

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group,

Respondent,

v.

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

Appellants.

**APPELLANTS' RETURN TO RESPONDENTS' EMERGENCY MOTION
TO DISMISS APPEAL AND FOR EXPEDITED REVIEW**

Pursuant to Rule 240, SCRAP, the Appellants, Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, by and through their undersigned counsel, submit this Return to Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review.

FACTS/PROCEDURAL HISTORY

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Appellant, Restoration Specialists, LLC ("Appellant Restoration") was awarded a contract to construct the Charlie Norwood VAMC Parking Garage in Augusta, Georgia. ("the Norwood Parking Garage Project" or the "Project"). The Respondent entered into a Subcontract Agreement with Appellant Restoration on September 10, 2014 in connection with the Project. (*Exhibit A*).

Respondent's Complaint alleges that Appellant Restoration has failed to pay the contract balance due under the Subcontract Agreement and asserts additional claims against the Appellants, Reuben Mark Ward and Lynnette Pennington Ward.

Respondent filed this lawsuit on March 7, 2016. (*Exhibit B*). Simultaneously with filing the lawsuit, Respondent filed a Motion to Stay and to Compel on March 7, 2016. (*Exhibit C*). The basis of Respondent'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 in Georgia and, if necessary, arbitrate all claims contained in Respondent's lawsuit.

Respondent simultaneously served Appellants with both the Complaint and Motion to Stay and to Compel on March 14, 2016. (*Exhibit D*).

Respondent filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. (*Exhibit D*). The Court entered default against the Appellants on April 21, 2016. (*Exhibit E*).

On the evening of June 2, 2016, the Appellants were served with a Notice of Hearing scheduling the default damages hearing for June 6, 2016. (*Exhibits F & G*). The Appellants were unaware of the default status of the case and the scheduling of the damages hearing until they received the Notice of Hearing on June 2, 2016. (*Exhibit H*). Upon receipt of this Notice of Hearing, the Appellants immediately retained legal counsel on June 3, 2016. (*Id.*) Appellants' 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 Appellants' 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 Appellants to provide financial information relative to the Project to the Respondent to see what could be resolved between the parties and scheduled the matter to reconvene for a status conference on July 14, 2016. (*Id.*). Per the Court's direction, Appellants provided certain relevant documents and basic written discovery responses to Respondent.

On July 11, 2016, the Appellants filed their own Motion to Stay and to Compel on the basis of the mandatory contractual mediation/arbitration provisions. (*Exhibit L*). In addition, the Appellants joined in and consented to Respondent'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, Appellants' singular and joint motions for arbitration were pending before the Master at this

time.¹

The parties reconvened before the Master on July 14, 2016. (*Exhibit M*). At the hearing, the Appellants submitted their Memorandum in Support of the Motion to Lift Entry of Default. (*Exhibit N*). During the reconvened hearing the Master stated that the Clerk of Court “closed out” the Respondent’s Motion to Stay and Compel, which motion had been joined in and consented to by the Appellants. (*Exhibit M*). On this basis, the Master issued a bench ruling finding that this action by the Clerk constituted an adjudication of this motion. (*Id.*). The Master further ruled from the bench finding Appellants in default, denying Appellants’ 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: (s): Denied Appellants’ Motion to Lift Entry of Default for lack of good cause; (b): Denied Appellants’ Motion to Stay and Compel Arbitration on the basis of default; and (c): Set a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016. (*Exhibit P*).

Appellants 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 Appellants’ 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 arbitration, the Appellants requested in writing that the Master schedule the hearing on Appellants’ Rule 59(e) motion prior to the October 4, 2016 damages hearing. (*Exhibit S*).

On September 7, 2016, the Master replied to Appellants’ 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.*).

¹ While Respondent stated at the July 14, 2016 hearing that it “set aside” its Motion to Compel and to Stay, Appellants have not been provided a copy of documentation reflecting Respondent’s setting aside of said motion, and, there is likewise nothing in the

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.*). Appellants 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 Appellant's Rule 59(e) motion prior thereto effectively denied this motion as proceeding with the damages hearing under these circumstances would severely prejudice, and potentially force a waiver of Appellants' rights to arbitration. Therefore, subject to, without waiving and in fully preserving their rights to arbitration, the Appellants filed the instant appeal via service of the Notice of Appeal on Respondent on September 30, 2016. (*Exhibit U*). Accordingly, the Appellants' appeal was made in good faith, not taken for delay and is in compliance with the South Carolina Appellate Court Rules.

After receipt of the Notice of Appeal, the Master notified the parties that the hearing docketed for October 4, 2016 would go forward. (*Exhibit V*). During that hearing, the Master acknowledged that jurisdiction for this case was now with the Court of Appeals. The Master did not issue a ruling on the Rule 59(e) motion, but stated that it wished to establish a full record for appellate court review. Accordingly, the Master had Appellants proffer their arguments related to the Motion to Reconsider and to Alter and Amend pursuant to Rule 59(e), SCRPC and submit their supporting legal memorandum. (*Exhibit W*). The Master further indicated that Respondent could submit a Memorandum in Opposition to Appellants' Rule 59(e) motion (which is due on October 17, 2016) and that Appellants would then have five (5) days to submit a Reply. The Master also had the Respondent proffer information related to their alleged damages to which Appellants vehemently objected.

LAW/ANALYSIS

A. The Master's Orders Denying Appellants' Motions to Stay and to Compel Arbitration Are Immediately Appealable

The Appellants have appealed the Master's bench and formal orders issued on July 14, 2016. The formal order included the denial of Appellants' Motion to Stay and Compel arbitration. The bench order issued a ruling finding that there had been an adjudication of Respondent's Motion to

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Stay and Compel arbitration, which motion had been joined in by the Appellants prior to the hearing. The Master's adjudication on the joint motion did not grant the motion nor compel arbitration.

The Master's orders denying Appellants' singular and joint motions to compel arbitration are immediately appealable under both federal and state law. *See* 9 U.S.C.A. § 16(a)(1)(C); S.C. Code Ann. § 15-48-200(a)(1); *Stedor Enter., Ltd. V. Armtex, Inc.*, 947 F.2d 727 (4th Cir. 1991); *Rich v. Walsh*, 357 S.C. 64, 590 S.E. 2d 506 (Ct. App. 2003); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E. 2d 839 (Ct. App. 1999).

Furthermore, the Master's orders are immediately appealable in that they deny the Appellants the right to arbitration and, therefore, affect a substantial right of the Appellants. An order denying a party a mode of trial to which he is entitled is immediately appealable and must be appealed immediately and cannot be challenged in an appeal from final judgment. S.C. Code Ann. §14-3-330 (2); *Lester v. Dawson*, 327 S.C. 263, 491 S.E. 2d 240 (1997); *Widdicombe v. Tucker-Cales*, 366 S.C. 75; 620 S.E. 2d 333 (Ct. App. 2005).

B. The Master's Orders Denying Appellant's Motions to Compel Arbitration Are Appealable And, Therefore, The Master's Entire Orders Should Be Considered On Appeal

Where there is a single order that is appealable in part, the entire order should be considered upon the appeal. *See Rice Hope Plantation v. South Carolina Pub. Serv. Auth.*, 216 S.C. 500, 59 S.E. 2d 132 (1950); overruled on other grounds, *Mcall v. Batson*, 285 S.C. 243, 329 S.E. 2d 741 (1985).

Ordinarily, an order denying a motion to lift entry of default is interlocutory and not immediately appealable. *Thynes v. Lloyd*, 294 S.C. 152, 363 S.E. 2d (Ct. App. 1987). An order that is not immediately appealable, however, will be considered if there is another appealable issue before the court. *Cox v. Woodmen of the World Ins. Co.*, 347 S.C. 460, 556 S.E. 2d 397 (Ct. App. 2001).

In the present case, the appealable issue of the Master's denial of Appellants' Motions to Compel Arbitration is squarely before the court. Therefore, the entire orders of the Master, including the Master's denial of Appellants' Motion to Lift Entry of Default, should be considered upon appeal. *Id.* Furthermore, a decision by the Court of Appeals on the Master's entire orders will best serve the interests of judicial economy and eliminate the inevitable additional appeals which would arise from a piecemeal appellate review of the Master's orders. *See Laffitte v. Bridgestone Corp.*,

381 S.C. 460, 674 S.E. 2d 154 (S.C. 2009); *Southern Bell Tel. and Tel. Co. v. Hamm*, 306 S.C. 70, 409 S.E. 2d 775 (S.C. 1991); *Widdicombe v. Tucker-Cales*, 366 S.C. 75, 620 S.E. 2d 333 (Ct. App. 2005); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E. 2d 250 (Ct. App. 1998).

C. The Issues Raised By Appellants On Appeal Have Been Properly Reserved For Appellate Review

On July 18, 2016, the Appellants received written notice of the entry of the Master's orders: (a): Denying Appellants' Motion to Lift Entry of Default; (b): Denying Appellants' denying their singular and joint Motion(s) to Stay and Compel mediation/arbitration; and (c): Setting a damages hearing for October 4, 2016.

On July 27, 2016, Appellants filed a timely Motion to Reconsider and to Alter and Amend the Master's orders pursuant to SCRCP 59(e) and applicable case law. The Appellants' Rule 59(e) motion requested the Master to amend his orders so as to make a final ruling on the merits of all motions, to lift the entry of default, and to stay this action and compel mandatory mediation/arbitration. Once Appellants filed this motion, the time for appeal was stayed and ran from receipt of written notice of entry of the order granting or denying this motion. *See* SCACR 203(b)(1).

On September 7, 2016, the Appellants, acting to preserve their rights to arbitration and protect against a potential forced waiver of these rights, requested the Master to hear their Rule 59(e) motion prior to the damages hearing. The Master decided to do so by switching the motion hearing to October 4, 2016 and, if necessary after the motion hearing, to hold the damages hearing on October 11, 2016. After making this decision, the Master asked the parties to advise if this plan was acceptable. The Appellants notified the Master of their agreement with this plan. However, the Respondent advised the Master that it preferred the damages hearing to proceed first on October 4, 2016 and the Rule 59(e) motions hearing to be held thereafter on October 11, 2016.

After receiving the parties' comments, the Master further considered the matter and decided not to switch the hearing dates. On September 12, 2016, the Master notified the parties in writing that after further consideration, the Master had rendered the decision to hold the damages hearing on October 4, 2016 and the Rule 59(e) motions hearing on October 11, 2016.

The Master's written decision, received by the Appellants on September 12, 2016, denied

Appellants' request for a hearing on its Rule 59(e) motion prior to the damages hearing. This decision was made upon "further consideration" and after the Master had originally decided to switch the hearing dates and rule upon Appellants' Rule 59(e) motion prior to the damages hearing.

Thus, the Master had ample opportunity to hear and issue an express ruling on Appellants' Rule 59(e) motion prior to the damages hearing. The Master fully considered the matter; however, and rendered the decision not to issue an express ruling prior to the damages hearing.

The Appellants attempted to avoid this result and obtain an express ruling from the Master prior to the damages hearing. After the Master initially decided to hear the Rule 59(e) motion on October 4, the Respondent advised the Master of its preference for holding the Rule 59(e) motion hearing the week after the completion of the damages hearing. The Respondent's actions in this regard certainly contributed to the preclusion of an express ruling by the Master. As such, the Respondent should not be heard to complain of the lack of an express ruling by the Master. See *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E. 2d 543 (S.C. 2000).

Once the Master declined the opportunity to hear the Rule 59(e) motion before the damages hearing, any further efforts by Appellants to obtain an express ruling would have been futile and were unnecessary to preserve the issue for appellate review. See *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E. 2d 543 (S.C. 2000) (holding that the court does not require parties to engage in futile actions in order to preserve issues for appellate review); *State v. Pace*, 316 S.C. 71, 447 S.E. 186 (S.C. 1994).

Indeed, in *Coward Hund*, the court of appeals explained:

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Arnold v. State*, 309 S.C. 157, 172, 420 S.E. 2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988)). As one authority has noted, **"Once the issue has been raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised."** *James F. Flanagan, South Carolina Civil Procedure* 475 (2d ed. 1996).

Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 4, 518 S.E. 2d 56, 58 (Ct. App. 1999) (emphasis added); see also *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E. 2d 524 (Ct. App. 2002) (quoting *Coward Hund*). In *Pressley v. Lancaster County*, 343 S.C. 696, 542 S.E. 2d

366 (Ct. App. 2001), the court of appeals, citing *Coward Hund*, applied this principle when the court addressed the merits of an argument which Pressley raised at trial and in a Rule 59(e) motion, but which the trial court “summarily denied.” See *Pressley*, 343 S.C. at 706 n. 4, 542 S.E. at 371 n. 4.

Professor Flanagan further edifies:

One commentator noted: “Lawyers cannot force a trial judge to address a disputed issue.” Page 511. Moreover, the Supreme Court identifies two ways to preserve the issue “a ruling by the trial judge or a post-trial motion.” **The language implies that a properly requested ruling under Rule 59 is sufficient without a specific judicial decision on the matter.**

South Carolina Civil Procedure 475-76 (2nd ed. 1996) (emphasis added) (footnotes omitted) (quoting Charles E. Carpenter, Jr. *Preserving Error for Appeal*, *South Carolina Lawyer*, 15, 18 (Mar./ Apr. 1995) and *Pelican Bldg. Ctrs. V. Dutton*, 311 S.C. 56, 427 S.E. 2d 673 (1993)).

In the instant case, the foundation of Appellants’ legal position is that the entry of default should be lifted, that this action should be stayed, and that mediation/arbitration should be compelled on the basis of Appellants’ substantial rights to mandatory mediation/arbitration, which rights have not been waived or defaulted upon by Appellants. The Appellants have asserted these positions both in their original motions and Rule 59(e) motion before the Master. Consequently, these issues are preserved for appellate review, even though the Master has not expressly ruled on Appellants’ Rule 59(e) motion. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E. 2d 505 (2006).

While no express ruling has been issued, the Master’s actions and decisions as described in this Return have the practical effect of denying Appellants’ Rule 59(e) motion. The collateral consequences of the Master’s decisions would have placed Appellants in the position of having to fully participate and engage in the litigation process by way of the damages hearing forum. Such substantial involvement in the litigation machinery would severely prejudice, and potentially force a possible default/waiver of Appellant’s rights to arbitration. See *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); *Toler’s Cove Homeowners Ass’n v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E. 2d 581 (2003); *Carlson v. South State Plastering, LLC*, 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *Rich v. Walsh*, 357 S.C. 64, 590 S.E. 2d 506 (Ct. App. 2003); *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.

Upon issuance of the Master's final judgment from the damages hearing, the Appellants could have been foreclosed from challenging on appeal the denial of their rights to arbitration. *Lester v. Dawson*, 327 S.C. 263, 491 S.E. 2d 240 (1997).

In short, prior to October 4, 2016, the date of the scheduled damages hearing, the Master had a full and fair opportunity to hear and issue an express ruling on Appellants Rule 59(e) motion. The Master declined to do so and ordered the damages hearing to proceed October 4. In the context of the facts and procedural history of this case, the Master's decision effectively denied Appellants' Rule 59(e) motion and constituted a sufficient ruling for purposes of appeal.

The Master's actions following the date of service of the Notice of Appeal further confirm the sufficiency of the Master's ruling for appellate purposes as well as the propriety of Appellants' appeal before this Court. After receipt of the Notice of Appeal, the Master notified the parties that the hearing docketed for October 4, 2016 would go forward. During that hearing, the Master acknowledged that jurisdiction for this case was now with the Court of Appeals. The Master did not issue a ruling on the Rule 59(e) motion, but stated that it wished to establish a full record for appellate court review of this matter. Accordingly, the Master had Appellants proffer their arguments related to the Motion to Reconsider and to Alter and Amend pursuant to Rule 59(e) and submit their supporting legal memorandum. The Master further indicated that Respondent could submit a Memorandum in Opposition to Appellants' Rule 59(e) motion (which is due on October 17, 2016) and that Appellants would then have five (5) days to submit a Reply. The Master also had the Respondent proffer information related to their alleged damages to which Appellants vehemently objected.

D. The Appellants Timely Filed Their Appeal Under SCACR 203(b)(1) and Applicable Case Law

On July 14, 2016, the Master issued bench and formal orders denying Appellants' Motion to Lift Entry of Default, denying Appellants' Motion(s) to Stay and Compel mediation/arbitration and setting a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016

On July 27, 2016, the Appellants filed a timely Motion to Reconsider and to Alter and Amend the Master's orders pursuant to SCRCR 59(e) and applicable case law.

On September 12, 2016, the Master rendered a decision to proceed with the damages hearing on October 4, 2016 and the Rule 59(e) motions hearing on October 11, 2016. The Master's decision in this regard effectively denied Appellants' Rule 59(e) motion and constituted a sufficient ruling thereon for purposes of this appeal. *See Appellants' Return to Respondent's Emergency Motion to Dismiss Appeal and For Expedited Review, Sections A., B. and C.* Appellants received written notice of the Master's decision on September 12, 2016.

Appellants timely served the Respondent with their Notice of Appeal on September 30, 2016. SCRAP 203(b)(1). Therefore, the Appellants timely filed their appeal under the South Carolina Rules of Appellate Procedure and applicable case law.

E. The Respondent's Emergency Motion to Dismiss Appeal and For Expedited Review is Moot

The Respondent seeks expedited review of this matter and requests that the appeal be dismissed in advance of the default damages hearing in order that it proceed as scheduled on October 4, 2016.

The Master has cancelled the damages hearing (October 4, 2016) as well as the Rule 59(e) motion hearing (October 11, 2016) in this matter. The Master has further acknowledged the appellate jurisdiction of this Court and established a full record for appellate court review.

Finally, the Court of Appeals has notified the parties that the Appellants' initial brief and designation of matter are due October 31, 2016.

For these reasons, the Respondent's Motion is moot.

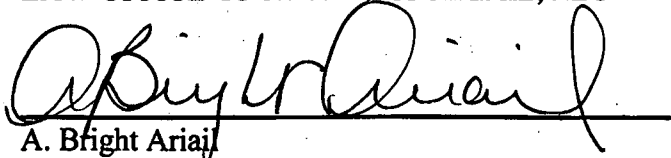
CONCLUSION

Based on the foregoing, the appeal of the Appellants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward should not be dismissed.

For these reasons, the Appellants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that the Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review be denied.

[signature on following page]

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October 17, 2016

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Attorneys for Respondent

 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

Init.

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

init.

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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.

Int.

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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 arbitrator(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.)

- ☒ 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

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

Substantial Completion Date

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 EXCHANGE 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

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

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.

§ 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.)

Init.

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 HANDEGAN - Vice President

(Printed name and title)

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User Notes:

15

(1114130519)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PALMETTO CONSTRUCTION GROUP, LLC.,

Plaintiff(s)

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

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 -CP - 10- 1143

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

- ☒ 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)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☒ Breach of Contract (140)
☒ 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) |
| 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

EXHIBIT B

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

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

SUMMONS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2016 MAR -7 PM 12:36

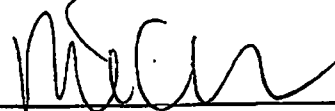
FILED

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

CASE NO. 2016-CP-10-1143

Plaintiff,

vs.

RESTORATION SPECIALISTS, LLC,
REUBEN MARK WARD, and LYNNETTE
PENNINGTON WARD

Defendants.

COMPLAINT

FILED
2016 MAR -7 PM 12:36
JULIE J. ARMS, 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

DATED: February 12, 2016
Charleston, South Carolina

ATTORNEYS FOR PLAINTIFFS

 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)

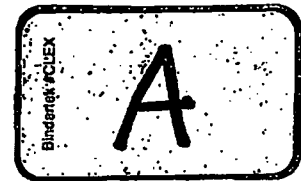
Structured Parking Solutions
21 South Tarragona Street, Suite 101

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:

(1114130619)

Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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User Notes:

(1114130519)

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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:

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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 arbitrator(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

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

Substantial Completion Date

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 EXCHANGE 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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User Notes:

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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.

§ 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.)

Init.

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 Hammond - Vice President
(Printed name and title)

Intt.

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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: [Signature]
(Authorized Signature)

Title: Managing Member
Date: 12/7/11

PALMETTO CONSTRUCTION GROUP

By: [Signature]
(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

PAYMENT BOND
(See Instructions on reverse)

DATE BOND EXECUTED (Must be same or later than date of contract)

April 23, 2012

OMB No.: 9000-0045
Expires: 11/30/2012

Public reporting burden for this collection of information is estimate to average 28 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)

Restoration Specialists, LLC

P. O. Box 5352

Savannah, GA 31414

SURETY(IES) (Name(s) and business address(es))

The Hanover Insurance Company

440 Lincoln Street

Worcester, MA 01653

TYPE OF ORGANIZATION ("X" one)

☐ INDIVIDUAL☐ PARTNERSHIP☐ JOINT VENTURE☒ CORPORATION

STATE OF INCORPORATION

GA

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
5	999	860	00

CONTRACT DATE

CONTRACT NO.

March 13, 2012

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.

Bidentek #CLEX

C

Restoration Specialists, LLC

PRINCIPAL

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

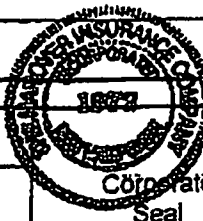
INDIVIDUAL SURETY(IES)

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

The Hanover Insurance Company

CORPORATE SURETY(IES)

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



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 used 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 written approval of the Administrator of General Services.

. 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.

. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of 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 spaces (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.

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)

Restoration Specialists, LLC

P. O. Box 5352

Savannah, GA 31414

TYPE OF ORGANIZATION ("X" one)
☐ 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)	THOUSAND(S)	HUNDRED(S)	CENTS
5	999	360	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 Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract 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

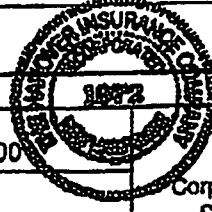
SIGNATURE(S)	1.	2.	3.	Corporate Seal
	(Seal)	(Seal)	(Seal)	
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	Corporate Seal

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1.	2.	(Seal)
	(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.	LIABILITY LIMIT	 Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
		Laura W. Dennison	Attorney-in-Fact		

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 spaces (Surety A, Surety B, etc.) headed "CORPORATE"

BOND PREMIUM		RATE PER THOUSAND \$ \$15 1st 500M, \$12 next 52 mil; \$9 next \$2.5mil; \$8 next \$2.5 mil	TOTAL \$61,999.00 \$0.00
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SURETY B	SURETY C	SURETY D	SURETY E	SURETY F	SURETY G					
Corporate Seal	Corporate Seal	Corporate Seal	Corporate Seal	Corporate Seal	Corporate Seal					
						NAME & ADDRESS	NAME & ADDRESS	NAME & ADDRESS	NAME & ADDRESS	NAME & ADDRESS
						SIGNATURE(S)	SIGNATURE(S)	SIGNATURE(S)	SIGNATURE(S)	SIGNATURE(S)
1.	1.	1.	1.	1.	1.					
2.	2.	2.	2.	2.	2.					
STATE OF INC.	STATE OF INC.	STATE OF INC.	STATE OF INC.	STATE OF INC.	STATE OF INC.					
\$	\$	\$	\$	\$	\$					
LIABILITY LIMIT	LIABILITY LIMIT	LIABILITY LIMIT	LIABILITY LIMIT	LIABILITY LIMIT	LIABILITY LIMIT					

CORPORATE SURETY(IES) (continued)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
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

Defendants.

MOTION TO STAY AND TO
COMPEL

FILED
2016 MAR -7 PM 12:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

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 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

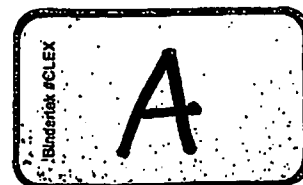
ADDITIONS AND DELETIONS:

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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User Notes:

(1114130519)

Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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User Notes:

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TABLE OF ARTICLES

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4	SUBCONTRACTOR
5	CHANGES IN THE WORK
6	MEDIATION AND BINDING DISPUTE RESOLUTION
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11	PROGRESS PAYMENTS
12	FINAL PAYMENT
13	INSURANCE AND BONDS
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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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User Notes:

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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.

§ 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

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

Substantial Completion Date

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 EXCHANGE 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

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 Hannon - Vice President
(Printed name and title)

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

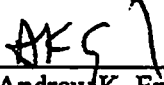
MOTION TO REFER TO THE
MASTER IN EQUITY AND FOR
ENTRY OF DEFAULT

FILED
2016 APR 18 PM 3:22
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) SCRPC 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

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-1143

vs.

AFFIDAVIT OF DEFAULT

Defendants.

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



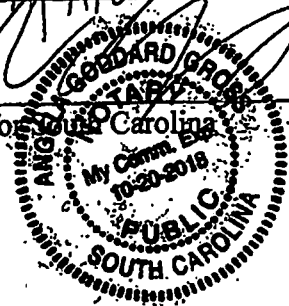
March 14, 2016, and attached hereto as EXHIBIT 3.

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



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:

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

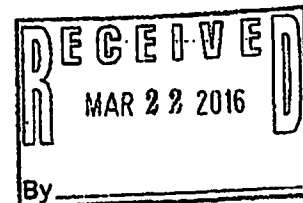
() GOVERNMENT AGENCY: By serving _____ as _____

_____ 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) Race White Height 5'10" Weight 185 Hair Bald Glasses
Y (N)



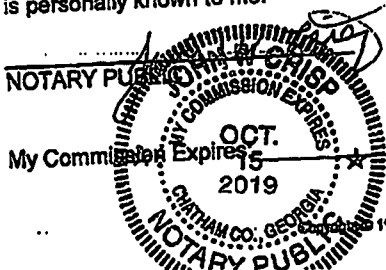
AFFIDAVIT OF SERVICE For 2016-CP-10-1143

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.

11:51
SEP 29 AM 9:21
CLERK OF COURT

Subscribed and Sworn to before me on the 15
day of March 2017 by the affiant who
is personally known to me.

NOTARY PUBLIC



My Commission Expires

2019

[Signature]
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

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: Lynette 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.

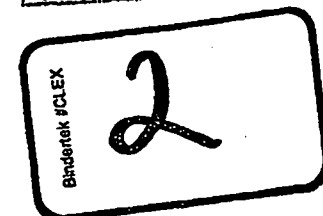
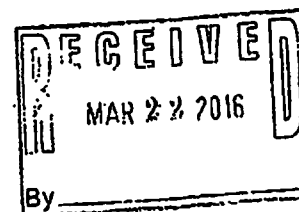
() OTHER SERVICE: As described in the Comments below by serving _____ as _____

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

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

COMMENTS: _____

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



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
MAR 29 AM 9:21
CLERK OF COURT

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.
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

Copyright © 1992-2013 Database Services, Inc. - Process Server's ToolBox V7.01

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2016-CP-10-1143

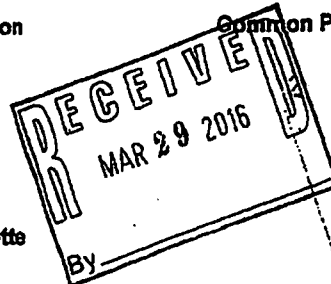
Plaintiff:

Palmetto Construction Group, LLC

vs.

Defendant:

Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward



For: Andrew Epling

Received by SERVE ONE PROCESS SERVING CORP to be served on Lynette Pennington 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:

(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.

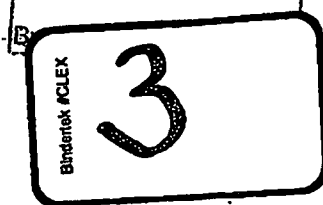
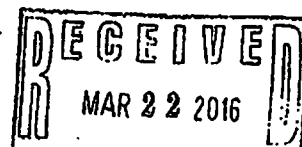
() OTHER SERVICE: As described in the Comments below by serving _____ as _____.

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

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

COMMENTS: _____

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



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
MAR 29 AM 9:20
CLERK OF COURT

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



[Signature]
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,

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

ORDER

FILED
2016 APR 21 PM 2:37
JULIE J. ARISTONG
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.

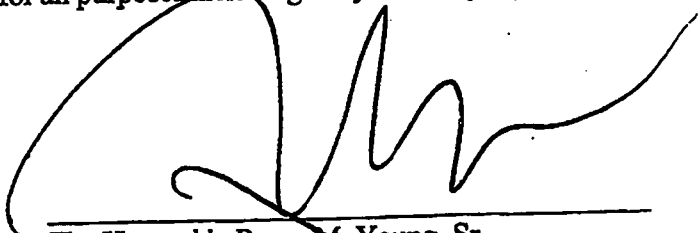
WHEREAS an affidavit of default was filed on April 18, 2016;

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) SCRPC 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

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

BY

CLERK OF COURT

2016 JUN -6 AM 11:19

FILED

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 09/1/2019

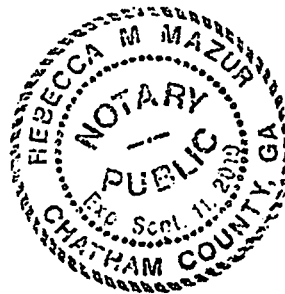


EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PALMETTO CONSTRUCTION GROUP,
LLC

Plaintiff

RESTORATION SPECIALISTS, LLC,
RUTHER MARK WARD, and LYNNETTE
PENNINGTON WARD

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2016 CP-10-1143

NOTICE OF HEARING

PURCHASED AND NO NOTICE had a default damages hearing is scheduled on Monday, June 6, 2016, at 10:30 a.m. before the Honorable Mikell E. Scarborough in the Charleston County Court of Common Pleas located at 160 Broad Street, Charleston, SC 29401 pursuant to the summons of process and returnable Roger M. Young Sr. dated April 20, 2016.

Respectfully submitted,

ANDREW W. EPTING, JR., LLC

Andrew W. Epting, Jr.

Andrew W. Epting, Jr., Esq.
Office: 160 Broad Street, Charleston, SC 29401

Phone: 843.727.1871
Fax: 843.727.1871

W. EPTING, JR., LLC
ATTORNEYS FOR PLAINTIFF

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
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.

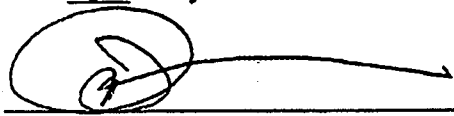
EXHIBIT H

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.

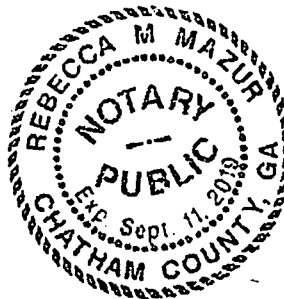
FURTHER DEPONENT SAYETH NAUGHT.


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



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 PM 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 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 handwritten signature in black ink, appearing to read 'A. Bright Ariail', written over a horizontal line.

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)
)
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 PM 3:32

FILED

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 handwritten signature in black ink, appearing to read 'A. Bright Ariail', written over a horizontal line.

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)
)
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 SET ASIDE ENTRY OF DEFAULT
PURSUANT TO SCRPC 55(c)

2016 JUN -3 PM 3:30

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 handwritten signature in black ink, appearing to read 'A. Bright Ariail', written over a horizontal line.

A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON
4 Palmetto Construction Group,
5 Plaintiff,
6 vs. CASE NO. 2016-CP-10-1143
7 Restoration Specialists, LLC,
8 Reuben Mark Ward, and Lynnette
9 Pennington Ward,
10 Defendants.
11
12

13 Hearing before the Honorable Mikell R.
14 Scarborough, reported by Christine A. Smith, Court
15 Reporter and Notary Public, at 11:29 a.m. on
16 June 6, 2016 at 100 Broad Street, Charleston,
17 South Carolina.

18 **COPY**
19
20

21 Christine A. Smith, Court Reporter
22 Master-in-Equity
23 P.O. Box 30276
24 Charleston, South Carolina, 29417
25 (843) 958-5071
casmith@charlestoncounty.org

EXHIBIT K

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

3 Andrew K. Epting, Jr., Esq.
4 Michelle Endemann, Esq.
5 Andrew K. Epting, Jr., LLC
6 46A State Street
7 Charleston, SC 29401
(843) 377-1871
Ake@epting-law.com
Mne@epting-law.com

8 ATTORNEYS FOR THE DEFENDANT:

9 A. Bright Ariail, Esq.
10 Law Office of A. Bright Ariail, LLC
11 125-E Wappoo Creek Drive
12 Suite 202
13 Charleston, SC 29412
14 (843) 814-8805
15 Bright@brightariaillaw.com

P R O C E E D I N G S

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

1 the motion before we get to the subset of the aspect
2 of it, or where do we stand on that?

3 MS. ENDEMANN: Well, Judge, we were served
4 late Friday, and we are amenable to try to come to
5 some resolution of these motions. If I could give
6 you a little bit of context and background for the
7 case?

8 THE COURT: Sure.

9 MS. ENDEMANN: It's a case that arises out of
10 a project for the VA. It was completing a hospital
11 parking deck in Georgia. So Restoration Specialists
12 was the general contractor on the project with the
13 Department of Veteran's Affairs. My client, Palmetto
14 Construction Group -- I have Mr. Kendle with me here
15 today -- was approached by Restoration.

16 This was a large project for them. They
17 needed some help getting a bond in place. In order
18 to complete the job they needed help managing the
19 project. They needed help completing the project.
20 So they came to my client, Palmetto Construction
21 Group, and asked for assistance.

22 A teaming agreement was entered into. So
23 under this agreement Palmetto would manage the
24 project, they would do other certain
25 responsibilities, and Restoration would stay as the

1 general contractor. There would be a profit split as
2 a result of this agreement. The project started --
3 seemingly it was going pretty well.

4 Towards the end of the project, we started to
5 get some red flags. We started to get notices that
6 some of the subcontractors, some of the suppliers,
7 are not being paid by Restoration. Unfortunately, as
8 part of this agreement with Restoration, Palmetto got
9 their bonding company to write this bond. Palmetto
10 is liable on the bond with Mr. Ward and Restoration
11 and Ms. Ward. Mr. Kendle personally is liable on the
12 bond. Mr. Handegan, another primary principal at
13 Palmetto is obligated on the bond and so is his wife.

14 So when all of these claims start coming in
15 from these subcontractors who say they're not getting
16 paid from Restoration, it becomes our problem in a
17 very large way. Hanover, the bonding company, turns
18 to us and says, You need to pay for this. You're
19 obligors on the bond. Now we have approximately
20 \$1.4 million dollars in claims on this bond for
21 subcontractors and suppliers that have not been paid,
22 and Hanover is looking to us to pay it.

23 It's impacting other jobs because obviously
24 they have this issue with the bonding company,
25 getting other bonds is becoming a problem. So

1 there's some real urgency on our clients' part to get
2 this worked out as fast as we possibly can.

3 Mr. Ward had been making some overtures.
4 Ms. Ariail was retained, and she filed the motions
5 that you discussed earlier on Friday. If we could
6 get some agreement, Judge? We need the file. We
7 need the financials. We need the bank accounts. We
8 need to get these documents in place, and we would
9 like to ask him some questions about, where are these
10 funds? You are receiving payments from the Federal
11 Government. Where is the money going because Hanover
12 is coming to us saying we need to pay it. We did our
13 part but we're going to end up in a really tough spot
14 here. So the urgency is really what we're impressing
15 here.

16 We're amenable to trying to work something out
17 on these motions, but we really need to have an
18 agreement and exchange so that we can have these
19 documents. We actually served the discovery with the
20 Complaint, so it's already pretty well overdue. I
21 actually today just served some deposition notices on
22 Ms. Ariail. Of course she's just getting involved in
23 the case.

24 We are looking to get these records as soon as
25 possible. That's a little bit about potential

1 accounting that would be great. If that can't be
2 done in the short term we would like the file. We
3 would like the file anyway, but we would like that at
4 least in the next seven or so days. If we can take a
5 deposition in the next 14 days I think Ms. Ariail
6 might have some issues with the date but as soon as
7 possible, and maybe even get a hearing in front of
8 Your Honor in case any other issues come up with the
9 discovery or if we need to go to mediation. If there
10 is any kind of order that we would like the Court's
11 help with we could come back to you in order to work
12 this out as quickly as we possibly can.

13 THE COURT: Ms. Ariail?

14 MS. ARIAIL: Your Honor, I learned of this
15 matter Thursday night of last week. I have
16 represented Restoration Specialists in other matters,
17 so I am, unfortunately very new to this issue. I do
18 understand from Mr. Ward, who is the managing member
19 of Restoration Specialists, that he has been in
20 contact with the attorney -- I guess it's an in-house
21 attorney with the bonding company, and he has made
22 some payments on some of these claims that are
23 considered valid reaching back into the March
24 timeframe of this year.

25 I know that he is eager to get this issue

1 resolved and behind him also. I've spoken to him
2 after speaking with Palmetto's counsel on Friday, and
3 he is willing to provide the documentation and
4 absolutely would be willing to mediate this case. I
5 believe there were -- per the contractors there was a
6 mediation and then mandatory mediation as condition
7 precedent to arbitration. So we would like to do
8 that.

9 Unfortunately it's compounded by -- I'm
10 actually leaving the country on Saturday for
11 two weeks. I had not asked for an order of
12 protection in this Court because I didn't have
13 anything active in this Court. So that unfortunately
14 is going to impact the time. I'm willing to do what
15 I need to do to try to facilitate the exchange of
16 information and move forward with this.

17 THE COURT: I think June 10th through the 24th
18 were the dates you were requesting that you would be
19 out?

20 MS. ARIAIL: Yes, sir.

21 THE COURT: Do you have information? Do you
22 have documentation from your client based on your
23 conversation you must have had last week with them?
24 Have you gotten any of this stuff? Do you have it in
25 hand I guess is my question?

1 MS. ARIAIL: I do not. The only thing I have
2 are a couple of affidavits that are specific to the
3 subject of the motions that I had filed.

4 THE COURT: I haven't seen any affidavits.

5 MS. ARIAIL: I just filed them this morning,
6 Your Honor. He's out of state, so I had to have them
7 overnighted to me on Saturday.

8 THE COURT: Sure.

9 MS. ARIAIL: I'll be happy to pass a copy up
10 to you.

11 THE COURT: Okay.

12 MS. ARIAIL: Again, I had filed a Motion for
13 Continuance and Protection. This is just dealing
14 with this schedule to try to give me some time to
15 figure out what's going on here and -- and then the
16 Motion to Set Aside the Default. So there's two
17 affidavits.

18 THE COURT: Okay. You have two affidavits
19 from Mr. Ward: One explaining what was going on
20 relative to the bond, and acknowledging receipt of
21 the Summons and Complaint on or about March 14th; the
22 other stating he's the managing member and just got
23 notice of this hearing on June 2, which would have
24 been last Thursday night at 6:30.

25 Ms. Endemann?

1 MS. ENDEMANN: Thank, you, Judge. I'm going
2 to object to these just because I haven't seen them
3 before now. One of the things I would like to point
4 out -- we did serve Mr. Ward pursuant to the Rule
5 last week with the notice of this hearing, and then
6 ever since then there's sort of been a flurry of
7 e-mail correspondence with the bonding company, and
8 there have been some payments, but my understanding
9 is that it's right near \$20,000 on the \$1.4 million
10 that's outstanding.

11 So while he's making overtures, respectfully,
12 we really need to push forward with the discovery
13 because obviously that's not even putting a dent into
14 what's owed. We're copied on most of this
15 correspondence with the bonding company since they're
16 coming to us weekly, if not daily, to get updates and
17 try to get their money.

18 THE COURT: Are you-all already out the 1.4 or
19 is that the amount of the claim.

20 MS. ENDEMANN: That's the amount of the
21 claims. The bonding company has been making demand
22 on this because they have been starting to pay these
23 claims, and so our time is running very short. Then
24 Ms. Ariail is going on vacation. I understand that.
25 We can maybe work with her on the deposition dates.

1 you-all can do to work out in the meanwhile, but it
2 sounds like it needs to happen sooner than later.
3 Okay? So I'll hold the Motion to Reopen the Entry of
4 Default in abeyance.

5 As it stands now, the Defendants are in
6 default. I'm going to give you some time because you
7 are going on vacation, but it sounds to me like your
8 client needs to come up with some information pretty
9 darn quick. Okay? Let's see if you-all can't get
10 this thing resolved. You indicated there was -- I
11 think I read that in your correspondence. There was
12 some sort of mandatory mediation prior to arbitration
13 was you-all's contractual arrangement; is that what
14 it was?

15 MS. ARIAIL: Yes, sir.

16 THE COURT: Well, we'll cross that bridge when
17 we get to it. Okay? I would see if you-all can't
18 set that up and get some information and get rolling
19 with this. I'm going to bring you-all back in here.
20 Let's get a date.

21 MS. BECK: We have some time July 14th.

22 THE COURT: Do you want to get a status about
23 that time? July 14th? Does that give you enough
24 time? You're going to be gone until the 24th, so
25 back in the office -- that would be -- we ought to

1 find out where we're going at that time? Why don't
2 you-all give me a response -- what does that day look
3 like? Is it wide open?

4 MS. BECK: The 14th?

5 THE COURT: Yes.

6 MS. BECK: We have one at 11:00.

7 THE COURT: I'll put you-all down for 11:00
8 a.m. on the 14th of July. We'll reconvene at that
9 time. See what you-all can resolve.

10 MS. ENDEMANN: Thank you, Judge.

11 (The proceedings were concluded at 11:43 a.m.)
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1 State of South Carolina)

2 County of Charleston) C E R T I F I C A T E

3
4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.

14
15
16 

17 Christine A. Smith
18 Notary Public
19 My Commission Expires
20 May 12, 2021
21
22
23
24
25

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 SCRPC 12(b)(1) AND
APPLICABLE CASE LAW**

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.

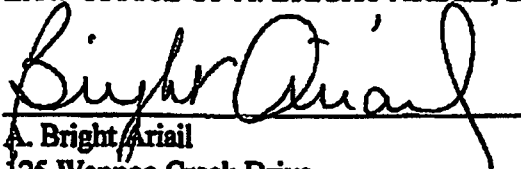
This Motion is made on the following grounds:

- (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 handwritten signature in black ink, appearing to read "Bright Ariail", is written over a horizontal line.

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

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

Civil Action No. 2016-CP-10-1143

CERTIFICATE OF SERVICE

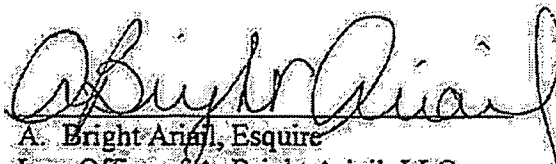
CLERK OF COURT

2016 JUL 11 AM 11:59

FILED

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 SCRPC 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
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 Palmetto Construction Group,

5 Plaintiff,

6 vs. CASE NO. 2016-CP-10-1143

7 Restoration Specialists, LLC,
8 Reuben Mark Ward, and Lynnette
9 Pennington Ward,

10 Defendants.

11
12 Hearing before the Honorable Mikell R.
13 Scarborough, reported by Christine A. Smith, Court
14 Reporter and Notary Public, at 10:57 a.m. on July
15 14, 2016 at 100 Broad Street, Charleston,
16 South Carolina.

17 **COPY**

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19
20
21 Christine A. Smith, Court Reporter

22 Master-in-Equity

23 P.O. Box 30276

24 Charleston, South Carolina, 29417

25 (843) 958-5071

casmith@charlestoncounty.org

EXHIBIT M

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

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4 Michelle Endemann, Esq.
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12 Suite 202
13 Charleston, SC 29412
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15 Bright@brightariaillaw.com
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P R O C E E D I N G S

1
2
3 THE COURT: Palmetto Construction Group versus
4 Restoration Specialists, LLC. For the Plaintiffs is
5 Mr. Drew Epting and Ms. Michelle Endemann. For the
6 Defendants is Ms. Bright Ariail. Good morning,
7 Ms. Ariail. I believe we are here on your motion,
8 are we? Is that what got us here?

9 MS. ENDEMANN: Judge, I think we are here on a
10 couple of different things that were noticed. I
11 think you set it for sort of a general status after
12 we were here before you about a month ago. Also,
13 there is a Motion to be Relieved from Default that
14 Ms. Ariail has filed, as well as a Motion to Compel
15 Arbitration.

16 I can give you a little bit of an overview of
17 sort of where we are from last time. I think it
18 would be helpful.

19 THE COURT: Sure.

20 MS. ENDEMANN: If you recall, Judge, this is a
21 case where my client, Palmetto Construction has sued
22 a business associate of theirs on a project for the
23 V.A. The agreement between Restoration Specialist
24 and the other Defendants which are the principals of
25 that company and Palmetto was essentially that they

1 would work together on a job with the V.A.
2 Restoration was to be the general contractor.
3 Palmetto was to aid Restoration in this job, provide
4 their expertise on a job of this size, provide the
5 bonds that were required in order to complete the
6 project. There would be a split of the profits, and
7 Mr. Ward was the one who had the contracts with the
8 V.A., and then all the subcontractors below.

9 Unfortunately what happened is Mr. Ward
10 stopped paying his subcontractors. He stopped paying
11 them it looks like all together. We started
12 receiving bond claims coming in toward the end of the
13 job. We didn't know what was going on because we
14 weren't a party to those agreements. We weren't the
15 ones that were paying them. We weren't the ones that
16 were receiving money from the V.A.

17 So Mr. Ward is getting money from the V.A.
18 He's diverting the funds. His subcontractors filed
19 claims on the bond for which Palmetto was liable, and
20 personally liable, all of its principals, their
21 wives, and now Hanover, the bonding company with
22 surety is looking to us to pay over a million dollars
23 in bond claims.

24 We were here before you last time for a
25 damages hearing because we had served discovery with

1 our Complaint and the Complaint went unanswered.
2 We're here for a damages hearing. We served Mr. Ward
3 with notice of that hearing pursuant to the Rules,
4 and it was then that he had hired Ms. Ariail.

5 She came and actually had a vacation planned,
6 so we kind of came to an agreement. She was able to
7 get us some of the documents that were owed. The
8 discovery is not complete. In particular we're
9 missing some pretty important things like the
10 payments from the V.A. to Mr. Ward and then where
11 that money went.

12 From the documents that we have received it
13 appears that the project was pretty profitable with
14 all the subcontractors being paid, and then still
15 some hundreds of thousands of dollars in profit. So
16 we're left looking at records that show there should
17 be a surplus of funds.

18 Instead we're faced with the surety coming to
19 us and saying, Hey, you owe us over a million
20 dollars. The other problem that my client has is
21 they do a lot of bonded work. They have a surety
22 that says, You owe us over a million dollars. Nobody
23 wants to bond any projects. So time is really,
24 really of the essence here because we can't get work.
25 If we can't get work our business goes under, and all

1 of our people don't have jobs, so we're really sort
2 of in dire straits here.

3 THE COURT: Okay.

4 MS. ENDEMANN: We were served with this Motion
5 to Compel Arbitration this week, and Your Honor has
6 set it probably for expediency today. We don't
7 think, Your Honor, that we can go forward on that
8 motion. First, we don't think that he can bring the
9 motion, period, because he's in default; and second,
10 it's not properly before this Court as we only got
11 notice of it a couple of days ago.

12 We think that the tapat here might be to try
13 to get relief from default, get this motion heard,
14 and get it appealed if Your Honor does not rule in
15 their favor and ties this up for several years. If
16 that happens, again, my client's out of business.

17 What we would like to see happen here today is
18 have a damages hearing set because Mr. Ward is in
19 default. He's not provided the Court with any
20 reasonable explanation for being in default and is
21 not entitled to make this Motion for Arbitration
22 since he is in default. Thank you, Your Honor.

23 THE COURT: Ms. Ariail, let me hear from you
24 on that one.

25 MS. ARIAIL: Your Honor, I don't totally agree

1 with the facts, but I think the thing that disturbs
2 me the most is the statement that we haven't provided
3 payments from the V.A. We have provided
4 documentation of the amount of payments that have
5 been made.

6 When we were in front of you a month or so ago
7 there was a -- and there still is a standing Motion
8 for Compelling Arbitration by the Plaintiff. They
9 actually filed that. The contract requires it, and
10 there is a motion that has not been heard that was
11 filed by the Plaintiff for compelling arbitration.

12 In the meantime, despite the requirement for
13 mediation and arbitration, and based on direction
14 from the Court at the last hearing, we have complied
15 with discovery. We have answered discovery. We have
16 been continuously providing documents as we've
17 compiled them, and at my direction my client has
18 concentrated on the financial records rather than the
19 voluminous information that is compiled on a
20 two-or-three-year construction project.

21 That being said, I think it's proper to hear
22 the Motion to Compel Mediation and Arbitration today.
23 We merely joined what the Plaintiff's have already
24 filed. For that reason I would ask that you go ahead
25 and hear that motion.

1 THE COURT: You want to get out of Default
2 first, don't you? I didn't rule on that last time I
3 don't think?

4 MS. ARIAIL: You did not.

5 THE COURT: You're right. Mr. Epting and
6 Ms. Endemann, it looks like there was a motion filed
7 back in March to Compel. Is it mediation or
8 arbitration? Is it contract specific?

9 MS. ENDEMANN: Your Honor, it's a standard
10 Form AIA contract, so there is a provision in there
11 having to do with mediation and arbitration. We did
12 file that motion assuming that we were going to get a
13 responsive pleading and that we would send it to
14 arbitration. That's not what happened in this case.
15 Instead we set aside that motion and asked for an
16 order referring this case to you for a damages
17 hearing which was granted by the Circuit Court.

18 THE COURT: I've got it. This was filed
19 March 7th. That motion was with those -- that was as
20 a result of the matter to referral. Mr. Ward was
21 served on the 14th of March. The Motion to Set Aside
22 the Entry was there. I recall we had a quick meeting
23 and then you-all did some discovery and I haven't
24 been able to resolve anything. Basically, it's a
25 Motion for a Continuance which we granted. And then

1 Mr. Ward's affidavit. All right. That rings a bell.

2 Well, Ms. Ariail, I think the first thing you
3 have to do is get out of default before you can bring
4 affirmative relief. It does appear that the matter
5 was referred over here. I think that took care of
6 the -- the clerk closed out the Motion to Compel the
7 Arbitration because of the fact that it was referred
8 over here. So that based some adjudication on that
9 motion is how the Court considers that.

10 I think what we were wrestling with last time
11 was whether or not you-all could resolve it. That
12 doesn't look like it's been done. I find that
13 because it was not shown by Mr. Ward in his
14 affidavits that that supported why he was in default
15 I find the Defendant in default and I so order.

16 So this will be a question of a damages
17 hearing to be set. How much time do you-all want?

18 MS. ENDEMANN: Your Honor, we probably need
19 about an hour to two hours for the hearing, and we
20 can hear it whenever the Court is available.

21 THE COURT: Okay.

22 MS. ARIAIL: Your Honor, I would ask since I
23 have in good faith participated in discovery that I
24 at least be allowed to serve some form of discovery
25 related to damages so that I can prepare properly for

1 the damages hearing.

2 THE COURT: Ms. Endemann?

3 MS. ENDEMANN: I don't think we're in a
4 position, Your Honor, to consent to that. Ms. Ariail
5 can certainly Cross the Plaintiff on any damages that
6 we present at the hearing as is allowed by the Rules,
7 but she isn't allowed to present her own evidence in
8 any event.

9 We're happy to try to -- most of the documents
10 that we would use in support of our case are her
11 clients and also Hanover's, which are the bond claims
12 spreadsheets and everything, which Hanover is sending
13 directly to her client and which we're happy to
14 provide if that's not happening. I think she has
15 everything that she would need. It would just be the
16 testimony, and of course, she's entitled to Cross
17 under the Rules.

18 THE COURT: All right. I think that's the
19 case. All right? I'm assuming you've got what
20 you've got. You're entitled to participate in a
21 damages hearing. There's no doubt about that by
22 Cross-Examination but not by putting forth in
23 evidence.

24 MS. ARIAIL: Right, Your Honor, but to
25 properly prepare to Cross-Examine their witnesses,

1 I've seen nothing they have. They have discussed an
2 indemnity agreement in the Complaint. I don't have
3 that. My client doesn't have that.

4 THE COURT: Well, it may expedite the matter
5 to move forward so everybody's talking with the same
6 thing. We don't have to read documents when we're
7 here. I would ask that you-all share what you can in
8 that regard. I'm not going to mandate it because I
9 don't think that's proper. If we don't get it worked
10 out we'll have a hearing in the next, what, 60 days
11 or so?

12 MS. BECK: I didn't know if this might be
13 something you might want to put on the trial term as
14 a possibility. If not, we've got some time the first
15 week in October.

16 THE COURT: I can bring you-all back -- I've
17 got some trials coming up. I've been squeezing stuff
18 in there. I've got a trial term in August and one in
19 September. The last week of September?

20 MS. BECK: Yes, sir, or if they prefer a date
21 certain we can do the first week of October.

22 MS. ARIAIL: Your Honor, I have a
23 Court-ordered mediation the last week of September,
24 so if we could move it to the first week of October
25 that would be helpful.

1 THE COURT: Okay.

2 MS. BECK: The afternoon of the 5th, after
3 those allocation hearings that you set, we can do the
4 rest in the afternoon.

5 THE COURT: What's going on on the 4th?

6 MS. BECK: Nothing. That would be fine, too.

7 THE COURT: Why don't we set this for October
8 4th at 2:00 p.m. Let's just set it up. That's a
9 Tuesday afternoon the first week of October. Okay?

10 MS. ENDEMANN: Thank you, Judge.

11 MR. EPTING: Thank you, Judge.

12 THE COURT: Very good. I'm just going to do a
13 Form 4, and I'll put that in there. If you-all want
14 to follow up with an order you can. 2:00 p.m.

15 MS. ENDEMANN: Thank you.

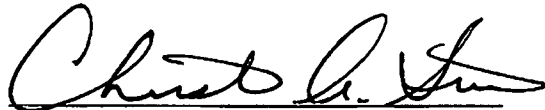
16 (The proceedings were concluded at 11:11 a.m.)
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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
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10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.
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18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021
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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

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), SCRPC

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRPC. *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

(Cl. 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), SCRCF.

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.*

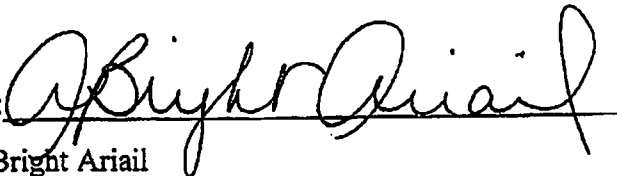
As no prejudice will result to Plaintiff in setting aside the entry of default, this good cause factor under Rule 55(c), SCRCF is satisfied.

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), SCRCF.

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

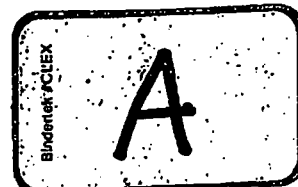
ADDITIONS AND DELETIONS:

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.



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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, assuming Sub-subcontractors are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assume 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 submissions 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

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.

§ 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.

§ 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

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

Substantial Completion Date

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 EXCHANGE 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

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:

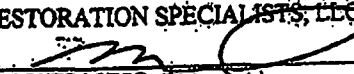
1. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
2. Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed 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.

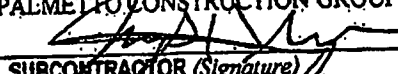
This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC


CONTRACTOR (Signature)

Mark Ward - Managing Member
(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC


SUBCONTRACTOR (Signature)

JAY HANNON - Vice President
(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 5GXEL, 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

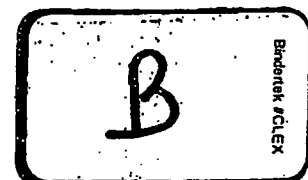
If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. 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: [Signature]
(Authorized Signature)
Title: Managing Member
Date: 12/7/11

PALMETTO CONSTRUCTION GROUP

By: [Signature]
(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

PAYMENT BOND
 (See instructions on reverse)

DATE BOND EXECUTED (Must be same or later than date of contract)

April 23, 2012

OMB No.: 9000-0045

Expires: 11/30/2012

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, DC 20405.

PRINCIPAL (Legal name and business address)

Restoration Specialists, LLC

P. O. Box 5352

Savannah, GA 31414

TYPE OF ORGANIZATION ("X" one)

☐ 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)	THOUSAND(S)	HUNDRED(S)	CENTS
5	999	860	00

CONTRACT DATE

CONTRACT NO.

March 13, 2012

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.

Bindertek #CLEX

C

Restoration Specialists, LLC

PRINCIPAL

SIGNATURE(S)

1.

2.

3.

(Seal)

(Seal)

(Seal)

Corporate Seal

NAME(S) & TITLE(S)
(Typed)

1.

2.

3.

INDIVIDUAL SURETY(IES)

SIGNATURE(S)

1.

(Seal)

(Seal)

NAME(S)
(Typed)

1.

2.

The Hanover Insurance Company

CORPORATE SURETY(IES)

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.

 AUTHORIZED FOR LOCAL REPRODUCTION
 previous edition is obsolete

 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 used 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 written approval of the Administrator of General Services.

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.

(a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of 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 spaces (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.

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)

Restoration Specialists, LLC

P. O. Box 5352

Savannah, GA 31414

TYPE OF ORGANIZATION ("X" one)
☐ 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)	THOUSAND(S)	HUNDRED(S)	CENTS
5	999	360	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 Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract 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.	2.	3.	Corporate Seal
	(Seal)	(Seal)	(Seal)	
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	Corporate Seal

INDIVIDUAL SURETY(IES)

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

The Hanover Insurance Company

CORPORATE SURETY(IES)

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

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 spaces (Surety A, Surety B, etc.) headed "CORPORATE

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

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

CORPORATE SURETY(IES) (Continued)

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

ORDER

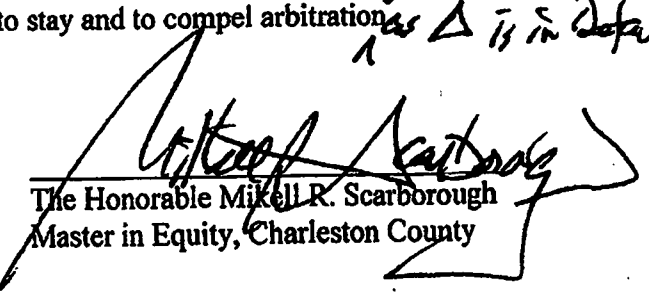
THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

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 RS
as Δ is in default.

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

On this 14 day of July 2016
Charleston, SC

Law Office of A. Bright Ariail, LLC

July 19, 2016

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

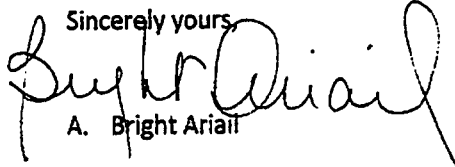
RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

2016 JUL 22 PM 2:21

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 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@brightariailaw.com
843/814-8805

CONFIDENTIALITY NOTICE

This electronic mail transmission may contain information belonging to the sender which is confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately delete this email and notify me by return email or by telephone at 843/814-8805.

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: 843-377-1871

F: 843-377-1310
mnc@epting-law.com

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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
SCRPC 59(e) AND APPLICABLE
CASE LAW**

2016 JUN 21 PM 1:30
FILED

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);*

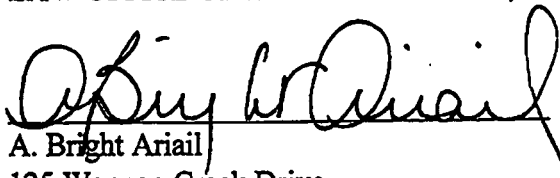
(4): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, 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 handwritten signature in black ink, appearing to read "A. Bright Ariail", written over a horizontal line.

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	Roster In
Roster Type	Motion Hearings	Roster Entry Date	10/11/2016	Roster Entry Party

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney
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) 77077707 D. Nathan I (843) 571-4
2	10/11/2016	10:00 AM		Motion/Alter or Amend judgment by plaintiff, crt/srv		07/27/2016	2012CP1002432 Regions Bank VS Bdt Projects Llc Etc defendant, et al	Foreclosure: 420	3281400181	Merritt Gordon Abney (843) 4110
3	10/11/2016	11:00 AM		Motion/Dismiss by Thomas Calcote et al, crt/srv		07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc defendant, et al	Foreclosure: 420	3281400181	Merritt Gordon Abney (843) 4110
4	10/11/2016	1:00 PM		Motion/Alter or Amend judgment by plaintiff, crt/srv	Merritt Gordon Abney-PAT	07/27/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc defendant, et al	Foreclosure: 420	3281400181	Merritt Gordon Abney (843) 4110
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 Nix Endemann 377-1871 Andrew K. I Jr. (843) 377-
6	10/11/2016	2:00 PM		Motion/Reconsider, Alter or Amend by defendant, crt/srv	A. Bright Anall-DAT	07/27/2016	2016CP1001143 Palmetto Construction Group	Breach of Cont 140		Michelle Nix Endemann 377-1871

**Charleston County - Roster Details
Master's Docket for October 11, 2016**

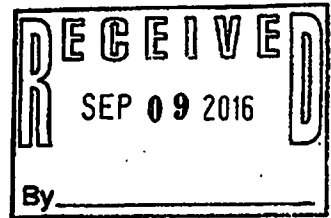
Court Agency	Master In Equity	Judge	Scarborough	Roster to
Roster Type	Motion Hearings	Roster Begin Date	10/11/2016	Roster End Date

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney
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 (803-0463)
8	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	4690500010	Scott Daniel Spivey (803-0463)
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 (803-0463)
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 John W R Whaley	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803-0463)
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 (803-0463)
12	10/11/2016	3:00 PM		Master/QT after tax hearing	Municipal Tax Investment LLC-PLT	09/08/2016	2015CP1006757 Municipal Tax Investment LLC VS John W R Whaley, defendant, et al	Real Prop/Other 499	4691500143	Scott Daniel Spivey (803-0463)

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

FILED
2016 SEP 13 PM 4:10
CLERK OF COURT
JUDGE J. ARISTON

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 handwritten signature in black ink, appearing to read "A. Bright Ariail".

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.

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 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

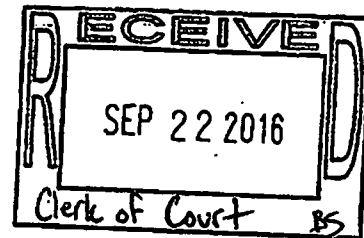
Judge Scarborough,

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@brightariailaw.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@brightariailaw.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 <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@brightariailaw.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. Inasmuch 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@brightariailaw.com

125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

843/814-8805

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

Palmetto Construction Group, Respondent,

v.

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

NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Bench and Formal Orders of the Honorable Mikell R. Scarborough dated July 14, 2016. The Court's orders: (a): Denied Appellant's Motion to Lift Entry of Default for lack of good cause; (b): Denied Appellant's Motion to Stay and Compel Arbitration on the basis of default; and (c): Set a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016.

Appellants filed a Motion to Reconsider and to Alter and Amend the Court's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. The Court scheduled the hearing on Appellants' motion for October 11, 2016. On September 7, 2016, standing on their rights to arbitration, the Appellants requested the Court to schedule the hearing on Appellants' motion prior to the October 4, 2016 damages hearing.

On September, 7, 2016, the Court replied to Appellants' 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. The Court asked the parties to advise if this plan was acceptable. The Appellants informed the Court that this plan was acceptable. The Respondent notified the Court that it would defer to the Court, but preferred the damages hearing to be held on October 4, 2016 and the motions hearing to be held on October 11, 2016.

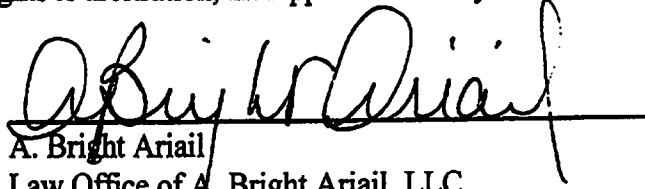
2016 SEP 30 PM 2:41
JULIE ARBUSHONG
CLERK OF COURT
BY _____

EXHIBIT U

After further consideration, the Court then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would be held on October 4, 2016 and the motions hearing would be held October 11, 2016. Appellants received written notice of the Court's decision on September 12, 2016.

The Court's decision to proceed with the damages hearing and not hear the Appellant's Rule 59(e) prior thereto effectively denies this motion and proceeding with the damages hearing under these circumstances would severely prejudice Appellants' rights to arbitration. Therefore, subject to, without waiving, and fully preserving their rights to arbitration, the Appellants hereby file the instant appeal in this matter.

September 29, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

Other Counsel of Record:

Andrew K. Epting, Jr.
Michelle N. Endemann
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

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

FILED
2016 SEP 30 PM 2:41
JULIE M. BRYANT, CLERK OF COURT
BY _____

Palmetto Construction Group,

Respondent,

v.

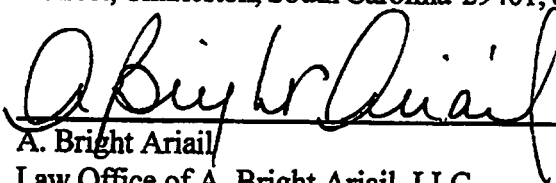
Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward

Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2016, addressed to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina 29401, on September 30, 2016.

September 30, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202

CHARLESTON, SC 29412

abright@brightariailaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805

Facsimile: (843) 266-0538

October 4, 2016

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

FILED
2016 OCT -4 PM 2:45
JULIE J. ARMSTRONG
CLERK OF COURT

RE: *Palmetto Construction Group v. Restoration Specialists, LLC,*
Reuben Mark Ward, and Lynette Pennington Ward
Case No. 2016-CP-10-1143

Dear Julie:

Enclosed for filing please find two copies of various email records related to the damages hearing set for October 4, 2016 in the above-referenced matter. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely,

A. Bright Ariail

Enclosures

cc: Andrew K Epting, Jr., Esq.
Michelle N. Endemann, Esq.

EXHIBIT V

Bright Ariail

From: Laura Dukes Beck <LBeck@charlestoncounty.org>
Sent: Monday, October 3, 2016 3:58 PM
To: Bright Ariail; Mikell Scarborough; Barnwell Fishburne
Cc: Andrew K. Epting; Michelle Endemann; Angela Gross
Subject: RE: Palmetto Construction Group v. Ward, et al; Case No. 2016-CP-10-1143

The Judge has decided that we ARE going forward with this tomorrow. We will see everyone at 2:00.

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: Monday, October 03, 2016 11:52 AM
To: Mikell Scarborough; Barnwell Fishburne
Cc: Andrew K. Epting; Michelle Endemann; Laura Dukes Beck; Angela Gross
Subject: RE: Palmetto Construction Group v. Ward, et al; Case No. 2016-CP-10-1143

Your Honor,

I am in receipt of Mr. Epting's email below. The Notice of Appeal was served after careful consideration and in good faith; it is our position that it is timely, it is not taken for the purpose of delay but rather to obtain lawful appellate review and preserve the arbitration rights of the Defendants, and it is in compliance with the South Carolina Appellate Court Rules and applicable law. Accordingly, Defendants will not be withdrawing the Notice of Appeal. Further, per Rule 205 of the SCACR, I understand all proceedings in your court will be stayed and that the appellate court now has exclusive jurisdiction over this matter.

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: Angela Gross [mailto:agg@epting-law.com]

Sent: Friday, September 30, 2016 6:26 PM

To: master@charlestoncounty.org

Cc: Andrew K. Epting <ake@epting-law.com>; Angela Gross <agg@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>; Michelle Endemann <mne@epting-law.com>; LBECK@charlestoncounty.org

Subject: Palmetto Construction Group v. Ward, et al; Case No. 2016-CP-10-1143

Judge Scarborough,

As you will recall, there is currently a default damages hearing scheduled for Tuesday, October 4 at 2:00pm in the above referenced case. Hearings on the motions to reconsider by both parties have been set for October 11 at 2:00pm.

This afternoon, we received a copy of Ms. Ariail's Notice of Appeal. The Notice of Appeal is facially invalid as the order denying the motion to lift the default and denying the affirmative defense of arbitration was served on all parties by the Court on July 18, 2016. The notice is untimely by more than two months, and the order is interlocutory. No order on the motion to reconsider has been entered as it remains pending.

The appeal is an attempt to continue the damages hearing and further delay any resolution of this matter. We are filing a motion to dismiss and for expedited review in the Court of Appeals. We view the appeal as frivolous, and this is to notify counsel and that Court that we will be seeking sanctions against the Defendants and counsel up to and including any further harm to Palmetto as they will likely have to close their doors.

We ask that Ms. Ariail withdraw her notice of appeal and that she advise her decision on the withdrawal by Monday. We are prepared to go forward with the damages hearing as scheduled.

With kindest regards,

Drew

Angela

Angela Gross
Legal Assistant to Andrew K. Epting, Jr., Esquire
And Michelle N. Endemann, Esquire
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
Telephone: (843) 377-1871
Facsimile: (843) 377-1310
agg@epting-law.com

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,	)	<u>MEMORANDUM IN SUPPORT OF</u>
	)	<u>DEFENDANTS' MOTION TO RECONSIDER</u>
	)	<u>AND TO ALTER OR AMEND PURSUANT TO</u>
vs.	)	<u>SCRCP 59(e) AND APPLICABLE</u>
	)	<u>CASE LAW</u>
	)	
Restoration Specialists, LLC,	)	
Reuben Mark Ward, and Lynnette	)	
Pennington Ward	)	
	)	
<u>Defendants.</u>	)	

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 handwritten signature in black ink, appearing to read "A. Bright Ariail", written over a horizontal line.

A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

October 4, 2016
Charleston, SC 29412

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OCT 19 2016

SC Court of Appeals

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

Palmetto Construction Group,
LLC

Respondent,

v.

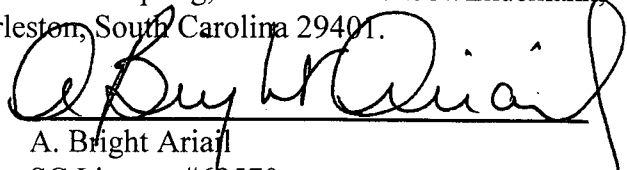
Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward

Appellants.

PROOF OF SERVICE

I certify that I have served the Appellants' Return to Respondents' Emergency Motion to Dismiss Appeal and for Expedited Review on Palmetto Construction Group, LLC by depositing a copy of it in the United States Mail, postage prepaid, on October 17, 2016, addressed to Palmetto Construction Group, LLC's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401.

October 17, 2016



A. Bright Ariail

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October 17, 2016

VIA US MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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OCT 19 2016

SC Court of Appeals

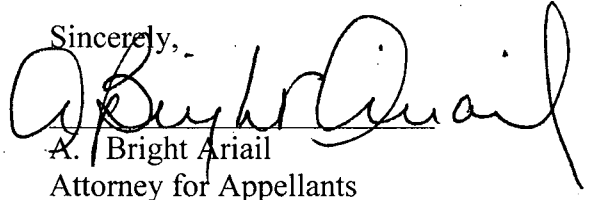
RE: *Palmetto Construction Group v. Restoration Specialists, LLC,*
Reuben Mark Ward, and Lynette Pennington Ward
Appellate Case No. 2016-002096
Circuit Court Case No. 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of Appellants' Return to Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review, together with the Proof of Service in the above-referenced matter.

Please file the originals and return a clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,



A. Bright Ariail
Attorney for Appellants

Enclosures – as stated

cc: Andrew K. Epting, Jr.,
Michelle N. Endemann
Andrew K Epting, Jr., LLC
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Attorneys for Respondent