.COM>; Andrew K. Epting <ake@epting-law.com>; Angela Gross <agg@epting-law.com>
Subject: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

We have prepared a simple proposed order for today's hearing so that Judge Scarborough does not have to prepare a Form 4.

Please note I have copied Ms. Ariail.

Best Regards,

Michelle N. Endemann, Esq.
ANDREW K. EPTING, JR., LLC
46A State Street, Charleston, SC 29401
P: 843-877-1871

F: 843-377-1310
mnc@epting-law.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE CASE LAW**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 27 P 12:39
CLERK OF COURT

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial Circuit at a time and place to be arranged by the Court and counsel involved for the Court to reconsider and amend its Order dated July 14, 2016 ("Order"). The Defendants will move the Court to amend its Order so as to make a final ruling on the merits of all motions filed in this matter and to lift the entry of default, stay this action and compel mandatory mediation/arbitration of this matter. The Defendants' Motion to Reconsider and to Alter or Amend ("Defendant's Motion) is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and all applicable case law.

The Defendants' Motion is made on the following grounds:

(1): The Defendants showed good cause such that the entry of default should be lifted in this matter. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(2): The Court lacks subject matter jurisdiction due to the mandatory and binding mediation/arbitration provisions contained in the contract giving rise to this action. *See, Defendants'*

EXHIBIT Q

Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).

(3): The contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Accordingly, the Court is required to stay this action and submit the matter to mediation, and if necessary, binding arbitration. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(3): The Plaintiff made a demand for mandatory mediation/arbitration contemporaneously with the commencement of this action pursuant to its Motion to Stay and Compel ("Plaintiff's Motion"). The Defendants joined in and consented to Plaintiff's Motion, which motion should be properly adjudicated before the court and the relief requested therein granted. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion);*

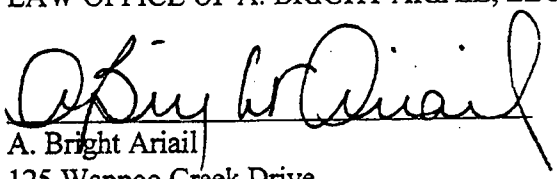
(4): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion to Reconsider and to Alter or Amend).*

This Motion is based upon Defendants' Memorandum of Law in Support of Motion to Reconsider and to Alter or Amend which will be submitted to the Court prior to the hearing of

Defendants' Motion, the parties' prior motions and supporting memorandums of law referenced above, the complete files, exhibits, and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

July 27, 2016
Charleston, SC 29412

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Agency	Master In Equity	Judge	Scarborough		952
Roster Type	Motion Hearings	Roster Date	10/11/2016		10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
1	10/11/2016	10:00 AM		Motion/Reconsider by plaintiff, crt/srv	Maria Kiehling Brees-PAT	07/25/2016	2012CP1006835 Joanne S Reed VS Christina Salters , defendant, et al	Real Prop/Other 499	1880000169	Maria Kiehling Brees (843) 724-7707 D. Nathan Davis (843) 571-4042	Jestine Townsend Graham (843) 467-9492 Irene Townsend Hodge (843) 889-9513 Kelvin Maurice Huger (843) 573-0143 Althea Salters (843) 889-2450 Irma Townsend (843) 425-7226 Jessie Townsend Mary Alice Townsend Morrison Karen Waters	EXHIBIT R
2	10/11/2016	10:00 AM		Motion/Dismiss by Thomas Calcote etal, crt/srv	Merritt Gordon Abney-PAT	07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
3	10/11/2016	11:00 AM		Motion/Dismiss by Thomas Calcote etal, crt/srv		07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
4	10/11/2016	11:00 AM		Motion/Alter or Amend by plaintiff, crt/srv	Merritt Gordon Abney-PAT	07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
5	10/11/2016	2:00 PM		Motion/Alter or Amend by plaintiff, crt/srv	Andrew K. Epting Jr.-PAT	07/29/2016	2016CP1001143 Palmetto Construction Group LLC VS Restoration Specialists LLC	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871 Andrew K. Epting Jr. (843) 377-1871	A. Bright Ariail (843) 814-8805	
6	10/11/2016	2:00 PM		Motion/Reconsider, Alter or Amend by defendant, crt/srv	A. Bright Ariail-DAT	07/27/2016	2016CP1001143 Palmetto Construction Group	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871	A. Bright Ariail (843) 814-8805	

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Activity	Master In Equity	Judge	Scarborough	Room	952
Roster	Motion Hearings	Roster Date	10/11/2016	Roster Print Date	10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
7	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006736 Municipal Tax Investment LLC VS Gilbert J White , defendant, et al	Real Prop/Other 499	4271600239	Scott Daniel Spivey (803) 225 -0463		
8	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006746 Municipal Tax Investment LLC VS Jeffrey Lee Whaley , defendant, et al	Real Prop/Other 499	4110800095	Scott Daniel Spivey (803) 225 -0463		
9	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearings	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006755 Municipal Tax Investment LLC VS William T Simmons III , defendant, et al	Real Prop/Other 499	4640100054	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900 T. Parkin C. Hunter (803) 734 -6151 Brittany Lauren Kilpatrick (843) 696-3048 E.B. "Trey" McLeod III (803) 737-3043	318
10	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006756 Municipal Tax Investment LLC VS Llewellyn R Whaley , defendant, et al	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900	
11	10/11/2016	3:00 PM		Master/Cross Claim Hearing	Municipal Tax Investment LLC-PLT	10/11/2016	2015CP1006756 Municipal Tax Investment LLC VS Llewellyn R Whaley	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900	
12	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006757 Municipal Tax Investment LLC VS Jeffrey Lee Whaley , defendant, et al	Real Prop/Other 499	4110800097	Scott Daniel Spivey (803) 225 -0463		

Law Office of A. Bright Ariail, LLC

RECEIVED
SEP 09 2016
By

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

FILED
2016 SEP 13 PM 4:10
JULIE J. ARMSTRONG
CLERK OF COURT

Re: ***Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.***
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants[i] and Plaintiff[ii] have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

[i] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[ii] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

EXHIBIT S

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Law Office of A. Bright Ariail, LLC

September 20, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

FILED
2016 SEP 22 PM 2:29
JULIE J. ARMSTRONG
CLERK OF COURT

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records with attachments for filing in the above referenced action which are related to Defendants' request that two outstanding motions be heard by the Court prior to the damages hearing set for October 4, 2016 at 2:00 p.m.; specifically, Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016 and Plaintiff's Motion to Alter or Amend filed July 29, 2016. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

EXHIBIT T

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Bright Ariail

From:	Bright Ariail
Sent:	Wednesday, September 7, 2016 10:43 AM
To:	master@charlestoncounty.org
Cc:	Andrew K. Epting; Michelle Endemann
Subject:	Palmetto Constr. Group, LLC v. Restoration Specialists, LLC et al., 2016-CP-10-1143
Attachments:	Ltr Scarborough Motions Hearing.pdf

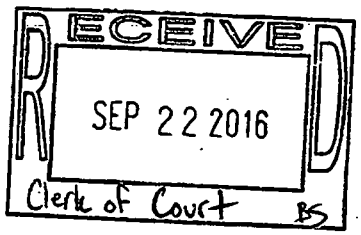
Judge Scarborough,

Please see my letter attached. Thanks for your consideration.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805



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Bright Ariail

From:	Bright Ariail
Sent:	Wednesday, September 7, 2016 11:55 AM
To:	Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc:	Barnwell Fishburne
Subject:	RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

CONFIDENTIALITY NOTICE
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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Michelle Endemann <mne@epting-law.com>
Sent: Wednesday, September 7, 2016 12:45 PM
To: Laura Dukes Beck; Angela Gross; Andrew K. Epting; Bright Ariail
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Hello Laura,

Plaintiffs would prefer that the hearings go forward as originally scheduled. This way, all rulings can be reconsidered/appealed, if necessary, at one time rather than piecemeal. We will, of course, defer to the Judge's preference.

Best,

Michelle Endemann

From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 07, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; Michelle Endemann <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; bright@brightariaillaw.com
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Laura Dukes Beck <LBeck@charlestoncounty.org>
Sent: Monday, September 12, 2016 2:02 PM
To: Bright Ariail; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

After further consideration, the Judge has decided to leave the hearings in the order that they were originally scheduled, with the Damages hearing to be held prior to the Motions to Alter or Amend. The previously sent roster publication emails and the published rosters have the date and time, or email me if you need more information.
Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

From: Bright Ariail [mailto:bright@BRIGHTARIAILLAW.COM]
Sent: Wednesday, September 07, 2016 11:55 AM
To: Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>

Cc: Barnwell Fishburne <BFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Law Office of A. Bright Ariail, LLC

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

Re: *Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.*
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants and Plaintiff have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

[1] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[2] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

Law Office of A. Bright Ariail, LLC

October 24, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find the original and one copy of the Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider, Alter and Amend in the above referenced action for filing. Please return one clocked copy to me in the enclosed SASE.

By copy of this letter, I am servicing opposing counsel with same.

Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805